



2019 Annual Conference

Lake Placid, New York

DWI Detection Process

September 17, 2019

Presented by:

NYSP Trooper Joseph K. Germano

NYSP Sergeant Jonathan Cook

Mary Tanner-Richter, Esq.

1.0 MCLE Skills

1.0 CJE

This program has been approved for credit in New York State for all attorneys including those who are Newly Admitted (less than 24 months) and administered by the Onondaga County Bar Association.

Trooper Joseph K. Germano

Trooper, Drug Recognition Expert (DRE) Instructor, Drug Recognition Expert (DRE), Standardized Field Sobriety Test (SFST) Instructor, Breath Test Operator (BTO) Instructor, Speed Enforcement Instructor (Radar and Lidar), Emergency Vehicle Operation and Control (EVOC) Instructor

Technical Sergeant Jonathan D Cook

Technical Sergeant Jonathan David Cook is a six-year veteran of the New York State Police. He is currently assigned to Division Traffic Services where he is assigned as the Impaired Driving Program Coordinator. His responsibilities include programming, coordinating and instructing New York State Police Standardized Field Sobriety Test, Drug Recognition Expert, Advanced Roadside Impaired Driving Enforcement and drug awareness courses and trainings. In addition, he is responsible for managing grant funding for the entirety of his programming. He is an SFST Instructor and a DRE Instructor with a background in education, having worked as a high school teacher for eight years prior to his career in law enforcement. During his education career, he obtained a Bachelor's in English and Education from Colgate University, a Master's degree in Special Education and completed coursework for an advanced certificate in Educational Leadership from Stony Brook University. As a part of his DRE status and his position with the New York State Police, he regularly attends conferences and trainings to keep his knowledge current with regards to trends in his fields of study.

Mary Tanner-Richter


Mary Tanner-Richter has been an Assistant District Attorney in the Office of the Albany County District Attorney since February 2001, and is currently the Chief of the Vehicular Crimes Unit. She has specialized in the area of vehicular crimes prosecution since 2004 and was instrumental in creating the Albany County District Attorney's Vehicular Crimes Unit in 2008. Ms. Tanner-Richter has completed training in At Scene Motor Vehicle Collision Investigation, and is responsible for overseeing the prosecution of all felony alcohol/drug-related vehicular crimes, vehicular assaults and vehicular homicides in Albany County. She has participated in numerous trainings of various law enforcement officials and prosecutors across the State and has spoken on numerous occasions to high school parents and students, and college students. Additionally, Ms. Tanner-Richter has been involved in providing training to Bar and Tavern Owners throughout the Capital Region. Ms. Tanner-Richter is a member of the Albany District Attorney's Office DWI Advisory Board, the Albany County STOP-DWI Program, and currently sits on the NYS GTSC Taskforce on Impaired Driving Enforcement Team.

Ms. Tanner-Richter received a Bachelor of Arts Degree in Political Science from Nazareth College in Rochester, New York, in 1994, and received her JD from Albany Law School in 1998. Prior to coming to the Albany County District Attorney's Office, Ms. Tanner-Richter was an Associate at the Buffalo Law Firm of Jaeckle, Fleischmann, & Mugel, LLP., assigned to the Litigation Department, from 1998-2000.

Ms. Tanner-Richter is the recipient of the 2011 Recognition of Excellence Award presented by NYS STOP DWI, Mothers Against Drunk Driving, in conjunction with the New York State Governor's Traffic Safety Committee. Additionally, Albany County STOP DWI presented Mary with the [Daniel S. Dwyer Memorial Award](#) in December 2012 to honor her commitment to justice for victims of DWI crimes.

In 2015, Mary Tanner-Richter was named the National Traffic Safety Prosecutor of the Year by the National Association of Prosecutor Coordinators (NAPC). Read about this accomplishment [here.](#)

In 2018, Bureau Chief Tanner-Richter was named as one of two [Traffic Safety Resource Prosecutors](#) (TSRP) for the State of New York through the Governor's Traffic Safety Committee's Highway Safety Program. The program is grant funded by the Federal Highway Safety Program under the National Highway Traffic Safety Administration (NHTSA), and addresses roadway safety through education and trainings across the State of New York, as well as nationwide. As a TSRP, Ms. Tanner-Richter is working in conjunction with members of the Governor's Traffic Safety Committee, the National Highway Traffic Safety Administration (NHTSA) and the National Traffic Law Center of the American Prosecutors Research Institute to keep New York prosecutors and police officers apprised of the latest traffic safety issues affecting the entire country.

 State
Police



**NYS Magistrate's Association
Annual Conference 2019
Standardized Field Sobriety Testing**

Trooper Joseph Germano
SP Latham IHP

July 16, 2019

The Goal of SFST


**Increase deterrence of DWI violations;
thereby reducing the number of crashes,
deaths, and injuries caused by impaired
drivers.**




General Deterrence



The fear of arrest



- 10,876 drunk driving deaths in USA
- 290,00 drunk driving injuries in USA
- 283 drunk driving deaths in NYS
- 28% of traffic deaths in NYS
- NYS ranked 22nd in USA



New York State Police

Types of Alcohol



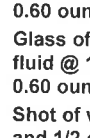

- Ethyl Alcohol (Ethanol)
- Methyl Alcohol (Methanol)
- Isopropyl Alcohol (Isopropanol)



New York State Police

Common Drink Sizes

- Bottle of beer – 12 ounces of fluid @ 5% alcohol equals 0.60 ounces of pure ethanol
- Glass of wine – 5 ounces of fluid @ 12% alcohol equals 0.60 ounces of pure ethanol
- Shot of whiskey (80 proof) – 1 and 1/2 ounces @ 40% alcohol equals 0.60 ounces of pure ethanol



New York State Police

Absorption of Alcohol

Getting the ethanol out of the stomach and into the blood

The diagram illustrates the stomach with arrows indicating the absorption of alcohol. Four arrows labeled '20%' point to the stomach walls, and one arrow labeled '20%' points to the pylorus. A large arrow labeled '80%' points from the stomach into the bloodstream. The text 'Getting the ethanol out of the stomach and into the blood' is written to the left of the diagram.

Elimination of Alcohol

Getting the ethanol out of the body:


- Direct excretion
 - Breath
 - Sweat
 - Tears
 - Urine
- Metabolism
 - Primarily in the liver

Metabolism in the Liver

- The liver burns the ethanol (i.e., causes a chemical reaction of ethanol with oxygen)
- The process is aided by an enzyme called alcohol dehydrogenase
- The ultimate products of the chemical reaction are carbon dioxide and water
- Due to metabolism, the average person's BAC drops by about 0.015/hr


DWI Detection

The entire process of identifying and gathering evidence to determine if a subject should be arrested for a DWI violation.



4-10

The Arrest Decision is Based on All Evidence Accumulated During All Three Detection Phases



Initial Observation of Vehicle Operation


Observation of the Stop

Observation of the Exit

Face to Face Observation and Interview

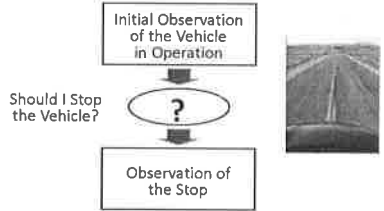
Psychophysical Tests

Preliminary Breath Tests



4-11


Phase One: Vehicle in Motion



Initial Observation of the Vehicle in Operation

Should I Stop the Vehicle?

Observation of the Stop



5-1E



Phase Two: Personal Contact

Should Driver Exit?

Interview and Observation of the Driver

?

Observation of the Exit




4.11

Phase Three: Pre-Arrest Screening

Field Sobriety Testing / PBT

?

Should I Arrest?



4.14

Additional Techniques

Alphabet



4.15

Additional Techniques
Count Down

68 67 66 65 64 63
62 61 60 59 58 57
56 55 54 53...

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Additional Techniques
Finger Count



San Diego State Police

Development and Validation

NHTSA Development and Validation research began in 1975:

- California: 1977 (lab study)
- California: 1981 (lab/field study)
- Maryland, Washington DC, Virginia, North Carolina: 1983 (field study)
- Denver, Colorado: 1995 (field study)
- Tampa, Florida: 1997 (field study)
- San Diego, California: 1998 (field study)

San Diego State Police


July 21, 2019

San Diego Field Validation Study of SFST

Based on this study:

- HGN was 88% accurate
- WAT was 79% accurate
- OLS was 83% accurate


0-17



San Diego Field Validation Study of SFST


- 91% correct arrest decision for 0.08 BAC and above using three test battery (HGN, WAT, OLS)
- HGN is still most reliable of three-test battery and supports arrest decisions at 0.08 BAC

0-18




Nystagmus

Involuntary Jerking of the Eyes




0-19



Categories of Nystagmus


- Vestibular
- Neural
- Pathological Disorders and Diseases

8-22




Horizontal Gaze Nystagmus

Involuntary jerking of the eyes, occurring as the eyes gaze to the side



8-18




Vertical Gaze Nystagmus

Involuntary jerking of the eyes (up and down)


- Occurs when the eyes gaze upward at maximum elevation
- Associated with high doses of alcohol and certain other drugs
- Drugs that cause VGN may cause HGN

8-24



Resting Nystagmus

- Jerking of the eyes as they look straight ahead
- Presence usually indicates a pathological disorder or high doses of a Dissociative Anesthetic drug such as PCP
- If detected, take OFFICER SAFETY precautions


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HGN Medical Impairment Assessment Procedures

Check eyes for:


- Equal pupil size
- Resting nystagmus
- Equal tracking

-If eyes do not track together, or pupils are noticeably unequal in size, medical disorders or injuries may be present

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HGN Testing: Three Clues

- Lack of smooth pursuit
- Distinct and sustained Nystagmus at maximum deviation
- Onset of Nystagmus prior to 45 degrees

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Administrative Procedures

- Check for eyeglasses
- Verbal instructions
- Position stimulus (12-15 inches and slightly above eye level)
- Check for equal pupil size and resting nystagmus
- Check for equal tracking
- Lack of smooth pursuit
- Distinct and sustained nystagmus at maximum deviation
- Onset of nystagmus prior to 45 degrees
- Total the clues
- Check for vertical nystagmus

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Test Interpretation

Look for three clues of nystagmus in each eye:

- Lack of smooth pursuit
- Distinct and sustained Nystagmus at maximum deviation
- Onset of Nystagmus prior to 45 degrees

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Horizontal Gaze Nystagmus (HGN)

- Most reliable field sobriety test
- Involuntary jerking occurring as eyes gaze toward the sides
- Readily noticeable when a person is impaired
- As BAC increases eyes begin to jerk sooner as they move to the side
- CNS Depressants, Inhalants, and Dissociative Anesthetics also cause HGN

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Horizontal Gaze Nystagmus Test Criterion


4 or more clues indicates
BAC above 0.08 (88% accurate)



4-31

Divided Attention


Concentrating on more than
one thing at a time (mental
tasks and physical tasks)



4-31

Typical Simultaneous Capabilities Required for Driving


- Information processing
- Short term memory
- Judgment/Decision making
- Balance
- Steady, sure reactions
- Clear vision
- Small muscle control
- Coordination of limbs



4-31



Psychophysical Tests

- **Methods of Assessing Mental and Physical Impairment**
- **Focus on balance, coordination, information processing**
- **SFST tests are most scientifically reliable**



Two Divided Attention Field Sobriety Tests



- **Walk and Turn**
- **One Leg Stand**



Walk and Turn

Two stages:

1. Instructions Stage
2. Walking Stage



4-36

**Administrative Procedures
Instructions Stage**

Verbal instructions:

- Assume heel-to-toe stance
- Arms down at sides
- Don't start until told

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Main State Police
4-37

**Administrative Procedures
Walking Stage**

- Nine heel-to-toe steps, turn, nine heel-to-toe steps
- Turn procedures:
 - Turn around on line
 - Several small steps

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Main State Police
4-38

Administrative Procedures

While walking:

- Keep watching feet
- Count steps out loud
- Arms down at sides
- Don't stop during walk

New State
Main State Police
4-39

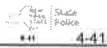
Walk and Turn Test Clues

1. Cannot keep balance while listening to the instructions
2. Starts too soon
3. Stops while walking
4. Does not touch heel to toe
5. Steps off the line
6. Uses arms to balance
7. Improper turn
8. Incorrect number of steps



Walk and Turn Test Criterion

2 or more clues indicates BAC at or above 0.08 (79% accurate)



One Leg Stand

Two stages:

1. Instructions Stage
2. Balance and Counting Stage



Administrative Procedures

Balance and counting stage:

- Raise either leg
- Keep raised foot approximately six inches off ground, parallel to the ground
- Keep both legs straight and arms at your side
- Keep eyes on raised foot
- Count out loud: "one thousand one, one thousand two, one thousand three and so on", until told to stop

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TAX POLICE
4.43

One Leg Stand


Four clues:

1. Sways while balancing
2. Uses arms to balance
3. Hopping
4. Puts foot down

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TAX POLICE

One Leg Stand Test Criterion

2 or more clues indicates BAC at or above 0.08 (83% accurate)



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4.45

Modified Romberg Balance Test

Modified Romberg Balance
Diagram

Internal Clock:
Estimated as 30 sec

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Finger to Nose Test

● Right ▲ Left
Draw lines to spots touched

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Police

Preliminary Breath Testing (PBT)

- Is a stage in DWI subject pre-arrest screening
- Purpose: Demonstrate association of alcohol with the observable evidence of the subject's impairment
- Impairment established through sensory evidence: what officer sees, hears, smells
- It does not indicate the level of subject impairment

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Police

Preliminary Breath Testing (PBT)

- PBT conducted at investigative stage
- Accusatory stage has not yet begun
- PBT is one of many factors to determine if subject should be arrested for DWI
- Never the sole basis for a DWI arrest
- PBT provides direct indication of alcohol impairment
- Administer PBT after administering SFSTs



The Arrest Decision

- DWI detection process concludes with the arrest decision
- This decision is based on all evidence obtained during all three detection phases:
 - Observation of vehicle in motion and during the stopping sequence
 - Face to face observation of subject and subject's vehicle exit
 - Pre-arrest screening and preliminary breath test




Note Taking and Testimony

- Graphically describe your observations
- Convey evidence clearly and convincingly
- Notes are only as good as the information they contain



DWI Investigative Notes



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State Police

Questions ?

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