National Association of State Boating Law Administrators (NASBLA)

Boating Under the Influence (BUI) Detection and Enforcement Course

Student Manual

V2015-3

Printed in the United States

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YOUR BOATING
DOLLARS AT WORK

Produced under a grant from the Sport Fish Restoration and Boating Trust Fund, administered by the U.S. Coast Guard.

Foreword

The National Association of State Boating Law Administrators' (NASBLA) mission is to protect, promote and enhance safe and enjoyable boating on our nation's waterways and to foster partnerships and cooperation among recreational boating safety interests.

As a means of achieving the purposes set forth in the mission statement, NASBLA is committed to the following strategic goals. The association will:

- Establish a broad national coalition of boating safety partners to advocate for national policies, research and resources to support the recreational boating safety (RBS) agenda;
- Maintain a canon of contemporary model boating laws and regulations to provide both a resource and benchmark for states working to achieve best RBS management practices;
- Function as the certifying body for national standards on the content and delivery of boater education courses for the boating public and officer training courses for the marine law enforcement professional;
- Serve as the information nexus for state boating law administrators and other boating professionals to foster interstate communication and cooperation on RBS policy issues and to facilitate greater uniformity and reciprocity among and between state programs;
- Administer the foremost professional development and continuing education academy for state boating officials in all levels of state agency management; and
- Build a comprehensive government affairs and outreach program to advance the association's public policy agenda

Acknowledgements

The National Association of State Boating Law Administrators and the state recreational boating safety programs are indebted to the NASBLA Training and Enforcement committee, and especially to Kevin Kelly, Recreational Boating Safety, Eighth Coast Guard District; Richard Moore, Boating Law Administrator, Florida Fish & Wildlife Conservation Commission; Nick Humphrey, Missouri Department of Revenue; Tim Baumgarten, Arizona Game & Fish Department; Gary Owen, Iowa Department of Natural Resources, Conservation and Recreation Division; and Kimberly Moeller, Alabama Department of Conservation and Natural Resources, Marine Police Division for bringing this product to fruition. Mr. Kelly and Mr. Moore served as the principle developers and primary authors of the original BUI curriculum and Mr. Moore, Mr. Baumgarten, and Mr. Todd Radabaugh, North Carolina Wildlife Resources Commission, contributed to updating this edition.

PREFACE

This student manual provides a reference for students of the Boating Under the Influence (BUI) Detection and Standardized Field Sobriety Testing course presented by the National Association of State Boating Law Administrators (NASBLA). The acronym "BUI" means Boating Under the Influence and is synonymous with terms such as BWI, OUI, OUII, etc. These terms are commonly used in conjunction with violations involving the operation of vessels by persons under the influence of alcohol and/or other drugs. While many of the concepts used in this course also apply to violations involving impaired automobile drivers, the focus of this course is the alcohol-impaired operator of a vessel.

The procedures outlined in this manual focus on the administration and evaluation of the seated battery of Standardized Field Sobriety Tests (SFSTs). We recognize that the conditions under which the SFSTs will be administered will vary in the field. Even when administered under less than ideal conditions, they generally serve as valid and useful indicators of impairment.

The enforcement of alcohol impaired operation laws is a complex and demanding law enforcement responsibility. It is for this reason that a separate block of instruction on this topic is deemed necessary to ensure that officers are given the skills to effectively **detect** and **apprehend** impaired operators. The procedures outlined in this course of instruction have been scientifically validated by the Southern California Research Institute, who performed the same work with the standing field sobriety tests several years ago.

All course participants should note that the ability to maintain the skills learned in this course will rapidly diminish if they are not reinforced by consistent field application and occasional in-service training. This does not imply that this training is so complex or confusing that it can only be mastered by exceptionally-skilled officers. The techniques of BUI detection and use of the seated battery of Standardized Field Sobriety Tests can be readily grasped by anyone of average competence, provided that they are wiling to devote the appropriate time and effort to study and practice.

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Module 1

Introduction and Overview

BUI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING

INTRODUCTION AND OVERVIEW

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

- State the goals and objectives of the course;
- Describe the course schedule and activities;
- Demonstrate his or her pre-training knowledge of course topics.

CONTENT SEGMENTS	LEARNING ACTIVITIES
1. Welcoming Remarks and Objectives	o Instructor-Led Presentations
2. Administrative Details	
3. Pre-Test	o Written Examination

GOALS AND OBJECTIVES

1. Ultimate Goal

   To increase deterrence of BUI violations and thereby reduce the number of accidents, deaths and injuries caused by impaired operators.

2. Enforcement-Related Goals

   A. Understand enforcement's role in general BUI deterrence.

   B. Understand detection phases, indicators, clues and enforcement techniques.

   C. Understand requirements for organizing and presenting testimonial and documentary evidence in BUI cases.

3. Job Performance Objectives

   As a result of this training, the student will become significantly better able to:

   A. Recognize and interpret evidence of BUI violations;

   B. Administer and interpret the seated battery of standardized field sobriety tests; and

   C. Describe BUI evidence clearly and convincingly in written reports and verbal testimony.

4. Enabling Objectives

   In pursuit of the job performance objectives, the student will come to:

   A. Understand the tasks and decisions of BUI detection;

   B. Recognize the magnitude and scope of BUI-related accidents, deaths, injuries, property loss and other social aspects of the BUI problem;

   C. Understand the deterrence effects of BUI enforcement;

   D. Understand the BUI enforcement legal environment;

E. Know and recognize typical vessel maneuvers and human indicators symptomatic of BUI that are associated with initial observation of boats in operation;

F. Know and recognize typical reinforcing maneuvers and indicators that become known during the stopping sequence;

G. Know and recognize typical sensory and other indicators (cues) of alcohol and/or drug influence that may be seen during face-to-face contact with BUI suspects;

H. Know and recognize typical behavioral cues of alcohol influence that may be seen during the suspect's exit from the boat;

I. Understand the role and relevance of psychophysical testing in pre-arrest screening of BUI suspects;

J. Understand the role and relevance of preliminary breath testing in pre-arrest screening of BUI suspects;

K. Know and be able to carry out appropriate administrative procedures for validated divided attention psychophysical tests;

L. Know and be able to carry out appropriate administrative procedures for the horizontal gaze nystagmus test;

M. Know and recognize the validated clues that may be observed during administration of the standardized field sobriety tests;

N. Understand the factors that may affect the accuracy of preliminary breath testing devices;

O. Understand the elements of BUI prosecution and their relevance to BUI arrest reporting;

P. Choose appropriate descriptive terms to convey relevant observations of BUI evidence; and

Q. Write clear, descriptive narrative BUI arrest reports.

GLOSSARY OF TERMS

ALVEOLAR BREATH - Breath from the deepest part of the lung.

BLOOD ALCOHOL CONCENTRATION (BAC) - The level of alcohol in a person's blood. The number of grams of alcohol in 100 ml of blood.

BREATH ALCOHOL CONCENTRATION (BrAC) - The level of alcohol in a person's breath. The number of grams of alcohol in 210 liters of breath.

BUI - Boating Under the Influence (also known as OUI, BWI, OUII) - Operating a vessel while under the influence of alcohol or other drugs.

BUI DETECTION PROCESS - The entire process of identifying and gathering evidence to determine whether a suspect should be arrested for a BUI violation. The BUI detection process has three phases:

Phase One - Vessel In Motion
Phase Two - Personal Contact
Phase Three - Pre-arrest Screening

CLUE - A specifically defined objective indicator of impairment.

CUE - Something said or done that provides a subjective signal to an observer.

DIVIDED ATTENTION TEST - A test which requires the subject to concentrate on both mental and physical tasks at the same time.

EVIDENCE - Any means by which some alleged fact that has been submitted to investigation may either be established or disproved. Evidence of a BUI violation may include any of the following types:

a. Physical (or real) evidence: something tangible, visible or audible.
b. Well-established facts (judicial notice).
c. Demonstrative evidence: demonstrations performed in the courtroom.
d. Written matter or documentation.
e. Testimony.

FIELD SOBRIETY TEST - Any one of several seated or standing tests that can be used to determine whether a suspect is impaired.

FINGER TO NOSE TEST (FTN) – A seated field sobriety test that requires the subject to touch the tip of the nose with the tips of the index fingers. It is performed with the eyes closed and the head tilted back.

HAND COORDINATION TEST (HC) - A seated field sobriety test that requires a subject to perform four tasks with the hands in front of the chest. This test is adapted from the walk and turn test.

HORIZONTAL GAZE NYSTAGMUS (HGN) - A field sobriety test based on the involuntary jerking of the eyes as they gaze toward the side.

ILLEGAL PER SE (Unlawful in and of itself) - Used to describe a law that makes it illegal to drive while having a statutorily prohibited Blood or Breath Alcohol Concentration.

INDICATORS OF IMPAIRMENT - Signs or symptoms that are commonly exhibited by a subject and are associated with alcohol or drugs.

NYSTAGMUS - An involuntary jerking of the eyes.

ONE-LEG STAND (OLS) - A divided-attention field sobriety test that requires a subject to balance on one leg for 30 seconds.

PALM PAT TEST (PP) - A seated field sobriety test that requires the subject to place the palms of the hands together and alternate patting the back and palm of the top hand while counting each pat.

PERSONAL CONTACT - The second phase in the BUI detection process. In this phase, the officer observes and interviews the operator face to face, determines whether the officer will continue with a BUI investigation and observes the operator's exit from the vessel.

PRE-ARREST SCREENING - The third phase in the BUI detection process. In this phase, the officer administers field sobriety tests to determine whether there is probable cause to arrest the operator for BUI and may administer or arrange for a preliminary breath test.

PRELIMINARY BREATH TEST - A pre-arrest breath test administered during a BUI investigation. Used to confirm the officer's observations are due to the person's blood alcohol concentration.

PBT - A commonly used acronym to describe a preliminary breath testing instrument used to obtain and measure a breath sample for breath alcohol concentration.

PSYCHOPHYSICAL (Mind-body) - Used to describe field sobriety tests that measure a person's ability to perform both mental and physical tasks.

SEATED BATTERY OF STANDARDIZED FIELD SOBRIETY TESTS (SFST) - A battery of four tests – Horizontal Gaze Nystagmus, Finger to Nose, Palm Pat and Hand Coordination – administered and evaluated in a standardized manner to reliably obtain validated indicators of impairment based on USCG/NASBLA-sponsored research.

STANDING BATTERY OF STANDARDIZED FIELD SOBRIETY TESTS (SFST) - A battery of three tests – Horizontal Gaze Nystagmus, Walk-and-Turn and One-Leg Stand – administered and evaluated in a standardized manner to obtain validated indicators of impairment based on NHTSA/IACP-sponsored research.

TIDAL BREATH - Breath that moves in and out of the upper part of the lungs and mouth during normal breathing.

VESSEL IN MOTION - The first phase in the BUI detection process. In this phase the officer observes the vessel in operation, determines whether to stop the vessel and observes the stopping sequence.

WALK-AND-TURN (WAT) - A divided-attention field sobriety test that requires the subject to walk nine heel-to-toe steps on a line, turn and return with nine heel- to-toe steps.

Module 2

Deterrence and Detection

Module 2

BUI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING

DETERRENCE AND DETECTION

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

- Describe the frequency of BUI violations and accidents.
- Define "General Deterrence."
- Describe the relationship between detection and general deterrence.
- Describe the three phases of detection.
- Describe the tasks and key decision of each phase.
- Describe the physiologic processes of absorption, distribution and elimination of alcohol in the human body.

CONTENT SEGMENTS

A. The BUI Problem

B. The Concept of General Deterrence

C. Relating Detection to Deterrence Potential

D. Overview of Detection

E. Three Phases of Detection

F. Alcohol and the Human Body

G. Understanding Breath and Blood Alcohol Concentration

H. Effects of Alcohol Based on BAC

I. Stressors

LEARNING ACTIVITIES

o Instructor-Led Presentations

THE BUI PROBLEM

Throughout the nation, alcohol is a major contributor to both traffic and boating fatalities. Each year, hundreds of people die in boating accidents. According to 2006 Coast Guard sponsored research to estimate the incidence and costs of boating accidents attributed to alcohol use, alcohol involvement in boating accidents was found to be statistically similar to that for motor vehicle accidents. In addition the study concluded that approximately 23% of fatalities resulted from accidents in which alcohol/drugs were noted as a contributing factor, yet any estimate is likely to understate alcohol involvement. Most boating enforcement officers agree that the actual number of alcohol related fatalities is likely to be higher than documented.

Although numerous studies have shown that alcohol use increases both the likelihood and severity of boating accidents, the majority of hard statistical data involves traffic accidents. Throughout this section we will discuss the effects of alcohol consumption on a person's ability to perform both simple and more complex tasks associated with safely operating a vessel. However, much of the statistical information will come from motor vehicle-related studies. When discussing statistics related to motor vehicles, we will refer to "drivers." Where the data relates to boaters, we will refer to "operators."

Alcohol-related traffic crashes have been found to be about ten times more likely to result in death than are similar accidents that do not involve alcohol. It is likely that this is also true for boating accidents. Drinking operators are more likely than other operators to take excessive risks, such as speeding or turning abruptly. Drinking operators are also more likely than other operators to have delayed reaction times. They may not be able to react quickly enough to slow down before crashing and are less likely to wear life jackets. BUI violations and accidents are not simply the work of a relatively few "problem drinkers" or "problem drug users." Many people commit BUI, at least occasionally.

- In a random survey of drivers stopped at all hours during one week, 12% had been drinking; 2% had a Blood Alcohol Concentration (BAC) of 0.10 or more.

- In numerous random surveys of drivers stopped during late evening-early morning weekend hours, approximately 10% had a BAC of 0.10 or more.

Given the historical relationship between boating and alcohol consumption, there is a real possibility that, if a similar study were performed with boaters, the percentages would be as high or higher. Compliance data derived from sobriety checkpoint operations along the Colorado River over a 10 year period indicated approximately 35% of all boat operators consumed alcohol while boating, and the arrest rate averaged 10%.

Recreational boaters want the BUI laws enforced. This is supported by the views identified through a national survey of recreational boaters conducted by the U.S. Coast Guard in 2002 and numerous state and local boater surveys. Over 92% of the respondents in the Coast Guard survey either agreed or strongly agreed that laws pertaining to boating while impaired should be strongly enforced.

CONCEPT OF GENERAL DETERRENCE

BUI countermeasures that seek a "quick" behavioral change generally are labeled "deterrence." Deterrence can be described as negative reinforcement. Some deterrence countermeasures focus primarily on changing individual drinking and boating behavior while others seek to influence people to intervene into others' drinking and boating decisions.

The key feature of deterrence is that it strives to change BUI behavior without dealing directly with the prevailing attitudes about the rightness or wrongness of BUI. Deterrence uses a mechanism quite distinct from attitudinal change: fear of apprehension and application of sanctions.

One approach to reducing the number of drinking operators is general deterrence. General deterrence of BUI is based on the boating public's fear of being arrested. If enough violators come to believe there is a good chance they will get caught, at least some of them will stop committing BUI at least some of the time. However, unless there is a real risk of arrest, there will not be much fear of arrest.

Law enforcement officers must arrest enough violators enough of the time to convince the general public that they will get caught, sooner or later, if they continue to boat while impaired.

The Fear of Being Caught and Punished

Large-scale BUI deterrence initiatives try to control the BUI behavior of the boating public by appealing to the public's presumed fear of being caught. Most actual or potential BUI violators view the prospect of being arrested with extreme distaste. For some, the arrest, with its attendant handcuffing, booking, publicity, and other stigmatizing and traumatizing features, is the thing most to be feared. For others, the prospective punishment (jail, stiff fine, lawyer's fees, etc.) causes most of the concern. Still others fear most the long-term costs and inconvenience of a BUI arrest: criminal record, stigma of arrest, etc. For many violators, the fear is probably a combination of all of these. Regardless, if enough violators are sufficiently fearful of BUI arrest, some of them will avoid committing the violation at least some of the time.

Fear by itself will not change people's attitudes. If boaters do not see anything inherently wrong with drinking and boating in the first place, the prospect of arrest and punishment will not help them change their views. However, fear sometimes can be enough to keep them from putting their anti-social attitudes into practice.

General deterrence applies to the boating public generally and presumably affects the behavior of those who have never been caught. There is an element of fear of the unknown at work here.

Another type of BUI deterrence, called "specific deterrence," applies to those who have been caught and arrested. The typical specific deterrent involves some type of punishment, perhaps a fine, involuntary community service or a jail term. The punishment is imposed as a way to convince the specific violator that there is indeed something to fear as a result of being caught and to emphasize that, if there is a next time, the punishment will be more severe. It is the fear of the known that comes into play in this case.

The concept of BUI deterrence through fear of apprehension and punishment seems sound. But will it work in actual practice? The crux of the problem is this: If the boating public is to fear arrest and punishment for BUI, they must perceive that there is an appreciable risk of being caught and convicted if they commit the crime. If actual and potential BUI violators come to believe that the chance of being arrested is nil, they will quickly lose whatever fear of arrest they may have felt.

Enforcement is the mechanism for creating and sustaining a healthy fear of being caught for BUI. No deterrence initiative can amount to much unless officers arrest sufficient numbers of violators; no punishment or rehabilitation program can affect behavior on a large scale unless it is applied to many people. Deterrence absolutely depends on enforcement -- the fear of being caught is a direct function of the number of people who are caught.

Obviously, the police alone cannot do the job. Legislators must supply sound laws that the police can enforce. Prosecutors must vigorously prosecute BUI violators and the judiciary must adjudicate fairly and deliver the punishment prescribed by law. The media must publicize the enforcement effort and communicate the fact that the risk is not worth the probable outcome. Each of these elements plays a supportive role in BUI deterrence.

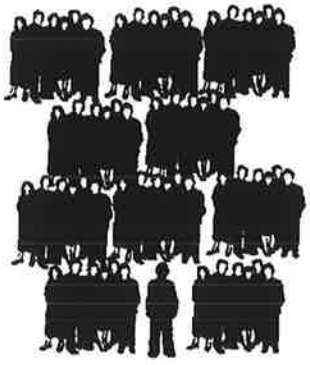
RELATING DETECTION TO DETERRENCE POTENTIAL

How great is the risk? Are violators afraid of being caught? More importantly, should they be afraid? Is there truly an appreciable risk of being arrested if a person commits BUI?

The answer to all of these questions unfortunately is: probably not. In most jurisdictions, the number of BUI arrests appears to fall short of what would be required to sustain a public perception that there is a significant risk of being caught. Sometimes, it is possible to enhance the perceived risk, at least for a while, through intensive publicity. However, media "hype" is difficult to generate, especially without correspondingly intensified enforcement.

How much should the public fear getting caught? In reality, there is little reason for the boating public to fear BUI arrest, even if they drink and boat. Although there is no hard data concerning how many BUI violators are caught compared to how many violations are occurring, deterrence will work only if we increase the number of BUI arrests. The question is, how much do we have to increase arrests to make deterrence work?

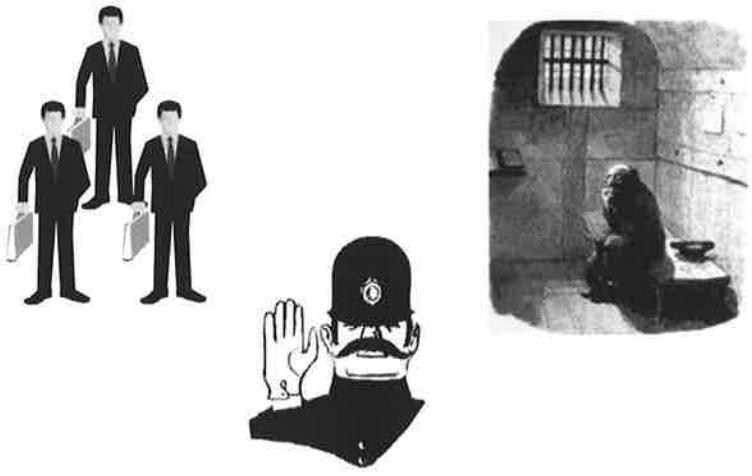
How many BUI violators must be arrested in order to convince the public that there is a real risk of arrest for BUI? There are no studies that have specifically addressed BUI; however, several programs have demonstrated that arresting one DWI violator for every 400 DWI violations committed can achieve significant deterrence. Currently, however, there are 500-2,000 DWI violations committed for every DWI violator arrested. When the chances of being arrested are one in 2,000, the average DWI violator has little to fear. Given that there are far fewer "marine" police officers, it is logical that the chances of being caught for BUI are even less than for DWI. Even without conclusive studies, there is no doubt that only a very small percentage of BUI violators get caught.



Chances of a DWI violator being arrested are as low as 1 in 2000.

In a study conducted in Fort Lauderdale, Florida, only 22% of traffic violators who were stopped with BACs between 0.10 and 0.20 were arrested for DWI. The remaining violators were cited for other violations, even though they were legally "under the influence." In this study, breath tests were administered to the violators by researchers after the police officers had completed their investigations. The officers failed to detect 78% of the DWI violators they investigated.

The implication of this study, and of other similar studies, is that for every DWI violator actually arrested for DWI, three others are contacted by police officers, but are not arrested for DWI. It is clear that significant improvement in the arrest rate could be achieved if officers were more skilled at DWI detection. The same reasoning applies to BUI.



For every DWI violator arrested,
3 others are contacted face-to-face by police
but not arrested.

Why might BUI arrest to violations ratios be low? There are four noteworthy reasons:

- BUI violators vastly outnumber police officers. It is not possible to arrest every drinking operator each time they commit BUI.
- Waterways do not have "lane lines" and navigation rules are more general than traffic regulations, therefore the vessel operation of an impaired operator is more difficult to distinguish from a sober one.
- Some officers are not highly skilled at BUI detection. They fail to recognize and arrest many BUI violators during boating safety inspections.
- Some officers are not motivated to detect and arrest BUI violators.

There have been some significant findings related to successful initiatives which have succeeded in achieving significant DWI deterrence. Consider, for example, the three-year, intensive weekend DWI enforcement program in Stockton, California. Under that program:

- arrests increased 500%;
- weekend nighttime accidents decreased 34%;
- the proportion of nighttime weekend operators legally under the influence dropped from 9% to 6%.

As with DWI, improved BUI detection can be achieved in virtually every jurisdiction in the country. The keys to success are police officers that are:

- skilled at BUI detection;
- willing to arrest every BUI violator who is detected;
- supported by their agencies in all aspects of this program, from policy through practical application.

OVERVIEW OF DETECTION

Detection is both the most difficult task in the BUI enforcement effort and the most important. If officers fail to detect BUI violators, the BUI countermeasures program ultimately will fail. If officers do not detect and arrest BUI violators, deterrence will not take place, the prosecutors cannot prosecute violators, the courts and operator licensing officials cannot impose sanctions on them and treatment and rehabilitation programs will go unused.

The term "BUI detection" has been used in many different ways. Consequently, it does not mean the same thing to all officers. For the purposes of this training, BUI detection is defined as:

"The entire process of identifying and gathering evidence to determine whether a suspect should be arrested for a BUI violation."

The detection process begins when the police officer first suspects that a BUI violation may be occurring and ends when the officer decides there either is or is not sufficient probable cause to arrest the suspect for BUI.

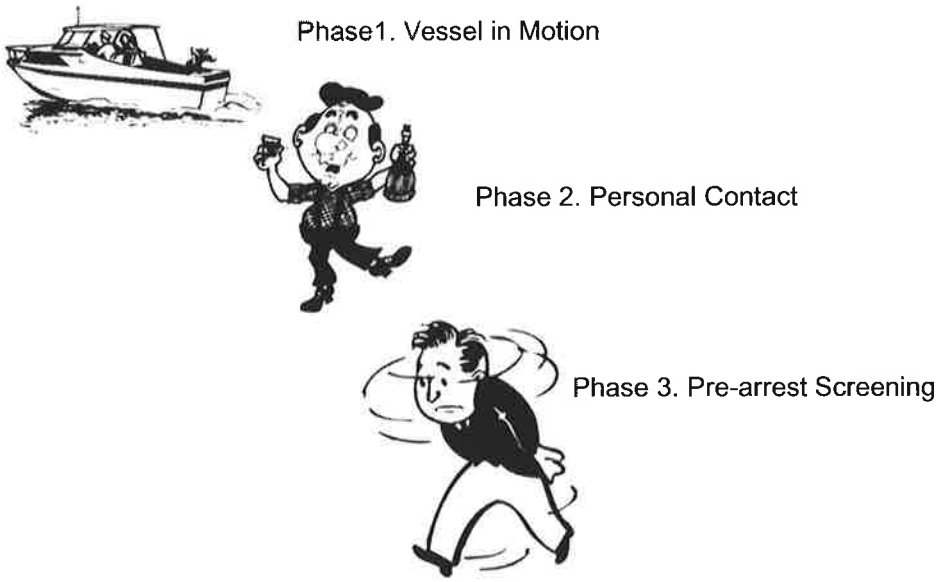
Your attention may be called to a particular vessel or individual for a variety of reasons. The precipitating event may be a loud noise; a splash of water, an obvious operational violation, behavior that is unusual but not necessarily illegal, an equipment defect or almost anything else. The initial "spark" of detection may carry with it an immediate, strong suspicion that the operator is under the influence; only a slight, ill-formed suspicion; or even no suspicion at all at that time. In any case, it sets in motion a process wherein you focus on a particular individual and have the opportunity to observe that individual and to accumulate additional evidence.

The detection process ends when you decide whether or not to arrest the individual for BUI. That decision, ideally, is based on all of the evidence that has become known since your attention first was drawn to the suspect. Officers who are effective at BUI enforcement do not rush into the arrest/no arrest decision. Rather, they proceed carefully through a series of intermediate steps, each of which helps to identify the collective evidence.

THREE PHASES OF DETECTION

The typical BUI contact involves three separate and distinct phases:

BUI DETECTION PHASES



In Phase One, you usually observe the operator operating the vessel.

In Phase Two, after you have stopped the vessel, there usually is an opportunity to observe and speak with the operator face-to-face.

In Phase Three, you usually have an opportunity to administer some formal, structured field sobriety tests to the operator to evaluate the degree of impairment. Some jurisdictions allow you to administer a preliminary breath test in addition to field sobriety tests to verify that alcohol is the cause of the impairment.

The BUI detection process does not always include all three phases. Sometimes there are BUI detection contacts in which Phase One is absent; that is, cases in which you have no opportunity to observe the vessel in motion. This may occur at the scene of an accident to which you have been called, during equipment safety checks or when you have responded to a request for boater assistance. Sometimes there are BUI contacts in which Phase Three never occurs. There are cases in which you would not administer formal tests to the operator. These may occur when the operator is grossly intoxicated, badly injured or refuses to submit to tests.

Major Tasks and Decisions

Each detection phase usually involves one major decision.

In Phase One: Your task is to observe the vessel in operation and the stopping sequence. Based on this observation, you must decide whether there is sufficient cause to command the operator to stop.

In Phase Two: Your task is to observe and interview the operator face-to-face. Based on this observation, you must decide whether there is sufficient cause to instruct the operator to exit the vessel and perform field sobriety tests.

In Phase Three: Your task is to administer structured, formal psychophysical tests. Based on these tests, you must decide whether there is sufficient probable cause to arrest the operator for BUI and arrange for (or administer) a breath test.

Each of the major decisions can have any one of three different outcomes:

1. Yes - Do it now
2. Wait - Look for additional evidence
3. No - Don't do it

Consider the following examples.

1. Yes - Do it now

Phase One:	Yes, there are reasonable grounds to stop the vessel.
Phase Two:	Yes, there is enough reason to suspect impairment to justify administering the field sobriety tests.
Phase Three:	Yes, there is probable cause to arrest the operator for BUI right now.

2. Wait - Look for additional evidence

Phase One:	Don't stop the vessel yet; keep following and observing a bit longer.
Phase Two:	Don't have the operator exit the vessel right away. Do the equipment checks while observing the operator a bit longer. (This option may be limited if the officer's personal safety is at risk.)
Phase Three:	Don't arrest the operator yet; administer another field sobriety test before deciding.

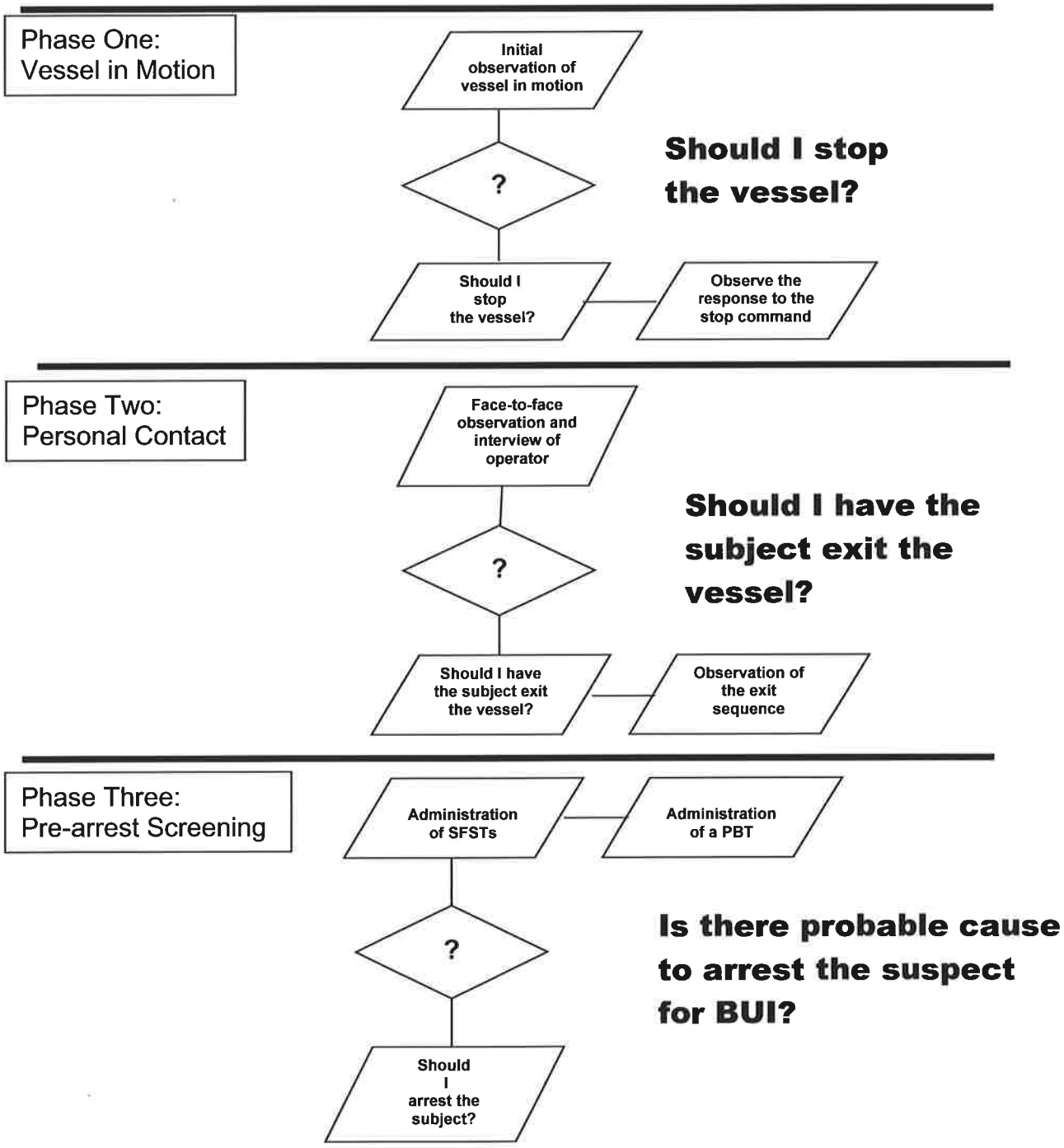
3. No - Don't do it

Phase One: No, there are no grounds for stopping that vessel.

Phase Two: No, there isn't enough evidence of BUI to justify administering field sobriety tests.

Phase Three: No, there is not sufficient probable cause to believe this operator has committed BUI.

BUI DETECTION PHASES



The ultimate decision you must make is whether there is sufficient evidence to establish "reasonable suspicion" necessary to proceed to the next step in the detection process or "probable cause" to make an arrest. It is always your duty to carry out whatever tasks are appropriate and to make sure that all relevant evidence of BUI is brought to light.

BUI DETECTION

Answers to questions like these **can aid in BUI detection**.

Phase One:
- What is the vessel doing?
- Do I have grounds to stop the vessel? (If needed)
- How does the operator respond to my signal to stop?
- How does the operator handle the vessel during the stopping sequence?

Phase Two:
- When I approach the vessel, what do I see?
- When I talk with the operator, what do I hear, see and smell?
- How does the operator respond to my questions?
- Should I instruct the operator to exit the vessel?
- How does the operator exit?

Phase Three:
- How does the operator perform SFSTs?
- What clues did the operator demonstrate when performing the tests?
- Do I have probable cause to arrest for BUI?
- Should I administer a preliminary breath test?
- What are the results of the preliminary breath test?

The most successful BUI enforcement officers are those who:
- know what to look and listen for;
- have the skills to ask the right kinds of questions;
- are proficient at administering and evaluating field sobriety tests;
- make the correct observations; and
- are motivated and apply their knowledge and skill whenever they contact someone who may be under the influence.

Officers like these are likely to make more arrests and to document the clear, convincing evidence needed to secure convictions.

ALCOHOL AND THE HUMAN BODY

"Alcohol" is the name given to a family of closely related and naturally occurring chemicals. Each of the chemicals that are called an "alcohol" is made up of molecules that contain a single oxygen atom and varying numbers of hydrogen and carbon atoms. The simplest alcohol has only one carbon atom and four hydrogen atoms. The next alcohol has two carbons and six hydrogens. The third alcohol has three carbons and eight hydrogens. The next one in the "chain" has one more carbon and two more hydrogen atoms than the one before. That is how the alcohols differ from one another.

Alcohols are molecularly very similar and produce similar effects. They produce intoxicating effect when ingested into the human body. Only one of them is meant for human consumption. However, when ingested in substantial quantities, it can cause death.

The ingestible alcohol is known as ethyl alcohol, or ethanol. Its chemical abbreviation is ETOH. The "ET" stands for "ethyl" and the "OH" represents the single oxygen atom and one of the hydrogen atom, bonded together in what chemicals refer to as the "hydroxy radical." Ethanol is the variety of alcohol that has two carbon atoms. Two of ethanol's best-known analogs are methyl alcohol (or methanol), commonly called "wood alcohol," and isopropyl alcohol (or isopropanol), also known as "rubbing alcohol."

Ethanol is the alcohol that features prominently in impaired driving. Ethanol is beverage alcohol -- the active ingredient in beer, wine, whiskey, liquors, etc. Ethanol production starts with **fermentation**. That is a kind of decomposition in which the sugars in fruit, grains and other organic material combine with yeast to product the chemical ethanol. This can occur naturally, as yeast spores in the air encounter decomposing fruit and grains. However, most of the ethanol in the world didn't ferment naturally -- it was produced under human supervision.

When an alcoholic beverage is produced by fermentation, the maximum ethanol content that can be reached is about 14%. At that concentration, the yeast dies, so the fermentation stops.

Obtaining higher ethanol content requires a process called **distillation**. This involves heating the beverage until the ethanol "boils off," then collecting the ethanol vapor. It is possible to do this because ethanol boils at a lower temperature than water.

Distilled spirits is the name given to high-ethanol-concentration beverages produced by distillation, including rum, whiskey, gin, vodka, etc. The ethanol concentration of distilled spirits usually is expressed in terms of **proof**, which is a number corresponding to twice the ethanol percentage. For example, an 80-proof beverage has an ethanol concentration of 40 percent.

Over the millennia during which people have used and abused ethanol, some standard-size servings of the different beverages have evolved. Beer, for example, is normally dispensed in 12-ounce servings. Since beer generally has an ethanol concentration of about 4%, the typical bottle or can of beer contains a little less than one-half ounce of pure ethanol. A standard glass of wine has about four ounces of liquid. Wine is about 12% alcohol, so the glass of wine also has a bit less than one-half ounce of ethanol in it. Whiskey and other distilled spirits are dispensed by the "shot glass," usually containing about one and one-quarter ounce of fluid. At a typical concentration of 40% ethanol (80-proof), the standard shot of whiskey has approximately one-half ounce of ethanol. Therefore, as far as their alcoholic contents are concerned, **a can of beer, a glass of wine and a shot of whiskey are all the same.**

Physiologic Processes

Alcohol is the most abused drug in the United States. Ethanol is a central nervous system depressant. It doesn't affect a person until it gets into the central nervous system, i.e., the brain, brain stem and spinal cord. Ethanol enters the brain by getting into the blood. In order to get into the blood, it must be in the body.

There are a number of ways ethanol can enter the body. It can be inhaled. Ethanol fumes, when taken into the lungs, will pass into the bloodstream and a positive blood alcohol concentration (BAC) will develop. However, prolonged breathing of fairly concentrated fumes would be required to produce a significantly high BAC. Ethanol could also be injected directly into a vein; it would then flow with the blood back to the heart, where it would be pumped first to the lungs and then to the brain. And it could be inserted as an enema and pass quickly from the large intestine into the blood. But none of these methods are of any practical significance because alcohol is usually introduced into the body orally, i.e., by drinking.

Absorption

Once the ethanol gets into the stomach, it has to move into the blood. The process by which this happens is known as **absorption**. One very important fact that pertains to alcohol absorption is that alcohol does not have to be digested in order to move from the stomach to the blood. Another very important fact is that alcohol can pass directly through the walls of the stomach. These two facts, taken together, mean that under the right circumstances absorption of alcohol can be accomplished quickly. The ideal circumstance for rapid absorption is to drink on an empty stomach.

When the alcohol enters the empty stomach, about 20% of it will make its way directly through the stomach walls. The remaining 80% will pass through the base of the stomach (past the “pyloric valve” or “pyloris”) and enter the small

intestine, from which it is readily absorbed into the blood. Because the body doesn't need to digest the alcohol before admitting it into the bloodstream, the small intestine will be open to the alcohol as soon as the alcohol hits the stomach.

But what if there is food in the stomach? Suppose the person has had something to eat shortly before drinking or eats food while drinking -- will that affect the absorption of alcohol?

Yes, it will. Food has to be at least partially digested in the stomach before it can pass to the small intestine. When the brain senses that food is in the stomach, it commands a muscle at the base of the stomach (the pyloric valve) to constrict and cut off the passage to the small intestine. As long as it remains constricted, little or nothing will move out of the stomach and into the small intestine. If alcohol is in the stomach along with the food, the alcohol will also remain trapped behind the pylorus.

Some of the alcohol trapped in the stomach will begin to break down chemically before it ever gets into the blood. In time, as the digestive process continues, the pylorus will begin to relax, and some of the alcohol and food will pass through. But the overall effect will be to slow the absorption significantly. Because the alcohol takes more time to get into the blood, and because the body will continue to process and eliminate the alcohol that does manage to get in there, the drinker's BAC will not climb as high or as fast as it would have if he or she had consumed alcohol on an empty stomach.

Distribution

Once the alcohol moves from the stomach into the blood, it will be distributed throughout the body by the blood. Alcohol has an affinity for water. The blood will carry the alcohol to the various tissues and organs of the body and deposit the alcohol in them in proportion to their water content. Brain tissue has a high water content, so the brain receives a substantial share of the distributed alcohol. Muscle tissue has reasonably high water content, but fat tissue contains very little water. Thus, very little alcohol will be deposited in the drinker's body fat. This is one factor that differentiates alcohol from certain other drugs, notably PCP and THC, which are very soluble in fat.

The affinity of alcohol for water, and its lack of affinity for fat, helps explain an important difference in the way alcohol affects women and men. Pound for pound, the typical female's body contains a good deal less water than does the typical man's. This is because women have additional adipose (fatty) tissue, designed, in part, to protect a child in the womb. A Swedish pioneer in alcohol research, E.M.P. Widmark, determined that the typical male body is about 68% water, the typical female only about 55%. Thus, when a woman drinks, she has less fluid pound-for-pound in which to distribute the alcohol.

If a woman and a man who weighed the same drank exactly the same amount of alcohol under the same circumstances, her BAC would climb higher than his. When coupled with the fact that the average woman is smaller than the average man, it becomes apparent that a given amount of alcohol will cause a higher BAC in a woman than it usually will in a man.

As soon as the alcohol enters the blood stream, the body starts trying to get rid of it. Some of the alcohol will be directly expelled from the body chemically unchanged. For example, some alcohol will leave the body in the breath, urine, sweat, tears, etc. However, only a small portion (about 2-10%) of the ingested alcohol will be directly eliminated.

Most of the alcohol a person drinks is eliminated by metabolism. Metabolism is a process of chemical change. In this case, alcohol reacts with oxygen in the body and changes, through a series of intermediate steps, into carbon dioxide and water -- both of which are directly expelled from the body.

Most of the metabolism of alcohol in the body takes place in the liver. An enzyme known as alcohol dehydrogenase acts to speed up the reaction of alcohol with oxygen. The speed of the reaction varies somewhat from person to person, and even from time to time for any given person. On the average, however, a person's blood alcohol concentration - after reaching peak value - will drop by about 0.015 per hour. For example, if the person reaches a maximum BAC of 0.15, it will take about ten hours for the person to eliminate all of the alcohol. For the average-sized male, a BAC of 0.015 is equivalent to about two-thirds of the alcohol content of a standard drink (i.e., about two-thirds of a can of beer, a glass of wine or a shot of whiskey). For the average-sized female, that same BAC would be reached on just one-half of a standard drink. So the typical male will eliminate about two-thirds of a drink per hour, while the typical female will burn up about one-half of a drink in that hour.

We can control the rate at which alcohol enters our bloodstream. For example, we can gulp down our drinks or slowly sip them. We can drink on an empty stomach, or we can take the precaution of eating before drinking. We can choose to drink a lot or a little. But once the alcohol gets into the blood, there is nothing we can do to affect how quickly it leaves. Coffee won't accelerate the rate at which our livers metabolize alcohol. Neither will exercise, deep breathing or a cold shower. We simply have to wait for the process of metabolism to move along at its own speed.

Dose-Response Relationships

People sometimes ask, "How 'high' is 'drunk'? What is the 'legal limit' for 'drunk boating'? How much can a person drink before becoming 'impaired'?"

There is no simple answer to these or similar questions, except to say that any amount of alcohol will affect a person's ability to operate to some degree. It is true that the laws of nearly all states establish a BAC limit at which it is explicitly unlawful to operate a vessel. In most cases, that "limit" is 0.08 BAC. **But every state also makes it unlawful to drive when "under the influence" of alcohol**, and the law admits the possibility that a particular person may be under the influence at a lower BAC.

How much alcohol does someone have to drink to reach these kinds of BACs? Obviously, as we've already seen, it depends on how much time the person spends drinking, whether the person is a man or a woman, how large the person is, whether the drinking takes place on an empty stomach and certain other factors. But let's take as an example a 175-pound man. If he drinks two beers, or two shots of whiskey, in quick succession on an empty stomach, his BAC is likely to climb slightly above 0.04. Two more beers will boost him above 0.08. One more will push him over 0.10. In one respect, then, it doesn't take very much alcohol to cause impairment to some degree -- "a couple of beers" can do it.

UNDERSTANDING BREATH AND BLOOD ALCOHOL CONCENTRATION

When we contrast alcohol with virtually any other drug, we find that impairment by alcohol requires a vastly larger dose than does impairment by the others. Consider exactly what a BAC of 0.08 means. Breath alcohol concentration (BrAC) is expressed in terms of the "number of grams of alcohol in every **210 liters** of breath." When we find that a person has a BrAC of 0.08 that means that there are eight-hundredths of a gram of ethanol in any given 210 liter sample of breath.

Another way to measure alcohol levels in the body is by blood sampling. Blood alcohol concentration is expressed in terms of the "number of grams of alcohol in every **100 milliliters** of blood." When we find that a person has a BAC of 0.08, that means there are eight-hundredths of a gram of pure ethanol in any given 100 milliliter sample of blood. Eight-hundredths of a gram is equal to eighty milligrams (a milligram is one-thousandth of a gram). So, at a BAC of 0.08, the person has 80 milligrams of alcohol in every 100 milliliters of blood.

EFFECTS OF ALCOHOL BASED ON BAC

As previously discussed, alcohol is a central nervous system depressant. It slows down or blocks the processes of the brain. We will now discuss in detail the effects of alcohol on the body as shown by BAC levels.

BAC	Effects of alcohol
.03	Reactions are measurably slowed by the time BAC reaches .03.
.04	Individuals have difficulty dividing attention.
.05	An individual's judgment and inhibitions are measurably impaired. NOTE: Studies conducted at two universities show 60% of attacks on law enforcement are by individuals with a .05 or greater BAC.
.08	Vision is impaired. A subject may lose peripheral vision or have difficulty focusing.
.10	Motor coordination is significantly impaired.
Above .10	May show progressive deterioration of emotional control, lack of comprehension of time and place, and false perception of objects and people.
.40 - .50	Person may become unconscious and comatose. If BAC continues to rise, vital functions, such as respiration and heartbeat, stop around .50.

STRESSORS

Stressors are external factors which can cause an individual to show symptoms similar to alcohol intoxication. There are several facts about stressors:

- A stressor is a stimulus that causes stress.
- Stressors are common in boating.
- Stressors affect people differently.
- Stressors add to the effects of alcohol.
- The effects of stressors mimic intoxication.

There are two major categories of stressors: environmental and medical.

Medical Stressors

Medical stressors are medical conditions that can give the appearance of intoxication. Medical stressors include:

- Insulin shock (diabetes-related)
- Stroke
- Speech disorders
- Head injuries
- Kidney ailments
- Mental disorders
- Vertigo
- Seasickness

Note: If you are in doubt whether the individual's condition is caused by a medical stressor or the person is in fact intoxicated, consult the proper medical authority.

Environmental Stressors

Environmental stressors are divided into two general types; daytime and nighttime. General types of stressors may be encountered any time of day and are associated with the operation of boats.

Daytime Stressors

Fatigue – Fatigue due to long hours of being in a boat results in slowed reactions and reasoning ability. Studies have shown that a fatigued operator operating at a speed of 30 MPH will travel 70 feet further in reacting to a visual stimulus that a rested operator.

Shock (not first aid definition) – Shock is caused by G-forces exerted as the boat's hull bounces on the water. The average out-drive unit undergoes a minimum of two Gs when riding on calm water. The forces increase as wave height increases. This can cause motion sickness, which leads to decreased reaction time.

Vibration – Produces effects similar to those caused by shock.

Heat – The detrimental effects of heat increase the strain on the body, as do many other factors in the marine environment. The table below shows the effects of heat on an individual:

Outside Temperature	Effects on Boater
76 – 86 F	Divided attention is affected.
84 – 90 F	Decrease in perception/response and auditory functions.
Over 91 F	Dexterity and motor functions affected.

Sun glare – Causes the pupils to constrict producing squinting and eyestrain, which reduces the ability to see and slows reaction time.

Time pressure – The pressure of needing to be someplace at a certain time causes increased respiration and leads to similar symptoms of those caused by noise.

Noise – The adverse effects of noise begin at the 80 dB range. (About the level of noise outboard engines produce.) Noise creates changes in the heart rate and blood flow which can result in:

- Loss of balance
- Tunnel vision
- Decrease in mental performance
- Interference with verbal communications

Law Enforcement presence – Officer presence may at times also be considered a stressor on an operator.

Nighttime Stressors

Nighttime and daytime stressors are nearly identical. However, operating at night adds additional stressors.

Reduced vision – Operators are further challenged with nighttime operation due to the challenges of seeing objects. Straining to see objects is a significant stressor on operators at night.

Background lighting – Affects boater's navigation by "hiding" other vessels or navigation aids. The strain of trying to pick out objects at night results in increased respiration and, in severe cases, panic may set in.

Unfamiliar surroundings – If not experienced in the area, the lack of prominent daytime landmarks and unfamiliar objects causes an increased concern for safety.

There is one major point that the officer must understand when dealing with stressors:

Stressors affect an individual's behavior and reaction times, which slows response in an emergency situation.

This will make a person under the effects of stressors show some symptoms associated with intoxication even though they may not have had anything to drink. When added to the use of drugs and/or alcohol, stressors can have an additive effect on an individual.

TEST YOUR KNOWLEDGE

INSTRUCTIONS: Complete the following sentences.

1. Deterrence is based on the fear of _____.

2. BUI detection is defined as the entire process of _____ to determine whether a suspect should be arrested for a BUI violation.

3. The three phases in a typical BUI contact are:

   Phase One _____

   Phase Two _____

   Phase Three _____

4. In Phase Two, the officer must decide _____
   _____

5. Name three different types of alcohols. _____

   Which of these is intended for human consumption? _____

6. What is the name of the process used to produce **high-concentration** beverage alcohol? _____

7. Multiple Choice: "Blood alcohol concentration is the number of ___ of alcohol in every l00 milliliters of blood."

   A. grams
   B. milligrams
   C. nanograms

8. True or False Pound-for-pound, the average woman contains more water than does the average man.

9. What is the name of the muscle that controls the passage from the stomach to the lower gastrointestinal tract? _____

10. Multiple Choice: Once a person reaches his or her peak BAC, it will drop at a rate of about __ per hour.

    A. 0.025
    B. 0.015
    C. 0.010

Module 3

The Legal Environment

Module 3

BUI Detection and Enforcement Course

THE LEGAL ENVIRONMENT

Upon successfully completing the session, the student will be able to:

- State and discuss the elements of BUI offenses;
- Discuss the provisions of the implied consent law;
- Discuss the application of Illegal Per Se laws;
- Discuss the relevance of chemical test evidence;
- Discuss precedents established through case law.

CONTENT SEGMENTS	LEARNING ACTIVITIES
A. Basic BUI Statute: Boating Under The Influence	○ Instructor-led presentations
B. Implied Consent Law and Presumptions	○ Reading assignments
C. Illegal Per Se Statute: Operating With A Prohibited BAC	
D. Preliminary Breath Test Law	
E. Case Law Review	

INTRODUCTION

An understanding of drinking and boating laws that apply in your jurisdiction is critical to BUI enforcement. All states (and some local jurisdictions) have their own drinking and boating laws. While the specific language of these laws may vary significantly, most include the following provisions:

- A Basic BUI law;
- An Implied Consent law;
- An Illegal Per Se law;
- A Preliminary Breath Test law.

In the following pages, these four types of boating and driving laws are discussed in detail. You are responsible for learning whether and how each law applies in your jurisdiction.

BASIC BUI LAW

A state's basic BUI statute addresses persons who operate a vessel while under the influence of alcohol or other drugs. Typically, the statute describes the who, what, where and how of the offense in language similar to the following:

"It is unlawful for any person to operate or be in actual physical control of any vessel within this state while under the influence of alcohol and/or any drug."

Arrest

In order to arrest someone for a basic BUI violation, a law enforcement officer must have probable cause to believe that all elements of the offense are present. That is, the officer must have probable cause to believe that the person in question:

- was operating or in actual physical control of
- a vessel (or any other conveyance prescribed by local or state law)
- within this state or waters of this state
- while under the influence of alcohol, drugs (including prescription), or both.

Note: In some states it is unlawful to operate a vessel while under the influence anywhere in the state on public or private property (waterways). In other states, the law applies only to public waters (local, state, or federal).

Conviction

In order to convict a person of BUI, it is necessary to establish that all four elements were present. With regard to under the influence, courts have generally held that phrase to mean that the ability to operate a vessel has been affected or impaired. To convict person of a basic BUI violation, it is essential to show that the person's capability of safely operating the vessel has been impaired. If BUI is a criminal offense, the facts must be established "beyond a reasonable doubt." If BUI is an infraction, or a civil violation, the standard of proof may be less. In either case, it is the officer's responsibility to collect and thoroughly document all evidence.

IMPLIED CONSENT LAW AND PRESUMPTIONS

Implied Consent

The question of the level of impairment necessary to convict for "operating under the influence" is not cut-and-dry. Some courts have held that the slightest degree of impairment in operating ability means the operator is "under the influence." Other courts have held that there must be evidence of substantial impairment before BUI conviction is warranted. Therefore, proving that an operator was "under the influence" has been (and continues to be) a challenge. Further, some states have instituted specific provisions for "operating while impaired," which usually have a lower standard of proof and correspondingly lower penalties.

To assist enforcement officers in gathering evidence, states have enacted Implied Consent laws. The principal purpose of the Implied Consent law is to encourage people arrested for BUI to submit to a chemical test to provide scientific evidence of alcohol influence. The Implied Consent law usually includes language similar to the following:

"Any person who operates or is in actual physical control of a vessel upon the waters of this state shall be deemed to have given consent to a chemical test for the purpose of determining the alcohol and/or drug concentration of the defendant's blood or breath."

The Implied Consent law requires the operator to submit to a chemical test. Further, the law provides penalties (civil or criminal depending on the statute) for refusal to submit to the test. Keep in mind that in most states, the implied consent provisions of the law apply only after the person has been arrested and have no bearing on a person's decision to submit to field sobriety testing. The penalties for refusal to submit to a breath or blood test generally come in the form of fines, civil assessments, and suspension of an operator's license or operating privileges. The provisions for penalties are a means of encouraging those arrested for BUI to submit to the test so that valuable chemical evidence may be obtained.

Legal Presumptions

Legal presumptions define the significance of the scientific chemical test evidence. Generally, a presumption provides an interpretation or a legal guideline for the chemical test evidence like the following:

"If the chemical test shows that the person's blood alcohol concentration (BAC) is ___ or more, the person shall be presumed to be under the influence. If the test shows that the BAC is ___ or less, it shall be presumed that the person is not under the influence. If the test shows that the BAC is more than ___ but less than ___, there is no presumption as to whether the person is or is not under the influence."

NOTE: These laws vary from state to state. Be familiar with your specific state law.

When establishing that a person is "under the influence, the weight of the chemical test evidence is presumptive of alcohol influence and may not be conclusive.

If there is no evidence to the contrary, the court may accept the legal presumption and conclude that the operator was or was not under the influence based on the chemical test alone. However, other evidence, such as testimony about the operator's appearance, behavior or speech and results of field sobriety tests may be sufficient to overcome a lower level of presumption from a chemical test.

It is possible for a person whose BAC at the time of arrest which is above the presumptive level to be acquitted of BUI. It is also possible for a person who's BAC at the time is below the presumptive level to be convicted of BUI. Consider the following examples:

An operator is arrested for BUI. A chemical test administered to the operator shows a BAC of 0.13. At the subsequent trial, the evidence from the chemical test is introduced. In addition, the arresting officer testifies about the operator's appearance, behavior and driving. The testimony is sketchy, confused and unclear. Another witness testifies that the operator drove, behaved and spoke normally. The court finds the operator not guilty of BUI.

An operator is arrested for BUI. A chemical test administered to the operator shows a BAC of 0.04. At the subsequent trial, the evidence from the chemical test is introduced. In addition, the arresting officer testifies about the operator's stuporous appearance, slurred speech, impaired driving and inability to perform divided attention field sobriety tests. The testimony is clear and descriptive. The court finds the operator guilty of BUI.

The difference in outcomes for the two examples cited is directly attributable to evidence other than the chemical test evidence presented in court. Remember that the chemical test provides presumptive evidence of alcohol influence; it does not provide conclusive evidence. While the "legal limit" in a given jurisdiction may be 0.08 BAC, many people will demonstrate impaired driving ability long before that "limit" is reached.

ILLEGAL PER SE STATUTE: OPERATING WITH A PROHIBITED BAC

Most states include in their BUI law a provision making it illegal to operate a vessel while having a statutorily prescribed blood alcohol concentration, or BAC. This provision, often called an Illegal Per Se law, creates another drinking and driving offense which is related to, but different from, the basic BUI offense. The following is a typical Illegal Per Se provision:

"It is unlawful for any person to operate, or be in actual physical control of, any vessel within this state while having a blood alcohol concentration at or above 0.08."

The Illegal Per Se law makes it an offense in and of itself to operate a vessel while having a BAC at, or above, the state's level. To convict an operator of an Illegal Per Se violation, it is sufficient to establish that the operator's BAC was at, or above, the state's level while operating a vessel in the state. It is not necessary to establish that the operator was under the influence. (In many states this is similar or identical to the provisions for "operating while impaired.") If a subject is prosecuted for an Illegal Per Se violation, the defense must attack the validity of the chemical test and the manner in which it was obtained to overcome the profound weight of the evidence.

NOTE: These laws vary from state to state. Be aware of your state's law.

The Illegal Per Se law does not replace the basic BUI law. Rather, the two work together. Each defines a separate offense:

- The basic BUI law makes it an offense to operate a vessel while under the influence of alcohol and/or any other drug.

- The Illegal Per Se law makes it an offense to operate a vessel while having a blood alcohol level above the statutorily prohibited limit.

For the basic BUI offense, the chemical test result is presumptive evidence. For the Illegal Per Se offense, the chemical test result is conclusive evidence.

Purpose

The principal purpose of the Illegal Per Se law is to aid in prosecution of alcohol-related boating/driving offenses. The law reduces the state's burden of proof. It is not necessary for the prosecutor to show that the operator was "under the influence." The state is not required to demonstrate that the operator's ability to drive was affected. It is sufficient for the state to show that the operator's BAC was at or above the state's prescribed level.

While the statute aids in prosecution, it does not significantly ease drinking and driving enforcement. An officer must still have probable cause to believe that the operator is under the influence before an arrest can be made. An Implied Consent law generally requires that the operator be under arrest before consenting to the chemical test and

that the arrest be made for "acts alleged to have been committed while operating a vessel while under the influence." Therefore, the officer generally must establish probable cause that the offense has been committed and make a valid arrest before the chemical test can be administered.

Officers dealing with possible BUI cases must continue to rely primarily on their own investigative skills to determine whether an arrest should be made. Usually it is impossible to obtain a legally admissible chemical test result until after the operator has been arrested. Sometimes operators will refuse the chemical test after they have been arrested. Then the case will depend strictly upon the officer's observations and testimony. **When making a BUI arrest, always assume that the chemical test evidence will not be available.** It is critical to organize and present observations and testimony in a clear and convincing manner. In this way, more operators who violate drinking and boating laws will be convicted, regardless of whether they take the chemical tests and regardless of the test results.

PRELIMINARY BREATH TEST LAW

Many states have enacted preliminary breath testing laws. These laws permit an officer to request an operator suspected of BUI to submit to a breath test prior to arresting the operator for BUI. Preliminary breath test laws vary significantly from one state to another. A typical statute reads as follows:

"When an officer has reason to believe that a person has committed the offense of operating while under the influence, the officer may request that person to provide a sample of breath for a preliminary test of the alcohol content of the blood using a device approved for this purpose."

Preliminary breath test results are most often limited to being used to determine the presence or absence of alcohol and help officer determine if alcohol is a cause of the impairment observed. The results are obtained pre-arrest and should support the probable cause already established. They often are not admissible in court, however, PBT laws may provide statutory or administrative penalties if the operator refuses to submit to the test. PBT laws vary greatly, so know your state guidelines and agency standards for use.

CASE LAW REVIEW

Legality of Random Stops

» *STATE v. PROUSE* (Delaware, 1979)

The Court was pressed to consider if an officer's search of Prouse's automobile constituted an unreasonable search and seizure under the Fourth Amendment.

A Delaware patrolman stopped Prouse's car to make a routine check of his driver's license and vehicle registration. The officer had not observed any traffic violation or suspicious conduct on the part of Prouse. After stopping the car, the officer uncovered marijuana. The marijuana was later used to indict Prouse.

The Court held that the privacy interests of travelers outweighed the state interests in discretionary spot checks of automobiles. The Court found that random checks made only marginal contributions to roadway safety and compliance with registration requirements; less intrusive means could have been used to serve the same ends. Officers must be held to a "probable cause" standard for searches, otherwise individuals would be subject to "unfettered governmental intrusion" each time they entered an automobile.

Keep in mind that the Court's decision did not preclude a state from developing systematic spot checks that involve less intrusion of those that eliminate officer discretion (e.g. sobriety checkpoints).

» *STATE v. CASAL* (Florida, 1982)

To respond to questions about the legality of random safety equipment or fisheries inspections of boats, the Florida Supreme Court first determined that the state's interest lies in promoting maritime safety. All motorboats must contain certain safety equipment and lighting devices. In *Prouse*, the Supreme Court stated that the state of Delaware had several alternative methods of promoting public highway safety, including annual automobile inspections and frequent enforcement of traffic violations. These methods were not available to marine patrol officers. The main concern that motorboats be safely equipped cannot be furthered by requiring periodic safety inspections. Unlike automobiles, the items of safety equipment required to be on boats, such as life jackets and fire extinguishers, are easily detachable. A periodic inspection could not insure that such equipment would be on board when the boat was being operated. Nor are such safety violations observable and therefore subject to as frequent enforcement as automobile violations.

The Court held that the expectation of privacy does not hold true for motorboat travel. It is not a pervasive or necessary mode of transportation for most people. There is not as great a sense of security and privacy when traveling in a boat as when traveling in an automobile. Thus subjecting boats to random spot checks for fishing permits or registration certificates does not seriously circumscribe the Fourth Amendment.

The Supreme Court in *Prouse* explicitly stated that its holding did not preclude the State of Delaware from developing a system of spot checks. The Court went so far as to suggest the possibility of setting up roadblocks where all traffic is stopped. 440 U.S. at 663, 99 S.Ct. a 1401. Cf. *United States v Martinet-Fuerte*, 428 U.S. 543, 96

S.Ct. 3074, 49 L.Ed.2d 1116 (1976) (checkpoint stops and questioning may be made in absence of any individualized suspicion).

They noted that this less intrusive alternative is not available to the marine patrol. Boat travel is not limited by fixed roadways. Unlike an automobile, a boat at sea can travel in any direction – even in harbors where there are channels which boats must follow, it would be impossible to establish a checkpoint on the water since boats cannot come to a complete stop and line up behind each other on the water as cars can on roads.

In sum, the Court found that the state's interest in random stopping and brief detention of motorboats for the limited purpose of checking fishing permits, registration certificates and safety equipment outweighs a person's interest in being completely free from such limited intrusion. In light of the absence of less restrictive alternatives, which would accomplish the state's goals, spot checks of motorboats are not unreasonable under the Fourth Amendment. The district court erred in holding that State marine officers must have probable cause to stop a vessel for the limited purposes discussed above.

They also considered an issue that the district court did not need to reach. That is the question whether the marine patrol officers, having lawfully stopped respondent's vessel, had probable cause to search it. As they had held earlier, after the initial stopping and boarding a vessel, the marine patrol must have probable cause before conducting any further search or inspection. *Tingley v Brown; Hill v State*. With respect to safety inspections, the legislature had decided that not even the initial boarding may be conducted without consent or probable cause. § 37.1.58, Fla. Stat. (1977). In this case, consent was freely given to board the vessel and to look in the icebox. In *Casal,* the officers were not given consent and were precluded from further searching the vessel unless they had probable cause to believe that a crime was being or was about to be committed, and this probable cause cannot be based on mere suspicion.

Legality of Boating Safety Inspections

» *SCHENEKL v. STATE* (Texas, 2000)

A game warden was on patrol around midnight on Lake Lewisville, Texas, when he saw Schenekl's boat leaving a marina. The warden stopped Schenekl for a routine water safety check. After the warden boarded, he observed Schenekl had trouble answering questions, fumbled with his fingers, and smelled of alcoholic beverage. The warden administered preliminary sobriety tests to Schenekl, then asked him to accompany him to shore for more complete tests. Schenekl agreed.

Schenekl underwent further sobriety testing on shore and failed. The warden arrested Schenekl. A Texas state law authorized an officer to perform a water safety check by stopping and boarding a boat without probable cause or reasonable

suspicion. Charged with boating while intoxicated, Schenekl plead not guilty. He argued the law authorizing police to conduct random water safety checks was unconstitutional. The court disagreed and convicted Schenekl. Schenekl appealed.

The appeals court ruled that the state law was constitutional. Valid law enforcement practices such as random stops and checkpoints balance legitimate governmental interests against the individual's right to be free from arbitrary interference from law officers. The Texas law was here was intended to "promote recreational water safety for persons and property." The state had a substantial interest in protecting the health and well-being of its citizens and in promoting recreational water safety.

There were no reasonable alternatives to random water stops. While police easily establish checkpoints on roadways, the lack of established waterways for boating made water checkpoints impractical. Checkpoints at docks would not have been effective. Only random safety checks would have been effective. On the other hand, the level of intrusion here was minimal. Unlike automobiles, boating was not a basic, pervasive, or generally necessary form of transportation. It was more commonly associated with recreation than necessity. Also the water stops here were for a brief inspection, not a full-blown search of the boat or driver.

» *STATE v. ALLEN* (Arkansas, 2013)

An Arkansas Game and Fish Commission officer was on boating safety patrol after dark and stopped Allen's vessel to conduct a safety equipment check. During that safety check, the officer detected a strong odor of alcoholic beverage and eventually concluded that Allen was under the influence of alcohol. Allen was charged with boating while intoxicated.

Allen entered a no-contest plea in District Court and appealed his conviction to Circuit Court. In Circuit Court, Allen filed a motion to dismiss, alleging that the Arkansas Game and Fish officers had no authority to stop and arrest him. The Circuit Court ruled that the stop was unreasonable and violated Allen's rights under the Fourth Amendment to the United States Constitution.

At the hearing on the motion, the officer testified that "[t]here was no probable cause or any violation of law that preceded the stop of Mr. Allen." According to the officer, he stopped vessels, such as Allen's, "to check for safety compliance, such as life jackets and other safety items that they are required to have on board their vessel." The circuit court granted the motion, concluding that granting "a law enforcement officer the unfettered right to stop and check a vessel at will removes" the Fourth Amendment requirement that "the stop must be reasonable under the circumstances." The circuit court found that where a vessel is "legally registered and illuminated, [and] . . . being operated in an unremarkable fashion, by an adult with one adult passenger on an uncongested part of Lake Hamilton at 11:00 p.m. . . . the stop of the Defendant's pontoon boat" was "unreasonable and violated Defendant's

rights under the Fourth Amendment." The decision of the circuit court was affirmed by the Arkansas Supreme Court.

In the majority opinion, Chief Justice Jim Hannah explained, "At issue is a brief stop by a law-enforcement officer to assure that a vessel complies with applicable safety requirements. It is a stop at the order of a law-enforcement officer and constitutes a seizure that is certainly less intrusive than a traditional arrest; however, it is a seizure and means that the law-enforcement officer is "lawfully present" and under a duty to act where the law enforcement officer reasonably suspects a crime has been or is about to be committed. *See* Ark. R. Crim. P. 3.1 (2012). A seizure under the Fourth Amendment must be based on specific, objective facts indicating that society's legitimate interests require the seizure of the particular individual or that the seizure must be carried out under a plan embodying explicit, neutral limitations on the conduct of individual officers. *See Brown,* 443"

"Regardless of how brief or slight the intrusion, or how weighty the public interest, "an individual's reasonable expectation of privacy is not subject to arbitrary invasions solely at the unfettered discretion of officers in the field." *Id.* [The officer] testified that, while he tried to stop and perform a safety check on as many vessels as he could in a given day, there was no plan and nothing to determine which boats he stopped. There were no specific, objective facts about Allen's vessel to indicate that society's legitimate interests required the seizure of Allen and his particular vessel. As the circuit court found, Allen's vessel was being legally operated in an unremarkable fashion. [The officer] testified that he did not believe that he had "the unfettered discretion to pull over any boat at any time for any reason that [he desired]," but only to perform a safety check. However, this means that whether the stop is proper depends only on the law enforcement officer's subjective assertion of his or her purpose when the Fourth Amendment requires objective facts supporting the stop or a plan embodying explicit, neutral limitations."

"As the circuit court found, the practice of safety-check stops by law-enforcement officers in this case violates the Fourth Amendment."

Other Relevant Case Law

» *STATE v. TAYLOR* (Florida, 1995)

When asked to consider the use of a suspect's refusal to submit to field sobriety tests, the Florida Supreme Court ruled that although field sobriety tests are voluntary, the refusal to submit to them may be admitted in evidence against a defendant if the defendant is advised that adverse consequences would result from refusal to perform them only because such refusal may be "probative of the issue of consciousness of guilt."

» *TERRY v. OHIO* (Ohio, 1968)

The ability of a law enforcement officer to detain a suspect is governed by this case ruling. The U. S. Supreme Court held that the Fourth Amendment prohibition on unreasonable searches and seizures is not violated when a police officer has a reasonable suspicion that the person has committed, is committing or is about to commit a crime and has a reasonable belief that the person "may be armed and presently dangerous."

For their own protection, police may perform a quick surface search of the person's outer clothing for weapons if they have reasonable suspicion that the person stopped is armed. This reasonable suspicion must be based on "specific and articulable facts" and not merely upon an officer's hunch. This permitted police action has subsequently been referred to in short as a "stop and frisk," or simply a "Terry stop." The Terry standard was later extended to temporary detentions of persons in vehicles and has also been applied to stops on the water. The rationale behind the Supreme Court decision revolves around the understanding that, as the opinion notes, "the exclusionary rule has its limitations." The meaning of the rule is to protect persons from unreasonable searches and seizures aimed at gathering evidence, not searches and seizures for other purposes (like prevention of crime or personal protection of police officers).

A "Terry stop" is a brief detention of a person by police based on reasonable suspicion of involvement in criminal activity but short of probable cause to arrest. To have reasonable suspicion that would justify a temporary detention, police must be able to point to "specific and articulable facts" that would indicate to a reasonable person that a crime has been, is being, or is about to be committed. Reasonable suspicion depends on the "totality of the circumstances" and can result from a combination of facts, each of which is by itself innocuous.

It is important to recognize that one of the valuable learning points from Terry v. Ohio is the guideline relate to the "20 minute rule" of investigative detentions as they apply to BUI investigations. The Court declared that it is reasonable to expect that such a detention should take less than 20 minutes.

SFST Administration

» *STATE v. HOMAN* (Ohio, 2000)

The Ohio Supreme Court ruled that standardized field sobriety tests conducted in a manner that departs from the methods established by the National Highway Traffic Safety Administration (NHTSA) "are inherently unreliable." The court determined that the administration of field sobriety tests, including the one-leg-stand and walk-and-turn tests, must be performed in strict compliance with the directives issued by NHTSA. The court concluded that because the arresting officer admitted to not having strictly complied with established police procedure during the administration

of the HGN and walk-and-turn tests, the results of the SFSTs must be excluded. This decision was based upon an older edition of the DWI Training Manual where an ambiguous phrase was strictly interpreted by the court. The phrase in question only applied to the use of the SFSTs for training purposes.

The Ohio Supreme Court attempted to distinguish *Homan* from prior court rulings that allow for substantial compliance in other testing areas. In *Ohio v. Plummer*, 490 N.E.2d 902, 905 (Ohio 1986), for example, the court held that there need only be substantial compliance with an administrative regulation requiring the refrigeration of urine specimens when not in transit or under examination. The court noted that "strict compliance with this regulation would not always be realistic or humanly possible." *Homan*, 732 N.E.2d at 957 (*quoting Plummer*, 490 N.E.2d at 905). In contrast, the *Homan* court found "it is well established that in field sobriety testing even minor deviations from the standardized procedures can severely bias the results." *Id.* In reaching this conclusion, the court relied on the NHTSA SFST STUDENT MANUAL, which reads "if any one of the standardized field sobriety test elements is changed, the validity is compromised." *Id.* at 956. The court appeared to ignore, however, the preface to the student manual, which states:

> The procedures outlined in this manual describe how Standardized Field Sobriety Tests (SFSTs) are to be administered under ideal conditions. We recognize that the SFSTs will not always be administered under ideal conditions in the field, because such conditions will not always exist. Even when administered under less than ideal conditions, they will generally serve as valid and useful indicators of impairment. Slight variations from the ideal, i.e., the inability to find a perfectly smooth surface at roadside, may have some effect on the evidentiary weight given to the results. However, this does not necessarily make SFSTs invalid. *(NHTSA SFST Student Manual (2000).*

As previously noted, the *Homan* court was not unanimous in its decision. Although the dissent did not cite the manual preface, it clearly adopted the same rationale. The dissent argued that any deviation from NHTSA's procedures should go to the weight of the evidence, not its admissibility. It further stated that by permitting a substantial compliance requirement for SFSTs, any potential compromise in the validity of the test could still be challenged by the defense, thus allowing for an attack on the weight to be given the evidence without the need to summarily exclude it. Other states have examined the issues raised in *Homan*. One of the leading cases is *Florida v. Meador*. In *Meador*, the State of Florida appealed a pretrial order excluding the results of field sobriety tests. The trial court excluded those results after finding that the officer had not strictly complied with NHTSA's guidelines. The threshold question on appeal was "whether testimony concerning the results of field sobriety tests is to be treated as lay observations of intoxication or as scientific evidence of impairment." Excluding the HGN test and addressing only the psychomotor tests, the court in *Meador* held:

> The mere fact that the NHTSA studies attempted to quantify the reliability of the field sobriety tests in predicting unlawful BAC's does not convert all of the observations of a person's performance into scientific evidence. The police officer's observations of the field sobriety exercises, other than the HGN test, should be placed in the same category as other commonly understood signs of impairment, such as glassy or bloodshot eyes, slurred speech, staggering, flushed face, labile emotions, odor of alcohol or driving patterns . . . . As long as the testimony of the officers is restricted to lay observations, we agree with the state that . . . the probative value of the psychomotor testing is not outweighed by the danger of unfair prejudice.

The Ohio Supreme Court is the only court to have held that deviations from NHTSA guidelines in the administration of SFSTs render test results inherently unreliable and inadmissible. The appellate courts of nine other states have reviewed the admissibility of both SFSTs and other physical dexterity tests and have held that deviations from NHTSA guidelines should not result in the suppression of test results. This common sense approach embraces the idea that although certain field sobriety tests like HGN may be scientific in nature, not all such tests fall into that realm. As these courts have recognized, many commonly used field sobriety tests, including the walk-and- turn and the one-leg-stand, are simple dexterity tests that can be interpreted by the fact finder through the use of common sense and experience. Thus, as a majority of courts have ruled, a deviation from NHTSA guidelines in the administration of SFSTs should go the weight of the evidence, not its admissibility.

SFST as Testimonial Evidence

» *STATE v. MUNIZ* (Pennsylvania, 1990)

In *Pennsylvania v. Muniz* the officer administered field sobriety tests post-arrest and without providing the Miranda warning. The U.S. Supreme Court held that the dialogue concerning the physical sobriety tests consisted primarily of carefully scripted instructions as to how the tests were to be performed and whether or not the defendant understood these instructions was not interrogation within the meaning of Miranda. Drawing analogy to "police requests to submit to fingerprinting or photography" and holding that police inquiry whether the suspect will submit to blood-alcohol test was not custodial interrogation, the Court opined that field sobriety tests are not testimonial communication and therefore do not constitute self-incrimination.

» *STATE v. MEADOR* (Florida, 1996)

When considering the admissibility of field sobriety tests, the court ruled that there is no admissibility requirement that the observations of psychomotor field sobriety

exercises be reliable. Lay observations of such exercises are admissible because they are relevant. As long as these exercises are not characterized in such a way that overly emphasizes their significance, they are held to be more probative than prejudicial.

Field Sobriety Exercises should not be referred to as a "test," "pass," "fail," or "points." This minimizes the danger that a jury will attach greater significance to Field Sobriety Exercises as anything other than a lay witness' observations of impairment.

HGN Case Law

The following cases are landmark court decisions relevant to the admissibility of Horizontal Gaze Nystagmus (HGN). Challenges to the admissibility of HGN have been based on (1) scientific validity and reliability; (2) relationship of HGN to specific BAC level; (3) officer training, experience, and application.

» *STATE v. BLAKE* (Arizona, 1986) 718 P.2d 171 (Arizona, 1986); see Also State vs. Superior Court of County of Cochise, 149 Ariz 269, 718 P.2d 171, 60 ALR 4th, 1103.

The Blake case established a very important precedent in Arizona and has been considered in many other opinions by courts in other states. The trial court ruled that the HGN test was not reliable under Frye v. United States, 293 F.2d 1013 (DC Cir. 1923) and thus could not be used as part of probable cause. The trial court dismissed the case. This ruling was appealed by the state and the order of dismissal was reversed by the court of appeals, and the case was remanded for further proceedings (7/25/85).

This is the landmark ruling on HGN because it was the first case decided at a State Supreme Court. The Arizona Supreme Court found that HGN satisfies the Frye standards for evidence to corroborate, or attack, the issue of a suspect's impairment.

The Frye standards are those set by the U.S. Supreme Court to govern the admissibility of "new" scientific evidence. In effect, the Arizona Supreme Court took judicial notice of HGN, so that it is no longer necessary, in Arizona, to introduce expert scientific testimony to secure the admissibility of HGN. However, the court did set standard governing the training of officers who would be qualified to testify about HGN, and the court explicitly ruled that HGN cannot be used to establish BAC quantitatively in the absence of a chemical test.

> "We find that the horizontal gaze nystagmus test properly administered by a trained police officer is sufficiently reliable to be a factor in establishing probable cause to arrest an operator for violating A,R.S.28-692 (B). We further find that the horizontal gaze nystagmus test satisfies the Frye test for reliability and may be admitted in evidence to corroborate or attack, but not to quantify, the chemical analysis of the accused's blood alcohol content. It may not be used to establish the accused's level of blood alcohol in the absence of a chemical analysis

showing the proscribed level in the accused's blood, breath or urine. In subsection "(A) Prosecutions" it is admissible, as is other evidence of the defendant's behavior, to prove that he was "under the influence."

» *STATE v. CLARK* (Montana, 1988) 762 P.2d 853 (Montana, 1988)

The court ruled that HGN results may be admitted at trial. This ruling was not based on the Frye standards but was based on more "liberal" rules of evidence: the court held that all scientific evidence should be admitted unless it is "exaggerated popular opinion." In this case, no attempt was made to infer a quantitative estimate of BAC from the angle of onset.

» *STATE v. BRESSON* (Ohio, 1990)

The state's highest court held that HGN results could be used (1) to establish probable cause for a DUI arrest and (2) as evidence at a DUI trial to prove that a person was driving a motor vessel while under the influence of alcohol. Results of HGN test could not be used to prove a specific BAC level.

» *STATE v. MURPHY* (Iowa, 1990)

The court held that the results of a HGN test could be admitted into evidence at a DUI trial to prove the intoxication of the operator. (Not to be used to determine specific BAC level.) The court considered HGN to be one of the SFSTs officers administer and in this case the officer was properly trained to administer the test. The court felt that the officer did not have to qualify as an expert witness because the observations were objective in nature and the officer needed no special qualifications to be able to interpret the results.

» *STATE v. BUENING* (Illinois, 1992)

The court ruled HGN test results admissible since they represented observed "behavior" and could be used. Such evidence could not be used to determine specific BAC level.

» *PEOPLE v. LOOMIS* (California, 1984)

The officer testified that he used the angle of onset to give a quantitative estimate of the suspect's BAC level. The court ruled that such an opinion is not admissible and that BAC is not to be estimated as a result of HGN results.

Summary of HGN Case Law

The prevailing trend in court is to accept HGN as evidence of impairment, provided the proper scientific foundation is laid. However, courts consistently reject any attempt to derive a quantitative estimate of BAC from nystagmus. Keep in mind that neither nystagmus nor any other elements of the drug recognition examination are intended to

substitute for chemical testing. It is true that there is an approximate, statistical relationship between BAC and angle of onset, but this approximate relationship is not sufficiently reliable to permit BAC "prediction" in any individual case.

Other SFST Case Law

Additional reference material is provided as an appendix to this module. These references include case law references to the legality of random stops, strict compliance with SFST administrative procedures, search incident to arrest and other issues dealing with self-incrimination.

Warrantless Blood Draws

» *STATE v.Schmerber* (California, 1996)

In Schmerber v. California, 384 U.S. 757 (1966), the petitioner was convicted in Los Angeles Municipal Court of the criminal offense of driving an automobile while under the influence of intoxicating liquor. He had been arrested at a hospital while receiving treatment for injuries suffered in an accident involving the automobile that he had apparently been driving. At the direction of a police officer, a blood sample was then withdrawn from petitioner's body by a physician at the hospital without a search warrant. The chemical analysis of this sample revealed a percent by weight of alcohol in his blood at the time of the offense which indicated intoxication, and the report of this analysis was admitted in evidence at the trial. Petitioner objected to receipt of this evidence of the analysis on the ground that the blood had been withdrawn despite his refusal, on the advice of his counsel, to consent to the test. He contended that in that circumstance the withdrawal of the blood and the admission of the analysis in evidence denied him due process of law under the Fourteenth Amendment, as well as specific guarantees of the Bill of Rights secured against the States by that Amendment: his privilege against self-incrimination under the Fifth Amendment; his right to counsel under the Sixth Amendment; and his right not to be subjected to unreasonable searches and seizures in violation of the Fourth Amendment. The Appellate Department of the California Superior Court rejected these contentions and affirmed the conviction. In view of constitutional decisions of the Supreme Court when these issues were considered, Breithaupt v. Abram, 352 U.S. 432 — see Escobedo v. Illinois, 378 U.S. 478; Malloy v. Hogan, 378 U.S. 1, and Mapp v. Ohio, 367 U.S. 643 — Granted certiorari. 382 U.S. 971. The decision was affirmed.

» *STATE v.McNeely* (Missouri, 2013)

On October 3, 2010, at approximately 2:08 A.M., patrolman Mark Winder stopped McNeely for speeding. During the routine traffic stop, Winder thought McNeely showed signs of intoxication, including bloodshot eyes, slurred speech, and the smell of alcohol on his person. As a result, Winder had McNeely perform multiple field-sobriety tests. According to Winder's later testimony, because McNeely performed

poorly on each of these tests, Winder arrested McNeely for driving while intoxicated. Winder then asked McNeely to take a breathalyzer test, but McNeely refused.

Winder, relying on an article he had recently read written by a prosecutor in the Missouri Attorney General's Office, took McNeely to the local hospital for a blood test without first getting a search warrant. Upon arrival at the hospital, Winder read an implied consent advisory form to McNeely, in which he warned McNeely that he would lose his driver's license for one year if he refused to consent to a blood test, and that such refusal would be admissible evidence in a future prosecution against McNeely. After McNeely refused the blood test, Winder then instructed a staff member to draw blood without McNeely's permission. The result of the test was a blood-alcohol level of 0.154 percent, well above the legal limit of 0.08.

After the state charged McNeely with driving while intoxicated, McNeely filed a motion to suppress evidence due to a violation of his Fourth Amendment right to be free from unreasonable searches and seizures. The trial court sustained this motion. On June 21, 2011, the Missouri Court of Appeals, Eastern District, reversed the trial court, holding that the exigent circumstances exception to the Fourth Amendment applied so Winder did not need a warrant. Subsequently, in light of the "general interest and importance of the issue," the Court of Appeals *sua sponte* transferred the case to the Missouri Supreme Court. The Missouri Supreme Court reversed the Court of Appeals and affirmed the trial's ruling in a *per curiam* opinion. The U.S. Supreme Court granted certiorari on September 25, 2012, on the question of whether the natural dissipation of alcohol in the bloodstream triggers the exigent circumstances exception to the Fourth Amendment.

Case Law on the Seated Battery of SFSTs

To date, there is no documented case law pertaining to the seated battery of SFSTs that NASBLA is aware of. As these tests continue to gain widespread use around the country and cases are challenged, case law will result in some instances. NASBLA will try to maintain up-to-date information on the NASBLA website at www.NASBLA.org, and both students and instructors are encouraged to check there periodically for case law information. Additionally, any officer involved in a case resulting in a court ruling is encouraged to contact NASBLA and provide information on the specific ruling so the website can be kept current.

TEST YOUR KNOWLEDGE
INSTRUCTIONS: Complete the following sentences.

1. The elements of the basic BUI law are that a person:

   a. _____

   b. _____

   c. _____

   d. _____

2. To be convicted of BUI as a criminal offense, the standard of proof is _____ _____.

3. The purpose of the Implied Consent law is _____ _____

4. Under the Implied Consent law, chemical test evidence is _____ evidence.

5. The Illegal Per Se law makes it unlawful to _____ _____

6. The PBT law permits an officer to request an operator suspected of BUI to _____

7. PBT results are used solely to help determine _____ _____

ATTACHMENTS

A. State and Federal Appellate Court Cases on Horizontal Gaze Nystagmus and Other SFST Rulings

B. Scientific Publications and Research Reports Addressing Nystagmus

C. Random Stops of Vessels Which Resulted In BUI Convictions

D. HGN State Summary Chart

ATTACHMENT A

STATE AND FEDERAL APPELLATE COURT CASES ON HORIZONTAL GAZE NYSTAGMUS AND OTHER SFST RULINGS

This paper summarizes the opinions of State and Federal courts that have considered the admissibility of the results of the Horizontal Gaze Nystagmus (HGN) test at trial. Most of the cases summarized are appellate court decisions. Ref: 60 ALR4th 1129.

Alabama. The court held that the admission of HGN test results at a DUI trial was "not harmless error" if a proper foundation for the test's results had not been made by the State. However, the court further stated that this holding did not necessarily mean that it would approve the admissibility of HGN results even if there were a "proper foundation". 574 So.2d at 859. The court felt that it had "not been presented with sufficient evidence concerning the test's reliability of acceptance by the scientific community to address that question." See *Ex parte State of Alabama,* 574 So.2d 859 (Ala. 1990)** *and Malone vs. City of Silverhill,* 575 So.2d 106 (Ala. 1990)**. A law enforcement officer's testimony concerning his training in the use of the HGN test was not sufficient evidence of the scientific reliability of such test to warrant the admissibility of its results into evidence at a DUI trial. *Brunson v. State,* 580 So.2d 62 (Ala. Cr.App. 1991) (cert. den. by the Alabama Supreme Court), *Johnson v. State,* 591 So.2d 580 (Ala. Cr.App. 1991), and Desselle v. State, 596 So.2d 602 (Ala. Cr. App. 1991)

Alaska. The court of appeals held that the results of an HGN test could be used alone to determine if there is probable cause to make a DUI arrest where there was other evidence of intoxication (e.g., bloodshot eyes) even if the defendant passed four (4) other field sobriety tests. However, the court made it clear that HGN test results were not to be admitted into evidence at a DUI trial to "corroborate" a chemical test for intoxication. State v. Grier, 791 P.2d 627 (Alaska App. 1990)

Arizona. HGN test results may be admitted as evidence of driving under the influence. The court felt that HGN satisfied the Frye* test. However, the court held that HGN test results cannot be used to prove a specific alcohol concentration. Statutory law requires that an alcohol concentration be determined by a chemical analysis of a defendant's blood, breath, or urine. The court also held that the HGN test results could be used to determine probable cause of DUI for arrest purposes. *State v. Superior Court,* 718 P.2d 171 (Ariz. 1986)**. In cases where there is no chemical test to determine an alcohol concentration for intoxication purposes, HGN test results can be admitted the same as other field sobriety tests to show a "neurological dysfunction, one cause of which could be alcohol ingestion." 799 P.2d 860. However, HGN test results cannot be used to establish an alcohol concentration.

The court, in a footnote, discusses the factual differences in this case and the *Ricke* case below decided by the court of appeals. State ex. *rel. Hamilton v. City Court of City of Mesa,* 799 P.2d 855 (Ariz. 1990)**. Also, if the defendant is not careful when cross-examining the officer who administered the HGN test, they could "open the door" to the

possible introduction of evidence by the State that relates HGN result to an alcohol concentration. *State v. Cook,* 834 P.2d 1267 (Ariz.App.Div. 2 1993) In a "per se case" decided by the court of appeals, the court held that HGN test results could be admitted into evidence to corroborate chemical test evidence that a person was operating a motor vehicle with an alcohol concentration at or above 0.10. The State Supreme Court appears to have approved this holding in the *Mesa* case; see footnote 2 in 799 P.2d at 858. *State ex rel. McDougall v. Ricke,* 778 P.2d 1358 (Ariz. App. 1989) Note: An appellate court has held that it was error to admit the results of an HGN test in situations where the defendant was wearing hard contact lenses during the test. However, such error was considered harmless given other aspects of the case. *State v. Stevens,* 1994 Ariz.App. LEXIS 184,_____ P.2d_____(Ariz.App. 1994)

Arkansas. The results of an HGN test may be admitted for the purpose of proving intoxication. The court, however, has apparently indirectly held that HGN results cannot be used to establish a specific alcohol concentration. *Whitson v. State,* 863 S.W.2d 794 (Ark. 1993)** For a prior case by the Arkansas Court Appeals that reached similar conclusions, see *Middleton v. State,* 780 S.W.2d 581 (Ark. App. 1989)

California. In *People v. Leahy,* 882 P.2d 321 (Calif. 1994)**, the court held (1) that a police officer, unless they have scientific expertise, cannot give an opinion concerning HGN test results and (2) HGN must be shown to be generally accepted in the scientific community. The court felt that the *Kelly/Frye* standard* must be satisfied.

Georgia. The court considered the HGN a type of field sobriety test and allowed the results of such test to be introduced into evidence as would other such tests. *Manley v. State,* 424 S.E.2d 818 (Ga.App. 1992) In an earlier decision, the court felt that there may have been error in the admission of the results of an HGN test at a DUI trial. The court reached this opinion based on the fact that the State introduced no proof that this test was accepted within the scientific community. However, the introduction of HGN results was considered "harmless error" due to the fact that there was other sufficient evidence upon which the court could have based a DUI conviction. *Foster v. State,* 420 S.E.2d 78 (Ga. App. 1992) For a similar case, see *Ross v. State,* 386 S.E.2d 721 (Ga. App. 1989).

Idaho. HGN test results are admissible into evidence at a DUI trial. However, such results cannot be used to determine an alcohol concentration. *State v. Garrett,* 811 P.2d 488 (Idaho 1991), *and State v. Gleason,* 844 P.2d 691 (Idaho 1992)

Illinois. The appellate courts in this State have reached contrary positions on whether HGN test results should be admitted into evidence at a DUI trial. Because the State did not provide a proper foundation to establish the scientific reliability of the HGN test, the results of such test could not be admitted into evidence. *People v. Vega,* 496 N.E.2d 501 01l. (App. 4 Dist. 1986) (reaffirmed in *People v. Sides,* 556 N.E.2d 778 011. App. 4 Dist. 1990), and *People v. Smith,* 538 N.E.2d 1268 (In. App. 2 Dist. 1989). In another case, the HGN test results could not be admitted at a BUI trial to establish an alcohol concentration. Statutory law provides that an alcohol concentration be determined by an

analysis of bodily substances. *People v. Dakuras,* 527 N.E.2d 163 011. App. 2 Dist. 1988). Note: In one case, HGN test results were admitted because the defendant did not object to such admissibility. *People v. Seymoure,* 511 N.E.2d 986 (11l. App. 4 Dist. 1987). However, HGN tests can be used as a factor by law enforcement officers to establish probable cause to make a DUI arrest. *People v. Griffith,* 493 N.E.2d 413 01l. (App. 5 Dist. 1986) and *People v. Furness,* 526 N.E.2d 947 (In. App. 5 Dist. 1988) Note: In *People v. Jebelian,* 561 N.E.2d 1079 011. (App. 3 DST. 1990), the court raised the possibility that HGN test results were not evidence, but the court made no specific holding on this issue. Nevertheless, in another appellate court HGN test results were admitted into evidence at a DUI trial based on the reasoning that they represented observed "behavior" and, therefore, could be used without a scientific foundation to establish whether the defendant was under the influence of alcohol. However, such evidence could not be used to determine a specific alcohol concentration. *People v. Buening,* 592 N.E.2d 1222 01l. (App. 5 Dist. 1992) In another case, the decision of the *Buening* court was supported. However, the court also held that HGN test results "are not conclusive evidence of intoxication" but are only one of several factors which must be considered to determine if a person was under the influence of alcohol. *People v. Wiebler,* 640 N.E.2d 24 (III.App. 3 Dist. 1994)

Iowa. The results of an HGN test could be admitted into evidence at a DUI trial to prove the intoxication of an operator. Note: HGN test results, however, were not used to determine a specific alcohol concentration. The court considered the HGN test to be one of the standard field sobriety tests law enforcement officers administer to persons suspected of a DUI offense. The officer, in this case, was properly trained to administer the HGN test and other field sobriety tests. These tests are especially designed to assist an officer's observations in determining if a person is intoxicated. The court felt that the officer did not have to qualify as an expert witness because the observations of intoxication obtained from the HGN test results were objective in nature. Therefore, there was no need that an officer be specially qualified to be able to interpret such results. The Iowa court based its decision to a large degree on *State v. Negal,* 506 N.E.2d 285 (Ohio App. 1986). *State v. Murphy,* 451 N.W.2d 154 (Iowa 1990)**. Note: The *Murphy* case was indirectly affirmed in *State v. Edman,* 452 N.W.2d 169 (Iowa 1990)**.

Kansas. The court held that HGN test results could not be admitted into evidence at a DUI trial. The court felt that the HGN test was scientific in nature and that, as a result, it was not the same as other field sobriety tests. In order to be admissible, therefore, the HGN test will have to satisfy the *Frye** test. *State v. Witte,* 836 P.2d 1110 (Kan. 1992)**

Louisiana. The court held that the "HGN test meets the standards of admissibility *in Frye** and, a proper foundation, may be admitted as evidence of intoxication." 561 So.2d at 887 Note: The court did not directly address the issue of whether HGN test results could be admitted into evidence at a DUI trial to establish a specific BAC level. *State v. Armstrong,* 561 So.2d 883 (La.App. 2 Cir. 1990) (writ denied by the Louisiana Supreme Court, 568 So.2d 1077 (La. 1990)), and State v. *Breiting,* 623 So.2d 23, (La.App. 1 Cir. 1993)

Minnesota. Using the *Frye** standard, the results of an HGN test can be admitted into evidence at a trial of a person charged with driving while under the influence of drugs. The HGN test was part of the 12-step protocol used by law enforcement officers, who have been trained as Drug Recognition Experts, to determine if a person should be arrested for DUI drugs. *State v. Klawitter,* 518 N.W.2d 577 (Minn. 1994)**

Missouri. The results of an HGN test can be admitted into evidence as proof of intoxication. It is interesting to note that, even though the court held that the results of the test could not be admitted to establish a specific alcohol concentration, it, nevertheless, held that a law enforcement officer could testify as to his or her experience concerning how a person's performance on the HGN test compares with breathalyzer test results that indicated an alcohol concentration of 0.10 of more. The court based its decision on the *Frye** rule. *State v. Hill,* 865 S.W.2d 702 (Mo.App. W.D. 1993).

Montana. HGN test results may be admitted into evidence at a DUI trial. The court did not follow the general acceptance rule for scientific evidence, the Frye* test, in reaching the holding in this case. Using more "liberalized" rules of evidence, the court felt that all scientific evidence should be admitted unless it is "exaggerated popular opinion" and likely to be prejudicial. *State v. Clark,* 762 P.2d 853 (Morir. 1988)**.

Nebraska. It was error to admit the HGN test results into evidence at a DUI trial. The court felt that the State had not established the scientific reliability of the test via a proper foundation. Note: Nevertheless, the court held that such admission was not prejudicial to the defendant and upheld his DUI conviction. There was other evidence that indicated the defendant's guilt. *State v. Borchardt,* 395 N.W.2d 551 (Neb. 1986)**.

New York. In a DUI case related to operating while under the influence of drugs, the court held that HGN test results were admissible. The court felt that the HGN test met the Frye* standard for admissibility. *People v. Quinn,* 580 N.Y.S.2d 818 (Dist.Ct. 1991)

North Dakota. The results of an HGN test can be admitted into evidence at a DUI trial provided it is a part of the standard field sobriety tests. *City of Fargo v. McLaughin,* 512 N.W.2d 700 (N.D. 1994)**

Ohio. The State's supreme court has held that the results of an HGN test could be used (1) to establish probable cause of a DUI arrest and (2) as evidence at a DUI trial to prove that a person was driving a motor vehicle while under the influence of alcohol. However, the court also held that the results of an HGN test could not be used to prove specific alcohol concentration. *State v. Bresson,* 554 N.E.2d 1330 (Ohio 1990)**, *Columbus* v. Anderson, 600 N.E.2d 712 (OhioApp. 10 Dist. 1991), and *State v. Scott,* 606 N.E.2d 1023 (OhioApp. 3 Dist. 1992). Note: In an earlier decision, the Ohio Court of Appeals held that the results of an HGN test could be admitted into evidence at a DUI trial. The court reasoned that the HGN test was just another "field sobriety test" and, as

such, a police officer could testify as to his or her observations while conducting the test without the need to be qualified as an expert witness. State v. Nega, 506 N.E.2d 285 (Ohio App. 1986).

Oklahoma. The court felt that HGN test results could not be admitted into evidence because the HGN test had not met the Frye* standard. *Yell v. State,* 856 P.2d 996 (Okl. Cr. 1993)**

Oregon. The Oregon Court of Appeals has held that the results of an HGN test may be admitted into evidence. I.e., law enforcement officers may now testify as to the defendants' reactions to the test and what the test meant to the officers. State v. *O'Key,* 858 P.2d 904 (Or.App. 1993) This decision reversed a prior one by this court on the same subject. *State v. Reed,* 732 P.2d 66 (Of. App. 1987) Note: An HGN test is considered a type of field sobriety test. Such tests are considered searches under Oregon law. *State v. Nagel,* 880 P.2d 451 (Of. 1994)

Pennsylvania. HGN test results could not be admitted into evidence at a DUI trial. The court held that the State had failed to "establish an adequate foundation for the admission of the test results." *Com. v. Miller,* 532 A.2d 1186 (Pa. Super. 1987), *Com. v. Apollo,* 603 A.2d 1023 (Pa. Super. 1992), and *Com. v. Moore,* 635 A.2d 625 (Pa. Super. 1993)

South Carolina. The court felt that the HGN test was one of the field sobriety tests. The results of the HGN test could be admitted into evidence in conjunction with the evidence obtained from other field sobriety tests. *State v. Sullivan,* 426 S.E.2D 766 (S.C. 1993)**

Tennessee. The Tennessee Supreme Court held that testimony concerning Horizontal Gaze Nystagmus (HGN) sobriety test is "scientific, technical, or other specialized knowledge" and, therefore, must be offered through expert witness. State of Tennessee v. Murphy. Oct. 13, 1997. 953 S.W.2d200 (Tenn.1997)

Texas. HGN test results could be admitted into evidence at a DUI trial to prove intoxication. *Emerson v. State,* 880 S.W.2d 759 (Tex. Cr. App. 1994)**

Washington. In order to be admissible, HGN must be shown to meet generally accepted scientific principles. The court used the *Frye** standard. *State v. Cissne,* 865 P.2d 564 (Wa.App.Div. 3 1994)

West Virginia. The court felt that if the HGN test is proven reliable, its results could be admitted into evidence to prove that an operator was under the influence. However, HGN test results could not be used as a measure of a person's alcohol concentration. Again, as in other States, HGN test results are not recognized in the statutes as a method for determining alcohol concentration. Note: In the specific case before the court, the State offered no evidence of the scientific reliability of the HGN test. *State v. Barker,* 366 S.E.2d 642 (W.Va. 1988)**.

Wisconsin. The court held that HGN test results could be admitted into evidence at a DUI trial. The Wisconsin court's reasoning was similar to that of the Ohio Court of Appeals *in State v. Negal,* 506 N.E.2d 285 (Ohio App. 1986). The court considered that HGN test results were "merely behavioral observations based upon the officer's training and experience. It required little more expertise than is acquired by anyone who observes unusual behavior in persons suspected of drinking intoxicants." The court disagreed with the defendant's argument that the HGN test involved scientific principles such that it was necessary for the witness to be a qualified professional. *Wisconsin v. Peters,* 419 N.W.2d 575 (unpublished limited precedent opinion) (Wis. App. Dist. 3 1987), *& State v. Keller,* 1995 Wisc. App. LEXIS 446 (Wis.App. 1990), HGN test results were used as evidence of probable cause of a drunk driving offense. However, in this published opinion, the scientific reliability of this test was not an issue before the court.

United States. HGN test results could be admitted into evidence at a DUI trial as part of the results of a series of tests performed on an operator to determine if he or she was under the influence of alcohol. There was no indication that the results of the HGN test were used to establish a specific alcohol concentration. Note: The operator, in this case, was charged with violating Federal regulations that prohibit a person from operating a motor vehicle on Federal park lands while under the influence of alcohol. *U.S. v. Van Griffin,* 874 F.2d 634 (9th Cir. 1989) Comment: Both the U.S. Supreme Court and the U.S. Court of Appeals for the Fourth circuit have mentioned in opinions that law enforcement officers have used the HGN test as a field sobriety test. These courts, however, made no determinations as to the reliability of the HGN test or to the admissibility of the test's results into evidence at a DUI trial. *Pennsylvania v. Muntiz,* 496 U.S. 582, 110 S.Ct. 638, 110 L.Ed.2d 528 (1990), and *U.S. v. Reid,* 929 F.2d 990 (4th Cir. 1991)

Frye v. United States, 293 F. 1013 (D.C. Ct. of App. 1923) In this case, the court held, that before a scientific principle could be admitted into evidence, it "must be sufficiently established to have gained general acceptance in the particular field in which it belongs." 293 F. at 1014 The U.S. Supreme Court has recently held that the *Frye* standard does not apply to the admission of scientific expert testimony in cases tried in Federal courts. Instead, the Court held that this standard has been superseded by Federal Rule of Evidence 702. *Daubert v. Merrell Dow Pharmaceuticals* ____ U.S. ____ 113 S.Ct. 2786, 125 L.Ed-2d 469 (1993)
** Opinion of the State's highest court.

Other Cases Involving Admissibility of SFSTs and/or Strict Compliance

In ***Pennsylvania v. Ragan***, 652 A.2d 925, 928 (Pa. Super. Ct. 1995), *appeal denied*, 664 A.2d 540 (Pa. 1995), the Pennsylvania Superior Court held that the one-leg-stand, finger-to-nose and walking-in-a-straight-line tests involve observations within the common experience of the ordinary citizen, and thus are admissible as non-scientific evidence of intoxication. *Meador*, 674 So.2d at 831 (*citing Ragan*, 652 A.2d at 928).

In ***Illinois v. Sides***, 556 N.E.2d 778 (Ill. App. Ct. 1990), the Illinois Court of Appeals stated:

> In assessing the defendant's mental and physical faculties at a time relevant to the charge that he was driving an automobile while under the influence of alcohol, it is entirely appropriate for the jury to consider the defendant's ability to perform the simple physical tasks which comprise the field sobriety tests. The jury's inference that a defendant who had difficulty performing some of these tasks may have been similarly impaired in his ability to think and act with ordinary care when in operation of an automobile is entirely justified and one which the law permits the jury to draw. Certainly in our modern society, a juror's common observations and experiences in life would include not only the driving of an automobile, but a familiarity with the degree of physical and mental acuity required to do so.

In ***Wisconsin v. Curran***, 559 N.W.2d 925 (Wis. Ct. App. 1996), the defendant argued that a finger dexterity test was not scientifically valid and that the walk-and-turn and one-leg stand tests were administered in a manner that deviated from the NHTSA SFST STUDENT MANUAL and were thus invalid. In rejecting the defendant's claim, the court held that just because the manual referred only to a specific three-test battery consisting of the walk-and-turn test, one-leg-stand test, and HGN test, it does not mean other combinations of such tests are not reliable. The court further stated, "it is not the province of this court to determine what weight to give evidence." *Id.*

In ***Wisconsin v. Drew***, No. 97-2182, 1998 Wisc. App. LEXIS 199 (Wis. Ct. App. Feb. 19, 1998), the Wisconsin Court of Appeals rejected the defendant's claim that the field sobriety tests were not sufficiently reliable. Noting that no part of the NHTSA SFST STUDENT MANUAL was proffered as evidence by the defendant, the court stated:

> Perhaps it is true that the NHTSA manual describes a three test battery that is claimed to be highly reliable in identifying persons whose blood-alcohol concentration are over .10 when administered in a standardized manner and assessed on the basis of standardized criteria. This does not necessarily mean, however, that other combinations of sobriety tests not described in the manual are not reliable as well in assessing whether a person's ability to operate a motor vehicle is impaired by alcohol . . . . We are unaware of any legal authority in Wisconsin for the proposition that the NHTSA described tests, and only those tests, may be relied upon by law enforcement.

In ***Dunn v. Woodman***, No. 99-0664, 1999 Wisc. App. LEXIS 1022 (Wis. Ct. App. Sept. 16, 1999) the court held that a police officer's lay observations formed during administration of field sobriety tests may be used for probable cause to arrest.

In ***Wautoma v. Wehe***, No. 99-0238, 1999 Wisc. App. LEXIS 764 (Wis. Ct. App. July 15, 1999) the court held that expert testimony is not helpful in determining validity and reliability of field sobriety tests since lay observations of police officers are admissible.

In ***Tennessee v. Williams***, C.C.A. No. 01C01-9707-CR-00309, 1998 Tenn. Crim. App. LEXIS 1189, at *3 (Tenn. Crim. App. Nov. 20, 1998), the officer who administered the SFSTs conceded that the heel-to-toe test is preferably performed on a flat surface, though in the instant case the test was performed in a valley, "midway between two hills". *Id.* Additionally, the officer admitted that there was no fog line at that point in the road to serve as a straight line for the performance of the test. *Id.* Nevertheless, the appellate court refused to rule that the trial court's failure to suppress the results was error, stating that "[t]he conditions under which the tests were performed relate to the weight to be afforded the test results, not the admissibility of the results." *Id* at *8. Georgia has also held that the results of field sobriety tests are admissible despite evidence that the tests were not administered in strict compliance with NHTSA's guidelines.

In ***Georgia v. Pastorini,*** 474 S.E.2d 122, 125 (Ga. Ct. App. 1996), the Georgia Court of Appeals held that testimony indicating the officer had failed to administer the tests in accordance with his training "affects only the weight to be given the tests . . . [C]redibility of evidence such as this should be left for jury determination."

In ***Cann-Hanson v. Georgia***, 478 S.E.2d 460, 461 (Ga. Ct. App. 1996) the court ruled that evidence gained when the officer did not fully comply with NHTSA guidelines did not destroy the probative value of the tests.

In ***Cantwell v. Georgia***, 497 S.E.2d 609, 611 (Ga. Ct. App. 1998), the appellate court adopted the State's view that the officer who administered the field sobriety tests testified as a lay witness. Prior to trial, the State made a motion *in limine* to exclude any mention of NHTSA SFST training received by the arresting officer. Instead, the State asserted that the officer would testify as a lay witness and only as to his observations of the defendant as he performed the tests. The State further asserted that the officer "would not testify as to any 'point system' or whether the defendant passed or failed the tests." The trial court granted the State's motion and defendant appealed, arguing that he was prevented from questioning the officer about his training and from calling an expert witness regarding the proper methods of administering and evaluating the tests. The Georgia Court of Appeals upheld the conviction, stating:

> [I]f the State chooses to have the officer testify as a lay witness and describe the actions of the defendant in performing simple exercises such as the "leg lift" and "walk and turn" without referring to any "points" system or using the words "pass" or "fail", cross-examination on NHTSA procedures is irrelevant, regardless of whether the officer is trained in them or not.

In ***Hawkins v. Georgia***, 476 S.E.2d 803 (Ga. Ct. App. 1996), the Georgia Court of Appeals explained:

> With regard to the "ABCs," "walk and turn," and "leg lift" field sobriety tests given appellant, the word "tests" is a misnomer; these are physical dexterity exercises that common sense, common experience, and the "law of nature" show are

> performed less well after drinking alcohol. The screening of these gross motor skills is hardly the type of "scientific principle or technique" to which *Harper* [*Harper v. State*, 292 S.E.2d 389 (Ga. 1982)] referred, and this Court will not hold these physical manifestations of impairment, which could be as obvious to the layperson as to the expert, to such a standard of admissibility.

In ***Cloud v. Texas***, No. 03-99-00165-CR, 2000 Tex. App. LEXIS 3518 (Tex. Crim. App. May 25, 2000), the court rejected the defendant's argument that he should be afforded a pretrial hearing on the scientific reliability of the field sobriety tests and stated:

> Unlike the horizontal gaze nystagmus ("HGN"), these tests— the walk-and-turn, alphabet recital, and finger dexterity tests— are not based on any novel scientific theory. The State introduced the testimony to show impairment of physical and mental faculties. These [field sobriety tests] involve observation of directed, basic tasks and are barely distinguishable from lay observation of undirected behavior. There was no reason to preliminarily inquire into the scientific basis of the tests outside the presence of the jury.

The Hawaii Supreme Court made a similar determination in ***Hawaii v. Toyomura***, 904 P.2d 893 (Haw. 1995). Over defense objections, the trial court allowed the arresting officer to give an opinion as to defendant's state of sobriety based upon, among other things, defendant's performance of field sobriety tests. In overruling the objection, the trial court stated, "I think any . . . lay person can have an opinion regarding sobriety." While reaffirming the holding in *Hawaii v. Nishi*, 852 P.2d 476 (Haw. Ct. App. 1993) that a police officer may not give an expert opinion about whether a person is intoxicated based on field sobriety tests, the court held that an officer may still give an opinion from a lay person's point of view.

In ***Smith v. Wyoming***, No. 00-71, 2000 Wyo. LEXIS 202, at *10 (Wyo. Oct. 4, 2000), the defendant contended that a police officer could only testify as to field sobriety test results if the tests were conducted in strict compliance with the procedures established by NHTSA. The court rejected this argument:

> Considering that there may be other means of law enforcement training available now and in the future, for the purpose of establishing probable cause, a law enforcement officer may testify to the results of field sobriety tests (including the horizontal gaze nystagmus test) if it is shown that the officer has been adequately trained in the administration and assessment of those field sobriety tests and conducted them in substantial accordance with that training . . . [P]urported deficiencies in the administration of the sobriety tests go to the weight accorded the evidence and not to its admissibility.

<u>Self-Incrimination and SFSTs</u>

Arizona v. Lee, Westlaw, 1995,184 Ariz. 230, 908 P.2d 44. The State Court of Appeals addressed the issue of whether post-arrest Miranda is required preceding the

administration of field sobriety tests and an intoxilyzer test. According to the State, the arresting officer was not required to give post-arrest Miranda warnings to a defendant prior to requesting that she perform field sobriety tests or prior to requesting that she submit to an intoxilyzer test. The appeals court affirmed the trial court's suppression of any post-arrest statements and reversed the trial courts suppression of the field sobriety tests, intoxilyzer test and refusal to take the test because field sobriety and intoxilyzer tests are nontestimonial in nature, we vacate the trial court's order suppressing evidence of the field sobriety tests and the refusal to take the intoxilyzer test.

The privilege against self-incrimination protects an accused only from being compelled to testify against himself, or otherwise provide the State with evidence of a testimonial or communicative nature...."*Schmerber v. California*, 384 U.S. 757, 761, 86 S.Ct. 1826, 1830, 16 L.Ed.2d 908 (1966). Testimonial or communicative evidence "reveals the subjective knowledge or thought processes of the subject." *State v. Theriault*, 144 Ariz. 166, 167, 696 P.2d 718, 719 (App.1984). However, an accused is not protected from being compelled to produce "real or physical evidence." *Schmerber*, 384 U.S. at 764, 86 S.Ct. at 1832. "[B]oth federal and state courts have usually held that it offers no protection against compulsion to submit to fingerprinting, photographing, or measurements, to write or speak for identification, to appear in court, to stand, to assume a stance, to walk, or to make a particular gesture." *Id.* at 764, 86 S.Ct. at 1832.

The United States Supreme Court considered "the 'testimonial' and 'compulsion' components of the privilege against self-incrimination in the context of pretrial questioning." *Muniz*, 496 U.S. at 590, 110 S.Ct. at 2644. In *Muniz,* the defendant was arrested and transported to a booking center where, while videotaped, he was questioned, performed three sobriety tests, and was requested to submit to a breathalyzer test. *Id.* at 585-86, 110 S.Ct. at 2642. Only at the end of this process, upon the defendant's refusal to submit to the breathalyzer, was he advised for the first time of his *Miranda* rights. *Id.* at 586,110 S.Ct. at 2642. However, the Court found "that any slurring of speech and other evidence of lack of muscular coordination revealed by Muniz's responses to the officer's direct questions constitute[d] non-testimonial components of those responses." *Id.* at 592, 110 S.Ct. at 2645. Thus, we conclude that field sobriety tests are non-testimonial in nature and therefore Miranda warnings are not required prior to administering the tests.

Our analysis of field sobriety tests is equally applicable to the intoxilyzer test. "*Miranda* is not applicable to evidence obtained from a breathalyzer test since *Miranda* is 'bottomed on the privilege against self-incrimination and bars the use of communications by or testimonial utterances of a person unless and until the four-fold warning has been given and applied. A breathalyzer test is unrelated to a communication by the subject.' " *Campbell v. Superior Court*, 106 Ariz. 542, 552 n. 8, 479 P.2d 685, 695 n. 8 (1971) (quoting *State v. Kenderski*, 99 N.J.Super. 224, 239 A.2d 249, 251 (App.Div.1968)). Accordingly, we hold that *Miranda* warnings were not required prior to requesting that defendant submit to the intoxilyzer test. Further, evidence of defendant's refusal to submit to the intoxilyzer test. Further, evidence of defendant's refusal to submit to the intoxilyzer test is admissible.

Search Incident to Arrest

Arizona v. Gant - U.S. Supreme Court, 129 S. Ct. 1710, decided April 21, 2009. The United State Supreme Court rejected the automatic application of search incident to arrest of a vehicle when the subject is arrested, handcuffed and locked in a patrol car.

The police received an anonymous tip that a particular residence was being used to sell drugs. When the police went to the residence they made contact with Gant who identified himself and told them the owner would return later. After the police left, a records check revealed that Gant's driver license was suspended and there was an outstanding warrant for his arrest for driving while suspended. When the officers returned to the residence later in the evening, they arrested a man near the back of the house for providing a false name and a woman parked in front for possessing drug paraphernalia. Both arrestees were handcuffed and secured in separate patrol cars. Gant then drove to the house where police arrested and handcuffed him pursuant to the warrant. After Gant was locked in a patrol car, police conducted a search incident to arrest of his vehicle. Police found a gun and a bag of cocaine.

Gant argued that the evidence found in his vehicle should be suppressed because the search violated the Fourth Amendment in that he could not have posed a threat to the officers after he was handcuffed and placed in the squad car. The state argued that the search was constitutional under ***New York v. Belton***, 453 U.S. 454 (1981). In Belton, the Court held that when an officer lawfully arrests the occupant of a vehicle, the officer may, as a contemporaneous incident of the arrest, search the passenger compartment of the vehicle. The underlying rationale was to prevent an arrestee from having access to a weapon or destructible evidence inside the vehicle.

The Supreme Court recognized that the search incident to arrest doctrine, based on a broad reading of ***Belton***, had become embedded in police practice having been widely taught in police academies for 28 years. However, the Court concluded, "The experience of the 28 years since we decided ***Belton*** has shown that the generalization underpinning the broad reading of that decision is unfounded. We now know that articles inside the passenger compartment are rarely 'within the area into which an arrestee might reach,' and blind adherence to ***Belton***'s faulty assumption would authorize myriad unconstitutional searches." Thus, the Supreme Court held that police may search a vehicle incident to a recent occupant's arrest under one of two scenarios:
1. When the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search, or
2. When it is "reasonable to believe evidence relevant to the crime of arrest might be found in the vehicle."

Unless one of these justifications exists, absent a warrant or another exception to the warrant requirement, a search of an arrestee's vehicle will be unreasonable.

ATTACHMENT B

SCIENTIFIC PUBLICATIONS AND RESEARCH REPORTS ADDRESSING NYSTAGMUS

1. Anderson, Schweitz & Snyder, Field Evaluation of Behavioral Test Battery for DUI, U.S. Dept. of Transportation Rep. No. DOT-HS-806-475 0983) (field evaluation of the field sobriety test battery (HGN, one-leg stand, and walk and turn) conducted by police officers from four jurisdictions indicated that the battery was approximately 80% effective in determining BAC above and below 0.10).

2. Arend, R., Dioquino, T., Burns, M., Fiorentino, D., Brown, T., Gguyen, S., and Seymour, C. (1999). A Florida Validation Study of the Standardized Field Sobriety test (SFST) Battery, Department of Transportation, State of Florida.

3. Aschan, Different Types of Alcohol Nystagmus. 140 ACTA OTOLARYNGOL SUPP. 69 (Sweden 1958) ("From a medico-legal viewpoint, simultaneous recording of AGN (Alcohol Gaze Nystagmus) and PAN (positional alcoholic nystagmus) should be of value, since it will show in which phase the patient's blood alcohol curve is...").

4. Aschan & Bergstedt, Positional Alcoholic Nystagmus in Man Following Repeated Alcohol Doses, 80 ACTA OTOLARYNGOL SUPP. 330 (Sweden 1975) (abstract available on DIALOG, file 173: Embase 1975-79) (degree of intoxication influences both PAN I and PAN II).

5. Aschan, Bergstedt, Goldberg & Laurell, Positional Nystagmus in Man During and After Alcohol Intoxication, 17 Q.J. OF STUD. ON ALCOHOL, Sept. 1956, at 381. Study distinguishing two types of alcohol-induced nystagmus, PAN (positional alcoholic nystagmus) I and PAN II, found intensity of PAN I, with onset about one-half hour after alcohol ingestion, was proportional to amount of alcohol taken.

6. Baloh, Sharma, Moskowitz & Griffith, Effect of Alcohol and Marijuana on Eye Movements, 50 AVIAT. SPACE ENVIRON. MED., Jan 1979, at 18 (abstract available on DIALOG, file 153: Medline 1979-79) (smooth pursuit eye movement effects of alcohol overshadowed those of marijuana).

7. Barnes, The Effects of Ethyl Alcohol on Visual Pursuit and Suppression of the Vestibulo-Ocular Reflex, 406 ACTA OTOLARYNGOL SUPP. 161 (Sweden 1984) (ethyl alcohol disrupted visual pursuit eye movement by increasing number of nystagmic "catch-up saccades").

8. Burns, M. (2007) The Robustness of the Horizontal Gaze Nystagmus Test Final Report, US Department of Transportation, DTNH22-98-D-55079, Washington, D.C.

9. Burns, M. and Anderson, E.W. (1995). A Colorado Validation Study of the Standardized Field Sobriety Test (SFST) Battery. Colorado Department of Transportation.

10. Burns, M. Fiorentino, D., and Stuster, J. (2000). The Observational Threshold of Horizonatal Gaze Nystagmus. In, Proceedings of the International Council on Alcohol, Drugs, and Traffic Safety, Stockholm, Sweden, May.

11. Burns & Moskowítz, Psychophysical Tes ts for DUI Arrest, U.S. Dept. of Transportation Rep. No. DOT-HS-802-424 (1977) (recommended the three-test battery developed by SCRI (one-leg stand, walk and turn, and HGN) to aid officers in discriminating BAC level).

12. Burns, M. (1997), A Florida Validation Study of Field Sobriety Test (SFST) Battery, U.S. Department of Transportation No. DOT-AL-97-05-14-01.

13. Church & Williams, Dose- and Time-Dependent Effects of Ethanol, 54 ELECTROENCEPHALOGEAPHY & CLIN. NEUROPHYSIOL., Aug. 1982, at 161 (abstract available on DIALOG, file 11: Psychinfo 1967-85 or file 72: Embase 1982-85) (positional alcohol nystagmus increased with dose levels of ethanol).

14. Compton, Use of the Gaze Nystagmus Test to Screen Operators at DUI Sobriety, U.S. Dept. of Transportation (1984) (field evaluation of HGN test administered to operators through car window in approximately 40 seconds: "the nystagmus test scored identified 95% of the impaired operators" at 2; 15% false positive for sober operators, id.).

15. Fregly, Bergstedt & Graybiel, Relationships Between Blood Alcohol, Positional Alcohol Nystagmus and Postural Equilibrium, 28 Q.J. OF STUD. ON ALCOHOL, March 1967, at 11, 17 (declines from baseline performance levels correlated with peak PAN I responses and peak blood alcohol levels).

16. Goldberg, Effects and After-Effects of Alcohol, Tranquilizers and Fatigue on Ocular Phenomena, ALCOHOL AND ROAD TRAFFIC 123 (1963) (of different types of nystagmus, alcohol gaze nystagmus is the most easily observed).

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18. L.R. Erwin, DEFENSE OF DRUNK DRIVING CASES (3rd ed. 1985) ("A strong correlation exists between the BAC and the angle of onset of (gaze) nystagmus." Id. at 8.15A(3).

19. Lehti, The Effect of Blood Alcohol Concentration on the Onset of Gaze Nystagmus, 136 BLUTALKOHOL 414 (West Germany 1976) (abstract available on DIALOG, file 173: Embase 1975-79) (noted a statistically highly significant correlation between BAC and the angle of onset of nystagmus with respect to the midpoint of the field of vision).

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21. Misoi, Hishida & Maeba, Diagnosis of Alcohol Intoxication by the Optokinetic Test, 30 Q.J. OF STUD. ON ALCOHOL 1 (March-June 1969) (optokinetic nystagmus, ocular adaptation to movement of object before eyes, can also be used to detect central nervous system impairment caused by alcohol. Optokinetic nystagmus is inhibited at BAC of only .051 percent and can be detected by optokinetic nystagmus test. Before dosage, subjects could follow a speed of 90 degrees per second; after, less than 70 degrees per second).

22. Murphree, Price & Greenberg, Effect of Congeners in Alcohol Beverages on the Incidence of Nystagmus, 27 Q.J. OF STUD. ON ALCOHOL, June 1966, at 201 (positional nystagmus is a consistent, sensitive indicator of alcohol intoxication).

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24. Norris, The Correlation of Angle of Onset of Nystagmus with Blood Alcohol Level: Report of a Field Trial, CALIF. ASS'N CRIMINALISTICS NEWSI.ETTER, June 1985, at 21 (The relationship between the ingestion of alcohol and the onset of various KINDS of nystagmus "appears to be well documented." Id. "While nystagmus appears to be useful as a roadside sobriety test, at this time, its use to predict a person's blood alcohol level does not appear to be warranted." Id. at 22).

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26. Oosterveld, Meineri & Paolucci, Quantitative Effect of Linear Acceleration on Positional Alcohol Nystagmus. 45 AEROSPACE MEDICINE, July 1974, at 695 (G-loading brings about PAIÑI even when subject has not ingested alcohol; however when subjects ingested alcohol, no PAN was found when subjects were in supine position, even with G-force at 3).

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28. Rashbass, The Relationship Between Saccadic and Smooth Tracking Eve 159 J. PHYSIOL. 326 (1961) (barbiturate drugs interfere with smooth tracking eye movement).

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32. Stuster, J. W. (1997) The Detection of DWI at BACs Below 0.10. U.S. Department of Transportation, National Highway Traffic Safety Administration, DOT-HS-808-654, Washington, D.C.

33. Stuster, J. and Burns, M. (1998). Validation of the Standardized Field Sobriety Test Battery at BACs Below 0.10. US Department of Transportation, Hational Highway TGraffic Safety Administration, DOT-HS-808-839, Washington, D.C.

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35. Tharp, Burns & Moskowitz, Development and Field Test of Psychophysical Test for DUI Arrests, U.S. Dept. of Transportation Rep. No. DOT-HS-805-864 (1981) (standardized procedures for administering and scoring the SCRI three-test battery; participating officers able to classify 81% of volunteers above or below .10).

36. Umeda & Sakata, Alcohol and the Oculomotor System, 87 ANNAJ~ OF OTOLOGY, RHINOLOGY & LARYNGOLOGY, May-June 1978, at 392 (in

volunteers whose "caloric eye tracking pattern" (CETP) was normal before alcohol intake, influence of alcohol on oculomotor system appeared consistently in the following order: (1) abnormality of CETP, (2) positional alcohol nystagmus, (3) abnormality of eye tracking pattern, (4) alcohol gaze nystagmus).

37. Wilkinson, Kime & Prunell, Alcohol and Human Eye Movement, 97 BRAIN 785 (1974) (oral dose of ethyl alcohol impaired smooth pursuit eye movement of all human subjects).

38. Zyo, Medico-legal and Psychiatric Studies on the Alcohol Intoxicated Offender, 30 JAPANESE J. OF LEGAL MED., No. 3, 1976, at 169 (abstract available on DIALOG, file 21: National Criminal Justice Reference Service 1972-85) (recommends use of nystagmus test to determine somatic and **mental** symptoms of alcohol intoxication as well as BAC).

ATTACHMENT C

RANDOM STOPS OF VESSELS WHICH RESULTED IN BUI CONVICTIONS

State law varies regarding the need to establish probable cause before stopping a vessel. While the Supreme Court set the standard for vehicle stops in Delaware v. Prouse, case law exists that indicates vehicles and vessels may be treated differently regarding random stops. The greater leeway for vessel enforcement seems based on the great dissimilarity in water-based vs. land-based conditions. Following are summaries of appeals court cases in which a random stop resulted in a BUI conviction. In each case, the appeals court upheld the state's actions in stopping the vessel.

Georgia:
Dalton v. The State, No. A94A1542, Feb. 6, 1995. Defendant was convicted in the State Court, Hall County, of boating under the influence of alcohol, and he appealed. The Court of Appeals held that the statute authorizing stop and boarding of any vessel for purposes of inspection, authorized Department of Natural Resources' rangers to stop boats randomly without probable cause or reasonable suspicion that the defendant had committed the offense.

Texas:
Schenekl v. The State, No. 2-98-386-CR, June 10, 1999. Defendant was convicted in the County Criminal Court No. 3, Denton County, of boating while intoxicated, and he appealed. The Court of Appeals held: (1) enforcement provisions of the state Water Safety Act did not authorize searches and seizures that violated the Fourth Amendment (2) defendant was not deprived of his constitutional right to a speedy trial.

North Carolina:
Pike v. State of North Carolina, No. C0A99-675, July 18, 2000. Defendant was convicted of operating a motor vessel while impaired (OWI) and filed a motion to suppress the evidence of the stop by Wildlife Resources officers. The Court of Appeals held that (1) as a matter of first impression, the officers' stop of the defendant's boat without any reasonable, articulable suspicion of criminal activity for purposes of inspecting the boat for compliance with safety regulations was reasonable (2) officers had the right to arrest the defendant for OWI, as evidence of his intoxication was in plain view.

Georgia:
Peruzzi v. State of Georgia, No. S02A0592, July 15, 2002. Mr. Peruzzi was convicted of operating a watercraft while under the influence of alcohol (BUI). He appealed because the boat was stopped without probable cause. The Supreme Court of Georgia held that "unlike cars traveling upon a public road, boats on an open body of water such as Lake Peachtree, originate from a large number of docks and launches and need not follow any particular path. A roadblock is clearly infeasible and the emphasis in this case is on the procedural aspects of the stop." The Court upheld the conviction and found no constitutional violations relating to the stop.

ATTACHMENT D

Horizontal Gaze Nystagmus State Summary Chart

	AL	AK	AZ	AR	CA	CO	CT	DE	DC	FL	GA	HI
I. Evidentiary admissibility												
A. Not scientific - admissible as an SFST												
B. Scientific test - scientific standard not applicable				X						X		
C. Scientific test - meets scientific standard		X	X		X		X	X			X	X
D. Scientific test - does not meet scientific standard												

E. Scientific test - inadequate evidence presented	X											
to determine if HGN meets scientific standard												
F. Scientific standard - state follows:												
1. *FRYE* – general acceptance	X	X	X		X							
2. *Daubert/FRE - reliability*							X	X				X
3. Other											X	
II. Police officer may testify about:												
A. HGN scientific reliability at admissibility hearing												
B. Correlation between HGN and alcohol at trial												
C. HGN test results based on training and		X	X		X		X	X		X	X	X
experience in administration of the test												
III. Purpose and limits of HGN test results												
A. Probable cause determination in criminal hearing		X	X				X	X				X
B. Probable cause determination in civil hearing								X				
C. Evidence of impairment		X	X	X	X			X			X	
D. Quantify BAC												
E. Same evidentiary weight as other field tests				X								

	ID	IL	IN	IA	KS	KY	LA	ME	MD	MA	MI	MN
I. Evidentiary admissibility												
A. Not scientific - admissible as an SFST				X								
B. Scientific test - scientific standard not applicable												
C. Scientific test - meets scientific standard	X	X					X	X	X		X	X
D. Scientific test - does not meet scientific standard												
E. Scientific test - inadequate evidence presented to determine if HGN meets scientific standard					X					X		
F. Scientific standard - state follows:												
1. *FRYE* - general acceptance		X			X				X	X	X	X
2. *Daubert/FRE - reliability*	X						X	X		X		
3. Other												
II. Police officer may testify about:												
A. HGN scientific reliability at admissibility hearing												
B. Correlation between HGN and alcohol at trial												
C. HGN test results based on training and experience in administration of the test	X	X		X			X	X	X	X	X	X
III. Purpose and limits of HGN test results												
A. Probable cause determination in criminal hearing	X	X					X	X				
B. Probable cause determination in civil hearing												
C. Evidence of impairment		X		X			X	X				X
D. Quantify BAC												
E. Same evidentiary weight as other field tests		X		X								

	MS	MO	MT	NE	NV	NH	NJ	NM	NY	NC	ND	OH
I. Evidentiary admissibility												
A. Not scientific - admissible as an SFST											X	X
B. Scientific test - scientific standard not applicable			X									
C. Scientific test - meets scientific standard		X		X			X		X			
D. Scientific test - does not meet scientific standard	X											
E. Scientific test - inadequate evidence presented to determine if HGN meets scientific standard								X		X		
F. Scientific standard - state follows:												
1. *FRYE* - general acceptance	X	X		X			X		X			
2. *Daubert/FRE - reliability*			X					X		X		
3. Other												
II. Police officer may testify about:												
A. HGN scientific reliability at admissibility hearing												
B. Correlation between HGN and alcohol at trial			X							X		
C. HGN test results based on training and Experience in administration of the test		X	X	X				X		X	X	X
III. Purpose and limits of HGN test results												
A. Probable cause determination in criminal hearing	X			X								X
B. Probable cause determination in civil hearing												
C. Evidence of impairment		X	X	X			X			X	X	X
D. Quantify BAC												
E. Same evidentiary weight as other field tests				X							X	X

	OK	OR	PA	RI	SC	SD	TN	TX	UT	VT	VA	WA
I. Evidentiary admissibility												
A. Not scientific - admissible as an SFST					X				X			
B. Scientific test - scientific standard not applicable			X									
C. Scientific test - meets scientific standard		X						X				
D. Scientific test - does not meet scientific standard												
E. Scientific test - inadequate evidence presented to determine if HGN meets scientific standard	X		X				X					X
F. Scientific standard - state follows:												
1. *FRYE* - general acceptance			X									X
2. *Daubert/FRE - reliability*	X	X						X				
3. Other							X					
II. Police officer may testify about:												
A. HGN scientific reliability at admissibility hearing												
B. Correlation between HGN and alcohol at trial												
C. HGN test results based on training and Experience in administration of the test	X	X			X			X	X			
III. Purpose and limits of HGN test results												
A. Probable cause determination in criminal hearing												
B. Probable cause determination in civil hearing												
C. Evidence of impairment		X			X			X				
D. Quantify BAC												
E. Same evidentiary weight as other field tests	X				X				X			

	WV	WI	WY		TOTALS
I. Evidentiary admissibility					
A. Not scientific - admissible as an SFST					**5**
B. Scientific test - scientific standard not applicable			**X**		**3**
C. Scientific test - meets scientific standard		**X**			**20**
D. Scientific test - does not meet scientific standard					**1**
E. Scientific test - inadequate evidence presented to determine if HGN meets scientific standard	**X**		**X**		**10**
F. Scientific standard - state follows:					
1. *FRYE* - general acceptance			**X**		**18**
2. *Daubert/FRE - reliability*	**X**	**X**			**15**
3. Other					**2**
II. Police officer may testify about:					
A. HGN scientific reliability at admissibility hearing					**0**
B. Correlation between HGN and alcohol at trial					**2**
C. HGN test results based on training and experience in administration of the test	**X**	**X**			**31**
III. Purpose and limits of HGN test results					
A. Probable cause determination in criminal hearing					**12**
B. Probable cause determination in civil hearing					**3**
C. Evidence of impairment		**X**			**23**
D. Quantify BAC					**0**
E. Same evidentiary weight as other field tests	**X**				**10**

Module 4

Phase One: Vessel in Motion

NASBLA Boat Operations and Training

Module 4

BUI Detection and Enforcement Course

PHASE ONE: VESSEL IN MOTION

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

- Identify typical cues of Detection Phase One.
- Describe the observed cues clearly and convincingly.

CONTENT SEGMENTS	LEARNING ACTIVITIES
A. Task One and a Decision	○ Instructor-Led Presentations
B. Initial Observations: Visual Cues Resulting from Vessel Operation	○ Video Presentation
C. Initial Cues: Recognition and Description	○ Instructor-Led Presentations
D. Task Two and Typical Reinforcing Cues of the Stopping Sequence	

TASK ONE AND A DECISION

The first task in Phase One (Vessel in Motion) is to observe the vessel in operation to note any initial cues of a possible BUI violation. At this point, you must decide if there is sufficient cause to stop the vessel, either to conduct further investigation to determine if the suspect may be impaired or for another boating violation. You are not committed to arresting the suspect for BUI based on this initial observation, but rather you should concentrate on gathering all relevant evidence that may suggest impairment. Your second task during phase one is to observe the manner in which the suspect responds to your signal to stop and to note any additional evidence of a BUI violation.

The first task, observing the vessel in motion, begins when you first notice the vessel, operator or both. Your attention may be drawn to the vessel by such things as:

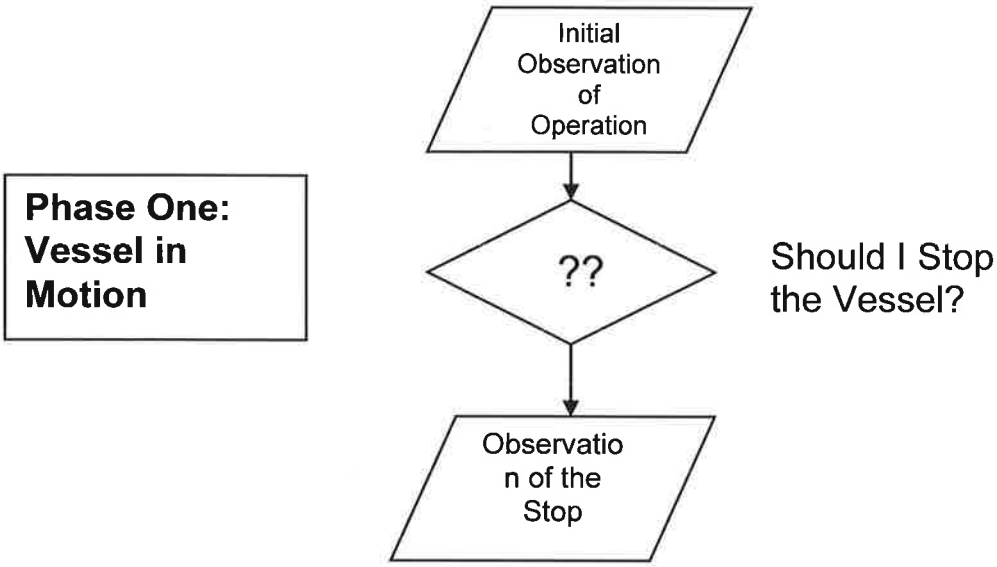
- a moving boating violation;
- an equipment violation;
- an expired registration or safety inspection decal;
- unusual operating actions; or
- "evidence of drinking" or drugs in vessel.

If this initial observation discloses vessel maneuvers or human behaviors that may be associated with impairment, you may develop an initial suspicion of BUI.

Based upon this initial observation of the vessel in motion, you must decide whether there is reasonable suspicion to stop the vessel. At this point, you have three choices:

- stop the vessel;
- continue to observe the vessel; or
- disregard the vessel.

Phase One Tasks and Decisions



INITIAL OBSERVATIONS: VISUAL CUES RESULTING FROM VESSEL OPERATION

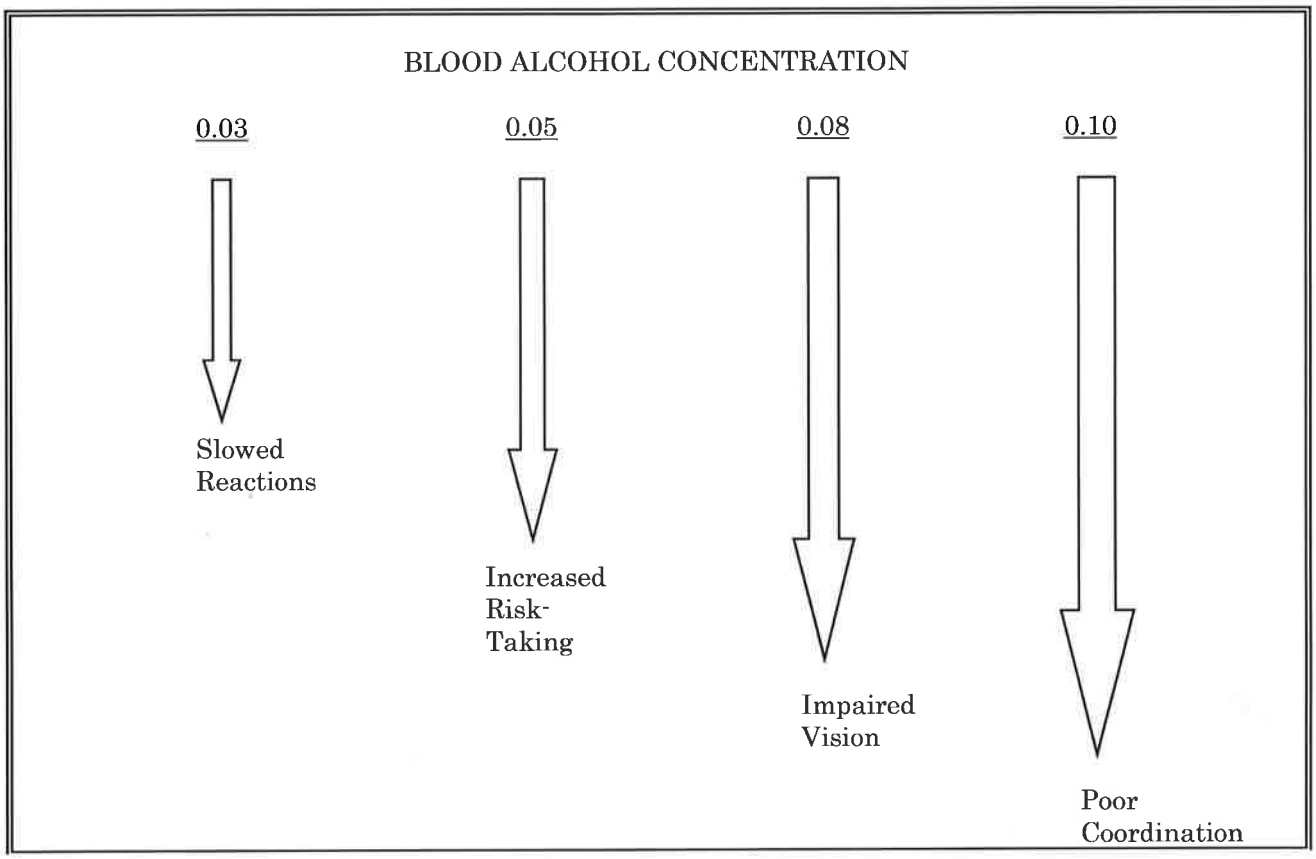
Operators who are impaired frequently exhibit certain effects or symptoms of impairment. These include:

- slowed reactions;
- impaired judgment as evidenced by a willingness to take risks;
- impaired vision; and
- poor coordination

The next page presents a chart showing these symptoms, or common signs, of alcohol influence. This Module focuses primarily on alcohol impairment because research currently provides more information about the effects of alcohol on operating than it does about the effects of other drugs on operating. Remember that whether the driver is impaired due to alcohol or other drugs, the law enforcement detection process is the same, and the offense is still BUI.

The common effects of alcohol on the operator's mental and physical faculties lead to predictable operating violations and vessel operating characteristics. These cues are described on the following pages.

COMMON SIGNS OF ALCOHOL INFLUENCE



VISUAL CUE DESCRIPTIONS

Appearing to be Impaired - This cue is actually one or more of a set of cues related to the personal behavior or appearance of the operator. Examples of specific cues might include:

- Eye fixation
- Tightly gripping the steering wheel
- Slouching in the seat
- Gesturing erratically or obscenely
- Face close to the windshield
- Operator's head protruding from vessel

Almost Striking Object or Vessel - The observed vessel almost strikes a stationary object or another moving vessel. Examples include passing abnormally close to a buoy or other object; passing abnormally close to another moving vessel; and causing another vessel to maneuver to avoid collision.

Weaving - Weaving occurs when the vessel alternately moves toward one side of the waterway and then the other, creating a zigzag course. The pattern of lateral movement is relatively regular as one steering correction is closely followed by another.

Swerving - A swerve is an abrupt turn away from a generally straight course. Swerving might occur when the operator discovers the approach of an oncoming boat or discovers that the vessel is going too close to shore.

Following Too Closely - The vessel is observed following another vessel unreasonably or unnecessarily close.

Stopping Inappropriately - The observed vessel stops at an inappropriate location or under inappropriate conditions.

Turning Abruptly or Illegally - The operator executes any turn that is abnormally abrupt or illegal. Specific examples include turning with excessive speed or turning sharply into oncoming boating traffic.

Accelerating or Decelerating Rapidly - This cue encompasses any acceleration or deceleration that is significantly more rapid than that required by the boating conditions. A vessel might alternately accelerate and decelerate rapidly.

Navigation Lights Off - The observed vessel is being operated with no navigation lights during a period when required.

Other Factors - Two other factors separate motor vehicle drivers from boat operators in terms of judgment and skill of operation. The first of these is often referred to as the "second nature effect." This can best be described as individuals operating a motor vehicle routinely, traveling over much the same territory that he or she travels during the course of the week, perhaps commuting to and from work. There is a familiarity with, and expectation for, certain flow patterns in traffic, highway conditions, intersections, congestion, and other hazards normally encountered on the roadway. The motor vehicle driver in familiar territory often operates under a second nature effect to the extent that driving a vehicle often does not take 100 percent of the driver's attention. The second nature effect often helps drivers who have had a moderate amount of alcohol to drive home without incident.

Boaters, on the other hand, rarely have the opportunity to operate with a second nature effect. This is due to several factors, such as the lack of controlled traffic flow (traffic may approach virtually from 360 degrees). Boat traffic approaches at widely varying speeds. There is an absence of roadway advisory signs or other regulatory controls that would keep traffic moving in uniform patterns. The intoxicated vessel operator, unlike the intoxicated motor vehicle driver, is unable to rely on the second nature effect and may experience more difficulty in normal operation without emergencies present.

Another factor to be considered is the marine environment itself. Unlike cars, boats are not equipped with brakes, and stopping distances, according to speed and hull design, are considerably longer. Most boaters do not operate boats enough on a regular basis to become as proficient in judgment of stopping distances and capabilities as they are with their own vehicles. Coupled with the general unfamiliarity with rules-of-the-road, which prescribe steering directions in meeting and overtaking situations, most boaters are generally left with only a single tactic -- avoidance. Experienced mariners, who make livelihoods from activities on the waterways, are familiar enough with the capabilities of their vessels to maneuver routinely within their vessel's capabilities and limitations. Recreational boaters, on the other hand, may not know the distance of travel required to bring their vessels to a complete stop from a cruising speed.

It is important to understand the effects of alcohol that are exhibited in operating a vessel so the significance of visual cues will be recognized. Operating a vessel is a complex task involving a number of subtasks, many of which occur simultaneously. These include:

- steering;
- controlling the throttle;
- signaling (if required);
- operating the gearshift;
- observing other boating traffic;
- observing navigation aids/waterway markers; and
- making decisions (whether to stop, turn, speed up, slow down).

Safe operating demands the ability to divide attention among these various tasks. **"Divided attention"** simply means the ability to concentrate on two or more things at the same time, and often these involve both mental and physical tasks. Under the influence of alcohol and/or other drugs, an operator's ability to divide attention is impaired. As a result, the impaired operator tends to concentrate on only the most important or critical parts of operating and to disregard the less important parts, often creating unexpected or dangerous situations for other operators.

Some of the most significant evidence from all three phases of BUI detection can be related directly to the effects of alcohol and/or other drugs on divided attention ability. We will return to the concept of divided attention in the next two Modules.

INITIAL CUES: RECOGNITION AND DESCRIPTION

Observing the vessel in operation is the first task in BUI detection. Proper performance of that task requires two distinct but related abilities:

- the ability to recognize evidence of impairment; and
- the ability to describe that evidence clearly and convincingly.

It is not enough that you observe and recognize symptoms of impaired operating. You also must be able to describe what happened so that others will have a clear mental picture of what took place. Improving your ability to recognize and clearly describe observational evidence requires practice.

Keep in mind the way your words "paint" a picture for the reader or listener. Suppose you were on patrol and decided to stop a boat because you noticed a person bow-riding. You could simply state in your report that, "I observed a passenger bow-riding." While that may be a true statement, consider how much clearer the situation is described if you wrote it, "I observed a female passenger riding on the bow of the boat with her legs hanging over the bow while the boat was traveling at planing speed." Describing your initial observations, and any evidentiary observations for that matter, is critically important in order to build your case should a stop turn into a potential BUI case.

Make notes below on the cues you observe during the short video segment and be prepared to discuss your observations with the class.

TASK TWO AND TYPICAL REINFORCING CUES OF THE STOPPING SEQUENCE

Your second task during Phase One of the detection process is to observe the manner in which the operator responds to your signal to stop and to note any additional evidence of a possible BUI violation.

Cues reinforcing the suspicion of BUI may be found in the stopping sequence. After the command to stop is given, the impaired operator may exhibit additional important evidence of BUI. These cues may include:

- an attempt to flee;
- no response;
- slow response;
- an abrupt swerve;
- a sudden stop; and
- striking another boat and/or object.

Some of these cues are exhibited because the stop command places additional demands on the operator's ability to divide attention. The signal to stop creates a new situation with which the operator must cope. Flashing emergency lights or a siren demand and divert the operator's attention, requiring that the operator now divide attention between operating and responding to the stop command. Just the act of stopping requires the operator to simultaneously turn the steering wheel and reduce speed.

Thus, the operator's task becomes more complex when the stop command is given. An impaired operator may not be able to handle this more complex task and additional evidence of impairment may appear.

It is your responsibility to recognize, record and convey the additional evidence of operating impairment that may become known during the stopping sequence. This task, just like observing the vessel in operation, requires:

- the ability to recognize evidence of impairment; and
- the ability to describe that evidence clearly and convincingly.

Recognizing and describing the reinforcing cues of BUI that appear during the stopping sequence requires practice.

You will watch a segment of an on-water scenario showing an example of Phase One and will have opportunity to discuss what was observed.

TEST YOUR KNOWLEDGE

INSTRUCTIONS: Complete the following sentences.

1. The two tasks in Phase One are _____ and _____

2. Two common symptoms of impairment are:

   a. _____

   b. _____

3. Alcohol impairs the ability to _____ among tasks.

4. Three cues reinforcing the suspicion of BUI which may be observed during the stopping sequence are:

   a. _____

   b. _____

   c. _____

Module 5

Phase Two: Personal Contact

Module 5

BUI Detection and Enforcement Course

PHASE TWO: PERSONAL CONTACT

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

- Identify typical cues of Detection Phase Two.
- Describe the observed cues clearly and convincingly.

CONTENT SEGMENTS	LEARNING OBJECTIVES
A. Overview: Tasks and Decision	○ Instructor-Led Presentations
B. Typical Investigative Cues of the Operator Interview	○ Video Presentation
C. Recognition and Description of Investigative Cues	○ Student Presentations
D. Interview/Questioning Techniques	○ Instructor-Led Presentations
E. Typical Cues of the Exit Sequence	

OVERVIEW: TASKS AND DECISION

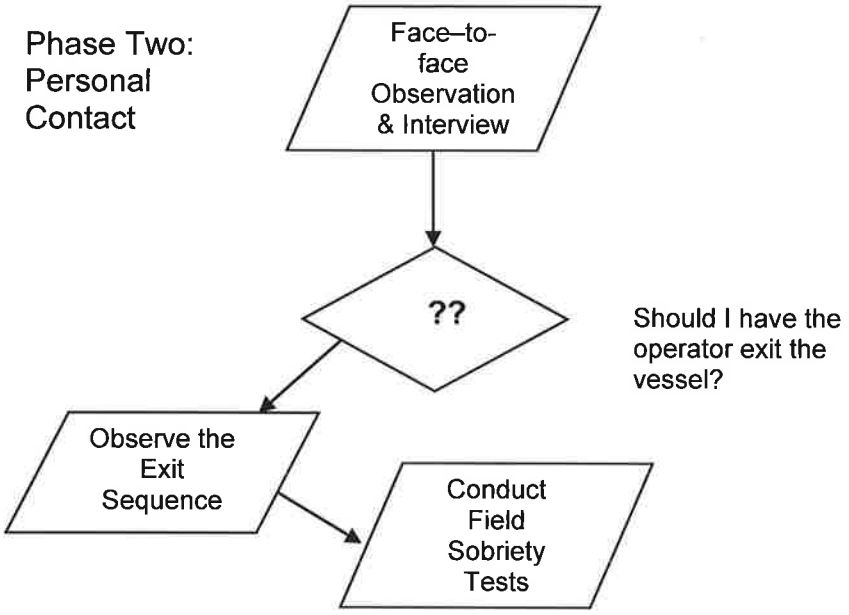
BUI Detection Phase Two: Personal Contact, like Phases One and Three, comprises two major evidence-gathering tasks and one major decision. Your first task is to approach, observe and interview the operator while he or she is still in the vessel to note any face-to-face evidence of impairment. During this face-to-face contact, you may use various questioning techniques and a boating safety inspection to gain additional information to evaluate whether or not the operator might be impaired. After this evaluation, you must decide whether to request the operator to exit the vessel to conduct the seated field sobriety tests. In some jurisdictions, departmental policy may dictate that all operators stopped on suspicion of BUI be instructed to exit. It is important to note that by instructing the operator to exit the vessel, you still are not committed to an arrest; this is simply another step in the BUI detection process. Once you have requested the operator to exit the vessel, your second task is to observe the manner in which the operator exits to note any additional evidence of impairment.

NOTE: You may initiate Phase Two without Phase One. This may occur, for example, when you have responded to the scene of a boating accident.

Task One - Observations and Interview

The first task of Phase Two, observation and interview of the operator, begins as soon as the suspect vessel and the patrol vessel have come to complete stops. It continues through your approach to the suspect vessel and involves all conversation between you and the operator prior to the operator's exit from the vessel.

You may have developed a strong suspicion that the operator is impaired prior to the face-to-face observation and interview. You may have developed this suspicion by observing something unusual while the vessel was in motion or during the stopping sequence, or you may have developed no suspicion of BUI prior to the face-to-face contact. The vessel operation and the stop may have been normal; you may have seen no actions suggesting BUI. For example, you may have stopped the vessel for an equipment/registration violation or where no unusual driving was evident. In some cases, Phase One will have been absent. You may first encounter the operator and vessel after a crash or when responding to a request for assistance.



Regardless of the evidence that may have become known during Detection Phase One, your initial face-to-face contact with the operator usually provides the first definite indications that the operator may be impaired.

Decision

Based upon your face-to-face interview and observation of the operator, and upon your previous observations of the vessel in motion and the stopping sequence, you must decide whether there is sufficient reason to instruct the operator to step from the vessel. This is a discretionary decision to be based on what the officer sees, hears and smells during observation and interview with the operator. If you decide to instruct the operator to exit, you must closely observe the operator's actions during the exit from the vessel and note any evidence of impairment.

Task Two – Observe the Exit Sequence

In the event there has been sufficient cause developed to lead you to instruct the operator to step from his or her vessel and perform field sobriety tests, the second task associated with Phase Two is to observe any evidence of impairment that may come to light as the operator comes aboard your patrol boat.

TYPICAL INVESTIGATIVE CUES OF THE OPERATOR INTERVIEW

Face-to-face observation and interview of the operator allows you to use three senses to gather evidence of alcohol and/or other drug influence:

- the sense of sight;
- the sense of hearing; and
- the sense of smell.

Sight

There are a number of things you might see during the interview that would be describable cues or evidence of alcohol and/or other drug influence.

Among them are:

- bloodshot, watery eyes;
- pupil size;
- soiled clothing;
- fumbling fingers;
- alcohol containers;
- drugs or drug paraphernalia;
- bruises, bumps or scratches;
- unusual actions.

A person's face may appear flushed and drawn, and this may indicate intoxication. However, it may also be caused by a combination of exposure to sun, wind and salt. Some people have naturally ruddy complexions. Facial muscles may be completely relaxed which gives the appearance of the face losing its shape and which is most noticeable in the area of the cheeks and mouth. In smokers, it is readily identified by a cigarette that appears to be falling out of the mouth. Due to the anesthetizing effect of alcohol, a smoker may not feel a cigarette between the lips.

The eyes can also yield indicators. A combination of bloodshot appearance in the eyes, enlarged pupil size and slow or no reaction to light can assist in determining if the individual is under the influence of alcohol, drugs or a combination of the two. Intoxication or a combination of eyestrain, exposure to irritants, lack of sleep and/or exposure to sunlight may cause bloodshot eyes. If the cause is alcohol intoxication, most or all of the whites of the eyes will be covered with a red-pink color. If the cause is due to marijuana use, there will be vivid red streaks zigzagging in the whites of the eyes. When the eyes have the red-pink color with the vivid streaks of red zigzagging through the red-pink color, it can be due to a combination use of marijuana and alcohol. Alcohol and/or drugs can cause the pupils to be slow, sluggish or not react to light.

Hearing

Among the things you might hear during the interview that would be describable cues or evidence of alcohol and/or other drug influence are:

- slurred speech;
- admission of drinking;
- inconsistent responses;
- abusive language;
- unusual statements.

Slurred speech can be a symptom of intoxication or simply an inability to pronounce words correctly. There may be an elongation of syllables in the words due to the mild anesthetic effects of alcohol causing the tongue to feel "thickened" (similar to the effects of Novocain). When identifying potential slurring of words, pay special attention to words with different vowel/consonant combinations to be sure the slurred speech is not due to a speech impediment. Slurred speech may also be caused by brain damage. Loose changing of speech patterns is another symptom to look for. Speech may change from rapid to slow or vice versa, loud to soft or vice versa, or articulate to confused and vice versa.

Human behavior is affected when drugs and/or alcohol reach the central nervous system, and you may notice behavioral indicators through both sight and sound. The centers of judgment, moral values and inhibitions will be the first areas affected. The officer should look for changes in the behavioral patterns, i.e., cooperative to uncooperative, cooperative to threatening, or threatening to pleading. The individual may not be responsive to the situation or surroundings. There may also be changes in mood: serious to silly, happy to depressed, or caring to uncaring.

Smell

There are things you might smell during the interview that would be describable cues or evidence of alcohol and/or other drug influence. Typically these include:

- alcoholic beverages;
- marijuana;
- "cover up" odors like breath sprays;
- unusual odors.

Alcohol in its pure form is odorless, so the correct term is "odor of alcoholic beverage" or "the odor of beer." The odor is caused by the manufacturing process when the alcohol is mixed with the other ingredients of the beverage.

When reporting an odor of alcoholic beverage, be specific in noting the location of the odor. Is it due to having spilled it on clothing, sweating profusely (i.e., a boater drinking heavily on a hot day), on the subject's breath or because of spilled alcoholic beverage in close proximity to the operator? What type of odor? If no odor is detected, the operator can still be under the influence. A lack of odor may be due to the method of alcohol ingestion or the use of mouthwash, breath mints, tobacco, etc., to cover the odor of alcoholic beverage.

Generally, the odor can be described as MILD, MODERATE, or STRONG. The odor will vary with the type of alcoholic beverage, as well as the amount, i.e., a vessel operator drinking a large amount of straight vodka can have a mild odor of alcoholic beverage; an operator drinking a small amount of beer can have a strong odor of alcoholic beverage. The type of odor does not automatically equate to the state of an individual's sobriety, i.e., a person with a mild odor of alcoholic beverage can be under the influence and vice versa.

Required Abilities

Proper face-to-face observation and interview of the operator demands two distinct but related abilities:

- the ability to recognize the sensory evidence of alcohol and/or other drug influence; and
- the ability to describe that evidence clearly and convincingly.

As you improve your capability to recognize sensory evidence, it is important to keep in mind that any symptoms exhibited by an individual under the influence are external manifestations caused by the effects of alcohol and/or drugs on the body's central nervous system and brain. It is very important to remember that observation of only one symptom is insufficient to make a determination that the individual is under the influence. There are many reasons, other than intoxication, that could explain a particular symptom. The well-trained officer makes determinations based on the entire series of observations, since each additional observation decreases the probability that there is an alternative explanation to the fact that the person is under the influence.

RECOGNITION AND DESCRIPTION OF INVESTIGATIVE CUES

This segment involves the review of a video showing a vessel stop in which you may observe some indicators of possible impairment. As you watch the officer engaged in a face-to-face interview, you will see and hear things which will be worthy of documentation. You will be expected to take notes on a SFST Performance Report form, and at least one class member will be asked

to "testify" to those observations. The class will discuss the observations following the video segment.

INTERVIEW/QUESTIONING TECHNIQUES

A basic reason for the face-to-face observation and interview of the operator is to identify, gather and document evidence of alcohol and/or other drug influence. This is the purpose of each task in each phase of BUI detection.

During the face-to-face observation and interview stage, it is not necessary to gather sufficient evidence to arrest the operator immediately for BUI.

There are a number of techniques you can use while the operator is still behind the wheel. Most of these techniques apply the concept of divided attention. They require the operator to concentrate on two or more things at the same time and involve both questioning techniques and psychophysical (mind/body) tasks. These techniques are not as reliable as the standardized field sobriety tests, but they can be quite useful for obtaining evidence of impairment.

THESE TECHNIQUES DO NOT REPLACE THE SFSTs.

The questions you ask and the way in which you ask them can constitute simple divided attention tasks. Three techniques are particularly pertinent:

- asking for two things simultaneously;
- asking interrupting or distracting questions; and,
- asking unusual questions.

An example of the first technique, asking for two things simultaneously, is requesting that the operator produce both the operator's license and the vessel registration. Possible evidence of impairment may become known as the operator responds to this dual request. Be alert for the operator who:

- forgets to produce both documents;
- produces documents other than the ones requested;
- fails to see the license, registration or both while searching through wallet or purse;
- fumbles or drops wallet, purse, license or registration;
- is unable to retrieve documents using fingertips.

The second technique, asking interrupting or distracting questions, forces the operator to divide attention between searching for the license or registration and answering a new question. While the operator is responding to the

request for license, registration or both, you ask an unrelated question such as, "Without looking at your watch, what time is it right now?" Possible evidence of impairment may be disclosed by the interrupting or distracting question. Be alert for the operator who:

- o ignores the question and concentrates only on the license or registration search;
- o forgets to resume the search after answering the question;
- o supplies a grossly incorrect answer to the question.

The third technique, asking unusual questions, is employed after you have obtained the operator's license and registration. Using this technique, you seek verifying information through unusual questions. For example, while holding the operator's license, you might ask, "What is your middle name?"

There are many such questions that the operator normally would be able to answer easily but which might prove difficult if the operator is impaired, simply because they are unusual questions. Unusual questions require the operator to process information; this can be especially difficult when the operator does not expect to have to process information. For example, an operator may respond to the question about the middle name by giving a first name. In this case, the operator ignored the unusual question and responded instead to a usual -- but unasked -- question.

Another highly effective means of identifying and gathering evidence of impairment relies on a systematic method of conducting a boating safety equipment inspection. Many officers who are very proficient at apprehending impaired operators have developed a system of requesting safety equipment items. Keeping the boat operator actively involved in the retrieval of each safety equipment item, perhaps passing out life jackets or even trying one on, is critical. Developing a habit of requesting more than one item at a time is especially helpful, such as, “Can I see a wearable life jacket for each person on board and a throwable life preserver?” Again, it is very important for an officer to be able to identify evidence that is noteworthy and to properly document it.

TYPICAL CUES OF THE EXIT SEQUENCE

Your decision to instruct the operator to step from the vessel usually is made after you have developed a suspicion that the operator is impaired (see NOTE below). Even though that suspicion may be very strong, usually the suspect is not yet under arrest when you give the instruction.

How the operator steps and walks from the vessel and actions or behavior during the exit sequence may provide important evidence of impairment. Be alert to the operator who:

- shows angry or unusual reactions;
- cannot follow instructions;
- leaves the vessel in gear;
- "climbs" out of vessel;
- leans against vessel;
- keeps hands on vessel for balance.

This is not a comprehensive list of possibilities. It is very important that officers pay particular attention to anything out of the ordinary that occurs as the operator leaves his or her vessel and comes on board your patrol boat. Remember, it is the accumulation of many small bits of evidence that build a solid case.

Proper face-to-face observation and interview of an operator requires the ability to recognize the sensory evidence of alcohol and/or other drug influence and the ability to describe that evidence clearly and convincingly. Developing these abilities takes practice.

Physical evidence of drinking may be present. Empty beverage containers, coolers, or other signs may be visible in the vessel. The officer may ask the operator if, when, and how much he/she was drinking. Asking where the operator is headed, where he/she had come from, and the time left are all questions that may provide useful information. After evaluating the results of this face-to-face contact during PHASE TWO, the officer must decide whether to request the vessel operator to exit the vessel to perform field sobriety tests.

NOTE: You may instruct a suspect to exit the vessel as a means of ensuring your own safety. Safety considerations take precedence over all other considerations.

You will watch a video segment showing the Phase Two portion of the on-water scenario started in the previous module. You will also have opportunity to discuss observations with the class.

TEST YOUR KNOWLEDGE

INSTRUCTIONS: Complete the following:

1. The two major evidence-gathering tasks of Phase Two are:

   a. _____

   b. _____

2. The major decision of Phase Two is _____.

3. Among the describable cues an officer might <u>see</u> during the Phase Two interview are these three:

   a. _____

   b. _____

   c. _____

4. Among the describable cues an officer might <u>hear</u> during the interview are these three:

   a. _____

   b. _____

   c. _____

5. Among the describable cues an officer might <u>smell</u> during the interview are these two:

   a. _____

   b _____

6. The techniques an officer uses in asking questions constitute simple divided attention tasks. These techniques include asking:

   a. _____

   b. _____

7. Leaning against the vessel is a possible cue to BUI which may be observed primarily during the _____.

Module 6

Phase Three: Pre-Arrest Screening

and

Note-Taking on the SFSTs

Module 6

BUI Detection and Enforcement Course

PHASE THREE: PRE-ARREST SCREENING AND NOTE-TAKING ON THE SFSTs

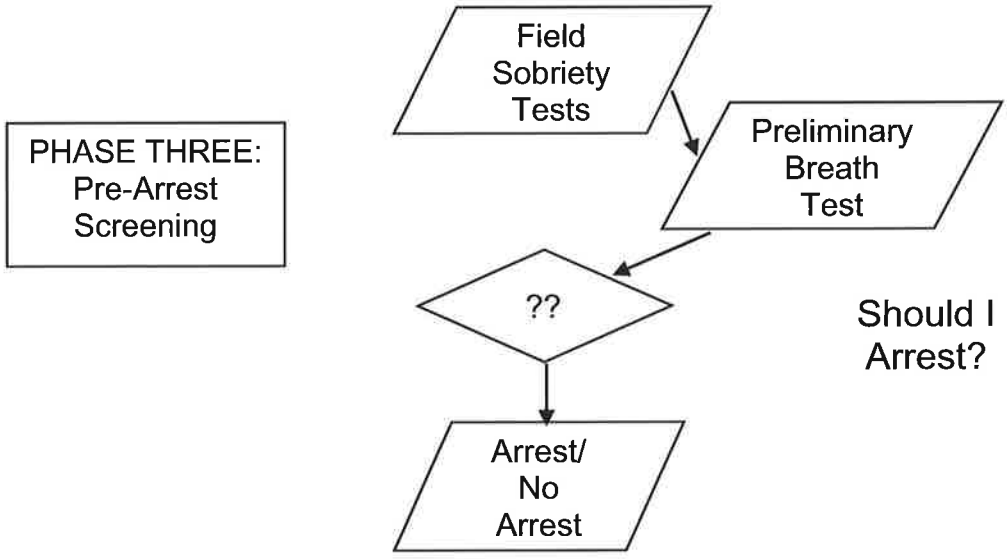
Upon successfully completing this session, the student will be able to:

- Describe the role of psychophysical and preliminary breath tests;
- Define and describe the concepts of divided attention;
- Discuss the advantages and limitations of preliminary breath testing;
- Discuss the arrest decision process;
- Discuss the uses of a standard note-taking guide.

CONTENT SEGMENTS	LEARNING ACTIVITIES
1. Overview: Tasks and Decision	o Instructor-Led Presentations
2. Divided Attention Tests: Concepts, Examples and Demonstrations	
3. Advantages and Limitations of Preliminary Breath Testing	
4. The Arrest Decision	
5. BUI Investigative Field Notes	o Reading Assignments

OVERVIEW: TASKS AND DECISION

As in Phases One and Two, BUI Detection Phase Three – Pre-Arrest Screening has two major evidence-gathering tasks and one major decision.



Your first task in Phase Three is to administer psychophysical field sobriety tests. The term "psychophysical" refers to mind and body, and by "psychophysical field sobriety tests" we are referring to those sobriety tests which are designed to require simple tasks which require active engagement of both mental and physical capabilities.

You will later be introduced to both seated and standing batteries of standardized field sobriety tests. Each is suitable for specific circumstances and locations, and each has its limitations.

Your second task, which is not applicable in all jurisdictions or situations, may then be to administer (or arrange for) a preliminary breath test (PBT) to confirm the chemical basis of the boat operator's impairment, if your state/agency uses PBTs. Refer to your state law and/or agency policy to determine how preliminary breath testing may apply to you.

Based on these tests and the cumulative evidence identified during Phases One and Two, your ultimate decision in Phase Three is whether or not you have developed probable cause to arrest the boat operator for BUI. The entire detection process culminates in the arrest/no arrest decision.

During the three phases, it is critically important to document all the evidence that comes to light. You might observe evidence at any point in time during the contact, and the development of effective evidence-gathering skills will dramatically increase an officer's detection capabilities. There will likely be many bits of evidence that come to light in a very short time period, so it is best to note your observations as soon as possible.

Another important part of Phase Three is asking the preliminary screening questions prior to administration of sobriety tests. Some people have physical limitations or medical conditions that could mimic impairment, so identifying potential problems will help an officer determine how much weight to give to any indicators observed. At times, a person's physical limitations or medical problems may lead you to conclude that specific sobriety tests are not suitable for a subject.

DIVIDED ATTENTION TESTS: CONCEPTS, EXAMPLES AND DEMONSTRATIONS

Many of the most reliable and useful psychophysical tests employ the concept of divided attention – they require the subject to concentrate on two things at once. Operating a boat is a complex task. In order to operate safely, boat operators must simultaneously control steering, acceleration and slowing; react appropriately to a constantly changing environment; and perform many other tasks. Alcohol and many other drugs substantially reduce a person's ability to divide attention among tasks such as these. Under the influence of alcohol or other drugs, boat operators often must ignore the less critical tasks of operation in order to focus their impaired attention on the more critical tasks. For example, a boat operator may ignore other boats and focus instead on speed control.

Even when under the influence, many people do fairly well at handling a task which only requires them to focus their attention on one thing at a time. For example, a boat operator may be able to keep the vessel within the proper channel as long as the channel remains fairly straight. However, most people, when under the influence, cannot satisfactorily divide their attention to handle multiple tasks at once.

The concept of divided attention has been applied to psychophysical testing. Field sobriety tests that simulate the divided-attention characteristics of driving and vessel operation have been developed and are being used by officers around the world. The best of these tests exercise the same mental and physical capabilities that a person needs to drive safely:

- information processing
- short-term memory
- judgment and decision making
- balance
- steady, sure reactions
- clear vision
- small muscle control
- coordination of limbs

Any test that requires a person to demonstrate two or more of these capabilities simultaneously is potentially a good psychophysical test.

Simplicity is the key to divided-attention field sobriety testing. It is not enough to select a test that simply divides the subject's attention. The test also must be reasonably simple for the average person to perform when sober. Tests that are difficult for a sober subject to perform have little or no evidentiary value.

ADVANTAGES AND LIMITATIONS OF PRELIMINARY BREATH TESTING

The basic purpose of preliminary breath testing (PBT) is to demonstrate the association of alcohol with the observable evidence of the suspect's impairment. The suspect's impairment is established through sensory evidence: what the officer sees, hears and smells. The PBT provides evidence that alcohol is the chemical basis of that impairment by yielding an on-the-spot indication of the suspect's blood alcohol concentration (BAC). The PBT provides direct indication of the BAC level. It does not indicate the level of the suspect's impairment. Impairment varies widely among individuals with the same BAC level.

Preliminary breath testing, like psychophysical testing, is a stage in the pre-arrest screening of a BUI suspect. Usually the suspect is not yet under arrest when requested to submit to the preliminary breath test. The BUI incident remains at the investigative stage; the accusatory stage has not yet begun.

The PBT result is only one of many factors the officer considers in determining whether the suspect should be arrested for BUI. It should never be the sole basis for a BUI arrest. Nevertheless, the PBT result is an important factor because it provides direct indication of alcohol influence. All other evidence, from initial observation of the vessel in operation through formal psychophysical testing, indicates alcohol influence indirectly, based on impairment of the suspect's mental and physical faculties.

Advantages of Preliminary Breath Testing

A PBT offers several important advantages for BUI detection. It may:

- corroborate other evidence by demonstrating that the suspicion of alcohol influence is consistent with the officer's observations of the suspect's mental and physical impairment.

- confirm the officer's own judgment and help give confidence in evaluating alcohol impairment accurately, based on observations and psychophysical tests. (Many officers experienced in BUI enforcement find that they rely less and less on the PBT as their confidence in their own powers of detection increases.)

- disclose the possibility of medical complications or impairment due to drugs other than alcohol. (The PBT can confirm or deny that alcohol is the cause of the observed impairment. For example, observed psychophysical impairment coupled with a PBT result showing a very low BAC indicates an immediate need to investigate the possibility that the suspect has ingested a drug other than alcohol or suffers from a medical problem.)

- help to establish probable cause for a BUI arrest. (The role of the PBT in establishing probable cause may be affected by the evidentiary value of PBT results in your state. Refer to Unit 4, Part 4 for more information. Consult your specific PBT law, your supervisor, or the local prosecutor for clarification, if necessary.)

Limitations of Preliminary Breath Testing

Preliminary breath testing may have both evidentiary and accuracy limitations. Evidentiary limitations vary with specific laws. In some states PBT results are admissible as evidence; in other states they are not admissible. Where the results are admissible, there may be differences in the weight of value they are given. Consult your state PBT law, your supervisor or your local prosecutor, as necessary, for clarification.

PBT instruments have accuracy limitations. Although all PBT instruments currently used by law enforcement are reasonably accurate, they are subject to the possibility of error, especially if they are not used properly. Factors that can affect the accuracy of preliminary breath testing devices may produce "high" test results or "low" results.

Two common factors that tend to produce low PBT results:

- Cooling of the breath sample: If the captured breath sample is allowed to cool before it is analyzed, some of the alcohol vapor in the breath may turn to liquid and precipitate out of the sample. If that happens, the subsequent analysis of the breath sample will produce a low BAC result.

- The composition of the breath sample: Breath composition means the mixture of the tidal breath and alveolar breath. Tidal breath is breath from the upper part of the lungs and the mouth. Alveolar breath is deep lung breath. Breath testing should be conducted on a sample of alveolar breath, obtained by having the subject blow into the PBT instrument until all air is expelled from the lungs.

Two common factors that tend to produce high results on a PBT:

- Residual mouth alcohol: After a person takes a drink, some of the alcohol will remain in the mouth tissues. If the person exhales soon after drinking, the breath sample will pick up some of this leftover mouth alcohol. In this case, the breath sample will contain an additional amount of alcohol and the test result will be higher than the true BAC.

    - It takes approximately 15 minutes for the residual alcohol to evaporate from the mouth. Evaporation cannot be sped up significantly by having the suspect gargle with water or in any other way.

    - The only sure way to eliminate this factor is to make sure the suspect does not take any alcohol for at least 15 to 20 minutes before conducting a breath test. Remember, too, that most mouthwashes, breath sprays, cough syrups, etc., contain alcohol and will produce residual mouth alcohol. Therefore, it is always best not to permit the suspect to put anything in his or her mouth for at least 15 to 20 minutes prior to testing.

- Breath Contaminants: PBTs meeting the conforming product standards and approved for use by NHTSA are designed to only react to substances containing alcohol, not other chemicals such as ether, chloroform, acetone, etc. In order for contamination to be an issue, the substance would have to include alcohol in its ingredients. Methanol and isopropanol will react slightly, while substances containing ethanol would be the primary problem. An example of contaminants of concern may include mouthwash, breath sprays and chewing tobacco with flavoring (i.e. wintergreen flavored Copenhagen). These substances could produce a positive result on a PBT, especially if a 15 to 20 minute deprivation period is not followed.

Radio Frequency Interference, or RFI, has been shown to interfere with the accuracy of breath testing instruments and may result in either high or low test results. Keying a radio or either making or receiving a call on a cell phone are common sources of RFI, but there may be others. Many breath testing instruments are programmed to prevent a breath test if RFI is occurring. Officers must take precautions to minimize or eliminate the possibility of RFI during breath testing, whether during preliminary or evidentiary breath testing.

THE ARREST DECISION

Your arrest/no arrest decision is the culmination of the BUI detection process. Your decision is based on all the evidence you have accumulated during each detection phase.

Phase One:

- Initial observation of vessel in motion
- Observation of the stop

Phase Two:

- Face-to-face observation and interview
- Observation of the exit

Phase Three:

- Standardized Field Sobriety Tests
- Preliminary breath tests

Your decision involves a careful review of each of the observations you have made. Conduct a "mental summary" of the evidence collected during vessel in motion, personal contact and pre-arrest screening. If all of the evidence, taken together, establishes probable cause to believe that BUI has been committed, you should affect physical arrest of the suspect for BUI.

Under no circumstances should you charge the suspect with a lesser offense instead of BUI if there is probable cause to believe that BUI has been committed. Any reduction of BUI to a lesser charge is the responsibility of the prosecutor or judge.

If, after careful consideration of the totality of the evidence observed, it is determined that probable cause has not been established, the proper decision is to either release the subject or, if applicable, cite for another violation.

Officers must use extreme caution when considering the release of a subject that may be impaired at some level below that which is required for probable cause for BUI, especially if that subject will be operating a vessel or vehicle.

NOTE-TAKING AND TESTIMONY

A basic skill needed for BUI enforcement is the ability to describe your observations graphically. Just as detection is the process of collecting evidence, description largely is the process of conveying evidence. Successful description demands the ability to convey evidence clearly and convincingly. Your challenge is to communicate evidence to people who were not there to see, hear and smell the evidence themselves.

USING CLEAR AND CONVINCING LANGUAGE

Field notes are only as good as the information they contain. Reports must be clearly written and events accurately described if the reports are to have evidentiary value. One persistent problem with BUI incident reports is the use of vague language to describe conditions, events and statements. When vague language is used, reports provide a confused picture of what happened. When clear language is used, reports provide an accurate picture of what happened. Clear and convincing field notes provide strong evidence in court.

Consider the following examples:

Vague Language	Clear Language
• Operated negligently.	o Vessel ran through a marked swim area.
• Operated vessel erratically.	o Weaving from side to side. Crossed in front of another vessel.
• Operator appeared intoxicated.	o Operator's eyes bloodshot; gaze fixed; hands shaking. Strong odor of alcoholic beverage on operator's breath.
• Vessel stopped in unusual fashion.	o Vessel struck dock, ran aground.

Your tools are the words that make up your written report and verbal testimony. You must communicate with the supervisor, the prosecutor, the judge, the jury, and even with the defense attorney. You are trying to "paint a word picture" for those people to develop a sharp mental image that allows them to "see" what you saw; "hear" what you heard; and "smell" what you smelled.

Officers with the knowledge, skills and motivation to select the most appropriate words for both written reports and courtroom testimony will communicate clearly and convincingly, making them more successful in BUI prosecution.

BUI Investigation Field Notes

One of the most critical tasks in the BUI enforcement process is the recognition and retention of facts and clues that establish probable cause to stop, investigate and subsequently arrest persons suspected of driving or operating a vessel while under the influence of alcohol, drugs or both. The evidence gathered during the detection process must establish the elements of the violation and must be documented to support successful prosecution of the violator. This evidence is largely sensory (sight, smell, hearing) in nature, and therefore is extremely short-lived.

You must be able to recognize and act on the facts and circumstances with which you are confronted. But you also must be able to recall those observations and describe them clearly and convincingly to secure a conviction. You may be inundated with evidence of BUI, i.e., sights, sounds and smells. You recognize this evidence, sometimes subconsciously, and on this evidence base your decisions to stop, to investigate and ultimately to arrest.

Since evidence of a BUI violation is short-lived, you need a system and tools for recording field notes at scenes of BUI investigations.

One way to improve the effectiveness of your handwritten field notes is to use a structured note-taking form. The form makes it easy to record brief "notes" on each step of the detection process and ensures that vital evidence is documented.

The field notes provide the information necessary for completion of required BUI report forms and assist you in preparing a written account of the incident. The field notes will also be useful if you are required to provide oral testimony, since they can be used to refresh your memory. A model note-taking guide is provided for your use. A brief description follows. Details are provided in subsequent units.

Remember that you must document those actions that gave you reasonable suspicion or probable cause to justify further investigation of a suspected BUI incident.

Observations section provides space to record basic information describing the suspect, general observations, such as the suspect's manner of speech, attitude, clothing, etc. and the date and time the incident occurred as well as pre-test questions.

Pre-test question section provides specific questions to ask and a place to document the subject's responses.

Seated test battery section provides space to record the results of the seated battery of standardized field sobriety tests.

Standing test battery section provides space to record the results of any of the standing battery of standardized field sobriety tests that were administered.

Chemical test section provides space to record the results of the preliminary breath test (PBT) if such a test was given.

Comment section provides space for additional comments.

Since this is a note-taking guide and space is limited, you may develop your own "shorthand" system. Your notes should be as descriptive as possible and should create "mental pictures" of the facts, circumstances or events being described. You will use these notes to refresh your memory when writing the arrest report and possibly even during courtroom testimony.

NOTE: Field notes may be subpoenaed as evidence in court. It is important that any "shorthand" system you use be as describable, usable, complete and consistent as possible.

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. Divided-attention tests require the subject to _____
_____

4. Among the mental and physical capabilities a person needs to operate safely are these four:

   a. _____

   b. _____

   c. _____

   d. _____

5. The purpose of PBT is _____
_____

6. Factors that can produce inaccurate results on a PBT include:
_____
_____

7. Effective documentation of evidence is important because evidence of BUI is observational and, therefore, _____.

8. The preferred method of note-taking for BUI cases is the use of
_____.

9. Field notes may be used:

   a. _____ b.. _____

MODULE 7

History of Validation Research

Module 7

BUI Detection and Enforcement Course

HISTORY OF VALIDATION RESEARCH

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

- Discuss the history of standardized field sobriety test research and why it was necessary to develop a seated battery.
- Discuss the limitations of the standing SFST battery.
- Discuss the development of the research that lead to the validation of the standardized elements, clues and interpretation of the four seated standardized field sobriety tests.

CONTENTS SEGMENTS		LEARNING ACTIVITIES
A.	Overview: Development and Validity	o Instructor-Led Discussion
B.	Limitations of the Standing Battery of SFSTs	
C.	A Seated Battery of SFSTs	
D.	Validating the Seated Battery of SFSTs	
E.	Field Testing the Seated Battery of SFSTs	
F.	Results of the Field Study	
G.	Test Your Knowledge	

OVERVIEW: DEVELOPMENT AND VALIDITY

For many years law enforcement officers have utilized field sobriety tests to determine the impairment of a person's driving due to alcohol influence. The performance of the person on those field sobriety tests was used to develop probable cause for an arrest and as evidence of impairment in court. A wide variety of field sobriety tests existed and there was a need to develop a battery of standardized and scientifically valid tests.

Beginning in late 1975, extensive scientific research studies were sponsored by the National Highway Traffic Safety Administration (NHTSA) through a contract with the Southern California Research Institute (SCRI) to determine which roadside field sobriety tests were the most alcohol sensitive. Following the research, NHTSA published three reports:

- California, 1977 (lab)
- California, 1981 (lab and field)
- Maryland, DC, VA, NC, 1983 (field)

SCRI traveled to law enforcement agencies throughout the United States to select the most commonly used field sobriety tests. Six tests were used in the initial stages of this study.

Laboratory research indicated that three of these tests, when administered in a standardized manner, were a highly accurate and reliable battery of tests for distinguishing BACs at or above 0.10:

- Horizontal Gaze Nystagmus (HGN)
- Walk - and –Turn (WAT)
- One – Leg Stand (OLS)

The final phase of this study was conducted as a field validation during which standardized, practical and effective procedures were developed. The tests were determined to discriminate in the field, as well as in the laboratory. SCRI analyzed the cumulative research data and found:

- HGN, by itself, was 77% accurate.
- WAT, by itself, was 68% accurate.
- OLS, by itself, was 65% accurate.
- By combining HGN and WAT, 80% accuracy was achieved.

NOTE: "Accuracy" is the ability of a test, when properly administered and evaluated, to predict a BAC at or above the legal limit (at the time 0.10 BAC) a certain percent of the time.

The three standardized tests were found to be highly reliable in identifying subjects whose BACs were at or above 0.10. The result of the study unmistakably validated the SFSTs.

Other Research on the Standing Battery of SFSTs

Three additional SFST validation studies were undertaken between 1995 and 1997, because of the nation-wide trend towards lowering the illegal per se BAC limits to 0.08. The question to be answered was, "Do SFSTs discriminate at BACs below 0.08?"

- Colorado: 1995
- Florida: 1997
- California: 1998

The Colorado SFST validation study was the first full field study that utilized law enforcement personnel experienced in the use of SFSTs. The initial study utilized only a few experienced officers in DWI enforcement in both a laboratory setting and a field setting to determine if the SFST battery could discriminate BACs as low as 0.05.

- Correct arrest decisions were made 93% of the time based on the 3-test battery (HGN, WAT, OLS). Substantially higher than the initial study results.

The Florida SFST field validation study was undertaken in order to answer the question of whether SFSTs are valid and reliable indicators of a threshold amount of alcohol when used under present day traffic and law enforcement conditions.

- Correct arrest decisions were made 95% of the time based on the 3-test battery (HGN, WAT, OLS).

In 1998, the California SFST field validation study was published by NHTSA and provided clear evidence of the validity of the SFST battery that was repeatable across the country.

- HGN, by itself, was 88% accurate
- WAT, by itself, was 79% accurate
- OLS, by itself, was 83% accurate
- Correct arrest decisions were made over 90% of the time based on the 3-test battery (HGN, WAT, and OLS).

In 2002, a study was sponsored by NHTSA to examine the validity of HGN with slight administrative variables including the seated and prone positions. The results of this study demonstrated that minor procedural variations do not compromise the validity of HGN evaluations.

The results of these studies provide a clear evidence of the validity of the 3-test battery. To support arrest decisions at above or below 0.08, it strongly suggests that the SFSTs also accurately discriminate BACs at 0.04 and above.

LIMITATIONS OF THE STANDING BATTERY OF SFSTS

The standing SFST battery of tests has limitations that have been identified by NHTSA. During early research, it was noted that persons 65 years of age or older had difficulty balancing during the WAT test and persons determined to be 50 pounds or more over-weight also had difficulty performing the OLS test. To limit the number of variables within the study, persons in these demographic categories were limited in the laboratory validation research. Administering the standing battery to persons that may fall within these variables does not necessarily invalidate the use of the tests, but officers should anticipate and prepare for defense challenges.

Transporting a subject to a suitable shoreline location to administer the standing battery may create unintended custody issues. Although investigative detention for brief periods has been acceptable to most courts, transporting a subject may overstep that threshold, especially if an agency's policy requires handcuffing during the transport. When making this decision, officers must rely on their agency policies and guidance by individual state courts.

Additionally, a suitable location to administer a standing battery (dry, level substrate, free of obstructions) may be difficult to find nearby.

The standing battery is largely dependent on a person's ability to balance. When activities (such as boating) disrupt a person's equilibrium, balance is potentially affected for a period of time following the activity. A common phenomenon occurs, commonly referred to as "sea legs," where a person feels unsure of their balance on shore, especially after riding in a boat for long periods. The USCG recommends allowing a waiting period onshore of at least 15 minutes before administering the standing SFST battery.

There needs to be additional research performed to thoroughly evaluate and quantify the effects of "sea legs" on a person's equilibrium.

Officers need a seated battery of scientifically validated field sobriety tests that avoid balance and evaluate cognitive function.

A SEATED BATTERY OF SFSTs

Although seated field sobriety tests used in the marine environment have not received the attention provided those used at roadside, in 1987 the U.S. Coast Guard sponsored a study to compare the arrest/release decisions of marine officers. This research identified the seated battery that has been in use for many years by marine law enforcement officers and compared the arrest decisions when officers administered an afloat battery to dosed volunteers in a seated position versus the decision made following the administration of the roadside SFST battery on shore.

The results of the study were incorporated into a training manual for marine law enforcement officers that was developed by the International Association of Chiefs of Police (IACP). This manual later served as a basis for the development of a national BUI

curriculum through the National Association of State Boating Law Administrators (NASBLA), which was initiated in 2005.

The objectives of the study were to determine if field sobriety tests were invalidated by the exposure of the individuals tested to the marine enforcement and to develop estimates of the effectiveness of a field sobriety test battery in aiding the marine law enforcement officer in identifying impaired boat operators. The results indicated that:

A. The accuracy of the field sobriety tests, when used on subjects exposed to recreational boating conditions, was as good as the accuracy of tests when evaluated under simulated highway conditions.

B. The Horizontal Gaze Nystagmus test appeared to provide the raters with the most accurate information of any single test.

C. There was no significant difference in the accuracy of the estimates as a result of ashore testing subsequent to the afloat testing.

The results showed convincingly that marine officers could effectively administer a seated battery in a boat and arrive at the same correct arrest/release decision as officers using the SFST battery on shore.

Although this research was convincing, it did not validate a seated battery of field sobriety tests.

VALIDATING THE SEATED BATTERY OF SFSTs

In an effort to further research and validate a seated battery of field sobriety tests, the US Coast Guard funded a study sponsored by NASBLA. In 2007, the Southern California Research Institute began a three year study to validate a seated battery suitable for use in the marine environment.

The objectives of the research were to identify and develop a suitable battery of standardized field sobriety tests that could be administered in a seated position to assist officers in detecting impairment caused by BACs at or above 0.08, creating a nationally accepted standard. As in the roadside tests, the seated tests must be easy to administer to avoid placing unnecessary burden on law enforcement officers. This was critical due to the unique challenges in the marine environment which require officers to continually monitor the environment for their own safety and the safety of the suspect and other boaters. Most importantly, the tests must be useful for an arrest/release decision. Unlike the roadside tests, however, the seated tests could not make use of any measure of equilibrium.

In the first year, over 1,100 BUI arrest reports from marine law enforcement agencies across the nation were reviewed to determine the current seated field sobriety tests in use.

- Twelve seated tests were identified and studied in the lab to determine their sensitivity to alcohol.

- Six candidate tests were identified for further study:

  Hand Coordination (based on the WAT)
  Finger to Nose
  Finger Count (also called Finger Dexterity)
  Palm Pat
  Time Estimation
  Horizontal Gaze Nystagmus

During the second phase of the study, the objectives of the laboratory research were to further refine the development of the seated battery and identify the most alcohol sensitive tests.

157 volunteer drinkers were "dosed" to pre-determined BACs and subjected to the six candidate tests. The dosing targeted the illegal per se BAC limit of 0.08.

Volunteers were evaluated by 24 officers that averaged about 10 years of experience administering the SFST battery. None of the participants knew the volunteers' BAC level.

External variables were eliminated from the evaluations - officers only administered one of the seated tests and had no other interaction with the test subjects.

The researchers found Horizontal Gaze Nystagmus (HGN), Finger to Nose (FTN), Palm Pat (PP) and Hand Coordination (HC) tests constituted a reliable seated battery of tests for distinguishing BACs at or above 0.08.

The research indicated that the four tests, when administered in a standardized fashion, provided reliable indicators of alcohol-related impairment, but the research was not conclusive at this point. Nevertheless, the seated tests showed enough promise to warrant a field study. In addition, the research also identified objective clues for evaluation and quantified the number of clues that indicated impairment at or above a BAC of 0.08.

In the laboratory study, the overall sensitivity of the tests was below what was typically reported in literature on the roadside standardized field sobriety tests (SFSTs). Three possible reasons were identified:

- First, the wider distribution of BACs and higher BACs in the previous studies may have made the detection of impairment less difficult than in the current study. Never before had a study "clustered" subject BACs at or near 0.08. In this study, the highest BAC achieved was 0.110 and 25% of the resulting BACs were at 0.08.

- Second, the impairment decisions were made exclusively on the basis of the tests, without external indicators such as smell of alcohol, appearance, speech, and demeanor.

- Third, an assumption was made that the participating officers had received adequate training to administer and evaluate and evaluate the tests, particularly HGN. The poor administration and evaluation of HGN was identified as a factor which affected the overall results.

FIELD TESTING THE SEATED BATTERY OF SFSTs

To complete the development of the seated SFST battery, the research had to be validated by field testing its effectiveness at identifying operators with a BAC at or above 0.08 in the marine environment.

The objectives of this phase of the field validation study were:

- To develop standardized, practical and effective procedures for officers to use in reaching arrest/no arrest decisions.

- To test the feasibility of the procedures in the marine environment.

- To secure data to determine if the tests will discriminate in the field, as well as in the laboratory.

In support of the objectives, the SCRI research team considered systemizing the administrative instructions and scoring procedures for Finger to Nose, Palm Pat and Hand Coordination tests. The intent was to ensure that each test would be simple to administer and easy to be understood so they could be used in various combinations as the circumstances dictated to the officer. They also needed to maximize detection of operators with BACs at or above 0.08 while minimizing the continued detention of persons with BACs below 0.08. As a result, some minor differences in the administrative instructions between the laboratory research and the field validation study exist because the SCRI research team and NASBLA advisory group recognized instructions that could be simplified or made clearer. The minor corrections did not affect the laboratory results or change the overall administration or validity of the tests.

The (standardized) elements were identified:

- Standardized administrative procedures

- Standardized clues

- Standardized evaluation criteria

For this third and final phase of the study, the research team from SCRI traveled to Lake of the Ozarks in central Missouri and provided four days of training in the administration

and evaluation of the new field sobriety tests to four marine officers of the Missouri State Water Patrol (recently changed to the Missouri State Highway Patrol—Water Patrol Division). The officers were dedicated to the validation study for a four month period from June through September.

This study followed the same approach as previous validation studies for roadside testing. Marine officers stopped boaters suspected of BUI, asked them to come aboard the patrol vessel, and administered the seated battery of SFSTs. The four sobriety tests were Horizontal Gaze Nystagmus (HGN), Finger to Nose, (FTN), Palm Pat (PP), and Hand Coordination (HC). A PBT was used to obtain breath sample to verify the accuracy of the tests.

- The SCRI researchers acted as civilian observers to ensure the sobriety tests were administered properly and the clues were evaluated in a standardized fashion.

- 331 probable cause and checkpoint stops were made to establish the validation data set. Fifty-eight percent of the subjects stopped as the result of probable cause had a BAC at or above 0.08.

RESULTS OF THE FIELD STUDY

- During the marine boating stops, when 4 clues of Horizontal Gaze Nystagmus (HGN) were observed, the subject had a BAC of 0.08 or above 80% of the time.

- When 9 clues were observed during the administration of the Finger to Nose test (FTN), the subject had a BAC of 0.08 or higher, 65% of the time.

- When 2 clues were exhibited during the performance of the Palm Pat (PP) test, 57% of the time the subject had a BAC of 0.08 or higher.

- Three (3) clues observed during the Hand Coordination (HC) test indicated the subject had a BAC of 0.08 or above 52% of the time.

- **When the required number of clues were observed for all the tests, the combined results indicated the tests accurately predicted the subject's BAC was 0.08 or higher 91% of the time.**

- When the seated tests were evaluated in various combinations, researchers found that positive results using HGN and any one other test indicated a BAC at or above 0.08 correctly 82% of the time.

- Without HGN, a combination of the remaining three tests was 76% accurate when the required number of clues was observed.

The four standardized tests were found to be highly reliable in identifying subjects with a BAC at or above 0.08.

This large scale field validation study was important because:

- It was the first significant assessment of the overall effectiveness of the seated battery of SFSTs under actual enforcement conditions.
- It was the first time objective clues and scoring criteria had been defined for the tests.

The results of the study unmistakably validated the SFSTs.

IT IS NECESSARY TO EMPHASIZE THIS VALIDATION APPLIES ONLY WHEN:

- The tests are administered in the prescribed, standardized manner.
- The standardized clues are used to assess the suspect's performance.
- The standardized criteria are employed to interpret that performance.

IF ANY ONE OF THE STANDARDIZED FIELD SOBRIETY TEST ELEMENTS IS CHANGED, THE VALIDITY IS COMPROMISED.

TEST YOUR KNOWLEDGE

1. The new battery of SFSTs is referred to as the _____ of tests.

2. A minimum of ____clues on the Finger to Nose test indicates a BAC of 0.08 or higher 65% of the time.

3. When properly administered, a positive outcome on each of the four tests that make up the seated battery can accurately predict whether a suspect's BAC is at or above 0.08 _____ percent of the time.

4. The third phase of the recent validation study evaluated the test battery in the _____ environment.

5. Early research revealed limitations to the reliability of the roadside SFSTs to these two groups of people:

   _____

   _____

6. The phenomenon of _____ is thought to possibly affect a person's performance on balance-related SFSTs after arriving back on shore.

7. The seated battery of SFSTs includes:

a. _____

b. _____

c. _____

d. _____

Module 8

Principles of Horizontal Gaze Nystagmus

Module 8

BUI Detection and Enforcement Course

PRINCIPLES OF HORIZONTAL GAZE NYSTAGMUS

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

- Discuss the different types of nystagmus and their effects on the Horizontal Gaze Nystagmus test.
- Describe the administrative procedures for the Horizontal Gaze Nystagmus test.
- Identify each of the clues and interpret the evidence observed during test administration.
- Discuss Vertical Gaze Nystagmus and its evaluation during a BUI investigation.

CONTENT SEGMENTS	LEARNING ACTIVITIES
A. Horizontal Gaze Nystagmus	Instructor-Led Discussion
B. Categories of Nystagmus	
C. Medical Impairment	
D. Administrative Procedures for HGN	Instructor-Led Demonstrations
E. Test Interpretation	
F. Test Demonstrations	Student Practice Session and Demonstration
G. Vertical Nystagmus	Instructor-Led Discussion and Demonstration

HORIZONTAL GAZE NYSTAGMUS

Horizontal gaze nystagmus is the involuntary jerking of the eyes occurring as the eyes gaze toward the side. People are usually unaware that nystagmus is visible in their eyes, and they are not able to control it. Also, nystagmus is a natural, normal phenomenon. Alcohol and certain other drugs do not cause this phenomenon, they merely exaggerate or magnify it.

CATEGORIES OF NYSTAGMUS

Horizontal Gaze Nystagmus is not the only type of nystagmus, so it is important to understand that nystagmus of several different origins may be seen. There are three general categories of nystagmus:

1. Vestibular Nystagmus is caused by movement or disturbance to the vestibular system (fluid in the inner ear).

   A. Types of vestibular nystagmus:

   - Rotational Nystagmus occurs when the person is spun around or rotated rapidly, causing the fluid in the inner ear to be disturbed. If it were possible to observe the eyes of a rotating person, they would be seen to jerk noticeably.

   - Post Rotational Nystagmus is closely related to rotational nystagmus: when the person stops spinning, the fluid in the inner ear remains disturbed for a short period of time, and the eyes continue to jerk.

   - Caloric Nystagmus occurs when fluid motion in the canals of the vestibular system is stimulated by temperature such as putting warm water in one ear and cold in the other.

   - Positional Alcohol Nystagmus (PAN) occurs when a foreign fluid, such as alcohol, that alters the specific gravity of the blood is in unequal concentrations in the blood and the vestibular system, while the head is turned to the side. This causes the vestibular system to respond to gravity in certain positions, resulting in nystagmus.

     PAN I occurs when the alcohol concentration in the blood is greater than in the inner ear fluid. PAN I occurs while BAC is increasing.

     PAN II occurs when the alcohol concentration in the inner ear fluid is greater than in the blood stream. This occurs while BAC is decreasing.

2. Nystagmus can also result directly from neural activity:

- Optokinetic Nystagmus occurs when the eyes fixate on an object that suddenly moves out of sight, or when the eyes watch sharply contrasting moving images.

  Examples of optokinetic nystagmus include watching scenery while looking out the window of a moving train or watching a rapidly spinning wheel that has alternating white and black spokes. The horizontal gaze nystagmus test will not be influenced by optokinetic nystagmus if administered properly.

- Physiological Nystagmus is a natural nystagmus that keeps the sensory cells of the eye from tiring. It is the most common type of nystagmus. It happens to all of us, all the time. This type of nystagmus produces extremely minor tremors or jerks of the eyes. These tremors are generally too small to be seen with the naked eye. Physiological nystagmus will have no impact on our standardized field sobriety tests because its tremors are generally invisible.

- Gaze Nystagmus occurs as the eyes move from the center position. Gaze nystagmus is separated into three types:

  (1) Horizontal Gaze Nystagmus occurs as the eyes move to the side. It is the observation of horizontal gaze nystagmus in the eyes that provides the first and most reliable test in the standardized field sobriety testing battery. Although this type of nystagmus is most accurate for determining alcohol influence, its presence may also indicate use of central nervous system depressants, inhalants and dissociative anesthetics, collectively called "DID" drugs.

  (2) Vertical Gaze Nystagmus occurs when the eyes gaze upward at their maximum elevation. The presence of this type of nystagmus is associated with PCP. High doses for the individual of CNS depressants (including alcohol) and inhalants may also cause this to occur. The drugs that produce vertical nystagmus are the same ones that produce horizontal gaze nystagmus.

  Note: All drugs that induce horizontal gaze nystagmus may also induce vertical nystagmus if enough of the drug is taken. There is no drug that will cause vertical nystagmus that does not cause horizontal nystagmus.
  If vertical nystagmus is present and horizontal nystagmus is not, it could be a medical condition.

  (3) Resting Nystagmus is referred to as jerking as the eyes look straight ahead. This condition is not frequently seen. Its presence usually indicates a pathological disorder or a high dose of PCP. If detected, take precautions. (**OFFICER SAFETY**.)

3. Nystagmus may also be caused by certain pathological disorders. They include brain tumors and other brain damage or some diseases of the inner ear. These pathological disorders occur in very few people and in even fewer drivers.

MEDICAL IMPAIRMENT

The examinations that you can conduct to assess possible medical impairment include:

- Resting Nystagmus
- Tracking ability
- Pupil size

Procedures to Assess Possible Medical Impairment

Prior to administration of HGN, the eyes are checked for equal pupil size, resting nystagmus, and equal tracking (see if they follow an object together). If the eyes do not track together or if the pupils are noticeably unequal in size, the chance of medical disorders or injuries causing the nystagmus may be present.

ADMINISTRATIVE PROCEDURES FOR HGN

The field sobriety test used either standing or seated is "Horizontal Gaze Nystagmus" (HGN) – an involuntary jerking of the eyes occurring as the eyes gaze toward the side.

Note: CNS depressants, inhalants and dissociative anesthetics can cause HGN.

HGN must be administered systematically both to ensure that no part is overlooked and to support admissibility of all observations. The systematic procedures are as follows:

1. Check for eyeglasses. If the suspect is wearing eyeglasses, have them removed. Ask "are you wearing contact lenses?" and note whether or not the suspect is wearing contacts before starting the test. The ability to see the stimulus clearly is not important, provided the suspect can see the stimulus enough to follow it with the eyes.

2. Make sure the suspect is in the appropriate position and instruct the suspect with the following points from a bladed, interview position (FOR OFFICER SAFETY KEEP YOUR WEAPON AWAY FROM THE SUSPECT):

    - Keep your head still and look at this stimulus.
    - Follow the movement of the stimulus with your eyes only.
    - Keep looking at the stimulus until told the test is over.

- Do you understand?

3. Position the stimulus approximately 12-15 inches from the suspect's nose and slightly above eye level so the eyes are wide open when they look directly at it.

4. Check to see that both pupils are equal in size. If they are not, this may indicate a head injury or a prosthetic eye. Also check for resting nystagmus at this time.

5. Check the suspect's eyes for the ability to track together (equal tracking). Move the stimulus rapidly from center to far right, to far left, to far right, to far left, then back to center, making two complete passes. Check to see if the eyes track the stimulus together or one lags behind the other. There should be a distinguishable break between the check for equal tracking and lack of smooth pursuit.

6. Check the suspect's eyes for the first clue - The Lack of Smooth Pursuit. Begin by moving the stimulus to your right to check the left eye first. Move the stimulus smoothly at a speed that requires about two seconds to bring the suspect's eye as far to the side as it can go. While moving the stimulus, look at the suspect's eye and determine whether it is able to pursue smoothly. Now, move the stimulus all the way to the left, back across suspect's face checking if the right eye pursues smoothly.

   This clue is observed if the eyes can be observed to jerk or "bounce" as they follow a smoothly moving stimulus. The eyes of an unimpaired person will follow smoothly, i.e., a marble rolling across a smooth pane of glass or windshield wipers moving across a wet windshield. As a person becomes impaired, the eyes will bounce, sometimes slightly, similar to a marble rolling across sandpaper. Check each eye individually, starting with the left eye first, moving the stimulus at a speed that takes about two seconds to go from center to the far extreme. Always make at least two complete passes, and additional passes are acceptable, if needed. Pay close attention to how you move the stimulus, both the speed and its smooth movement in a straight line.

7. Check the eyes for the second clue - Distinct and Sustained Nystagmus at Maximum Deviation beginning with the suspect's left eye. Simply move the object to the suspect's left side until the eye has gone as far to the side as possible (the very far extreme). Usually, no white will be showing in the comer of the eye at maximum deviation. Hold the eye at that position for at least four seconds and observe the eye for distinct and sustained nystagmus. Move the stimulus all the way across the suspect's face to check the right eye holding that position for at least four seconds. Repeat the procedure to check each eye twice.

People exhibit slight jerking of the eye at maximum deviation, even when sober, but this will not be evident or sustained for more than a few seconds. When impaired by alcohol, the jerking will be larger, more pronounced, sustained for more than four seconds, and easily observable. The stimulus must be moved to a point where the eye is straining to follow it, and it is not necessary for the suspect to still see the stimulus except in the periphery. Remember, four seconds is a relatively long time. Slow down at maximum deviation and ensure that you hold the eye there for NO LESS THAN four seconds.

Note: Fatigue Nystagmus. This type of nystagmus may begin if a subject's eyes are held at maximum deviation for more than 30 seconds.

8. The third and final clue of HGN is the Onset of Nystagmus Prior to 45-Degrees. Starting in the center, move the stimulus towards the right (suspect's left eye) at a speed that would take about four seconds for the stimulus to reach the edge of the suspect's shoulder. Watch the eye carefully for any sign of jerking. When you see any jerking begin, stop and verify that the jerking continues. Now move the stimulus to the left (suspect's right eye) at a speed that would take about four seconds for the stimulus to reach the edge of the suspect's shoulder. Watch the eye carefully for any sign of jerking. When you see any jerking begin, stop and verify that the jerking continues. Repeat the procedure.

   NOTE: It is important to use the full four seconds when checking for onset of nystagmus. If you move the stimulus too fast, you may go past the point of onset or miss it altogether.

Estimating a 45-Degree Angle

It is important to know how to estimate a 45-degree angle. How far you position the stimulus from the suspect's nose is a critical factor in estimating the 45-degree angle. (i.e., if the stimulus is held 12" in front of the suspect's nose, it should be moved 12" to the side to reach 45 degrees. Likewise, if the stimulus is held 15" in front of the suspect's nose, it should be moved 15" to the side to reach 45-degrees.)

For practice, a 45-degree template can be prepared by making a piece of paper and drawing a diagonal line at a 45-degree angle. To use this device, hold it up so that the person's nose is above the diagonal line. Be certain that one edge of the template is centered on the nose and perpendicular to (or at right angles to) the face. Have the person you are examining follow a penlight or some other object until the suspect is looking down the 45-degree diagonal. Note the position of the eye. With practice, you should be able to recognize this angle without using the template.

You should note that there is usually some white of the eye still visible at 45-degrees. It is also important to look at the alignment of the stimulus and the edge of the suspect's shoulder while considering the distance out and distance from center. With practice, it is possible to closely estimate a 45-degree angle while checking for the third clue.

ADMINISTRATIVE PROCEDURES

1. REMOVE EYEGLASSES/CHECK FOR CONTACTS
2. GIVE VERBAL INSTRUCTIONS
3. POSITION STIMULUS (12 TO 15 INCHES)
4. CHECK EQUAL PUPIL SIZE AND RESTING NYSTAGMUS
5. CHECK EQUAL TRACKING
6. CHECK FOR LACK OF SMOOTH PURSUIT
7. CHECK FOR DISTINCT AND SUSTAINED NYSTAGMUS AT MAXIMUM DEVIATION
8. CHECK FOR ONSET OF NYSTAGMUS PRIOR TO 45-DEGREES
9. TOTAL THE CLUES
10. CHECK FOR VERTICAL GAZE NYSTAGMUS

NOTE: Nystagmus may be due to causes other than alcohol. These other causes include seizure medications and some other drugs. A large disparity between the performance of the right and left eye may indicate a medical condition.

Test Interpretation

There is a maximum of three clues possible in each eye:

1. The lack of smooth pursuit.

2. Distinct and sustained nystagmus at maximum deviation.

3. The onset of nystagmus is prior to 45-degrees.

The total number of clues possible for HGN is six. Based on the results of considerable research, any combination of four or more clues for HGN indicates the likelihood that the suspect has a BAC at or above 0.08.

For many suspects, the clues of HGN will appear in the sequence listed. That is, as a person's BAC increases, many will first show a lack of smooth pursuit. As BAC level continues to rise, a distinct and sustained jerking at maximum deviation is seen with an onset of nystagmus prior to 45-degrees being observable last. Keep in mind, this is not true for all cases. This is but one reason why the systematic administration of HGN is critical. It is also possible that the same clue is not observed in both eyes. Each eye must be tested and evaluated independently.

If one eye shows three clues and the other eye shows no evidence of nystagmus, consider medical impairment as a possible explanation.

TEST DEMONSTRATION

An instructor will demonstrate the appropriate way to administer the complete HGN test on a student volunteer while articulating every step in the testing sequence.

VERTICAL NYSTAGMUS

The Vertical Gaze Nystagmus (VGN) test is very simple to administer. During this test, look for jerking as the eyes move up and are held for at least four seconds at maximum elevation.

1. Position the stimulus horizontally about 12-15 inches front of the suspect's nose.

2. Instruct the suspect to hold the head still, and follow the object with the eyes only.

3. Raise the object until the suspect's eyes are elevated as far as possible.

4. Hold for at least four seconds.

5. Watch closely for evidence of jerking. Check twice.

Vertical nystagmus is often observed in subjects under the influence of PCP, but it is also observed when a subject is under the influence of a high dose of CNS depressants or inhalants. A person who never or rarely drinks alcohol may exhibit VGN when at a BAC that is higher than normal for that person.

HGN and VGN can be observed directly and do not require special equipment. You will need a contrasting stimulus for the suspect to follow with the eyes, and this can be as simple as the tip of your index finger, a penlight, or a pen. The stimulus used should be held slightly above eye level so the eyes are wide open when they look directly at it. It should be held about 12-15 inches in front of the nose. Remain aware of your position in relation to the suspect at all times.

OFFICER SAFETY IS THE NUMBER ONE PRIORITY!

TEST YOUR KNOWLEDGE

INSTRUCTIONS: Complete the following sentences.

1. When looking for the clue of distinct and sustained nystagmus at maximum deviation, the stimulus must be held at the extreme outside for _____.

2. The maximum number of clues for the Horizontal Gaze Nystagmus test that can appear in <u>one</u> eye is _____.

3. The three indicators of possible medical impairment that must be checked prior to administration of HGN are:

   _____

   _____

   _____

4. When checking for lack of smooth pursuit, it should take about _____ to move the stimulus from center to the far extreme.

5. The third clue of HGN is onset of nystagmus prior to a _____-degree angle.

6. If _____ clues are observed during the HGN test, this indicates it is likely the suspect's BAC is at or above 0.08.

Module 9

The Seated Battery of Standardized Field Sobriety Tests

Module 9

BUI Detection and Enforcement Course

THE SEATED BATTERY OF STANDARDIZED FIELD SOBRIETY TESTS

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

- Discuss and properly administer the seated battery of SFSTs.
- Discuss and recognize the clues of the seated battery of SFSTs.
- Describe in a clear and convincing fashion and properly record test results on the SFST Performance Report Form.
- Discuss the limiting factors of the seated battery of SFSTs.

CONTENT SEGMENTS

A. General Instructions

B. Procedures and Evaluation of the Finger to Nose Test

C. Procedures and Evaluation of the Palm Pat Test

D. Procedures and Evaluation of the Hand Coordination Test

E. Taking Field Notes on the Seated Battery of SFSTs

F. Limiting Factors of the Seated Battery of SFSTs

LEARNING ACTIVITIES

- Instructor-Led Discussion and Demonstrations

GENERAL INSTRUCTIONS

The validation of the seated battery of SFSTs relied upon an assurance that the subject was properly positioned and stable, and this was an important part of the research. To ensure that your subject is in a stable seated position, give the following instructions to all subjects before starting any of the Seated Battery Standardized Field Sobriety Tests.

- **"Please sit straight at the front edge of your seat."**
- **"Put your arms down at your sides."**
- **"Place your feet shoulder-width apart so you are comfortable and stable. Are you stable?"** (Wait for response.)
- **"Do not move your feet until the tests are over. Stay in this position and do not do anything else until I tell you to do so."**
- **"Do you understand?"** (Get acknowledgement of understanding.)

NOTE: An allowable tactical option is to administer HGN to a seated suspect who has feet crossed at the ankles and is sitting on the hands. This position may provide officers an added level of personal safety when stepping in close to evaluate HGN. Should this seated position be used for HGN, it is important to keep in mind that the suspect's safety and stability are of utmost importance. A suspect **must** be placed into the seated position per the general instructions for the remaining seated tests. Instructions for the seated battery tests should always be given from a bladed position, keeping your sidearm away from the suspect.

PROCEDURES AND EVALUATION OF THE FINGER TO NOSE TEST

Introduction to the Test

This test requires the subject to bring the tip of the index finger to touch the tip of the nose. It is performed with eyes closed and head tilted back. This test should be administered in an environment where the subject is stable and is able to tilt the head back with eyes closed without risking personal injury.

Test Considerations

Ensure that the subject has met the general instructions with arms down to the sides.

Instructions for the Finger To Nose Test

The standard instructions for the Finger to Nose test are as follows:

- **"Make a fist with both hands, extend your index fingers and turn your palms forward"** (Demonstrate.)

- **"Remain in this position while I explain the test. Do you understand?"** (Wait for response.)

- **"When I say BEGIN, tilt your head back to about a 45-degree angle and close your eyes."** (Demonstrate how the subject's head should be tilted back, but do not close your eyes.)

- **"When I tell you to, touch the tip of your nose with the tip of your index finger and immediately return it to your side"** (Demonstrate how the subject is supposed to move the arm up directly in front of the subject and how to properly touch the tip of the nose with the tip of the index finger.)

  NOTE: Show the tip of the index finger as the area immediately below fingernail tip, not the fingerprint pad area or the side of the index finger, and demonstrate touching the tip of the nose (about a dime-sized portion at the very end of the nose).

- **"When I say RIGHT, you must touch your right index finger to your nose; when I say LEFT, you must touch your left index finger to your nose."**

- **"Do you understand?"** (Get acknowledgement of understanding.)

- **"BEGIN."**

  NOTE: Ensure that the subject tilts the head back and closes the eyes. Do not start to give the commands until the subject is in compliance. If necessary, emphasize to the subject that he must keep the eyes closed until you say to open them.

- **"LEFT, RIGHT, LEFT, RIGHT, RIGHT, LEFT."** (Give the commands in exactly this order.)

  NOTE: Make sure the subject returns the arm to the side immediately after each attempt. Pause two or three seconds between commands to both evaluate a proper return and to allow time for you to document observations.

- **"Open your eyes and straighten your head."** (After the sixth attempt.)

Documenting the Results and Test Interpretation

The test requires monitoring two sets of clues: compliance with the instruction stage and the performance stage finger-to-nose accuracy. Properly record the information on the SFST Performance Report form.

Test Interpretation

Below is a list of the validated clues of impairment:

Instruction Stage

A. Unable to follow instructions - Check this if the test had to be explained to the subject more than twice or if the subject did not remain in the instruction position.

B. Started at wrong time - Check this if the subject began the test before being told to either by tilting head back and/or closing eyes or by raising either finger before being told to do so.

Performance Stage

A. Did not close eyes - Check this if the subject failed to close eyes when told to begin the test.

B. Did not tilt head back - The subject failed to tilt head back when told to begin the test. NOTE: If subject tilted head back too far or not far enough, this clue would not be assessed, however the officer would ask the subject to move the head up or down to about the 45-degree position.

C. Opened eyes during test - The subject opened eyes at all during the test.

D. Moved head during test - The subject moved head backward, forward, or side to side after beginning the test. Movement of the subject's head in any direction of at least one inch is necessary to check this clue.

The following require compliance with each attempt

E. Wrong hand - The subject makes contact to the nose with the wrong hand.

F. Wrong finger - The subject used any finger other than the index finger.

G. Hesitated - The subject started with one hand but then changed to the other hand prior to making contact with the nose or when the subject pauses or significantly slows down upon approach to and prior to making contact with the nose.

H. Searched - The subject makes any distinct vertical or horizontal movement with the finger upon approach to and prior to making contact with the nose.
NOTE: Hesitation and searching may both be observed during the same attempt.

I. Not fingertip – (Synonymous with "missed fingertip") The subject touches the nose with any part of the finger other than the area of the index finger immediately below fingernail tip. The fingerprint pad area of finger is not the fingertip.

J. Missed tip of nose - The subject fails to touch any part of the finger to the tip of the nose. The tip of the nose shall be considered a dime-sized portion of the nose furthest away from the face.

K. Did not bring hand down - The subject failed to immediately (if contact is more than one second) bring finger back down to the side after making contact with the nose. (If a subject does not return the hand to the side as instructed, tell him to move hand down into the start position.)

Test Criteria

Nine or more clues suggest that the individual being tested is impaired with a BAC of 0.08 or higher.

PROCEDURES AND EVALUATION OF THE PALM PAT TEST

Introduction to the Test

The Palm Pat test requires the subject to place one hand extended, palm up, out in front of him. The other hand is placed on top of the first with the palm facing down. The top hand then begins to pat the bottom hand. The top hand rotates 180-degrees alternating between the back of the hand and the palm of the hand. The bottom hand remains stationary. The subject counts out loud, "ONE, TWO, ONE, TWO," etc., when the hands make contact during each pat.

Test Considerations

Ensure that the subject has met the general instructions with arms down to the sides.

Instructions for the Palm Pat Test

The standard instructions for the Palm Pat test are as follows:

- **"Place your hands palm to palm with one hand up and one hand down, like this."** (Demonstrate.)

  NOTE: Start by demonstrating to put one hand out in front with the open palm facing upward. The opposite hand is then placed on top of the first hand with the open palm facing downward with hands/fingers parallel. The demonstration will show that the hand with the palm facing upward is held in a stationary position. The hand on top with the palm facing downward will be the only hand moving.

- **"Remain in this position while I explain the test. Do you understand?"** (Wait for response.)

- **"When I tell you to begin, turn the top hand over and count out loud "one," then turn the hand back over and count out loud "two," counting only when your hands make contact, like this."** (Demonstrate at least two sets at a moderate pace.)

  NOTE: To begin, the subject will rotate the top hand 180-degrees and pat the back of the top hand to the palm of the bottom hand simultaneously counting out loud, "One." The top hand then rotates 180-degrees so the palm of the top hand pats the palm of the bottom hand, simultaneously counting out loud, "Two". Be sure to exaggerate the palm pat sequence using adequate height between claps.

- **"Repeat this, speed up as you go, and do not stop until told."**

  Note: The process then repeats. The subjects should start at a slower speed then gradually increase the speed until a relatively rapid pace is reached.

- **"Make sure to keep your hands and fingers parallel during each pat, like this."** (Demonstrate.)

- **"Do you understand?"**(Get acknowledgement of understanding.)

- **"Begin."**

  NOTE: The subject should perform this test for a minimum of 10 seconds but no more than 15 seconds. If the speed has not noticeably increased within 4 or 5 seconds, prompt the subject to increase speed. The goal is to reach a relatively rapid pace.

Documenting the Results and Test Interpretation

The test requires monitoring two sets of clues: compliance with instruction stage and accuracy during the performance stage. Properly record the information on the SFST Performance Report form.

Test Interpretation

The following is a list of the validated clues of impairment:

Instruction Stage

A. Unable to follow instructions— the test had to be explained to the subject more than twice or if the subject did not remain in the instruction position during the instruction stage.

B. Started at wrong time— the subject began the test before being told to begin either by starting on his own at any time or by following along with the officer's demonstration.

Performance Stage

A. Did not count as instructed - The subject counts out loud anything other than "1, 2, 1, 2, 1, 2," and so on. "1" must be said out loud only when the back of the top hand makes contact with the palm of the bottom hand, and "2" must be said out loud only when the palm of the top hand makes contact with the palm of the bottom hand. If the subject fails to count out loud, check this clue, however, correct him and advise to start counting out loud.

B. Rolled hands - The subject fails to fully break contact between the two hands when going from one pat to the next, simulating a "rolling" movement on the bottom hand with the top hand.

C. Double pat - The subject conducts two or more of the same pat in a row. e.g. Subject pats the palm of the top hand to the palm of the bottom hand twice in a row.

D. Chopped pat - The subject hits the bottom hand with the side of the top hand instead of either the palm or the back of the top hand.

E. Other improper pat (document) - The subject conducts any pat other than what is instructed and which cannot be checked above. Be sure to describe the pat appropriately in the narrative.

F. Did not increase speed - The subject does not make a noticeable increase in speed within any 4 to 5 second period of the test. Correct this and remind him to speed up as he goes.

G. Rotated hands - The subject's fingers no longer run parallel to each other resulting in a noticeable and distinct rotation in any pat.

H. Stopped before being told - The subject stops at any time before the command to stop is given.

Criteria

Two or more clues suggest that the individual being tested is impaired with a BAC of 0.08 or higher.

PROCEDURES AND EVALUATION OF THE HAND COORDINATION TEST

Introduction to the Test

This test requires the subject to perform four tasks with the hands. It is adapted from the Walk-And-Turn SFST performed in the standing position.

Test Considerations

Ensure that the subject has met the general instructions.

Instructions for the Hand Coordination Test

The standard instructions for the Hand Coordination test are as follows:

- **"Make fists with both hands. Place your left fist at the center of your chest and your right fist against your left fist, like this."** (Demonstrate.)

  Note: Place your left fist thumb against the sternum and the thumb side of the right fist against the fleshy side of the left fist.

- **"Remain in this position while I explain the test. Do you understand?"** (Wait for response.)

- **"When I say BEGIN, you must perform four tasks."**

- **"The first task is to count out loud from one to four while you move your fists in a step-like fashion, making contact between your fists at each step."** (Demonstrate while counting out loud "1, 2, 3, 4.")

- **"The second task is to memorize the position of your fists after you have counted to four, clap your hands three times and return your fists to the memorized position."** (Demonstrate.)
  Note: No verbalized count is required.

- **"The third task is to move your fists in a step-like fashion in reverse order; counting out loud from five to eight and returning your left fist to your chest."** (Demonstrate while counting out loud "5, 6, 7, 8.")

- **"The fourth task is to open your hands with palms down and place them in your lap."** (Demonstrate.)
- **"Do you understand?"** (Get acknowledgement of understanding.)
- **"BEGIN."**

Documenting the Results and Test Interpretation

The test requires monitoring two sets of clues: compliance with the instruction stage and the performance stage hand coordination accuracy. Properly record the information on the SFST Performance Report form.

Test Interpretation

Below is the list of validated clues of impairment:

Instruction Stage

A. Unable to follow instructions - The test had to be explained to the subject more than twice or if the subject did not remain in the instruction position. Also check this if the subject puts right fist to chest instead of left fist when told to put left fist against chest.

B. Started at wrong time - The subject began the test before being told to begin either by starting on his own or by following along with the officer's demonstration.

Performance Stage

Task One: Forward Steps

A. Improper count - The subject counts anything other than "1, 2, 3, 4," while moving the fists out away from the chest four times in a step-like fashion. This includes when the subject does not count out loud or counts too many or too few steps.

B. Improper touch - The subject drags the fists over one another while moving from one step to another, when the subject does not make end-to-end contact between the two fists or when the subject accidentally makes top to bottom contact between the two fists.

C. Did not perform - The subject skips over and forgets to perform this task.

Task Two: Hand Clapping

A. Improper count - The subject does anything but clap 3 times. The subject does not have to count out loud. This includes too many or too few claps.

B. Improper touch - The subject makes any contact between the hands other than palm-to-palm clapping.

C. Improper return - The subject does not return fists to the memorized position end-to-end with the right fist in front of the left fist. Most common mistake is returning the left fist in front of the right fist.

D. Did not perform - The subject skips over and forgets to perform three hand claps.

Task Three: Return Steps

A. Improper count - The subject counts anything other than "5, 6, 7, 8," while moving the fists in toward the chest four times in a step-like fashion. This includes when the subject does not count out loud or counts too many or too few steps.

B. Improper touch - The subject drags the fists over one another while moving from one step to another, when the subject does not make end-to-end contact between the two fists or when the subject accidently makes top to bottom contact between the two fists.

C. Did not return left fist to chest - The subject does not make contact to the chest with the left fist or if the subject brings the right fist to the chest instead of the left fist.

   NOTE: Following an improper return on the hand clap, if the subject makes an adjustment to return the left hand to chest along with a proper number of counted steps and proper touch, a clue will not be assessed.

D. Did not perform - The subject skips over and forgets to perform this task.

Task Four: End Position

A. Improper position - The subject opens up the fists and places them anywhere other than on the lap. A noticeable attempt to complete this task must be observed. e.g. If the subject opens hands, palms facing down and then holds them out in the air in front of them, if the subject opens hands, palms facing down and places the hands beside them in the seat, or if the subject opens hands and then says, "I can't remember where to put my hands."

B. Did not perform - Check this if the subject skips over and forgets to perform this task. e.g. If the subject remains with fists closed against the chest and makes no attempt to perform the final task or if the subject takes fists directly to lap or seat with no attempt to open hands up with palms facing down.

Criteria

Three or more clues suggest that the individual being tested is impaired with a BAC of 0.08 or higher.

NOTE: If subject totally refuses to perform the Hand Coordination test, the refusal will be noted. The officer will not check all of the "did not perform" boxes, thus resulting in an indication that four clues were observed.

NOTE: During Task 1 of the Hand Coordination test, while moving fists in a step-like fashion out away from the chest; if the subject did not go out away from the chest as much as the officer demonstrated, no clue will be assessed. All the subject must do is place one fist in front of the other in a step-like fashion while counting out loud from 1 to 4. No specific distance from the chest is required.

NOTE: During Tasks 1 and 3 on the Hand Coordination test, no clues will be assessed if the subject "steps" under or around the fist instead of "stepping" over the fist as demonstrated by the officer.

NOTE: When a clue is observed in any test, it is only counted once, no matter how many times it was observed. The only exception is for those performance clues which require compliance during each attempt during the Finger to Nose test.

TAKING FIELD NOTES ON THE SEATED BATTERY OF SFSTs

As previously discussed, it is critically important for officers to develop a method of accurately documenting evidence during a BUI investigation. The preferred method of compiling the necessary field notes is the use of a structured note-taking form, such as the SFST Performance Report form provided with this course of instruction. The form makes it easy to record brief "notes" on each step of the detection process and is especially helpful in documenting the clues for the seated battery of SFSTs.

The form is broken down into sections to make it easier to use, but our focus is on the sections that refer to the seated battery of SFSTs (to include HGN).

Horizontal Gaze Nystagmus

As with each of the SFSTs, the note-taking section for the HGN test includes the standardized instructions for reference. There is ample space to document each of the

clues observed in either or both eyes, and any additional space may be used to note anything else observed during test performance that may be of evidentiary value.

Finger To Nose

In addition to the instructions for this test, the form provides a system to document any clues observed during either the instruction or performance stage. There are many possible clues for this test, and there is potentially a lot of evidence to be observed and documented in a very short period of time. Familiarization and practice with this section of the form is very important to ensure effective and accurate documentation of clues.

Palm Pat

Documentation of the clues observed during administration of the Palm Pat test is a bit more straight-forward than for the Finger To Nose test. It is important to remember that each clue, although possibly observed more than one time, may only be documented once in the total number of clues. It is recommended that officers use any blank space to document clues which may have been repeated to assist in writing the arrest report. For example, if you observed the suspect start correctly and begin rolling hands consistently when the speed is increased, it would be good to note that fact.

Hand Coordination

The section of the form for use in documenting the clues for the Hand Coordination test is broken down into both the instruction and performance stages. The performance stage portion is also simplified by being broken down into each of the test's four tasks.

REMEMBER, your field notes may be subpoenaed as evidence in court. It is important that any system you develop for making quick notes through the use of "short-hand" is as describable, usable, complete and consistent as possible.

LIMITING FACTORS OF THE SEATED BATTERY OF SFSTs

It is important to consider that any or all of the SFSTs in the seated battery may not be appropriate for people with certain disabilities, such as:

1. People with certain arm, shoulder or elbow problems may not be able to perform the tests.

2. People missing a portion of an index finger that includes the first joint (knuckle nearest the fingertip) or more should not be administered the FTN. If the entire joint (knuckle) nearest the fingertip is still intact, the FTN may be administered.

Make note of any potential limiting factors, including any observed or stated by the subject, to assist you in giving proper weight to any evidence observed during the performance of the seated battery tests. If obvious disabilities are observed which would significantly limit the subject's ability to perform one or more of the tests, it is best not to administer the test(s) in question.

The seated battery must be administered while providing a reasonably safe and stable environment for the subject and officer. It is recommended to administer the seated battery in calmer waters, i.e. backwaters, coves, bays or stabilized on the shoreline in a location that minimizes significant boat movement.

TEST YOUR KNOWLEDGE

1. What tests are included in the seated battery of SFSTs?

   A. _____

   B. _____

   C. _____

   D. _____

2. To ensure that a suspect is in a stable seated position, the officer should

   _____.

3. For the Finger To Nose test, the suspect is to tilt the head back to about a

   _____ angle.

4. When the suspect is told to touch the tip of the nose with the tip of the index finger, it is important that the officer_____.

5. A total of _____ clues indicate a BAC of 0.08 or higher for the Finger To Nose test.

6. Keeping the hands/fingers parallel is an important part of the _____.

7. A total of _____ clues indicate a BAC of 0.08 or higher for the Palm Pat test.

8. The suspect should perform the Palm Pat test for at least _____ and no more than _____.

9. The Hand Coordination test is adapted from the _____.

10. The Hand Coordination test involves _____ tasks in the performance stage.

11. A total of _____ clues indicate a BAC of 0.08 or higher for the Hand Coordination test.

12. To ensure accuracy of note-taking on the SFSTs, it is recommended that officers use_____.

Field Sobriety Test Performance Report

Subject Name_____ Start time_____

PRE-TEST QUESTIONS Notes:

Do you have any physical defects or disabilities? Y N
Do you have any defects with your eyes? Y N
Are you sick or injured? Y N
Are you under the care of a doctor or dentist? Y N
Are you taking any medication or drugs? Y N

GENERAL INSTRUCTIONS:

Please sit straight at the front edge of your seat. Put your arms down at your sides. Place your feet shoulder-width apart so you are comfortable and stable. Are you stable? *(Response)* **Do not move your feet until the tests are over. Stay in this position and do not do anything else until I tell you to do so. Do you understand?** *(Response)*

HORIZONTAL GAZE NYSTAGMUS

Have the subject remove their eyeglasses, if worn.

Are you wearing contact lenses? ___ *Yes* ___ *No*

Keep your head still and look at the stimulus. Follow the movement of the stimulus with your eyes only. Keep looking at the stimulus until told the test is over. Do you understand? *(Response)*

Elevate the stimulus about 12-15" from the subject's nose. Check for equal pupil size, resting nystagmus and equal tracking.

Clues	Left	Right
Lack of smooth pursuit		
Distinct & sustained nystagmus at max. deviation		
Onset of nystagmus prior to 45-degrees		
Total Clues		

Vertical nystagmus: **Yes**___ **No**___ **Evaluation Criteria: 4 or more clues**

FINGER TO NOSE

- **Make a fist with both hands, extend your index fingers and turn your palms forward. Remain in this position while I explain the test.** *(Demonstrate)* **Do you understand?** *(Response)*
- **When I say begin, tilt your head back to about a 45° angle and close your eyes.** *(Demonstrate)*
- **When I tell you to, touch the tip of your nose with the tip of your index finger and immediately return it to your side.** (*Demonstrate and explain the fingertip, pad and side of fingers and demonstrate touching tip of the nose)*
- **When I say right, you must touch your right index finger to your nose; when I say left, you must touch your left index finger to your nose. Do you understand?** *(Response)*
- **Begin.** *(After head tilt...)* **Left...Right...Left...Right...Right...Left** *(After performance...)* **Open your eyes and straighten your head.**

Instruction Stage		Performance Stage			Left	Right	Left	Right	Right	Left	
Unable to follow instructions		Did not close eyes		Wrong hand							Wrong hand
		Did not tilt head		Wrong finger							Wrong finger
Started at wrong time		Opened eyes during test		Hesitated							Hesitated
				Searched							Searched
		Moved head during test (1"+)		Not fingertip							Not fingertip
				Missed nose							Missed nose
				Did not bring down							Did not bring down
				Total Clues							
				Evaluation Criteria: 9 or more clues							

PALM PAT

- **Place your hands palm to palm with one hand up and one hand down, like this.** *(Demonstrate)* **Remain in this position while I explain the test. Do you understand?** *(Response)*
- **When I tell you to begin, turn the top hand over and count out loud "one," then turn the hand back over and count out loud "two," counting only when the hands make contact, like this.** *(Demonstrate at least two sets)*
- **Repeat this, speed up as you go, and do not stop until told. Make sure to keep your hands and fingers parallel during each pat, like this.** *(Demonstrate)*
- **Do you understand?** *(Response)* **Begin.** *(If necessary, tell to speed up)*

Instruction Stage	
Unable to follow instructions	
Started at wrong time	
Performance Stage	
Did not count as instructed	
Rolled hands	
Double pat	
Chopped pat	
Other improper pat (document)	
Did not increase speed	
Rotated hands	
Stopped before told	
Total Clues	
Evaluation Criteria: 2 or more clues	

HAND COORDINATION

- **Make fists with both hands, place your left fist at the center of your chest and your right fist against your left fist, like this.** (*Demonstrate)*
- **Remain in this position while I explain the test. Do you understand?** *(Response)*
- **When I say begin, you must perform four tasks.**
- **The <u>first</u> task is to count out loud from one to four while you move your fists in a step-like fashion, making contact between your fists at each step.** *(Demonstrate while counting out loud 1, 2, 3, 4)*
- **The <u>second</u> task is to memorize the position of your fists after you have counted to four, clap your hands three times and return your fists to the memorized position.** (*Demonstrate)*
- **The <u>third</u> task is to move your fists in a step-like fashion in reverse order; counting out loud from five to eight and returning your left fist to your chest.** *(Demonstrate while counting out loud 5, 6, 7, 8)*
- **The <u>fourth</u> task is to open your hands with palms down and place them in your lap.** *(Demonstrate)*
- **Do you understand?** (*Response)* **Begin.**

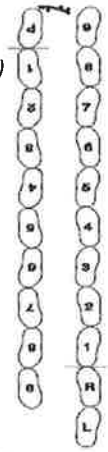
Instruction Stage	
Unable to follow instructions	
Started at wrong time	
Performance Stage	
Task 1 – Forward Steps	
Improper count	
Improper touch	
Did not perform	
Task 2 – Hand Clapping	
Improper count	
Improper touch	
Improper return	
Did not perform	
Task 3 – Return Steps	
Improper count	
Improper touch	
Did not return left fist to chest	
Did not perform	
Task 4 – End Position	
Improper position	
Did not perform	
Total Clues	
Evaluation Criteria: 3 or more clues	

Field Sobriety Test Performance Report

Subject Name_____

WALK AND TURN

- **Place your left foot on the line. Place your right foot on the line in front of the left foot, with the heel of the right foot against the toe of the left.** *(Demonstrate)*
- **Place your arms at your sides. Maintain this position until I have completed the instructions. Do not start to walk until I tell you to do so. Do you understand?** *(Response)*
- **When I tell you to start, take nine heel-to-toe steps on the line, turn, and take nine heel-to-toe steps down the line.** *(Demonstrate 3 heel-to-toe steps)*
- **When you turn, keep the front foot on the line and turn by taking a series of small steps with the other foot, like this.** *(Demonstrate turn and 3 steps back)*
- **While you are walking, keep your arms at your sides, watch your feet at all times and count your steps out loud. Once you start walking, do not stop until you have completed the test. Do you understand?** *(Response)*
- **Begin.**



Instruction Stage	
Cannot keep balance	
Starts too soon	
Performance Stage	
Stops while walking	
Does not touch heel-to-toe (1/2"+)	
Steps off the line	
Uses arms to balance (6"+)	
Improper turn	
Incorrect number of steps	
Total Clues	
Cannot perform test (explain)	
Evaluation Criteria: 2 or more clues	

ONE LEG STAND

- **Stand with your feet together and your arms at your sides, like this.** *(Demonstrate)*
- **Do not start until I tell you to do so. Do you understand?** *(Response)*
- **When I tell you to start, raise either leg with the foot approximately six inches off the ground with your raised foot parallel to the ground.** *(Demonstrate)*
- **You must keep both legs straight, arms at your sides. While holding that position, count out loud in the following manner: one thousand one, one thousand two, one thousand three, and so on until told to stop.**
- **Keep your arms at your sides at all times and keep watching the raised foot. Do you understand?** *(Response)*
- **Begin.** *(30 seconds)*

Clues	
Sways while balancing	
Uses arms to balance (6"+)	
Hopping	
Puts foot down	
Total Clues	
Cannot perform test (explain)	
Evaluation Criteria: 2 or more clues	

Phase I: Vessel in Motion – Document initial observations to describe vessel maneuvers or operator/occupant behaviors that may be associated with alcohol/drug influence prior to the stop. If no Phase I observations are made, describe initial contact.

Phase II: Personal Contact – Document observations made during face-to-face contact with the operator.

Operator Actions
- □ Cannot find registration/wallet
- □ Tries to conceal something
- □ Produces wrong documents
- □ Fumbles items
- □ Excessive movement
- □ Forgets to respond to request
- □ Incorrect answers
- □ Problem using fingertips
- □ Avoids eye contact
- □ Ignores questions
- □ Lights cigarette or eats/chews
- □ Angry/abusive language
- □ Admits to drinking
- □ Difficulty with safety equip.
- □ Unusual statements

Breath

Alcoholic beverage:
- □ Strong
- □ Moderate
- □ Faint
- □ None
- □ Marijuana
- □ Breath mint/cover odor

Face
- □ Pale
- □ Flushed
- □ Sweating
- □ Sunburned
- □ Normal

Eyes
- □ Bloodshot
- □ Watery
- □ Glassy
- □ Dilated pupils
- □ Constricted pupils
- □ Droopy eyelids
- □ Normal

Unusual Actions
- □ Hiccupping
- □ Belching
- □ Vomiting
- □ Gagging/dry heaves
- □ Fighting
- □ Laughing
- □ Crying

Attitude
- □ Jovial
- □ Talkative
- □ Cooperative
- □ Indifferent
- □ Sleepy
- □ Profanity
- □ Combative
- □ Belligerent
- □ Insulting

Clothing
(describe)

Balance
- □ Normal
- □ Swaying
- □ Falling
- □ Sits down
- □ Supports against object
- □ Staggering
- □ Unsteady
- □ Wide stance
- □ Needs assistance

Notes:

Phase III – Pre-Arrest Screening – Document any other observations made during field sobriety testing to describe finding of probable cause to place subject under arrest for operating while impaired.

Officer:		**Agency:**		**Case #:**	
Date:		**Location:**			
Subject Name:				**D/O/B:**	
Height:	**Weight:**	**Eyes:**	**Hair:**	**Gender:**	
PBT results:	**@ hrs.**	**Evidentiary breath test results:**	**@ hrs.**	**Time of arrest:**	**hrs.**

Module 10

Instructor-Led Demonstrations
And
Dry-Run Practice

Module 10

BUI Detection and Enforcement Course

INSTRUCTOR-LED DEMONSTRATIONS / DRY-RUN PRACTICE

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

- Discuss and properly administer the seated battery of SFSTs.
- Discuss and recognize the clues of the seated battery SFSTs.

CONTENT SEGMENTS	LEARNING ACTIVITIES
A. Live Classroom Demonstrations	o Instructor-Led Demonstration
B. Dry-Run Practice	o Student Demonstrations

INSTRUCTOR-LED DEMONSTRATIONS

The instructor(s) will lead the class through a demonstration of the entire seated battery of SFSTs, including:

- Horizontal Gaze Nystagmus (can be administered either seated or standing)
- Finger to Nose
- Palm Pat
- Hand Coordination

DRY-RUN PRACTICE

You will be assigned to work in pairs to practice the administration of the entire seated battery of SFSTs. The instructors will observe how you administer the SFSTs and will make appropriate comments and suggestions to ensure that the seated battery is administered correctly.

Proper administration of these and all SFSTs is very important for reasons discussed earlier. You will be expected to become proficient in SFST administration and evaluation, so proper practice is essential. The following is a reminder of what is expected during administration of the seated battery of SFSTs:

General Instructions

You will be expected to provide the following general instructions to ensure that the subject is in the correct position and is prepared to perform the seated battery of SFSTs:

- Please sit straight at the front edge of your seat.
- Put your arms down at your sides.
- Place your feet shoulder-width apart so you are comfortable and stable. Are you stable? *(Wait for response)*
- Do not move your feet until the tests are over. Stay in this position and do not do anything else until I tell you to do so.
- Do you understand? *(Get acknowledgement of understanding)*

Horizontal Gaze Nystagmus

You will be expected to perform as follows:

1. Give a proper introduction to the test.

2. Assess the appropriate test considerations. (Subject position, indications of medical/physiological issues, etc.)

3. Provide proper instructions for the test.

The standard instructions for the Horizontal Gaze Nystagmus test are:

- Remove eyeglasses/check for contacts.
- Tell the subject, "Keep your head still and look at the stimulus. Follow the movement of the stimulus with your eyes only. Keep looking at the stimulus until told the test is over. Do you understand?" *(Get acknowledgement of understanding)*
- Position stimulus. (12 to 15 inches and elevated)
- Check for equal pupil size, resting nystagmus and equal tracking.
- Check for lack of smooth pursuit.
- Check for distinct and sustained nystagmus at maximum deviation.
- Check for onset of nystagmus prior to 45-degrees.
- Total the clues.
- Check for Vertical Gaze Nystagmus.

4. Properly interpret the test results.

You should assess the presence of each of the three possible clues in each eye.

- Lack of smooth pursuit.
- Distinct and sustained nystagmus at maximum deviation.
- The onset of nystagmus prior to 45 degrees.

5. Properly administer the Vertical Gaze Nystagmus test and note any observations.

6. You should recognize that the presence of four or more clues during the HGN test indicates a BAC of 0.08 or higher.

Finger To Nose

You will be expected to perform as follows:

1. Provide a proper introduction to the test.

2. Assess the appropriate test considerations (subject must be seated).
3. Provide the proper instructions for the test.
The standard instructions for the Finger To Nose test are:

- *(Have subject seated in the seated position)*
- Make a fist with both hands, extend your index fingers, and turn your palms forward. *(Demonstrate)*
- Remain in this position while I explain the test. Do you understand? *(Wait for response)*
- When I say begin, tilt your head back at about a 45-degree angle and close your eyes. *(Demonstrate without closing your eyes)*
- When I tell you to, touch the tip of your nose with the tip of your index finger and immediately return it to your side. *(Demonstrate arm and hand movement.)*
- *(Show tip of index finger as area immediately below fingernail tip, not the fingerprint pad area of finger and demonstrate touching the tip of the nose - the dime-sized portion of the nose at the very end of the nose.)*
- When I say "right," you must touch your right index finger to your nose; when I say "left," you must touch your left index finger to your nose.
- Do you understand? *(Get acknowledgement of understanding)*
- Begin
- Left, Right, Left, Right, Right, Left.
- Open your eyes and straighten your head.

4. Properly interpret the test results.

You should assess the following clues of impairment:

Compliance with instructions
- Unable to follow instructions
- Started at wrong time
- Did not close eyes
- Did not tilt head
- Moved head during test
- Opened eyes during test

Accuracy with each attempted finger to nose
- Wrong hand
- Wrong finger
- Hesitated
- Searched
- Not fingertip
- Missed tip of nose
- Did not bring hand down

You should recognize that the presence of nine or more clues during the Finger To Nose test indicates a BAC of 0.08 or higher.

Palm Pat Test

You will be expected to perform as follows:

1. Provide the proper introduction to the test.

2. Assess the appropriate test considerations (subject must be seated).

3. Provide the proper instructions for the test.

The standard instructions for the Palm Pat test are:

- Place your hands palm to palm with one hand up and one hand down, like this. *(Demonstrate)*
- Remain in this position while I explain the test. Do you understand? *(Wait for response)*
- When I tell you to begin, turn the top hand over and count out loud, "one," then turn the hand back over and count out loud, "two," counting only when the hands make contact, like this. *(Demonstrate at least two sets)*
- Repeat this, speed up as you go, and do not stop until told.
- Make sure to keep your hands and fingers parallel during each pat, like this. *(Demonstrate)*
- Do you understand? *(Get acknowledgement of understanding)*
- Begin. *(If necessary)* Tell to "speed up…speed up…"
- *Have subject continue for at least 10 and no more than 15 seconds.*

4. Properly interpret the test results.

You should assess the following clues of impairment:

Start Position
- Unable to follow instructions
- Started at wrong time

Performance
- Did not count as instructed
- Rolled hands
- Double pat
- Chopped pat
- Other improper pat (document)
- Did not increase speed
- Rotated hands
- Stopped before told

You should recognize that the presence of two or more clues during the Palm Pat test indicates a BAC of 0.08 or higher.

Hand Coordination Test

1. Provide the proper introduction to the test.

2. Assess the appropriate test considerations (subject must be seated).

3. Provide the proper instructions for the test.

The standard instructions for the Hand Coordination Test are:

- Make fists with both hands, place your left fist at the center of your chest and your right fist against your left fist, like this. *(Demonstrate)*
- Remain in this position while I explain the test. Do you understand? *(Wait for response)*
- When I say begin, you must perform four tasks:
- The first task is to count out loud from one to four while you move your fists in a step-like fashion, making contact between your fists at each step. *(Demonstrate while counting out loud 1, 2, 3, 4)*
- The second task is to memorize the position of your fists after you have counted to four, clap your hands three times, and return your fists to the memorized position. *(Demonstrate)*
- The third task is to move your fists in a step-like fashion in reverse order, counting out loud from five to eight and returning your left fist to your chest. *(Demonstrate while counting out loud 5, 6, 7, 8)*
- The fourth task is to open your hands with palms down and place them in your lap. *(Demonstrate)*
- Do you understand? *(Get acknowledgement of understanding)*
- Begin.

4. Properly assess the test results.

You should assess the following clues of impairment:

Starting Position
- Unable to follow instructions
- Started at wrong time

Task One - Forward Steps
- Improper count
- Improper touch
- Did not perform

Task Two - Hand Clapping

- Improper count
- Improper touch
- Improper return
- Did not perform

Task Three - Return Steps

- Improper count
- Improper touch
- Did not return left fist to chest
- Did not perform

Task Four - End Position

- Improper position
- Did not perform

You should recognize that the presence of three or more clues during the Hand Coordination test indicates a BAC of 0.08 or higher.

Module 11

Standing Battery of Standardized Field Sobriety Tests

Module 11

BUI Detection and Enforcement Course

STANDING BATTERY OF STANDARDIZED FIELD SOBRIETY TESTS

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

- Demonstrate the appropriate administrative procedures for the standing battery of Standardized Field Sobriety Tests.

CONTENT SEGMENTS	LEARNING ACTIVITIES
A. Review of the Walk and Turn and One-Leg Stand SFSTs	○ Instructor-led discussion and demonstrations
B. Horizontal Gaze Nystagmus	
C. Walk and Turn	
D. One-Leg Stand	
E. Limitations of These Tests	

REVIEW OF THE WALK AND TURN AND ONE-LEG STAND SFSTs

Limiting officers to only one possible battery of SFSTs affects opportunities to gather additional important evidence of impairment in certain situations. As you should recall, both the Walk and Turn (WAT) and One-Leg Stand (OLS) tests have limitations based on either suspect age or physical condition (weight). Research indicated that suspects over 65 years of age or 50 or more pounds overweight were likely to have difficulty performing one or both of these tests.

In addition, officers are likely to occasionally encounter suspects who have a hip, leg, knee or foot disability or injury. Suspects with a glass eye or other type of eye disorder are also encountered on occasion. There are other times when a smooth, level, hard surface is simply not available for use in administering these tests. Use of the standing battery of SFSTs is not likely to be appropriate in these circumstances.

On the other hand, there are times when the seated battery of SFSTs may not be appropriate either. Should the suspect be missing one or more index fingers, the Finger to Nose test should not be administered. A person with an injury to one or more hand, wrist, arm or shoulder is a less likely candidate for the seated battery.

For these reasons and a host of other possibilities, is important to have a full suite of validated divided attention tests to help officers build probable cause and make appropriate arrest/no arrest decisions. While the validated seated battery of SFSTs is well suited for use on the water and in other circumstances where WAT and OLS are not appropriate, there are other times when the traditional standing battery of SFSTs may be the best option.

The standing battery of SFSTs has been widely used for decades, and courts have widely accepted their use as a means of establishing probable cause of impairment. This section will review the standing battery of SFSTs simply as a means of reinforcing student proficiency and understanding of how best to utilize these valuable "tools" for law enforcement officers.

HORIZONTAL GAZE NYSTAGMUS

HGN has already been covered in this course, so that information will not be repeated here. It is important to remind students that this test has been proven effective in either the seated or standing position, so it is included as a part of both the seated and standing batteries of SFSTs.

WALK AND TURN

The Walk and Turn test (WAT) is a divided attention test that requires a suspect to divide attention among both mental and physical tasks. Mentally, the suspect is required to comprehend verbal instructions, process that information and recall the instructions and demonstrations. Physically speaking, the subject must maintain balance and coordination while standing in the instruction position, while waking and during the prescribed turn.

There are two stages for the WAT; the instruction stage and the walking stage. Both stages are important parts of this test, and each can reveal important evidence of impairment.

The subject is required to take nine heel-to-toe steps down a straight line, turn around in the prescribed manner, and then return by taking nine heel-to-toe steps back up the line. While performing the test, the subject must watch the feet, count each step out loud, keep arms to the side and not stop until the test is completed. A designated straight line may be difficult to find in field situations, and an imaginary line is acceptable in this instance.

Recent field validation studies have indicated that varying environmental conditions have no affected the suspect's ability to perform this test.

Demonstration of the Instruction Stage: Initial Positioning and Verbal Instructions

For standardization in the performance of this test, have the suspect assume the heel-to-toe stance by giving the following verbal instructions accompanied by demonstrations:

- Place your left foot on the line. (real or imaginary) *(Demonstrate)*
- Place your right foot on the line ahead of the left foot, with heel of the right foot against the toe of the left foot. *(Demonstrate)*
- Place your arms down at your sides. *(Demonstrate)*
- Maintain this position until I have completed the instructions. Do not start to walk until I tell you to do so.
- Do you understand? *(Make sure suspect indicates understanding)*

This position is not a stance that people normally choose to stand in, but it is not difficult for a sober person in reasonably good health to maintain for several minutes. The challenge for an impaired subject is to focus on maintaining this simple position while watching your demonstrations and processing the remaining instructions. They simply cannot focus on all of this at one time.

There are two specific clues that may be observed during the instruction stage. They are failing to maintain that instruction position (breaking from the heel-to-toe stance) or starting to walk before being told to do so. On the other hand, a subject may focus so intently on maintaining balance that there is little or no comprehension of the instructions which follow.

Demonstration and Instruction for the Walking Stage

Explain the test requirements using the following verbal instructions accompanied by demonstrations:

- When I tell you to start, take nine heel-to-toe steps on the line, turn, and take nine heel-to-toe steps down the line. *(Demonstrate 3 heel-to-toe steps)*
- When you turn, keep the front foot on the line and turn by taking a series of small steps with the other foot, like this. *(Demonstrate turn and at least three steps back)*
- While you are walking, keep your arms at your sides, watch your feet at all times and count your steps out loud.
- Once you start walking, do not stop until you have completed the test.
- Do you understand? *(Make sure suspect understands)*
- Begin.

Clues for the Walk and Turn Test

You may observe a number of different behaviors when a suspect performs this test. The research demonstrated that the behaviors listed below are the likely to be observed in someone with a BAC at or above 0.08. Look for the following clues each time this test is given:

- Cannot keep balance while listening to instructions. Two tasks are required at the beginning of this test. The suspect must balance heel-to-toe on the line while listening carefully to the instructions. Typically, the person who is impaired can do only one of these things. The suspect may listen to the instructions but not keep balance. Record this clue if the suspect does not maintain the heel-to-toe position throughout the instructions. (Feet must actually break apart.) Do not record this clue if the suspect sways or uses the arms to balance but maintains the heel-to-toe position.

- Starts too soon. The impaired person may also keep balance but not listen to the instructions. Since you specifically instructed the suspect not to start walking "until I tell you to begin," record this clue if the suspect does not wait and starts any time before being told "Begin."

- Stops while walking. The suspect pauses to regain balance. Do not record this clue if the suspect is merely walking slowly but maintains a steady rhythm.

- Does not touch heel-to-toe. Record this clue only if the suspect leaves a space of one-half inch or more between the heel and toe on any step.

- Steps off the line. The suspect steps so that one foot is entirely off the line.

- Uses arms to balance. The suspect raises one or both arms 6-inches or more from the side in order to maintain balance.

- Improper turn. There are many ways a suspect can perform an improper turn, such as removing the front foot from the line while turning or losing balance during the turn. Also record this clue if the suspect has not followed directions as demonstrated, i.e., spins or pivots around. Document the specific performance which led you to indicate an improper turn.

  NOTE: There may be times when the suspect takes a wrong number of steps of begins the heel-to-toe walk with the wrong foot resulting in a turn on the right foot instead of the left. If this occurs, the suspect would normally be assessed a clue for an incorrect number of steps and not assessed a clue for an improper turn if the turn was made using a series of small steps as instructed and the suspect did not lose his/her balance while attempting the turn.

- Incorrect number of steps. Record this clue if the suspect takes more or fewer than nine steps in either direction.

Note: If suspect cannot do test, note any clues observed and document the reason for not completing the test, e.g. suspect's safety. It is reasonable to terminate this test if the suspect steps off the line three or more times, falls or nearly falls or gets "leg-locked."

Should the suspect have difficulty with this test (for example, steps off the line), allow the test to continue from that point, not from the beginning. This test may lose its sensitivity if it is repeated several times.

Observe the suspect from a safe distance and limit your movement which may distract the subject. **Always consider officer safety.**

Based on the research (CA, 1998), if the suspect exhibits two or more of the validated clues on this test or fails to complete it, there is a high probability the suspect's BAC is at or above 0.08. Using this criterion, you will be able to correctly evaluate about 79% of your suspects using the walk-and-turn test alone.

Restrictions

Walk-and-Turn test requires either a designated straight line or an imaginary line and should ideally be conducted on a reasonably dry, hard, level, non-slippery surface. There should be sufficient room for suspects to complete nine heel-to-toe steps. Note: Recent field validation studies have indicated that varying environmental conditions have not affected a suspect's ability to perform this test.

The research indicated that individuals over 65 years of age and those with back, leg or inner ear problems had difficulty performing this test. It is recommended that the seated battery of SFSTs be administered for persons over 65. Also, individuals wearing heels more than 2 inches high should be given the opportunity to remove their shoes.

ONE-LEG STAND

The One-Leg Stand (OLS) test also relied on the concept of divided attention. The suspect must divide attention between simple tasks such as balancing, listening to and comprehending simple instructions and counting out loud. None of these tasks is difficult in itself, but the combination may be challenging for an individual who is impaired.

There are two stages for the OLS; the instruction stage and the balance and counting stage. Both are important and may yield valuable evidence of impairment.

This test requires that the subject stand on one leg with the other leg held out straight with the foot elevated about 6-inches above and parallel to the ground for a 30-second time period. A smooth, dry, level and non-slippery surface is preferred to ensure the safety of the subject.

Recent field validation studies have indicated that varying environmental conditions have not affected a subject's ability to perform this test.

Demonstration and Instructions for the Instruction Stage: Initial Positioning and Verbal Instructions

Initiate the test by giving the following verbal instructions accompanied by demonstrations.

- Stand with your feet together and your arms down at your sides, like this. *(Demonstrate)*
- Do not start until I tell you to do so.
- Do you understand? *(Make sure suspect indicates understanding)*

Demonstration and Instructions for the Balance and Counting Stage

Explain the test requirements using the following verbal instructions accompanied by demonstrations:

- When I tell you to start, raise either leg with the foot approximately six inches off the ground with your raised foot parallel to the ground. *(Demonstrate)*
- You must keep both legs straight, arms at your sides.
- While holding that position, count out loud in the following manner: "one thousand one, one thousand two, one thousand three and so on until told to stop.
- Keep your arms at your sides at all times and keep watching the raised foot.
- Do you understand? *(Make sure suspect indicates understanding)*
- Begin. *(Officer should always time the 30 seconds. Test should be discontinued after 30 seconds)*

Observe the suspect from a safe distance. If the suspect puts the foot down, give instructions to pick the foot up again and continue counting from the point at which the foot touched the ground. Regardless of the speed in which the suspect counts, the test should be terminated after 30 seconds.

Clues for the One-Leg Stand

You may observe a number of different behaviors when a suspect performs this test. The research found the behaviors listed below are the most likely to be observed in someone with a BAC at or above 0.08. Look for the following clues each time the OLS test is administered:

- Sways while balancing. This refers to a very distinct, very noticeable side-to-side or front-to-back movement of the subject's elevated foot or body. Slight tremors of the foot or body should not be interpreted as swaying.

- Uses arms to balance. Suspect moves either or both arms six or more inches from the side of the body in order to keep balance.

- Hopping. Suspect is able to keep one foot off the ground, but resorts to hopping in order to maintain balance (foot comes off the ground).

- Puts foot down. The suspect is not able to maintain the one-leg stand position, putting the foot down one or more times during the 30-second count.

It is possible to observe more than one clue at a time during the OLS test. For example, a subject may hop and sway at the same time or put foot down and use arms to balance simultaneously.

NOTE: If the subject cannot perform the test, such as if the foot is put down three or more times or the subject falls or nearly falls, it is appropriate to terminate the test. Describe the behavior which led to the termination and record any clues observed.

Remember - time is a critical part of this test. The research has shown a person with a BAC at or above 0.08 can often maintain balance for up to 25 seconds but is less likely to maintain that position for as long as 30 seconds.

Test Interpretation

Based on the research, if an individual shows two or more clues or fails to complete the OLS test, there is a high probability their BAC is at or above 0.08. Using that criterion, you will accurately evaluate about 83% of the people you test as to whether their BAC is at or above 0.08 (California, 1998).

Observe the suspect from several feet away and remain as motionless as possible during the test so as not to interfere. If the suspect puts the foot down, give instructions to pick the foot up again and continue counting from the point at which the foot touched the ground. If the suspect counts very slowly, terminate the test after 30 seconds. If the suspect is counting quickly, have the suspect continue counting until 30 seconds have elapsed.

Restrictions

The One-Leg Stand requires a reasonably dry, hard, level and non-slippery surface. The suspect's safety should be considered at all times.

The research indicated that individuals over 65 years of age, those with back, leg or inner ear problems, or people who are 50 or more pounds overweight had difficulty performing this test. It is recommended that the seated battery of SFSTs be administered for persons over 65 and those who are 50 or more

pounds overweight. Individuals wearing heels more than 2 inches high should be given the opportunity to remove shoes.

TEST YOUR KNOWLEDGE

1. In addition to HGN, what other tests comprise the standing battery of SFSTs?

_____, _____

2. Walk-and-Turn requires a real or imaginary line and _____

_____

3. During the _____ stage of the Walk-and-Turn test, the suspect is required to count out loud.

4. When properly administered, the Walk-and-Turn can determine whether a suspect's BAC is at or above 0.08 ____ percent of the time.

5. During the Walk-and-Turn test, a suspect who steps off the line during the first 9 steps, once again during the second 9 steps, and who raises arms for balance twice during the second nine steps has produced _____ distinct clue(s).

6. The Walk-and-Turn may not be valid when administered to persons who are over _____.

7. During the _____ stage of the One-Leg Stand test, the suspect must raise one foot and maintain balance.

8. The One-Leg Stand test requires that the suspect keep the foot elevated for _____.

9. When properly administered, the One-Leg Stand can determine whether a suspect's BAC is at or above 0.08 ____ percent of the time.

10. In the One-Leg Stand test, a suspect who sways and stops counting at "25" has exhibited _____ distinct clue(s).

11. In the One-Leg Stand test, a suspect who raises arms, hops, and repeats "15" has exhibited _____ distinct clue(s).

Module 12

Testing Subjects: Session One

Module 12

BUI Detection and Enforcement Course

TESTING SUBJECTS: SESSION ONE

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

- Properly administer the seated battery of SFSTs;
- Properly observe and record a subject's performance utilizing the SFST Performance Report form;
- Properly interpret the subject's performance;
- Properly use and maintain the SFST Field Arrest Log. *(The use of the log is recommended.)*

CONTENT SEGMENTS	LEARNING ACTIVITIES
A. Procedures	o Instructor-Led Presentation
B. Practical Exercise	o Student Practice Session
C. Use and Maintenance of SFST Field Arrest Log	o Instructor-Led Presentation

PROCEDURES

During this session, you will work in a team with another student to observe the administration of the seated battery of Standardized Field Sobriety Tests to volunteers who may have consumed alcoholic beverages and then you will evaluate their performance. Some of these volunteers will have BACs at or above 0.08. Others will be below that level. You will carefully note and record any clues observed on the SFST Performance Report form as each volunteer performs the SFSTs, and then you will attempt to distinguish those "0.08 and above" from those "below 0.08."

This session involves the use of a series of videos to demonstrate the administration and performance of the SFSTs rather than the use of live drinking subjects in the classroom. You will be given an opportunity to observe each subject perform the seated battery of SFSTs slowly and systematically, then you will be expected to evaluate each subject's performance just as if this was a face-to-face exercise with drinking subjects.

Each subject will be evaluated individually, and you are expected to record your observations in a manner which will fully document all important pieces of evidence to help make a case as to whether the subject is at or above 0.08 BAC. The instructors will lead a class discussion on the observations and subsequent determinations. You will learn the actual BAC level of each subject observed.

You will also learn to record your observations on an SFST Field Arrest Log.

PRACTICAL EXERCISE

You will view the NASBLA-approved SFST videos, record all observations and interpret any evidence of impairment observed for each subject.

It is important to recognize that it may be challenging to determine if any nystagmus occurs prior to 45-degrees in some instances as a result of the use of video. You will be expected to estimate if the nystagmus is occurring based on the amount of white still showing in the corner of the eye being evaluated, although it is recognized that this, in itself, is not the most accurate way to make such a determination.

Students will be expected to report their observations made for each subject. Following discussion on each, the actual BAC levels will be revealed.

USE AND MAINTENANCE OF THE SFST FIELD ARREST LOG

The SFST Field Arrest Log is used to record the results of each administration of the SFSTs, whether administered during training or to either BUI or DUI suspects. This log is a very important tool which, when properly used, can fully document an officer's

experience and proficiency in administering the SFSTs and interpreting evidence observed. A well-kept SFST Field Arrest Log can be valuable evidence in court.

The log should be used to document ALL SFSTs administered, even those which did not lead to arrest or when inaccurate determinations were made. The use of this log is highly recommended by both NASBLA and the International Association of Chiefs of Police (IACP). You will be encouraged to transfer documentation from the SFST Performance Report form to the log during this training course.

The log is intended to note the following:

- The date the SFSTs were administered.
- The suspect's name.
- The results (number of clues observed) of each field sobriety test.
- A "+" or "-" to indicate your determination of "at or above" or "below" 0.08 BAC.
- Whether or not the suspect was arrested (in the case of training, simply insert "training").
- The subject's actual BAC level, if available.

NASBLA Boat Operations and Training

SFST FIELD ARREST LOG

Date	Suspect Name	HGN	FTN	Palm Pat	Hand Coordination	Walk and Turn	One- Leg Stand	BAC +/- .08	Arrest Y/N	Measured BAC

Officer_____ ID#_____

Module 13

Student-Led Demonstrations
And
Dry-Run Practice

Module 13

BUI Detection and Enforcement Course

STUDENT-LED DEMONSTRATIONS / DRY-RUN PRACTICE

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

- Discuss and properly administer the seated battery of SFSTs.
- Discuss and recognize the clues of the seated battery SFSTs.

CONTENT SEGMENTS	LEARNING ACTIVITIES
A. Live Classroom Demonstrations	o Student-Led Demonstrations
B. Dry-Run Practice	o Student Practice

STUDENT-LED DEMONSTRATIONS

The instructor(s) will select two students to demonstrate the entire seated battery of SFSTs, with one administering the tests and the second serving as the subject. Once completed, a second pair of students will be selected to repeat the demonstrations, to include:

- Horizontal Gaze Nystagmus
- Finger to Nose
- Palm Pat
- Hand Coordination

DRY-RUN PRACTICE

You will be assigned to again work in pairs to practice the administration of the entire seated battery of SFSTs. The instructors will observe how you administer the SFSTs, and will make appropriate comments and suggestions to ensure that the seated battery is administered correctly.

Proper administration of these and all SFSTs is very important for reasons discussed earlier. You will be expected to become proficient in SFST administration and evaluation, so proper practice is essential. Refer to the SFST Performance Report form for the administrative procedures for the seated battery of SFSTs.

Module 14

Testing Subjects: Session Two

Module 14

BUI Detection and Enforcement Course

TESTING SUBJECTS: SESSION TWO

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

- Properly administer the seated battery of SFSTs;
- Properly observe and record a subject's performance utilizing the SFST Performance Report form;
- Properly interpret the subject's performance;

CONTENT SEGMENTS	LEARNING ACTIVITIES
A. Procedures	o Instructor-Led Presentation
B. Practical Exercise	o Student Practice Session
C. Session Wrap-Up	o Instructor-Led Discussion
D. Testing Subjects Proficiency Exam	o Evaluation of Subject Performance

PROCEDURES

During this session, you will again work in a team with another student to observe the administration of the seated battery of Standardized Field Sobriety Tests to volunteers who may have consumed alcoholic beverages and evaluate their performance. Some of these volunteers will have BACs at or above 0.08. Others will be below that level. You will carefully note and record any clues observed on the SFST Performance Report form as each volunteer performs the SFSTs and then attempt to distinguish those "0.08 and above" from those "below 0.08."

This session involves the use of a series of videos to demonstrate the administration and performance of the SFSTs rather than the use of live drinking subjects in the classroom. You will be given an opportunity to observe each subject perform the seated battery of SFSTs and will be expected to evaluate each performance just as if this was a face-to-face exercise with drinking subjects.

Each subject will be evaluated individually, and you are expected to record your observations in a manner which will fully document all important pieces of evidence to help make a case as to whether the subject is at or above 0.08 BAC. The instructors will lead a class discussion on the observations and subsequent determinations. As this session concludes, you will learn the actual BAC level of each subject.

You will also record your observations on an SFST Field Arrest Log.

PRACTICAL EXERCISE

You will view additional subjects on the NASBLA-approved SFST videos, record all observations and interpret any evidence of impairment observed for each subject.

SESSION WRAP-UP

During the wrap-up, students will be expected to report their observations made for each subject. Following discussion on each, the actual BAC levels will be revealed.

TESTING SUBJECTS PROFICIENCY EXAM

You will view the Phase Three portion of the on-water scenario and be expected to work independently to evaluate the subject's performance on the seated SFSTs. You will be expected to document your observations as accurately as possible on the SFST Performance Report Form and turn it in for instructor review and later discussion.

Module 15

Logistical Preparedness

Module 15

BUI Detection and Enforcement Course

LOGISTICAL PREPAREDNESS

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

- Describe the importance of prior planning for BUI enforcement.
- Identify steps that can be taken to improve efficiency of BUI enforcement efforts.
- Discuss alternatives to vessel impoundment.

CONTENT SEGMENTS	LEARNING ACTIVITIES
A. The Need for Prior Planning	◦ Instructor-Led Discussion
B. Unique Challenges in BUI Enforcement	
C. Prior Planning Topics	
D. Vessel Impoundment Issues	

THE NEED FOR PRIOR PLANNING

Officers experienced in BUI enforcement agree that a BUI arrest is a major case. The specific tasks involved in detecting violators and identifying BUI evidence can be quite taxing, especially for officers who are inexperienced or lack the appropriate training.

Specific BUI enforcement training, such as the information contained in this course, is a critical link in the overall BUI enforcement effort nationwide. Training is required to ensure that officers have the ability to notice subtle signs of impairment in order to better detect those violating the BUI laws. The Standardized Field Sobriety Tests (SFSTs) are very regimented and require that officers know the details of both the proper administration and evaluation of the exercises.

Making the case is really just the beginning. A BUI case that is poorly documented, even though all of the necessary evidence was available at the time of arrest, is unlikely to be successful at the time of prosecution. Officers must be consistent and thorough in their documentation of elements of the crime and personal observations. Proper documentation of the facts in an arrest report must then be combined with skillful courtroom testimony.

UNIQUE CHALLENGES IN BUI ENFORCEMENT

Officers enforcing the BUI laws face several very unique challenges. As evidence of impairment becomes more obvious during a vessel stop, officers must be prepared to meet these challenges pretty fast. At the conclusion of Phase Two, Personal Contact, an officer may be faced with locating a suitable location for the administration of SFSTs, especially if any of the standing battery of tests (the Walk and Turn and One-Leg Stand) are needed.

Often just getting to an appropriate location requires the ability to either take the suspect's vessel in tow or arrange for towing. Should the suspect eventually be arrested for the BUI violation, the officer has a responsibility to ensure that the suspect's vessel is properly secured. In many instances, a friend or family member can be located to assist with taking charge of the vessel, but there are occasions where waiting for a commercial towing company is the only option.

Officers must keep in mind the fact that the evidence of BUI diminishes rather quickly. A suspect who has just recently consumed their last drink of alcoholic beverage may still have their BAC rising for a short period of time, but soon their BAC will begin to drop. Although there is no reason to "race" to a breath testing facility to get a breath sample, it is important to remember that time is probably in the suspect's favor.

Just getting the suspect to a breath test facility may be a challenge. On many occasions, an officer who initiated a BUI case as a result of a vessel stop will face the challenge of having to secure their patrol vessel and use a vehicle for prisoner transport. Once at the jail or breath testing facility, there are specific requirements in each state pertaining to processing an impaired suspect.

All of these challenges cumulate to give defense attorneys more areas in which to attack an officer's actions and decisions. Although most officers report that only approximately one in ten BUI arrests will result in actual trial, those which end up at trial often put an officer's courtroom skills to the test.

PRIOR PLANNING TOPICS

There are many things an officer can do to better prepare for making a BUI arrest. Even if BUI arrests are not very common in an officer's area of responsibility, maintaining proficiency in the administration of SFSTs is very important. This can be done by practicing with fellow officers or a family member. Occasionally reading the verbal instructions out loud will help ensure that the procedures are smooth and easy to follow when facing an impaired operator with a boatload of friends.

Some other prior-planning tips include:

1. Stay familiar with the SFST Performance Report form and other related documents.
2. Make sure you know the location of all nearby breath testing facilities and are familiar with their procedures for processing a suspect.
3. Keep the phone numbers for local vessel towing services handy.
4. Maintain a supply of all forms required to process a BUI suspect.
5. Stay abreast of any peculiarities of your local court, such as case rulings that may affect your case. Occasionally talk to the Prosecutor's Office to find out if there are any issues you should be aware of.

To become effective at addressing the BUI problem on our waterways, officers should become pro-active in their enforcement efforts. We can improve our efficiency when we:

1. Coordinate with other local officers to develop an enforcement plan.
2. Consider annual high-use time periods and areas where specific targeted enforcement details may be appropriate.
3. Try to utilize multiple officer patrols during peak periods. Reserve/Auxiliary Officers are especially helpful here.
4. Consider which boat ramp may be the best strategic location for launching patrol vessels in order to make prisoner transport as smooth as possible.

5. Place a mobile breath testing unit in a suitable location near a high-use boat ramp when possible. This will also serve as a deterrent for potential violators.
6. Maintain appropriate towing gear in preparation for towing a suspect's vessel.
7. Make sure your vessel is equipped with at least one life jacket that can be fitted to a suspect who is already handcuffed. Prisoners being transported on a patrol vessel should always wear a life jacket, and placing a collar-type PFD on a handcuffed suspect is much easier.
8. Make sure you know what other officers are on the water nearby in case you need assistance. Offering assistance to other officers will help ensure that they will be available to assist you when necessary.

VESSEL IMPOUNDMENT ISSUES

As previously mentioned, many BUI arrest situations will allow that the suspect's vessel be turned over to another responsible, sober person. It is important, though, to be thoroughly familiar with your agency policy regarding releasing a vessel. When an officer is authorized to release the vessel to another person, there are some factors that should be considered.

1. Check to see that the new operator is sober by administering SFSTs (at least HGN), if in doubt.
2. Make sure that the suspect approves of releasing the vessel.
3. Ensure that the new operator is comfortable with operating the boat and finding their way back to shore.
4. Consider the current weather conditions.
5. Be careful to always use good judgment and discretion.

Keep in mind that even when you have planned to the very best of your ability and are prepared in every aspect, your plan is subject to fail on occasion. Marine and conservation officers are some of the best at improvising when the situation dictates, and BUI cases should not be the exception. Keeping an open mind, using proper judgment and discretion, and always considering your safety and that of others around you will help ensure that you will succeed against all odds.

Module 16

Live Alcohol Workshop

Module 16

BUI Detection and Enforcement Course

LIVE ALCOHOL WORKSHOP

This session will involve groups of students taking turns administering the seated battery of SFSTs to subjects who have been "dosed" to specific BAC levels and then evaluating their levels of impairment. The students are to use the training received thus far to make a decision as to whether there is evidence to determine if each suspect is at or above 0.08 or if they are below 0.08.

The groups are expected to document all evidence of impairment on the SFST Performance Report form and to be prepared to describe their observations during the session wrap-up.

Each drinking subject will move from one team of students to the next, and the instructors will encourage efficiency in evaluating the subjects due to BAC evidence which will be diminishing quickly.

This session will conclude with a wrap-up session where the instructors will solicit each group's findings and decision. Before the session is over, the class will be made aware of the BAC level of each drinking subject just prior to the first evaluation and another BAC level taken as the session concludes.

Module 17

Review And Proficiency Exam

Module 17

BUI Detection and Enforcement Course

REVIEW AND PROFICIENCY EXAM

During this session, each student will be evaluated independently on their ability to properly administer the seated battery of SFSTs. Each student will demonstrate their abilities to an instructor according to a designated schedule.

Students are expected to be proficient at providing the proper instructions and demonstrations for each of the seated battery SFSTs. As encouraged in class, it is recommended that students make use of the tools that have been made available to them throughout this class, namely the SFST Performance Report form or any other document which can assist in proper test administration.

Any student who is not being tested will be expected to spend time preparing for the proficiency exam or, once finished with their exam, review and prepare for the final course exam.

The course instructors will facilitate a course review and question and answer session prior to administering the final course exam.

Module 18

Processing the Arrested Suspect and Preparation for Trial

Module 18

BUI Detection and Enforcement Course

PROCESSING THE ARRESTED SUSPECT AND PREPARATION FOR TRIAL

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

- Discuss the importance of correct processing and report-writing procedures in BUI arrests;
- Discuss the correct sequence of BUI suspect processing procedures;
- Discuss the essential elements of the BUI arrest report;
- Discuss the importance of pre-trial conferences and presentation of evidence during the BUI trial.

CONTENT SEGMENTS	LEARNING ACTIVITIES
A. The Basis for Successful Prosecution	○ Instructor-Led Presentations
B. The Processing Phase	
C. Preparing the BUI Arrest Report: Documenting the Evidence	
D. The Narrative BUI Arrest Report	○ Videotape Presentation
E. Case Preparation and Pre-trial Conference	○ Interactive Discussion
F. Guidelines for Direct Testimony	○ Videotape Presentation

THE BASIS FOR SUCCESSFUL PROSECUTION

The successful prosecution of a BUI case depends upon the officer's ability to organize and present all relevant evidence of each element of the BUI violation. The officer must keep in mind that virtually all of this evidence must be compiled during the three phases of detection -- vessel in motion, personal contact and pre-arrest screening. The officer must be able to establish the level of impairment at the time that the violation occurred; therefore, observations are of critical importance. Subsequent evidence of impairment, such as the evidential chemical test result(s) and/or the evidence gathered during a drug evaluation, will be admissible only when a proper arrest has been made. The efforts expended in detecting, apprehending, investigating and testing/evaluating the BUI violator will be of little value if there is insufficient evidence to prove every element of the violation.

Accordingly, if the evidence is not presented clearly and convincingly in court, the case may be lost no matter how good that evidence may be. Therefore, it is essential that officers develop the ability to write a clear and concise report describing their observations and results of their investigation for presentation to the prosecutor.

What is evidence? Evidence is any alleged fact that is used to determine or demonstrate the truth of an assertion, and it is subject to either being proved or disproved. Evidence of a BUI violation may be of various types:

a. Physical (or real) evidence: something tangible, visible, audible (e.g. a blood sample or a partially empty can of beer).

b. Well-established facts (e.g., judicial notice of accuracy of the breath test device when proper procedures are followed).

c. Demonstrative evidence: demonstrations performed in courtroom (e.g., field sobriety tests).

d. Written matter of documentation (e.g., the citation, the alcohol influence report, the drug evaluation report, evidential chemical test results, etc.).

e. Testimony (the officer's verbal description of what was seen, heard, smelled, etc.).

The prosecutor must be able to establish that the defendant was operating a vessel on a waterway within the state while under the influence of alcohol or drugs. The prosecutor also must establish that the following procedures were followed:

a. That there were reasonable grounds for arrest.

   1. That the accused was the operator or in physical control of the vessel.

   2. That there were grounds for stopping/contacting the accused.

   3. That there was probable cause to believe that the accused was under the influence or impaired.

b. That proper arrest procedures were followed.

c. That proper and due regard was given to suspect's rights.

d. That subsequent observation and interrogation of the suspect provided additional evidence relevant to the alleged offense.

e. That there was a proper request for the suspect to submit to the chemical test.

f. If drugs other than alcohol are involved, the prosecutor also must establish that there were grounds to request a drug evaluation and:

   1. That the evaluation was properly administered.

   2. That the results establish the cause of impairment was a drug or drugs other than alcohol or in combination with alcohol.

   3. That there was a proper request for the suspect to submit to an additional evidential chemical test.

The prosecutor's case will largely be based upon the officer's investigation and, in particular, on the arrest report.

While it is true that many items that are critical to the prosecution are documented on special forms, the officer must keep in mind that the prosecutor may not have the time to search out relevant facts. The decision may be made to amend, reduce or even dismiss the case on the basis of the arrest report alone.

It is, therefore, essential that the report clearly and accurately describes the total sequence of events from the point the subject was first observed, through the arrest, the drug evaluation (if conducted), and subsequent release or incarceration.

THE PROCESSING PHASE

The processing phase of a BUI enforcement incident is the bridge between arrest and conviction of a BUI offender. Processing involves the assembly and organization of all of the evidence obtained during the detection phase to ensure that the evidence will be available and admissible in court. Processing also involves obtaining additional evidence such as a scientific chemical test or tests of the suspect's breath, blood, etc.

Typically, the processing phase may involve the following tasks:

- Inform the offender that he or she is under arrest.
- "Pat-down" or frisk the offender.
- Handcuff the offender.
- Secure the offender in the patrol vessel.
- Secure the offender's vessel, passengers and property.
- Transport the offender to an appropriate facility.
- Arrange for videotaping, if applicable.
- Advise offender of obligations under the implied consent law.
- Administer the evidential chemical test(s).
- Advise offender of Constitutional Rights (Miranda admonition).
- Interview the offender.
- Incarcerate or release the offender.
- Complete the required reports.

The processing phase involves organizing all the evidence gathered during the detection phases to ensure that the evidence is submitted to the court and that it will be admissible.

Additional evidence may be obtained during the processing phase and following physical arrest. Such evidence may come in the form of statements made by the suspect or the results of any chemical test or drug evaluation. Should proper

procedures during this phase not be followed, important evidence might be ruled inadmissible.

This phase begins when the suspect is arrested and ends when the suspect is either incarcerated or released.

PREPARING THE BUI ARREST REPORT: DOCUMENTING THE EVIDENCE

The successful prosecution of a BUI case depends on the clarity and completeness of the arresting officer's report. If you are unable to convey your observations with sufficient clarity to convince others that there was probable cause to believe the suspect was under the influence, your efforts to detect, apprehend, investigate, arrest and test a BUI suspect is of little value.

Chemical test and other evidence gathered subsequent to the arrest may be suppressed if you do not adequately establish probable cause for the arrest prior to requesting the chemical test.

Since BUI trials are often held many months following the actual arrest, it is even more essential to fully document all the evidence in a clear, convincing fashion. A well-written report will enable you, as the arresting officer, to recall the specific details critical to the case and present them in the courtroom during testimony.

It is especially important, given the recent introduction of the seated battery of SFSTs, that evidence gathered during Phase Three – Pre-Arrest Screening is documented thoroughly and with great accuracy both on the forms and in the narrative arrest report.

A well-written, clear and convincing arrest report greatly increases the likelihood that conviction will result. Prosecutors are more likely to follow through with the charges if there is clear and compelling evidence. Defense attorneys are less likely to contest the charge when the evidence in the report is convincing. Overall, the best way to increase your success in BUI enforcement is to become really good at documenting your observations and findings in your arrest report.

The narrative arrest report should be organized around the total sequence of events beginning with the first observation of the suspect and vessel through the incarceration or release. Keeping proper field notes during the detection phases will greatly assist in preparation of the arrest report at a later time.

THE NARRATIVE BUI ARREST REPORT

Report writing is an essential skill for a police officer and learning to do it well becomes second nature with practice. While there is no one best way to write an arrest report, it is helpful to follow a simple format. The effective use of field notes will help jog one's memory in preparing the report. Keep in mind that your agency policies and/or special instructions or requirements of the prosecutor may also provide guidance.

The following outline format identifies the essential ingredients in a BUI offense (arrest) report:

- Initial Observations - Describe your first observations of the subject's actions and reason for the stop. What drew your attention to the vessel? Your first observations are important. Be sure to record the time and location of the first event.

- Vessel Stop - Record any unusual actions taken by the subject. How did the subject react to the emergency light and/or siren? Was it a "normal" stop? Be specific.

- Operator Contact - Record your observations of the subject's personal appearance, condition of the eyes, speech, etc. Record the name and number of passengers in the vessel and where they sat. Describe any unusual actions taken by the subject.

- Operating or Actual Physical Control - In some cases, you may not use the subject's operating behavior as the basis for the contact. Your first contact could result from an accident investigation or from an assistance type of contact. Your observations and documentation must establish that the subject was operating and in actual physical control of the vessel.

- Standardized Field Sobriety Tests - Describe the subject's actions when you administered the SFSTs. Be specific.

- Arrest - Document the arrest decision and ensure that all elements of the violation have been accurately described.

- Disposition/Location of Vessel and Keys - Indicate where the vessel was secured or towed and the location of the keys. If the vessel was released to another party or was driven by a backup officer, record that fact.

- Disposition of Passenger and/or Property – Indicate how passengers and property were properly cared for.

- Transportation - Describe where the subject was transported for evidential testing. Document time of departure and arrival (This information can be obtained from the radio log). Note any spontaneous comments made by the suspect.

- Evidential Test - Document which test(s) were administered and by whom. Be sure to include the results of the evidential test(s).

- Implied Consent/Miranda Warning - Document that the admonishments were given at the appropriate point in the investigation.

- Witness Statements - List all witnesses and attach copies of their statements. Include officers who assisted.

- Notification of Offender's Attorney or Other Party - Document the time and result of subject's telephone call to an attorney or other party.

- Citation/Complaint - Document that the citation/complaint was issued at the appropriate time, if applicable.

- Incarceration or Release - Document the time and place of incarceration or the name and address of the responsible party to whom the offender was released. Be sure to record the time.

- Additional Chemical Test - If the subject is authorized to request additional chemical tests and does so, record the type of test, time administered, location, and party administering the test.

The preceding list is not intended to be all-inclusive. In many cases, several points will not be needed. For persons who are dead, unconscious or otherwise unable to give consent to a chemical test, a search warrant may be required.

The narrative does not have to be lengthy, but it must be accurate and detailed. Remember, successful prosecution depends on your ability to describe the events you observe. Often a trial can be avoided (i.e., an offender may plead guilty) when you do a good job in preparing your arrest report.

A sample narrative arrest report, based on the on-water BUI arrest scenario video shown earlier in this course, is provided at the conclusion of this module for reference.

CASE PREPARATION AND PRE-TRIAL CONFERENCE

Guidelines for Case Preparation

Case preparation begins with your first observation and contact with the suspect. It is essential that all relevant facts and evidence are mentally noted and later documented in field notes or other official forms.

- Use field notes to document evidence.
- Accurately note statements and other observations.
- Review the case with other officers who witnessed the arrest or otherwise assisted you and write down relevant facts.
- Collect and preserve all physical evidence.
- Prepare all required documents and a narrative report.
- Make sure your resume is up-to-date.

Remember, it is essential that all reports be consistent. If differences occur, be sure to explain them adequately. The defense will try to impeach your testimony by pointing out seemingly minor inconsistencies.

Preparation for Trial

Upon receipt of a subpoena or other notification of a trial date, review all records and reports to refresh your memory. If appropriate, revisit the scene of the arrest. Compare notes with assisting officers to ensure that all facts are clear.

During discovery, list all evidence and properly document it. Remember, evidence may be excluded if proper procedures are not followed.

Attention to detail is very important.

Pre-Trial Conference

Successful prosecution is dependent upon the prosecutor's ability to present a clear and convincing case based on your testimony, physical evidence, and supporting evidence/testimony from other witnesses and experts.

If possible, arrange a pre-trial conference with the prosecutor. Review with the prosecutor all evidence and your conclusions. If there are weak points in your case, bring them to the prosecutor's attention. Ask the prosecutor to review the questions

to be asked on the witness stand. Point out when you do not know the answer to a question. Ask the prosecutor to review questions and tactics the defense attorney may use. Make sure your resume is current. Review your credentials and qualifications with the prosecutor.

If you cannot have a pre-trial conference, try to identify the main points about the case and be sure to discuss these with the prosecutor before the trial.

You will watch a video, based on the on-water scenario shown earlier in this course, showing an example of how a pre-trial conference might be conducted.

GUIDELINES FOR DIRECT TESTIMONY

Your basic task is to establish the facts of the case: that the suspect was operating or in actual physical control of a vessel, on a waterway or other specified location, within the court's jurisdiction, and was under the influence of alcohol or other drug(s) or some combination thereof. In other words, present evidence to establish probable cause for the arrest and conclusive evidence that the violation was, in fact, committed.

Describe in a clear and convincing manner all relevant observations during the three detection phases and those subsequent to the arrest. When you testify about the suspect's performance of the standardized field sobriety tests, do not use the terms “pass" or "fail.” Also, do not refer to the suspect's "score" on the test or the number of "points" produced. Instead, describe clearly and explicitly how the suspect performed (e.g., "stepped off the line twice, raised the arms three times, etc.") By presenting your observations clearly and convincingly, you will allow the facts relating to the suspect's impairment to speak for themselves.

Always keep in mind that juries typically focus on the officer's demeanor as much or more than on the content of the testimony. Strive to maintain your professionalism and impartiality. Be clear in your testimony; explain technical terms in common terms; don't use jargon, abbreviations, acronyms, etc. Be polite and courteous. Do not become agitated in response to questions by the defense. Above all, if you don't know the answer to a question, say so. Don't guess at answers or compromise your honesty in any way. Be professional and present evidence in a fair and impartial manner.

Typical Defense Tactics

In many cases, you will be the key witness for the prosecution. Therefore, the defense will try very hard to cast doubt on your testimony.

The defense may ask some questions to challenge your observations and interpretations. For example, you may be asked whether the signs, symptoms and

behaviors you observed in the suspect could have been caused by an injury or illness or by something other than the alcohol/drugs you concluded were present. You may also be asked questions whose purpose is to make it appear as if you weren't certain you actually saw what you say you saw. Answer these questions honestly, but carefully. If your observations are not consistent with what an illness or injury would produce, explain why not. Make it clear that your conclusions about alcohol/drug influence are based on interpretation of the observed facts.

The defense may also attempt to challenge your credentials by asking questions to cast doubt on the formal training you have had. There may also be an attempt to ask questions to "trip you up" on technical or scientific issues and make it appear that you are less knowledgeable than you should be or claim to be. Stick to absolute honesty. Answer all questions about your training fully and accurately, but don't embellish. Don't try to make the training appear to have been more elaborate or extensive than it really was. Answer scientific or technical questions only if you know the answer. Otherwise, admit that you don't know. Don't try to fake or guess the answers.

The defense may ask questions to challenge your credibility. You may be asked several very similar questions in the hope that your answers will be inconsistent. You may be asked questions whose purpose is to show that you had already formed your opinion well before the suspect completed the field sobriety tests. And you may be asked questions that try to suggest that you eliminated portions of the tests or only gave incomplete or confusing instructions. Guard against these kinds of defense challenges by performing complete, standardized field sobriety tests, exactly as you have been taught. Standardization will ensure both consistency and credibility.

Courtroom Testimony Video Segment

You will watch a video segment showing testimony which introduces the seated SFSTs. At the conclusion of the video, you will have an opportunity to discuss your observations in class.

Sample Arrest Report
NASBLA BUI Detection and Enforcement Course

Suspect Name: Fred Steven Smith

Date of Arrest: June 3, 2013

Location: Near the intersection of the Intracoastal and Motts Channel at the south end of the no-wake zone in Wrightsville Beach.

Vessel: NC 0000 JW, 21 foot Carolina Skiff registered to Fred Smith. Valid until 8/2014.

Passengers: Emily Smith – Wife

Phase I – Vessel in Motion:

At 1:40 pm on Monday, June 3, 2013, Officer Ryan Taylor and I were on water patrol in the Intracoastal Waterway at Motts Channel in Wrightsville Beach. I observed the above referenced Carolina Skiff enter the south end of the no-wake zone and continue for some distance at planing speed in violation of the posted speed restriction. I observed two occupants on board the vessel. A subject wearing a light blue t-shirt was operating the vessel as it entered the no-wake zone. The vessel passed behind a barge which temporarily obstructed my view, and when it came into view again it was being operated by a subject in a dark blue shirt. As we approached the vessel to conduct a safety inspection and address the speed zone violation, I noticed that the subject wearing the light blue shirt was holding a can of beer as if hiding it behind his leg. I instructed the female subject operating the boat (wearing the dark blue shirt) to put the vessel in neutral so we could come along side and inspect their safety equipment.

Phase II – Personal Contact:

The female subject stated that she was operating the vessel. I told her that although she was operating the vessel now, the gentleman in the light blue shirt had been operating the vessel when they entered the wake zone. I told them that I would be dealing with him and asked him to put his beer down for me so I could inspect his safety equipment. The male subject was later identified by NC driver license as the defendant, Fred Steven Smith. Mr. Smith was barefoot and wearing a light blue shirt and tan shorts. As Mr. Smith came over to talk to me, he appeared unsteady on his feet and leaned against the leaning post of his vessel. I asked what they had been doing today, and he stated that they had been at a friend's house "watching the game." I asked him who had been playing, to which he replied that he could not remember. Mr. Smith looked for his vessel registration and eventually explained that he has two boats and must have left it on the other one. Mr. Smith had a difficult time remembering where to locate the

safety equipment during my inspection. He repeatedly forgot what I had asked for and asked me for clarification. At the point that I reminded him that I needed to see two wearable life jackets, he went to the front storage compartments and struggled for several seconds trying to open a latch which apparently was locked. He then opened the other compartment and retrieved two wearable life jackets, handing them to me for inspection.

I detected the faint odor of an alcoholic beverage coming from his breath and noticed that his face was flushed, his eyes were bloodshot and watery and his eyelids were droopy. I noticed several empty beer cans in the back of the boat. When asked if he had been drinking beer, Mr. Smith stated that he had "a couple" of beers. Mrs. Smith stated that she had not consumed any beer. I asked Mr. Smith to place a life jacket on and step into my boat. Mr. Smith started to put the life jacket correctly, took it back off, put it back on and fumbled with the zipper before zipping it up. Although our boats were quite stable in the calm water, Mr. Smith was unsteady as he began coming over into my patrol boat. For his safety, I assisted him into my patrol boat.

Phase III – Pre Arrest Screening:

I sat Mr. Smith down on the cooler seat of our patrol boat, pulled out the Standardized Field Sobriety Testing Instructions and Clues card from the pocket of my uniform shirt and administered the four standardized seated field sobriety tests using the prepared text. I administered the General Instructions from that card to Mr. Smith and asked him if he understood. He replied that he did. I then asked Mr. Smith the Pre-Test Questions from the same card. Mr. Smith replied "no" to questions 1, 3, 4 and 5. On question number two, Mr. Smith shook his head and replied "Not that I'm aware of." I administered each of the standardized seated field sobriety tests to Mr. Smith using the prepared text.

Horizontal Gaze Nystagmus:

Mr. Smith was not wearing contact lenses. His pupils were equal in size, he had no resting nystagmus and his eyes tracked equally. I observed **Lack of Smooth Pursuit** in both eyes. I observed **Distinct and Sustained Nystagmus at Maximum Deviation** in both eyes. I observed **Onset of Nystagmus Prior to 45 Degrees** in Mr. Smith's right eye. Vertical Gaze Nystagmus was not present. I observed five observable clues of impairment during my administration of the Horizontal Gaze Nystagmus test and noticed that he wobbled back and forth and side to side during the instructions and at times during the test.

Finger to Nose:

I then provided the instructions for the Finger to Nose test to Mr. Smith. Mr. Smith was swaying distinctly during my instructions for this test. When I told Mr. Smith to begin, he failed to tilt his head back (**did not tilt head**). He continued to sway

during the test and moved his head forward, backward and side to side in excess of 1" on multiple occasions (**moved head during test**).

On the first command of "left," Mr. Smith made a noticeable pause upon approach to the nose (**hesitated**), touched below the tip of his nose then moved his finger to the tip of the nose (**missed tip of nose**), touched his nose with the pad of his finger (**not fingertip**), and kept his finger on his nose for several seconds before bringing it down to his side (**did not bring hand down**).

I then said "right," and Mr. Smith **hesitated, missed tip of nose** (first touched his lip, then moved to tip of nose), and **did not bring hand down.**

I then said "left," and he **hesitated, missed tip of nose** (again touched his lip first, then tip of nose), and **did not bring hand down.**

I then said "right," and he **hesitated, missed tip of nose, did not bring hand down** and **opened eyes during test**.

I said "right" again, and he **missed tip of nose** and **did not bring hand down.**

I gave the final command of "left," and he **hesitated, missed tip of nose,** and **did not bring hand down.**

Mr. Smith swayed distinctly throughout his performance of the Finger to Nose test. I documented 21 observable clues of impairment during Mr. Smith's performance of the Finger to Nose test.

Palm Pat Test:

I then gave the instructions for the Palm Pat test to Mr. Smith. During the instruction stage of this test, Mr. Smith did not remain in the instruction position (**unable to follow instructions**). During the performance stage of this test, Mr. Smith **did not increase speed,** and I had to ask him to speed up after five seconds. I documented two observable clues of impairment during Mr. Smith's performance of the Palm Pat Test.

Hand Coordination Test:

I then gave Mr. Smith the instructions for the Hand Coordination test. Mr. Smith did not remain in the instruction position during my explanation of the test, as directed (**unable to follow instructions**).

During his performance of Task One, he touched the top of his left fist to the bottom of his right fist on step four (**improper touch**).

During Task Two, he first asked "Three?," to which I replied to do it just like I demonstrated. He then clapped three times and counted out loud.

For Task Three, he counted three reverse steps as "six, seven, eight," (**improper count**) and returned his left fist to his chest.

For Task Four, Mr. Smith then looked at me for a few seconds, clapped his hands three more times and placed them with palms down in his lap. This was not how I had instructed him to perform this test.

I documented three observable clues of impairment during Mr. Smith's performance of the Hand Coordination Test, although it is likely that the biting no-see-ums (sand gnats) contributed to his movement during the instructions for this test.

Arrest and Processing:

Based on Mr. Smith's excessive rate of speed in the no-wake zone, the fact that he switched operators of his vessel, the odor of an alcoholic beverage coming from his breath, his difficulty producing equipment during the safety inspection, his balance and appearance during my interview and observations of him and his performance on standardized field sobriety tests, I arrested him for **Operating a Vessel on the Waters of this State While Under the Influence of an Impairing Substance** in violation of state law ######. It is my opinion that the defendant, Mr. Smith, had consumed a sufficient quantity of an impairing substance (alcoholic beverage) so that his mental and physical faculties were appreciably impaired on or about 14:08 on the afternoon of June 3, 2013.

Mrs. Emily Smith was given some field sobriety tests, and I determined that she was not under the influence of any impairing substance. I asked her if she was comfortable operating the vessel back to her house or if she would like Officer Taylor to take the vessel back for her. She said that she was very comfortable operating the vessel and stated, "I tried to tell him to let me drive home when we left that stupid party." She asked where we were going to take her husband, and I gave her directions to the Wrightsville Beach Police Department. She said she would see us there and departed in the boat. I saw her again at the Wrightsville Beach Police Department at 14:45 later that day.

The defendant was transported to the Wrightsville Beach Police Department and was requested to submit to a breath alcohol test on the Intox. EC/IR II. The defendant provided two breath samples upon my request and the test was concluded at 15:28. The results of the chemical test showed .10 grams of alcohol per 210 liters of Mr. Smith's breath. I took the defendant before Magistrate Duncan, who released him to the custody of Mrs. Emily Smith under a $1,000 unsecured bond. The defendant's court date was set for September 4, 2013 in New Hanover County District Court.

Field Sobriety Test Performance Report

Subject Name Fred Smith Start time 13:52

PRE-TEST QUESTIONS

Do you have any physical defects or disabilities? Y (N)
Do you have any defects with your eyes? Y (N)
Are you sick or injured? Y (N)
Are you under the care of a doctor or dentist? Y (N)
Are you taking any medication or drugs? Y (N)

Notes:

GENERAL INSTRUCTIONS:

Please sit straight at the front edge of your seat. Put your arms down at your sides. Place your feet shoulder-width apart so you are comfortable and stable. Are you stable? *(Response)* Do not move your feet until the tests are over. Stay in this position and do not do anything else until I tell you to do so. Do you understand? *(Response)*

HORIZONTAL GAZE NYSTAGMUS

Have the subject remove their eyeglasses, if worn.
Are you wearing contact lenses? ___ Yes X No
I am going to check your eyes. Hold your head still and follow the stimulus with your eyes only. Do you understand? *(Response)*
Elevate the stimulus about 12-15" from the subject's nose. Check for equal pupil size, resting nystagmus and equal tracking.

Clues	Left	Right
Lack of smooth pursuit	P	P
Distinct & sustained nystagmus at max. deviation	P	P
Onset of nystagmus prior to 45-degrees	-	P
Total Clues	5	

Vertical nystagmus: Yes___ No X — **Evaluation Criteria: 4 or more clues**

FINGER TO NOSE

- Make a fist with both hands, extend your index fingers and turn your palms forward. Remain in this position while I explain the test. *(Demonstrate)* Do you understand? *(Response)*
- When I say begin, tilt your head back to about a 45° angle and close your eyes. *(Demonstrate)*
- When I tell you to, touch the tip of your nose with the tip of your index finger and immediately return it to your side. *(Demonstrate and explain the fingertip, pad and side of fingers and demonstrate touching tip of the nose)*
- When I say right, you must touch your right index finger to your nose; when I say left, you must touch your left index finger to your nose. Do you understand? *(Response)*
- Begin. *(After head tilt...)* Left...Right...Left...Right...Right...Left *(After performance...)* Open your eyes and straighten your head.

Instruction Stage		Performance Stage			Left	Right	Left	Right	Right	Left	
Unable to follow instructions		Did not close eyes		Wrong hand							Wrong hand
Started at wrong time		Did not tilt head	X	Wrong finger							Wrong finger
		Opened eyes during test	X	Hesitated	X	X	X	X		X	Hesitated
		Moved head during test (1"+)	X	Searched							Searched
				Not fingertip	X						Not fingertip
				Missed nose	X	X	X	X	X	X	Missed nose
				Did not bring down	X	X	X	X	X	X	Did not bring down
				Total Clues							2

Evaluation Criteria: 9 or more clues

PALM PAT

- Place your hands palm to palm with one hand up and one hand down, like this. *(Demonstrate)* Remain in this position while I explain the test. Do you understand? *(Response)*
- When I tell you to begin, turn the top hand over and count out loud "one," then turn the hand back over and count out loud "two," counting only when the hands make contact, like this. *(Demonstrate at least two sets)*
- Repeat this, speed up as you go, and do not stop until told. Make sure to keep your hands and fingers parallel during each pat, like this. *(Demonstrate)*
- Do you understand? *(Response)* Begin. *(If necessary, tell to speed up)*

Instruction Stage	
Unable to follow instructions	X
Started at wrong time	
Performance Stage	
Did not count as instructed	
Rolled hands	
Double pat	
Chopped pat	
Other improper pat (document)	
Did not increase speed	X
Rotated hands	
Stopped before told	
Total Clues	2

Evaluation Criteria: 2 or more clues

HAND COORDINATION

- Make fists with both hands, place your left fist at the center of your chest and your right fist against your left fist, like this. *(Demonstrate)*
- Remain in this position while I explain the test. Do you understand? *(Response)*
- When I say begin, you must perform four tasks.
- The first task is to count out loud from one to four while you move your fists in a step-like fashion, making contact between your fists at each step. *(Demonstrate while counting out loud 1, 2, 3, 4)*
- The second task is to memorize the position of your fists after you have counted to four, clap your hands three times and return your fists to the memorized position. *(Demonstrate)*
- The third task is to move your fists in a step-like fashion in reverse order; counting out loud from five to eight and returning your left fist to your chest. *(Demonstrate while counting out loud 5, 6, 7, 8)*
- The fourth task is to open your hands with palms down and place them in your lap. *(Demonstrate)*
- Do you understand? *(Response)* Begin.

Instruction Stage	
Unable to follow instructions	X
Started at wrong time	
Performance Stage	
Task 1 – Forward Steps	
Improper count	
Improper touch	X
Did not perform	
Task 2 – Hand Clapping	
Improper count	
Improper touch	
Improper return	
Did not perform	
Task 3 – Return Steps	
Improper count	X
Improper touch	
Did not return left fist to chest	
Did not perform	
Task 4 – End Position	
Improper position	
Did not perform	
Total Clues	3

Evaluation Criteria: 3 or more clues

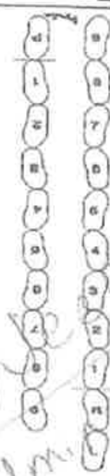
Revised 09/2011

Field Sobriety Test Performance Report

Subject Name: Fred Smith

WALK AND TURN

- Place your left foot on the line with your right foot in front of the left foot, with the heel of the right foot touching the toe of the left. *(Demonstrate)*
- Place your arms at your sides. Maintain this position until I have completed the instructions. Do not start to walk until I tell you to do so. Do you understand? *(Response)*
- When I tell you to begin, take nine heel-to-toe steps, turn and take nine heel-to-toe steps back. *(Demonstrate 3 heel-to-toe steps)*
- When you turn, keep the front foot on the line and turn by taking a series of small steps with the other foot, like this. *(Demonstrate)*
- While you are walking, keep your arms at your sides, watch your feet at all times and count your steps out loud. Once you start walking, do not stop until you have completed the test. Do you understand? *(Response)*
- Begin.



No Admit 10x

Instruction Stage	
Loses balance during instructions	
Starts before told	
Performance Stage	
Stops while walking	
Does not touch heel-to-toe (1/2"+)	
Steps off line	
Uses arms to balance (6"+)	
Improper turn	
Wrong number of steps	
Total Clues	
Cannot perform test (explain)	
Evaluation Criteria: 2 or more clues	

ONE LEG STAND

- Stand with your feet together and your arms at your sides, like this. *(Demonstrate)*
- Do not start until I tell you to. Do you understand? *(Response)*
- When I tell you to start, raise one leg, either leg, approximately six inches off the ground, keeping your raised foot parallel to the ground. *(Demonstrate)*
- You must keep both legs straight, arms at your sides. While holding that position, count out loud in the following manner: one thousand and one, one thousand and two, one thousand and three, and so on until told to stop.
- Keep your arms at your sides at all times and keep watching the raised foot. Do you understand? *(Response)*
- Begin. *(30 seconds)*

Clues	
Sways while balancing	
Uses arms to balance (6"+)	
Hopping	
Puts foot down	
Total Clues	
Cannot perform test (explain)	
Evaluation Criteria: 2 or more clues	

Phase I: Vessel in Motion – Document initial observations to describe vessel maneuvers or operator/occupant behaviors that may be associated with alcohol/drug influence prior to the stop. If no Phase I observations are made, describe initial contact. Entered no-wake zone on plane. Operator in light blue shirt saw the other in dark blue shirt. Light blue shirt holding a can of beer behind his leg as we approached.

Phase II: Personal Contact – Document observations made during face-to-face contact with the operator.

Operator Actions
- ☒ Cannot find registration/wallet
- ☒ Tries to conceal something
- ☐ Produces wrong documents
- ☐ Fumbles items
- ☐ Excessive movement
- ☐ Forgets to respond to request
- ☒ Incorrect answers
- ☐ Problem using fingertips
- ☐ Avoids eye contact
- ☐ Ignores questions
- ☐ Lights cigarette or eats/chews
- ☐ Angry/abusive language
- ☒ Admits to drinking
- ☒ Difficulty with safety equip.
- ☐ Unusual statements

Breath

Alcoholic beverage:
- ☐ Strong
- ☐ Moderate
- ☒ Faint
- ☐ None
- ☐ Marijuana
- ☐ Breath mint/cover odor

Face
- ☐ Pale
- ☒ Flushed
- ☐ Sweating
- ☐ Sunburned
- ☐ Normal

Eyes
- ☒ Bloodshot
- ☒ Watery
- ☐ Glassy
- ☐ Dilated pupils
- ☐ Constricted pupils
- ☒ Droopy eyelids
- ☐ Normal

Unusual Actions
- ☐ Hiccupping
- ☐ Belching
- ☐ Vomiting
- ☐ Gagging/dry heaves
- ☐ Fighting
- ☐ Laughing
- ☐ Crying

Attitude
- ☐ Jovial
- ☐ Talkative
- ☐ Cooperative
- ☒ Indifferent
- ☐ Sleepy
- ☐ Profanity
- ☐ Combative
- ☐ Belligerent
- ☐ Insulting

Clothing *(describe)* Light Blue T-Shirt, Tan Shorts, Barefoot

Balance
- ☐ Normal
- ☐ Swaying
- ☐ Falling
- ☐ Sits down
- ☒ Supports against object
- ☐ Staggering
- ☐ Unsteady
- ☐ Wide stance
- ☐ Needs assistance

Notes: At a buddy's house watching "the game." Could not remember who was playing. Forgot what I was... Increase to 5?? Had "a couple."

Phase III – Pre-Arrest Screening – Document any other observations made during field sobriety testing to describe finding of probable cause to place subject under arrest for operating while impaired. Swaying distinctly throughout. Subject entered in a no-wake zone. Both boats nosed in the marsh.

Officer: T.E. Rockabaugh 721	Agency: NCWRC	
Date: 6-3-15	Location: Ibis - Loughtsville Beach wake zone	Case #:
Subject Name: John Steven Smith		D/O/B: 11-15-78
Height: 5'11" / Weight: 190	Eyes: Brown / Hair: Brown	Gender: Male
PBT results: None @ hrs.	Evidentiary breath test results: .10 @ 15:22 hrs.	Time of arrest: 14:06 hrs.

⓪ HAND COORDINATION

1. Make fists with both hands, place your left fist at the center of your chest and your right fist against your left fist, like this. (Demonstrate)
2. Remain in this position while I explain the test. Do you understand? (Response)
3. When I say begin, you must perform four tasks.
   - The **first** task is to count out loud from one to four while you move your fists in a step-like fashion, making contact between your fists at each step. (Demonstrate while counting out loud 1, 2, 3, 4)
   - The **second** task is to memorize the position of your fists after you have counted to four, clap your hands three times and return your fists to the memorized position. (Demonstrate)
   - The **third** task is to move your fists in a step-like fashion in reverse order, counting out loud from five to eight and returning your left fist to your chest. (Demonstrate while counting out loud 5, 6, 7, 8)
   - The **fourth** task is to open your hands with palms down and place them in your lap. (Demonstrate)
4. Do you understand? (Response)
5. Begin.

Instruction Stage

Unable to follow instructions ☒
Started at wrong time ☐

Performance Stage

Task 1-Forward Steps	*Task 3-Return Steps*	
Improper count ☐	Improper count ☒	**Total Clues** 3
Improper touch ☒	Improper touch ☐	
Did not perform ☐	Did not return left fist to chest ☐	**Evaluation Criteria:**
	Did not perform ☐	**3 or more clues**

Task 2-Hand Clapping	*Task 4-End Position*
Improper count ☐	Improper position ☐
Improper touch ☐	Did not perform ☐
Improper return ☐	
Did not perform ☐	

NASBLA

YOUR BOATING DOLLARS AT WORK

Notes: Entered no wake zone on plane. Switched operatuss while being barge. Subject holding a beer as we approached. At buddy's house watching "the game". Could not remember who was playing. Had "a couple". Difficulty w/ the inspection. Faint odor of alcoholic beverage coming from u.s breath. Flushed face. Bloodshot, watery eyes. Sweated throughout. See notes.

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Standardized

FIELD SOBRIETY TESTING

Instructions and Clues

Subject Name Fred Steven Smith

Date June 3, 2013

Case # _____

GENERAL INSTRUCTIONS:

Please sit straight at the front edge of your seat.
Put your arms down at your sides.
Place your feet shoulder-width apart so you are comfortable and stable. Are you stable? (Response)
Do not move your feet until the tests are over.
Stay in this position and do not do anything else until I tell you to do so.
Do you understand? (Response)

⓪ PRE-TEST QUESTIONS

1. Do you have any physical defects or disabilities?
2. Do you have any defects with your eyes?
3. Are you sick or injured?
4. Are you under the care of a doctor or dentist?
5. Are you taking any medication or drugs?

⓪ HORIZONTAL GAZE NYSTAGMUS

Administrative Procedures

1. Have the subject remove their eyeglasses, if worn.
2. Are you wearing contact lenses? **Yes** ☐ **No** ☒
3. I am going to check your eyes.
4. Hold your head still and follow the stimulus with your eyes only. Do you understand?
5. Position the stimulus about 12-15 inches from the subject's nose.
6. Check for equal pupil size, resting nystagmus and equal tracking.
7. Check for lack of smooth pursuit.
8. Check for distinct & sustained nystagmus at max. deviation.
9. Check for onset of nystagmus prior to 45-degrees.
10. Check for vertical nystagmus.

Clues	Left	Right
Lack of smooth pursuit	P	P
Distinct & sustained nystagmus at max. deviation	P	P
Onset of nystagmus prior to 45-degrees	–	P

Total Clues 5

Vertical nystagmus: **Yes** ☐ **No** ☒

Evaluation Criteria: 4 or more clues

⓪ FINGER TO NOSE

1. Make a fist with both hands, extend your index fingers & turn your palms forward. (Demonstrate) Remain in this position while I explain the test. Do you understand? (Response)
2. When I say begin, tilt your head back to about a 45° angle & close your eyes. (Demo)
3. When I tell you to, touch the tip of your nose with the tip of your index finger and immediately return it to your side. (Demonstrate and explain the fingertip, pad and side of fingers and demonstrate touching tip of the nose)
4. When I say right, you must touch your right index finger to your nose; when I say left, you must touch your left index finger to your nose. Do you understand? (Response)
5. Begin. (After head tilt…) Left…Right…Left…Right…Right…Left (After performance…) Open your eyes and straighten your head.

Instruction Stage

Unable to follow instructions ☐

Started at wrong time ☐

Performance Stage

Did not close eyes ☐

Did not tilt head ☒

Open eyes during test ☒

Moved head during test (1"+) ☒

	Left	Right	Left	Right	Right	Left
Wrong hand						
Wrong finger						
Hesitated	X	X	X	X		X
Searched						
Not fingertip	X					
Missed nose	X	X	X	X	X	X
Did not bring down	X	X	X	X	X	X

21

Total Clues ☐ **Evaluation Criteria: 9 or more clues**

⓪ PALM PAT

1. Place your hands palm to palm with one hand up and one hand down, like this. (Demonstrate)
2. Remain in this position while I explain the test. Do you understand? (Response)
3. When I tell you to begin, turn the top hand over and count out loud "one," then turn the hand back over and count out loud "two," counting only when the hands make contact, like this. (Demonstrate)
4. Repeat this, speed up as you go, and do not stop until told. Make sure to keep your hands and fingers parallel during each pat, like this. (Demonstrate)
5. Do you understand? (Response)
6. Begin. (If necessary, tell to speed up)

Instruction Stage

Unable to follow instructions ☒

Started at wrong time ☐

Performance Stage

Did not count as instructed ☐

Rolled hands ☐

Double pat ☐

Chopped pat ☐

Other improper pat (document) ☐

Did not increase speed ☒

Rotated hands ☐

Stopped before told ☐

Total Clues 2

Evaluation Criteria: 2 or more clues

Module 19

Final Exam – Program Conclusion

Module 19

BUI Detection and Enforcement Course

FINAL EXAM – PROGRAM CONCLUSION

This session consists of each student completing the final course exam. This is a closed-book exam which covers the entire course of instruction. It is intended to evaluate each student's understanding of the principles taught in the class.

Once all exams are completed and turned in, the instructors will lead the class to provide a written critique of the course. This critique is an important part of the class and allows NASBLA to evaluate where further improvements might be made. The critiques are anonymous, and NASBLA asks that students be candid while providing feedback.

When conducted by NASBLA, this course of instruction is a certificate program based on very strict standards established by the American National Standards Institute (ANSI). This means that the course materials, structure, recordkeeping and assessments meet appropriate national standards, thus yielding a benefit of enhanced credibility for course graduates. Students can expect to receive their certificates within 30 days of completing the course.

For courses taught per the national standard by properly trained BUI instructors through individual states, course administration (exam evaluations, record keeping and issuance of certificates) will be handled by the appropriate state authority.