

55 Minutes

SESSION VII

PHASE THREE: PRE-ARREST SCREENING

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Upon successfully completing this session, the participant will be able to:

- o Describe the role of psychophysical and preliminary breath tests.
- o Define and describe the concepts of divided attention and nystagmus.
- o Discuss the advantages and limitations of preliminary breath testing.
- o Discuss the arrest decision process.

CONTENT SEGMENTS

LEARNING ACTIVITIES

- | | |
|---|---------------------------------|
| A. Overview: Tasks and Decision | o Instructor-Led Presentations |
| B. Gaze Nystagmus - Definition | o Instructor-Led Demonstrations |
| C. Horizontal Gaze Nystagmus - Definition, Concepts, Demonstrations | o Video Presentation |
| D. Vertical Gaze Nystagmus - Definition, Concepts, Demonstrations | |
| E. Divided Attention Tests: Concepts, Examples, Demonstrations | |
| F. Advantages and Limitations of Preliminary Breath Testing | |
| G. The Arrest Decision | |



Display VII-O (Session Objectives)



55 Minutes



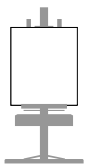
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VII-1



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VII-2



**VII PHASE THREE:
PRE-ARREST SCREENING**

**A. Overview: Tasks and
Decision**

1. DWI Detection Phase Three, Pre-arrest Screening, consists of structured, formal psychophysical testing and preliminary breath testing of persons suspected of DWI, and culminates in the arrest/no arrest decision.

- a. Psychophysical tests are methods of assessing a suspect's mental and/or physical impairment.

- (1) The most significant psychophysical tests are the standardized field sobriety tests, administered at roadside.

Point out that it is the policy of some police departments to conduct psychophysical testing prior to preliminary breath testing, whereas other departments usually conduct preliminary breath testing first. Hence, the two screening tasks are shown as parallel rather than sequential activities on the slide.

Indicate the preferred sequence of psychophysical and preliminary breath testing for the participants' department.

Point out that these tests directly assess impairment by focusing precisely on the human capabilities needed for safe driving (examples: balance, reactions, coordination, information, processing, etc.)

Write on dry-erase board or flipchart: "Standardized Field Sobriety Tests."



Redisplay
VII-1

b. The preliminary breath test can also be very important in helping to corroborate all other evidence, and in helping to confirm the officer's judgment as to whether the suspect is under the influence.

c. The final stage of Detection Phase Three is the Arrest Decision.

Point out the PBT block.
Instructor Please Note: In most states, results of a preliminary breath test ordinarily cannot be introduced as evidence by the prosecution. Indicate to participants the limits of admissibility of PBT results in their state.

Point out the arrest decision on the slide.

Emphasize that the arrest decision is based on all of the evidence obtained during all three detection phases.



5 Minutes

B. Nystagmus - Definition

1. "Nystagmus" means an involuntary jerking of the eyes.

a. Alcohol and certain other drugs cause Horizontal Gaze Nystagmus.

b. Show video.

Show video "The Truth Is In The Eyes" (Wisconsin - 1999).



Display
VII-3

C. Horizontal Gaze Nystagmus - Definition, Concepts, Demonstration

1. Horizontal Gaze Nystagmus means an involuntary jerking of the eyes occurring as the eyes gaze toward the side.

Choose a participant to come forward to serve as a demonstration subject.



5 Minutes

2. To test for Horizontal Gaze Nystagmus, the suspect is instructed to stand with feet together, hands at sides, hold the head still, and follow the motion of a small stimulus with the eyes only.
 - a. The object may be the tip of a pen or penlight, the eraser on a pencil, or your fingertip which contrasts with the background.
 - b. Each eye is checked, beginning with the suspect's left.
 - c. Two or more "passes" are made before each eye, to look for each of the clues of nystagmus.

Ask participant if they have any eye problems or eye abnormalities. If the participant is wearing glasses, have participant remove them.

Point out here the stimulus should be held approximately 12-15 inches (30-38 cm) from the suspect's nose.

Demonstrate the administration of the Horizontal Gaze Nystagmus test using a participant.

Allow participant to return to seat.

Point out that a suspect's height might restrict ability to clearly see nystagmus. Suspect may be placed in sitting position to accommodate a better view.

Suggest the showing of the video entitled, "The Truth Is In the Eyes" (8 minutes and 50 seconds).

Note: Vertical Gaze Nystagmus was not included in the SFST battery during the original research, however, it is a reliable indicator of a high quantity of alcohol for that individual, or other drug impairment.

D. Vertical Gaze Nystagmus - Definition, Concepts, Demonstration

1. Vertical Gaze Nystagmus is an involuntary jerking of the eyes occurring as the eyes are held at maximum elevation.



5 Minutes



20 Minutes



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VII-4

**E. Divided Attention Tests:
Concepts, Examples**

1. Many of the most reliable and useful psychophysical tests employ the concept of divided attention.
 - a. Driving is a complex divided attention task, composed of many components.
 - b. Alcohol and many other drugs impair a person's ability to divide attention.
 - c. Under the influence of alcohol or various other drugs, drivers often must ignore the less critical components of driving and focus their impaired attention on the more critical tasks.
2. Even under the influence, many people often can handle a single, focused-attention task fairly well.
3. But most people, when under the influence, cannot satisfactorily divide their attention to handle multiple

For VGN to be recorded, it must be distinct and sustained for a minimum of four seconds at maximum elevation.

Demonstrate the administration of the Vertical Gaze Nystagmus test using a participant.

Remind participants of the many tasks drivers must perform in order to operate a vehicle safely.

Example: Focus on steering and speed control, and ignore signaling or the processing of information from traffic control devices.

Example: May be able to keep the vehicle well within the proper traffic lane, as long as the road remains fairly straight.



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VII-5

tasks at once.

4. Application of divided attention concept to psychophysical testing: select and use field sobriety tests that simulate the divided attention characteristics of driving.
 - a. Typical mental and physical capabilities that drivers must be able to carry out simultaneously.
 - o Information processing
 - o Short-term memory
 - o Judgement/decision making
 - o Vision
 - o Small muscle control
 - b. A test that simultaneously requires a person to demonstrate two or more of these capabilities is a potentially good psychophysical test.
5. Key supportive concept for divided attention tests: simplicity.
 - a. It is not enough to select a test that divides the suspect's attention.

Point out that some of the best psychophysical tests are those that exercise the same mental and physical capabilities that a person needs to drive safely.

Briefly give examples/ indications of how these capabilities relate to driving.

Aids

Lesson Plan

Instructor Notes



**Display
VII-6**

- b. The test must also be reasonably simple to perform, when sober.

- c. Tests that might be too difficult to perform when sober will be of little or no evidentiary value.

- 6. First example of a simple divided attention test: Walk-and-Turn.

Point out that Walk-and-Turn is a test that has been validated through extensive research sponsored by the National Highway Traffic Safety Administration.

NOTE: Also point out here, that officers should be reminded of the rigid standards the scientific community must follow in order to validate laboratory research (i.e., the development of psychophysical test for DWI detection) and the differences between validated testing and standardized testing. Officers administering SFSTs at roadside are expected: 1) to be reasonable and prudent in their decision to test; and 2) not to deviate from the SFST administrative instructions described later in this course.



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VII-7**

- a. Walk-and-Turn is a divided attention test consisting of two stages:
 - o Instructions stage.
 - o Walking stage.

Remind participants that prior to starting this test they should ask if the subject has any physical problems or disabilities.

Aids

Lesson Plan

Instructor Notes



Display
VII-8

- b. Instructions Stage: Suspect must assume heel-to-toe stance, with arms at sides, and listen to instructions.
 - c. Walking Stage: Suspect must take nine heel-toe steps down the line, turn in a prescribed fashion, and take nine heel-toe steps up the line, while counting steps out loud.
 - d. Prescribed Turn: Suspect must keep the front foot on the line, turn on that foot, using a series of small steps with the other foot.
7. Second example of a simple divided attention test: One-Leg Stand.
- a. One-Leg Stand consists of two stages.
 - o Instructions stage.
 - o Balance and Counting stage.
 - b. Instructions Stage: Suspect must stand with the feet together, with arms at sides, and listen to the instructions.
 - c. Balance and Counting Stage: Suspect must raise one leg, either leg, with the foot approximately six inches (15 cm) off the

Demonstrate stance.

Point out that this divides attention between a balancing task and an information processing task. Demonstrate heel-toe steps and simultaneous counting.

Demonstrate turn.

Point out that the walking stage divides the suspect's attention between a task of listening, comprehending and carrying out the instruction.

Point out that One-Leg Stand has also been validated through NHTSA's research program.

Point out that this divides attention between a balancing task and an information processing task. Demonstrate the stance.

Demonstrate stance and counting.



8. Video Segment Number 8

Point out that this divides attention between balancing and counting out loud.

ground, keeping raised foot parallel to the ground.

While looking at the raised foot, count out loud in the following manner: "one thousand and one," "one thousand and two," "one thousand and three" until told to stop.

Point out that research has demonstrated that many impaired suspects are able to maintain one leg balance for as long as 25 seconds, but relatively few can do so for 30 seconds. NOTE: Therefore officer should keep track of the actual time the suspect stands on one leg. When 30 seconds have passed, stop the test.

Point out that the subject should be timed while performing this test.

9. Other examples of simple, divided attention tests. (Instructor's Option)

Show video segment #8, tape one "Proper Administration of the SFSTs"

Instructor Please Note:
If time permits, explain and demonstrate other divided attention tests that may be used by participant's respective departments.

Typical tests:
o Finger-to-nose
o Romberg balance



15 Minutes

F. Advantages and Limitations of Preliminary Breath Testing



Display VII-9

1. Basic purpose of preliminary breath testing: To demonstrate the association of alcohol influence with the sensory evidence of the suspect's impairment.

NOTE: If your state does not have a PBT law, skip this segment. However, passive alcohol sensors are available to detect the possible presence



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VII-10

2. Preliminary breath testing, like psychophysical testing, is a stage of the pre-arrest screening of a DWI suspect.
 - a. Suspect is not yet under arrest when requested to submit to the preliminary breath test.
 - b. Incident remains at the investigative stage; accusatory stage has not yet begun.
 - c. PBT result is only one additional factor to help determine whether or not suspect should be arrested for DWI.
 - d. PBT result can be a significant factor in the arrest decision, because it provides a direct indication of alcohol influence.

3. Advantages of Preliminary Breath Testing.
 - a. Corroborates other evidence: demonstrates that the suspicion of alcohol influence is consistent with the officer's observations of suspect's mental and physical impairment.

of alcohol.

Emphasize that the suspect's impairment is established through what the officer sees, hears and smells.

Emphasize that the PBT helps to confirm the chemical basis (alcohol) of that impairment.

i.e., all other evidence, from initial observation of vehicle in operation through psychophysical testing, indicates alcohol influence indirectly, based on impairment of the suspect's mental and physical faculties.

Aids

Lesson Plan

Instructor Notes

	<ul style="list-style-type: none">b. Confirms officer's own judgment: helps the officer gain confidence in ability to evaluate alcohol impairment accurately, based on observations and psychophysical tests.c. May disclose the possibility of medical complications and/or impairment due to drugs other than alcohol.d. Can help to establish probable cause for a DWI arrest. <p>4. Limitations of Preliminary Breath Testing.</p> <ul style="list-style-type: none">a. Evidentiary Limitations.	<p>Point out that many experienced DWI officers find that they rely less and less on the PBT as their confidence in their own powers of detection increases.</p> <p>i.e., observed psychophysical impairment coupled with a PBT result showing very low BAC indicates an immediate need to investigate the possibility that the suspect suffers from some medical/ health problem, or may have ingested other drugs.</p> <p><u>INSTRUCTOR PLEASE NOTE:</u> The potential role of the PBT in establishing probable cause may be affected by the evidentiary value of PBT results in your state.</p> <p>Consult your specific PBT statute, and your local state's or district attorney to clarify this point for your participants.</p> <p>Explain the specific circumstances under which PBT results may and may not be admissible as evidence in your state.</p>
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VII-11

- b. Accuracy Limitations:
 - o Circumstances producing low test results.
 - o Circumstances producing high test results.
- 5. Factors affecting accuracy of Preliminary Breath Tests.
 - a. Five major factors potentially can affect preliminary breath test accuracy:
 - o Composition of breath sample.
 - o Cooling of breath sample.
 - o Residual mouth alcohol.
 - o Contaminating substances in the breath sample.
 - o Radio frequency interference (RFI)

Explain the weight or probative value of PBT evidence, when admissible.

Point out that, although all PBT instruments currently used by law enforcement are reasonably accurate, they are subject to the possibility of some error, especially if they are not used in the proper fashion.

Point out that the first two factors listed act to produce low test results, and that the third and fourth act to produce high test results.

Point out that RFI can produce either high or low test results, or can prevent a breath test device from producing any result.

Briefly explain the factors and their influence.



5 Minutes



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VII-12

G. The Arrest Decision

1. Arrest/No Arrest Decision is based on all evidence accumulated during all detection phases.
 - a. Officer's mental summary of the evidence collected during vehicle in motion, personal contact, and pre-arrest screening.
 - b. The decision involves a careful review and "weighing" of observations.
2. If all of the evidence, taken together, establishes probable cause to believe the offense has been committed, officer should arrest the suspect.
3. In the absence of probable cause, the proper decision is to release suspect, or to cite for another violation, if applicable.

TEST YOUR KNOWLEDGE

INSTRUCTIONS: Complete the following sentences.

1. The two major evidence gathering tasks of Phase Three are _____

2. The major decision in Phase Three is _____

3. The entire DWI detection process culminates in _____

4. Divided attention tests require the subject to _____

5. Among the mental and physical capabilities a person needs to drive safely are these four:
 - a.
 - b.
 - c.
 - d.
6. The two stages of the Walk-and-Turn are:
 - a.
 - b.

7. The two stages of the One-Leg Stand are:

a.

b.

8. The purpose of PBT is _____

9. Two factors that produce high results on a PBT are:

a.

b.

10. Two factors that produce low results on a PBT are:

a.

b.