Basic Police Academy

Affidavits and Search Warrants



Affidavits & Search Warrants

Instructional Goal:

This course is designed to introduce a new officer to the use, limitations, and process of affidavits and search warrants.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify when a search warrant is required in a given situation.
2. Describe probable cause in a given situation.
3. Describe the scope of a search in a given situation.

Content Outline:

- Definitions
- Constitutional Foundations
- Subjects of a Search Warrant
- The Affidavit
- Suggestions for Drafting a Warrant
- Executing a Warrant

Scenario-

You have responded to a local business for a report of two stolen ATVs. As you walk around the property, you find a knife lying on the ground. Upon closer inspection, you see the knife has a name on it, Frank T. Lewiston. You are familiar with Lewiston because you have arrested him numerous times for theft. You go to Lewiston's house to speak with him. He admits the knife is his but denies knowing anything about stolen ATVs. You speak with Lewiston's neighbor who reports seeing two ATVs in Lewiston's garage earlier today. The neighbor has never seen ATVs at Lewiston's residence before. You believe that Lewiston is responsible for the thefts, and the ATVs will be located on his property.

The following content comes from the Oregon Department of Justice Search and Seizure Manual. The Department of Justice permits copies to be made for law enforcement use only.

Definitions

A **search** occurs when a person's privacy interests are invaded.	A **seizure** occurs when there is a significant interference with a person's possessory or ownership interests in property.	A **search warrant** is an order issued by a legal authority permitting or directing someone to take some action. A search warrant authorizes a police officer to search a specified place for evidence even without the occupant's consent.	An **affidavit** is a written statement of facts made by an affiant under an oath or affirmation.

Constitutional Foundations

Why are search warrants needed?

Article I, section 9, of the Oregon Constitution, provides safeguards against unreasonable searches and seizures and protects both privacy and possessory interests. The Fourth Amendment to the United States Constitution contains similar, although not identical, protections.

Oregon Constitution	US Constitution
No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.	The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

When is a search warrant required?

Under Article I, section 9, a search occurs when a government agent intrudes upon a person's protected privacy interests. In determining whether a "search" occurred, two issues are presented:

1) Does a constitutionally protected privacy interest exist in the area or object? and
2) Did the police conduct intrude upon that interest?

As a general rule, to be valid, searches and seizures require probable cause. There are exceptions to this rule, for example, consent searches, emergencies, and inventories.

The Oregon Supreme Court's definition of probable cause to search: The probable cause requirement means that the facts upon which the warrant is premised must lead a reasonable person to believe that seizable things will probably be found in the location to be searched.

- "Probably" means "more likely than not."
- Probable cause does not require certainty.
- Probable cause requires more than "reasonable suspicion" or "reasonable grounds."

The United States Supreme Court has said that probable cause to search exists when "there is a fair probability that contraband or evidence of a crime will be found in a particular place."

Is a search warrant needed for the above scenario? Why or why not?

Under the Oregon Constitution and the Fourth Amendment, warrantless searches and seizures by the government are unreasonable unless they fall within one of the few specifically established and carefully delineated exceptions to the warrant requirement.

Abandoned property- If a person with a protected privacy or possessory interest in property abandons that interest before police officers search the property, the person will have no entitlement to suppression for any illegality perpetrated by the police in conducting the search.

The Proper Subjects of a Search Warrant

Object of Search

ORS 133.535 sets forth the permissible objects of a search warrant. These include, among other things, evidence of a criminal offense, information "concerning" the commission of a criminal offense, contraband, "things criminally possessed," and persons who are subject to arrest or who are being unlawfully held in concealment. The "fruits" of criminal activity are also proper objects of a search.

What are the objects of the search from the above scenario?

Nature of Offense

The authority provided by ORS 133.535(1) to issue a search warrant for mere "evidence" is limited to evidence of a "criminal offense." It does not authorize a warrant for evidence of an infraction or a violation. But a warrant may issue under ORS 133.535(3) for property that has been used, or is possessed for the purpose of being used, to commit or conceal the commission of an offense."

What is the nature of the offense in the above scenario?

To obtain a warrant, law enforcement officers must show that there is probable cause (PC) to believe a search is justified, that a crime was committed, and evidence of that crime is available. Officers must support this, showing with sworn statements (affidavits).

The Affidavit

Who can apply for a search warrant?

Under ORS 133.545, application for a search warrant may be made only by a district attorney, police officer, or a special agent.

Oath or Affirmation

Article I, section 9, and the Fourth Amendment each require that the issuance of a search warrant must be supported by statements made under oath or affirmation. This requirement is reflected in ORS 133.545(5) and (6), which require either the submission of an affidavit (a written statement under oath) or an "oral statement under oath" before a warrant may issue.

Probable Cause

A warrant may issue only if the record before the magistrate supports a finding of probable cause to believe that "the search will discover things specified in the application." ORS 133.555(2). Probable cause for purposes of ORS 133.555(2) exists when the facts set out in the warrant lead a reasonable person to believe that seizable things will probably be found in the location to be searched.

What probable cause exists to request a search warrant in the above scenario?

Nexus Between Criminal Activity, Place to be Searched, and Items Sought

Article I, section 9, and ORS 133.565 both require that the warrant specifically identify the persons and places to be searched. However, the affidavit must provide probable cause to believe that the items sought will be found in the location to be searched and that the items relate to the crime alleged.

When the location to be searched is the suspect's residence:

- In addition to establishing probable cause to believe that the suspect committed the crime and still has evidence of the crime in his or her possession, the affidavit must provide probable cause to believe that the target evidence is located in the suspect's residence.
- The mere fact that the suspect resides there does not establish the nexus.

Officers should take care in drafting the affidavit so that it adequately explains the relationship between the people and the places described in the affidavit.

Describe the nexus in the above scenario.

Facts Justifying Special Authorizations

ORS 133.565 provides that a search warrant may authorize limited extensions of the statutory timing restrictions relating to the execution of the warrant and return of the warrant. The statute requires that these special authorizations appear on the face of the warrant. The factual justification for seeking any special authorization also should appear in the body of the affidavit.

Examples: nighttime execution, extension time for execution.

Staleness and Perishable Evidence

Information contained in an affidavit must be sufficiently "fresh" to justify the conclusion that seizable evidence is present at the location to be searched at the time that application for the warrant is made. An affidavit is not stale if it contains facts that show that it is more probable than not that the items sought are still at the location to be searched at the time the application is made.

The length of time is only one factor in the analysis. Other factors include the character of the crime and the thing to be seized; for example, is the item perishable or durable? Despite a lengthy delay in seeking the warrant, probable cause may still be found if the items sought are typically retained for a significant length of time and not readily discarded or consumed. In addition to durability, the fact that an item may be lawfully possessed is an additional factor indicating that the suspect may be less likely to dispose of the item. Evidence that the criminal activity is ongoing increases the likelihood that, even after the passage of time, items subject to seizure will remain in the location to be searched.

How would you describe probable cause in the scenario as related to staleness?

Items to be Seized

The objects sought to be seized also must be described with particularity in the search warrant. The particularity requirement for search warrants is not only statutory but also constitutional Article I, section 9; ORS 133.565(2) (c).

The authorization in a search warrant to search for items is not itself an authorization to seize the objects searched for — i.e., for a seizure pursuant to a search warrant to be lawful under ORS 133.565(2) (c), the warrant must expressly authorize the seizure.

Using the Fourth Amendment standard, the court in State v. Tidyman, held that the list of items in the search warrant must be sufficiently particular to guide the officer to the thing intended to be seized and to minimize the danger of unwarranted invasion of privacy by unauthorized seizures. The degree of specificity required to accomplish these purposes varies with the circumstances and with the property to be seized. The failure to provide a description that is specific enough to enable the person conducting the search to reasonably identify the things authorized to be seized violates the Fourth Amendment. It will result in suppression of the evidence seized.

Describe items to be seized in the scenario.

Suggestions for Drafting a Warrant

Many difficulties with the specification of the location to be searched and the scope of a search warrant may be avoided by careful drafting. In addition to the considerations contained in the "Search Warrant Checklist," consider the following suggestions:

- Proofread- Carefully proofread the description on the face of the warrant for typographical errors and transposed numbers — particularly addresses, names, dates, vehicle identification, and the descriptions of specific items. Consider having someone else do the proofreading. Make sure that a factual basis for the description stated on the face of the warrant is set forth in the affidavit.

- Authorization to Seize- Ensure that the warrant expressly authorizes the seizure of those items for which you are searching.

- Specify Small Items- Be explicit in the description of the things sought. The circumstances of many offenses justify requesting a warrant to look for very small articles. The inclusion of small items will not only avoid challenges to the warrant based on lack of specificity but will also serve to expand the scope of the search. Individual bullets, folded bindles of controlled substances, papers with names and phone numbers of potential co-conspirators, and papers that tend to identify the person in custody or control of the premises are a few examples of common items that can bolster specificity and expand the boundaries of the search.

- Expand List of Crimes Under Investigation- Listing additional crimes under investigation may expand the potential scope of the search warrant.

- Avoid "catch-all" phrases such as "any evidence related to..." or "any and all evidence of..." Recent Court of Appeals and Supreme Court opinions have held phrases such as, "any evidence related to [the crime]..." as being overly broad. Search clauses should be for the specific items or class/type of items law enforcement has PC to search for and seize.

- Search for Evidence of Frequenting (Drug Cases) - Probable cause to believe a residence has been the location of narcotics sales will often support the inference that persons found on the premises at the time the warrant is executed will be committing the crime of frequenting a place where controlled substances are kept.

- Search for Identity of Primary Suspect- The identity of the prime suspect may be only partially known. Request authority to search persons present for identification to determine whether they may be the prime suspect.

- Justify Car and Person Searches- Include language justifying searches of cars and persons when probable cause exists for such a search.

- Seize Forfeitable Items- ORS 131A.060 (2) (civil forfeiture) and ORS 131.561 (criminal forfeiture) each permit a court to issue an order or endorse a search warrant with authority to seize property for forfeiture.

Additional Requirements for the Warrant

In addition to requiring "particularity" concerning the location to be searched, the name of the person to be searched, and the things authorized to be seized, the warrant must:

- Contain the date the warrant was issued. ORS 133.565(1) and (2) (a).
- Be addressed to and authorize its execution by an officer authorized by law to execute search warrants. ORS 133.565(1) (e.g., "To any peace officer of the State of Oregon.".
- Set forth the identity of the judge who issued the warrant. ORS 133.565(2) (a).
- Contain authorization to execute the warrant after 10 p.m. or before 7 a.m. The judge may authorize execution "at any time of the day or night." ORS 133.565(3
- Specify an extended period of time (not to exceed ten days) within which the warrant must be executed. ORS 133.565(3). The statute does not require that the warrant indicate the execution time limit unless more than five days is authorized.
- Specify the period of time (not to exceed five days after execution) within which the warrant is to be returned to the court. ORS 133.565(2) (d).

The Issuing Magistrate

Only a judge can issue a search warrant, and only a judge can dictate the terms of a warrant. ORS 133.545(1). An officer executing a search warrant has no authority to correct an error in the warrant, but unauthorized interlineations do not necessarily invalidate the warrant.

Executing a Warrant

Securing Persons

A person may not be "seized" while a warrant is obtained unless the police have probable cause to arrest, or some other independent authority (e.g., ORS 131.615, authorizing stop and reasonable detention of a person suspected of criminal activity), to detain the person.

Securing Premises

Under Article I, section 9, of the Oregon Constitution, the "securing" of premises while a search warrant is sought is a seizure that must be justified under a recognized exception to the warrant requirement. For example: padlocking a storage unit while a warrant is sought to enter it.

Exigent circumstances may justify a warrantless seizure of premises. For example: when the police arrive at the scene of a homicide, they may make an immediate, warrantless entry of the premises to preserve the crime scene.

Securing Automobiles

The act of securing a vehicle or an object while a warrant is sought is a seizure. Absent probable cause and exigent circumstances, such a seizure is unlawful. For example: assigning an officer to watch a car versus towing it to impound lot until a search warrant can be obtained.

Under the Fourth Amendment, it is reasonable to seize and impound an automobile, based on probable cause, for "whatever period is necessary to obtain a warrant for the search."

Identifying, Detaining, and Controlling Persons at Search Scene

ORS 133.605 authorizes officers to control persons present at a place where a search warrant is being executed to the extent necessary to execute the warrant with all practicable safety.

- That includes the authority to identify anyone entering the site.
- Handcuffing an occupant of a residence during the execution of a search warrant is permissible if the police have reasonable suspicion to believe that the person poses a threat to the safety of the officers or others.
- An officer may frisk an occupant of the place searched if there is reasonable suspicion that the person is armed and dangerous.
- A police officer also is entitled to conduct an officer-safety search of the immediate area around an individual when the officer has reason to believe that the individual may gain immediate control of a weapon.

Reading and Delivering a Copy of the Warrant

ORS 133.575(3) provides that, except for mobile tracking device warrants, before undertaking any search or seizure pursuant to the warrant, the executing officer shall read and give a copy of the warrant to the person to be searched or to the person in apparent control of the premises to be searched. If the premises are unoccupied or there is no one in apparent control, the officer shall leave a copy of the warrant suitably affixed to the premises.

Scope of the Search

The areas subject to lawful search pursuant to the warrant are defined by the description set forth on the face of the warrant. The test is whether the scope of the search is “reasonably necessary” to find those items specified in the warrant. The character of the things specified in the warrant defines the areas that may be searched. For example, police cannot move a stereo to view serial numbers while executing a warrant for evidence of a shooting.

If you are searching for stolen ATVs, can you search inside dresser drawers? Why or why not?

Absent probable cause or reasonable officer-safety concerns, persons not named in a search warrant who happen to be present during the execution of a warrant are not themselves subject to search.

Receipt for Things Seized

ORS 133.595 requires that promptly upon completion of the search, the officer shall make a list of the things seized and shall deliver a receipt embodying the list to the person from whose possession they are taken, or the person in apparent control of the premises or vehicle from which they are taken. If the vehicle or premises are unoccupied or there is no one present in apparent control, the executing officer shall leave the receipt suitably affixed to the vehicle or premises.

Returning the Warrant

ORS 133.615(2) provides an officer who has executed a search warrant shall, as soon as is reasonably possible and in no event later than the date specified in the warrant, return the warrant to the issuing judge together with a signed list of things seized and setting forth the date and time of the search. The return and warrant are then filed with the original affidavit, completing the record of the issuance and execution of the search. ORS 133.615(3).

Summary

A search warrant is a court order to search a specific place for specific items.

Place to be searched	Person to be searched	Property to be seized

Search Warrant Checklist

Affidavit

- "Boilerplate"
  - Does the affidavit explain expertise relating to a particular case ("boilerplate")?

- Case information
  - Basis of knowledge: Is it clear that the information is based on the affiant's personal knowledge?
  - "I saw...." "Witness/officer told me..."
  - Does the affidavit address credibility of each informant?
    - Identified by name/agency/location
    - Motive to lie/other reasons to question credibility (drug/alcohol use, etc.)
    - Impeachable criminal history
    - Previously provided accurate information
    - Voluntarily provided evidence supporting contentions
    - Passed polygraphs
  - Does the affidavit address the reliability of information?
    - Cross-corroborated
    - Consistent with police knowledge/expertise
    - Was the accuracy verified?
  - Does the affidavit include information known that would weigh against the credibility of the informant/reliability of information?
  - Does the affidavit describe how the affiant verified the accuracy of information?

- Descriptions
  - Is the place to be searched described with particularity?
    - Describe a unique location? Include outbuildings/vehicles/yards/persons, if applicable
  - Is property to be seized described with particularity?
  - Does it include a catch-all: "... and any other evidence of [the crime]"?

- Probable Cause
  - Does the affidavit establish probable cause that the property in question is crime-related?
  - Does the affidavit explain why property in question is likely to be at the place to be searched?
  - Does the affidavit explain why the property is likely to be there still?
  - If applicable, does the affidavit explain why nighttime service is justified?
  - If applicable, does the affidavit explain why more than five days is needed for service?
  - Does the request say to "search" and "seize"?

Warrant

- Does the place described in the warrant exactly match the place described in the affidavit?
- Does the description of the property to be seized in the warrant exactly match the description in the affidavit?
- Does the request say to "search" and "seize"?
- Does it include a nighttime indorsement?
- Does it include an extension of the five-day service limit?

- Warrant Service
    - Before executing:
        - Knock and announce
        - Give a copy of the warrant to the person to be searched/person in apparent control of the property
        - If unoccupied/no one in apparent control, affix a copy of the warrant to premises/vehicle

    - After executing:
        - Make a list of things seized
        - Deliver receipt embodying list to the person from whom items seized/person in apparent control
        - If unoccupied/no one in apparent control, affix a copy of the receipt to premises/vehicle

- Warrant Return
    - If not executed within the time specified in the warrant, return the warrant to the issuing judge immediately.
    - If executed within time limits on the warrant, return the warrant to the issuing judge by the date specified in the warrant with:
        - Signed list of things seized
        - Date and time of the search

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

State of OREGON	)	AFFIDAVIT OF PROBABLE
	)	CAUSE FOR ISSUANCE OF
County of MARION	)	SEARCH WARRANT

I, J.D. "Buck" Savage being first duly sworn on oath, do depose and say that I am a certified Police Officer in the State of Oregon who is authorized to apply for a search warrant pursuant to ORS 133.545(5). I have been employed by the Everytown Police Department for over a year. I am currently assigned to the Everytown Police Department Patrol Division as a Patrol Officer and am tasked with conducting criminal investigations as part of my assigned duties. During my Law Enforcement career, I have received training in the detection and investigation of crimes from the Oregon Department of Public Safety Standards and Training (DPSST). I have over 600 hundred hours of DPSST recognized training. As a police officer, I have received numerous hours of training in the investigation of property crimes such as theft, burglary, metal theft and criminal conspiracies. I have made numerous arrests based on probable cause for these crimes, and have seized evidence which has led to convictions of offenders for those crimes.

I am seeking a search warrant for the residence and curtilage located at 315 Harry Minto Court, Everytown, Marion County, Oregon, for evidence of the crimes of: Theft in the First Degree (ORS 164.055), Theft in the Second Degree (ORS 164.045), and Theft by Receiving (ORS 164.095);

This affidavit is intended to provide probable cause to support the issuance of a search warrant, and does not set forth all of the information obtained during the course of this investigation. The information contained within this affidavit is based upon information I have gained from my investigation, my personal observations, my training and experience, and/or information relayed to me by other law enforcement officers and/or agents.

FACTS

On the afternoon of 02/09/2022 I was on duty, wearing the uniform and badge of the Everytown Police Department (EPD) and operating a marked EPD patrol car. I was patrolling my assigned district when I received the following dispatch from EPD communications at 1:47 P.M.. This following *italicized* narrative has been cut and pasted from the original computer aided dispatch into this affidavit:

Respond to the north side of the fire tower near the intersection Mignano Street and Morrow Street. Anonymous report of two subjects loading items into a pickup. Caller is a passerby but advises caller knows that the location is private property and no one should be there.

I arrived on scene at 1:52 P.M. and noted a single subject later identified as Robert Gene Peterson DOB 07/08/1962, loading what appeared to be scrap metal into the rear of a 2006 Chevrolet 3500 pickup bearing Oregon License Plate ABC123. I performed records checks of this vehicle and

learned it had been flagged in DMV records as “Flag 10 – sold” which means the Oregon DMV has received notice that the vehicle had been sold, but has not received the new owner’s identity.

I approached Peterson who had piece of scrap metal scrap in his hands and observed numerous pieces of metal in the back of the truck as well as scrap metal on the ground. The metal in the truck included what appeared to be aluminum window frames, small metal drums, steel pipe, aluminum flashing, electrical panel boxes, conduit, fence posts, electrical wire, auto rims, brass pipe fittings, copper pipe scraps and the like. I also noted most of the metal in the truck, in Peterson’s hands and on the ground, had a line of dark red spray paint applied, randomly across the pieces in a haphazard manner.

I introduced myself and advised Peterson of the reported activity and my concerns that no one was supposed to be at the property. Peterson was quick to tell me he had permission from the property owner to haul off scrap, telling me he was doing a service for the owner who did not want to deal with it. Peterson was very direct and confident in his statements. Peterson told me he did not have a metal transportation certificate as the stuff was just given to him.

When I confirmed Peterson was not the owner of the property he told me, “I don’t own the property. The guy who owns it told us to haul all this away for him.”

When I asked if he was being paid for this service Peterson replied, “He’s not paying me to haul all this away. He said we could have it to sell. He doesn’t want the hassle.”

When asked who the owner was, Peterson told me, “His name, it’s, uhh, umm, Tim!” when asked for “Tim’s” full name or phone number, Peterson was unable to provide a full name or phone number. Peterson told me that he made the deal with “Tim,” in person.

When asked, Peterson advised he was not carrying any identification but gave me his name and date of birth. Utilizing my mobile data terminal, I was able to verify his identity by viewing Peterson’s Oregon DMV file photograph as well as recent mugshots from the Marion County Jail.

While I was verifying Peterson’s identity, the property owner Victoria Huerta arrived on scene and asked me what was going on. I advised her of the initial report and of Peterson’s statement. Our conversation took place out of earshot of Peterson.

Of note, while speaking with Huerta, I noticed Peterson seemed to be suffering some physical stress, pacing about, looking over towards us and then quickly away. Peterson appeared very tense and worried, crossing his arms and running his hands through his hair repeatedly. Peterson only exhibited this behavior after the arrival of Huerta.

Huerta identified herself as the owner of this property and I later confirmed this with on-line searches of Marion County Assessor’s Office records. Huerta told me no one that works for her or in her family was named “Tim.”

When asked if Huerta had given Peterson permission to be present, and take possession of the metal she replied, “No way. I did not tell them him he could have any metal. I didn’t give him permission to be on my property. I don’t know him!”

When asked if she had been the original anonymous caller Huerta told me, “No, I didn’t call you guys but I’m glad someone did. This is a guy I’ve seen on my property before.”

Huerta told me she previously had metal stolen from the property two different times and that both of the previous thefts occurred within the last two or three weeks. Huerta told me those thefts were not reported as she had not gotten her business license with the City of Everytown as of yet, and thought she may have gotten in trouble.

I re-approached Peterson and detained him without incident, advising him of his rights per Miranda from the EPD provided card. Peterson acted indignant telling me he had done nothing wrong. I placed him inside of a patrol car.

I returned to Huerta and spoke with her at greater length. Huerta told me she was a resourceful person who has found many different ways to make money. Huerta told me she was a licensed and bonded “handyman,” who own several rentals in the area and this piece of property. Huerta’s long-term plan is to sell this parcel to a developer, but for now it is a great place to store all the scrap metal she picks up at both commercial and residential jobs. Huerta told me since she had the storage space she can hold onto the metal and watch the market, selling when it is high, and increasing her profit.

Huerta told me she was a generally a calm person and rolls with the punches, but she’s angry about the thefts and want the suspects prosecuted.

Huerta told me scrap metal prices vary but last she checked, local metal recyclers were paying $0.35 to $0.50 a pound for aluminum, $3.00-$3.50 a pound for copper and steel was about $179 a ton. Huerta looked at the collection of metal in the back of Peterson’s truck and estimated there was 200 pounds of steel, 50 pounds of aluminum and 30 pounds of copper for a value of roughly $120.00. Huerta estimated the remaining metals that had not yet been loaded up would be over $500.

When asked about the previous thefts Huerta told me they occurred a couple of days apart and both times the suspect drove off in a white pickup truck. Huerta told me she was “100 percent” positive that Peterson was the same person from the previous thefts, and that the Chevrolet truck on her property today matched for size, color and type. Huerta told me she could not be sure it was the same truck and was reluctant in a 100% identification because she didn’t get the license plate.

When asked about the total value of the metal from the previous thefts Huerta told me it was difficult to know without weighing it, but that a very conservative estimate would be $1000.00.

When asked about the red spray paint on the metal, Huerta told me, “Yeah, I did that. A buddy told me to mark everything so if it got stolen, I could prove it was mine.” Huerta told me she knows she needs a fence for security but can’t afford it right now. Huerta added she would have more money if “tweakers” would stop stealing from her.

I then turned my attention to Peterson and spoke with him in the back of my patrol car. I reminded him of his Miranda rights, and he acknowledged understanding of his rights and agreed to speak with me. This interaction was all recorded on my body camera and later downloaded into evidence at EPD.

Peterson told me, “Man, I don’t want to go to jail today, is there something we can do?” I told Peterson that I was unable to make him any promises of leniency but would appreciate the truth about what was going on today.

Peterson admitted he didn’t know the property owner and was stealing the metal when I first contacted him. Peterson told me he had stolen metal from this location on three previous occasions, not just the two Huerta reported.

Peterson told me he sells his stolen metal to a guy who then takes it to an out-of-town recycler every month. I asked Peterson to tell me more. Peterson told me he sells the metal he steals to John Anderson who hoards various stolen metal waiting for prices to rise, and then sells it at an out of town recycler hauling it in his utility trailer and truck. Peterson described Anderson as a white male about six feet tall with brown hair. Peterson told me he is a user of methamphetamine and met Anderson through another methamphetamine user who steals metal and introduced them, out of a favor to Peterson. Peterson told me he did not know where Anderson sells the metal.

Peterson told me Anderson lived at 315 Harry Minto Court, Everytown, Marion County, Oregon, and he has been there on multiple occasions to deliver scrap metal. Peterson said that when he makes deliveries to Anderson he helps carry the scrap metal into the house. Peterson said as far as he knows Anderson lives at the house alone.

Peterson told me Anderson turned one of the rooms in his house into a sort of workshop where he weighs the metal he receives on a scale, then separates it by type into barrels and has a specially made hand truck to move heavy drums. Peterson told me this scale looks like a bigger version of the type of scales people use to weigh themselves at home. Peterson told me Anderson usually pays about half of the lowest going rate for metals over the previous month average. Peterson told me Anderson has a red computer tablet with a frayed leather holder he checks prices on via some scrap metal pricing internet website, and then tallys the metal he buys on a yellow scratch pad and pays him in cash for the stolen metal. Peterson told me after Anderson completes the tally, he goes into a different room to get cash and pay him. Peterson told me Anderson always pays the exact amount and has exact change. Peterson believes Anderson doesn’t keep his money on him when dealing with metal sellers out of fear of robbery. Peterson told me over the past six months he has sold metal to Anderson at least 15 times and estimates Anderson has paid him over $3000 for the metal he, “collected.”

Peterson told me the residence at 315 Harry Minto Court, Everytown, Marion County, Oregon is full of barrels containing metals separated by type such as copper, brass and aluminum, and there are some even stacked in the backyard. Peterson told me sometimes when he goes over there the barrels are empty and Anderson has told him he made another “run” to drop a load and get paid. Peterson told me Anderson doesn’t like to accept steel as its heavy and not worth as much.

Peterson told me he has never used drugs with or bought drugs from Anderson, but he is pretty sure Anderson uses methamphetamine. When asked how he knew this, Peterson told me, "You can just tell man, takes one to know one, besides we're talking about stolen metal right?" Peterson told me he knows other drug users drop off metal there as he has met them coming and going, some he has recognized from his time in jail, and others from the streets.

Peterson told me Anderson has a metal grinder with cut off wheels, hydraulic press and cutting torch at his house. Anderson will take metal he buys from the streets and cut, grind or flatten it to make it difficult to trace and recognize. Peterson told me with it being in smaller pieces, Anderson explained to him he could transport more of it and mix it up so it would be less identifiable. Peterson told me he offered to assist Anderson with this process for pay, but Anderson refused him. Peterson characterized Anderson as greedy and is likely trying to maximize his profits as much as possible.

I performed Computerized Criminal History Checks (CCH) of Peterson and learned in Oregon Peterson had been convicted of the following felony crimes: Burglary II, Unlawful Possession of Methamphetamine and Theft I. Peterson also lists multiple convictions for impeachable misdemeanors including Failure to Appear II, Theft II (2 counts), Theft III (4 counts).
I confronted Peterson about his criminal history and the fact that he was lying to me when we first met and asked if Peterson had any other information that would verify what he was telling me about Anderson and the metal theft.

Peterson asked me to get his phone from his truck. Peterson explained he communicates with Anderson on a social app called Facebook messenger, to set up appointments to drop off metal. Peterson told me he has seen Anderson get messages on Facebook Messenger on the red computer tablet in the garage before from other metal sellers and Anderson has hurried him along in order to receive more metal from others who contact him on Facebook Messenger.

Peterson signed a consent to search form for his phone, and gave me verbal permission to look through it. I opened the Facebook Messager app and found a contact for John Anderson, complete with a thumbnail sized profile picture.

In a search of EPD computerized records I located a John Ray Anderson DOB 2/1/1966 who had been contacted by EPD officers on 12/25/2021 at 315 Harry Minto Court, Everytown, Marion County, Oregon on a noise complaint at 2:15 AM. I further researched this EPD call for service and learned an anonymous neighbor reported loud metal grinding sounds coming from the property that disturbed her. Officer Franck Poncherello arrived and documented contacting Anderson who admittedly had been grinding metal and agreed to stop for the night. This incident was documented in EPD call #2021359003 and no further action was taken by EPD.

I later searched the body camera files of the EPD for Officer Frank Poncerello's contact with Anderson documented in EPD call #2021359003 and viewed Anderson's image during the contact with Officer Frank Poncherello when he answered the front door to 315 Harry Minto Court, Everytown, Marion County, Oregon.

I checked with the Oregon Department of Motor vehicles and learned John Ray Anderson DOB 2/1/1966 had just renewed his driver license on 01/29/2022 listing his home address as 315 Harry Minto Court, Everytown, Marion County, Oregon.

I performed a CCH check of John Ray Anderson DOB 2/1/1966 and learned he is a convicted felon for Burglary I, Aggravated Theft, Unlawful Possession of Methamphetamine, Unlawful Manufacture of Methamphetamine and Theft I by Receiving.

In paging though the Facebook messenger posts between Anderson and Peterson, I noted the following conversation between them on 2/8/2022 at 12:10 AM:

Peterson: Hey ill have more 4 u you tomorrw :)
Anderson: after 6 works. Don't bring me anymore of that red paint shit get some acetone and wipe it off.
Peterson: cant U just cut it up?
Anderson: They take digital pictures now when you drop off I aint getting caught with your shit
At my request Peterson sent a message to Anderson at 3:21 PM today:

Peterson: Cool 2 come by?
Anderson: I'm going to drop a load. back after 6

During my conversation with Peterson he was very apologetic and wanted to make sure all of the metal he had loaded into his pickup truck was returned to Huerta. While Huerta was unloading the metal from the back of Peterson's truck I noticed a tan Home Depot shopping bag in the bed of the truck wrapped around a one gallon can of acetone that appeared un-opened. Also around the bag were numerous torn rags.

TRAINING AND EXPERIENCE

I know based on my training and experience investigating property crimes such as theft, burglary, and metal theft, that evidence of such crimes commonly includes stolen property, U.S. Currency, records of sales of stolen property, and tools used in the commission of the crimes of theft, burglary and metal theft such as screw drivers, sledge hammers, prybars, grinders, bolt cutters and the like.

During the course of my investigations, I have interviewed many persons regarding their admitted commission of property crimes and know, from these interviews and by training, of the various equipment, packaging, transportation and sales methods used for stolen property and the monetization of stolen property through sales to third parties.

I have learned from my training and experience and that stolen property is commonly sold for cash, or traded for controlled substances or other property. Those persons who steal or receive the stolen property are likely to retain certain items, of personal interest to them, and to use other items for resale. I know from my training and experience in the investigation of property crimes that persons who are in possession of valuable and/or stolen property will more likely than not keep the property in areas familiar and immediately accessible such as residences and vehicles.

I have learned from my training and experience in the investigation of crimes involving theft, burglary and related conspiracies, that those individuals involved in such activity will conduct themselves in such a manner to avoid detection by law enforcement.

I know from my training and experience that persons involved in criminal activity, especially property and controlled substance offenses, to prefer to use vehicles not registered to them when committing these crimes. The vast majority of contraband and stolen property I have seized from vehicles, has come from vehicles not occupied by the registered owner, or very commonly, vehicles that have transferred ownership but without proper DMV notification and database updating. True owner registration is commonly not done by those involved in criminal activity in an effort to thwart law enforcement investigation and hide the true identity of the operator or owner utilizing the vehicle in criminal activity.

I also know from my personal experience and training that cellular phones, computers and computer tablets can be used to communicate between persons in a variety of ways including voice calls, text messages, e-mails and through various social "apps." I know from my experience in investigating property crimes that people involved in criminal conspiracies, metal theft and theft by receiving are more likely than not to communicate with their co-conspirators through electronic devices such as computer tablets, computers, and cell phones. I know the contents of those communications between offenders have great evidentiary value to investigators and prosecutors of property crimes such as Theft, Theft by Receiving, Conspiracy and Metal Property Offenses. I personally use apps of this nature for lawful communication purposes.

I know from my training and experience that persons involved in criminal activity will usually not carry personal identification in an effort to potentially thwart law enforcement from being able to identify them, and as a safeguard against losing or mislaying the identification at the scene of a crime. I know from my training and experience that many forms of theft and burglary require personal physical effort in moving property, breaking into buildings and other secure spaces, as well as possibly resulting in physical flight from the scene from property owners or law enforcement. I know loss of personal items, including identification from one's pockets or effects during these physical efforts is possible and not desirable by persons involved in criminal activity as it would identify them as suspects.

I know from my personal experience and training that commercial metal recyclers more likely than not record the identity of persons, descriptions of vehicles, type and amount of metals sold, record digital images of these metals and pay for certain amounts of metals by check. I am familiar with the Metal Property Offenses listed in Chapter 165 of the ORS and have read those statutes.

PRAYER

Based on the information detailed above, I believe that more likely than not, evidence of the crimes of; Theft in the First Degree (ORS 164.055), Theft in the Second Degree (ORS 164.045), and Theft by Receiving (ORS 164.095); will be found through the search, seizure, and analysis of the residence and curtilage located at 315 Harry Minto Court, Everytown, Marion County, Oregon. 315 Harry Minto Court, Everytown, Marion County, Oregon, is a single story red house, with a gray metal roof.

A photograph of the location is shown below:



Therefore, I pray for the issuance of a search warrant for the search, seizure, and analysis of the aforementioned location for the following items:

1. Identifiable stolen metals and stolen metals with red spray paint on them
2. Metal grinders, presses, torches and similar tools used to conceal an items status as stolen or alter the appearance of stolen materials.
3. U.S. Currency
4. Business records consisting of tally sheets, metals payment receipts from commercial metals buyers, gas receipts and travel records pertaining to the transportation of stolen metals.
5. A red computer tablet with worn/frayed leather cover. If located, a search of this device will be supported with an additional affidavit in support of search warrant.

_____
J.D. Savage

Sworn and subscribed before me on this the _____ day of February, 2022.

_____ _____
Signature Name
Circuit Court Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

STATE OF OREGON	)	SEARCH WARRANT AND
	)	SEIZURE ORDER
COUNTY OF MARION	)	

THIS MATTER came before the court on a police officer application for a search warrant pursuant to ORS 133.545(5). The basis of the application was set forth in an affidavit, signed and sworn to by the officer.

THE COURT FINDS probable cause to believe the item(s) described below is/are permissible objects and/or categories of search and seizure pursuant to ORS 133.535, relevant to the criminal offense(s) under investigation

THE COURT ORDERS, that any police officer of the State of Oregon is commanded to SEIZE and to SEARCH the location described below:

1. The residence and curtilage located at 315 Harry Minto Court, Everytown, Marion County, Oregon. 315 Harry Minto Court, Everytown, Marion County, Oregon, is a single story red house, with a gray metal roof.

A photograph of the location is shown below:



TO SEARCH for, to SEIZE, and to ANALYZE the following described property as evidence concerning the commission of Theft in the First Degree (ORS 164.055), Theft in the Second Degree (ORS 164.045), and Theft by Receiving (ORS 164.095):

1. Identifiable stolen metals and stolen metals with red spray paint on them
2. Metal grinders, presses, torches and similar tools used to conceal an items status as stolen or alter the appearance of stolen materials.
3. U.S. Currency

4. Business records consisting of tally sheets, metals payment receipts from commercial metals buyers, gas receipts and travel records pertaining to the transportation of stolen metals.
5. A red computer tablet with worn/frayed leather cover. If located, a search of this device will be supported with an additional affidavit in support of search warrant.

You are further directed to make return of this warrant, along with a list of those items seized setting forth the date and time of the search, to the Court within five (5) days after execution.

Issued over my hand on this _____ day of [month], [year]

at _____ am / pm.

_____ _____

Signature Name

Circuit Court Judge,
County of [county], State of Oregon

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MARION

IN THE MATTER OF AN APPLICATION) Case Number:

FOR A SEARCH WARRANT)

AFFIDAVIT

STATE OF OREGON

ss.

County of MARION

INTRODUCTION:

I, J.D. "Buck" Savage, being first duly sworn on oath, do depose and say that: I am a Police Officer and have been employed by Everytown Oregon Police Department for over a year. I am currently assigned to the Everytown Police Department Patrol Division as a Patrol Officer and am tasked with conducting criminal investigations as part of my assigned duties. I am authorized by the Oregon Revised Statutes to make application to a judge for Search Warrant.

TRAINING AND EXPERIENCE:

During my Law Enforcement career, I have received training in the detection and investigation of crimes from the Oregon Department of Public Safety Standards and Training (DPSST). I have over 600 hundred hours of DPSST recognized training. As a police officer, I have received numerous hours of training in the investigation of property crimes such as theft, burglary, metal theft and criminal conspiracies. I have made numerous arrests based on probable cause for these crimes, and have seized evidence which has led to convictions of offenders for those crimes.

This evidence has included stolen property, U.S. Currency, and records of sales of stolen property, tools used in the commission of the crimes of theft, burglary and metal theft such as screw drivers, sledge hammers, prybars, grinders, bolt cutters and the like.

During the course of my investigations, I have interviewed many persons regarding their admitted commission of property crimes and know, from these interviews and by training, of the various equipment, packaging, transportation and sales methods used for stolen property and the monetization of stolen property through sales to third parties.

I have learned from my training and experience and that stolen property is commonly sold for cash, or traded for controlled substances or other property. Those persons who receive the stolen property are likely to retain certain items, of personal interest to them, and to use other items for resale.

I have learned from my training and experience in the investigation of crimes involving theft, burglary and related conspiracies, that those individuals involved in such activity will conduct themselves in such a manner to avoid detection by law enforcement.

I know persons involved in criminal activity, especially property and controlled substance offenses, to prefer to use vehicles not registered to them when committing these crimes. The vast majority of contraband and stolen property I have seized from vehicles, has come from vehicles not occupied by the registered owner, or very commonly, vehicles that have transferred ownership but without proper DMV notification and database updating. True owner registration is commonly not done by those involved in criminal activity in an effort to thwart law enforcement investigation and hide the true identity of the operator or owner utilizing the vehicle in criminal activity.

I also know from my personal experience and training that cellular phones, computers and computer tablets can be used to communicate between persons in a variety of ways including voice calls, text messages, e-mails and through various social “apps.” I know the contents of those communications between offenders have great evidentiary value to investigators and prosecutors of property crimes such as Theft, Theft by Receiving, Conspiracy and Metal Property Offenses. I personally use apps of this nature for lawful communication purposes.

I know from my training and experience that persons involved in criminal activity will often times not carry personal identification in an effort to potentially thwart law enforcement from being able to identify them, and as a safeguard against losing or mislaying the identification at the scene of a crime. I know from my training and experience that many forms of theft and burglary require personal physical effort in moving property, breaking into buildings and other secure spaces, as well as possibly resulting in physical flight from the scene from property owners or law enforcement. I know loss of personal items, including identification from one’s pockets or effects during these physical efforts is possible and not desirable by persons involved in criminal activity as it would identify them as suspects.

I know from my personal experience and training that commercial metal recyclers record the identity of persons, descriptions of vehicles, type and amount of metals sold, record digital images of these metals and pay for certain amounts of metals by check. I am familiar with the Metal Property Offenses listed in Chapter 165 of the ORS and have read those statutes.

LOCATION:

The following premises and curtilage and vehicles located at: 315 Harry Minto Court, Everytown, Marion County, Oregon. 315 Harry Minto Court, Everytown, Marion County, Oregon is sited on the southside of Harry Minto Court in the City Limits of Everytown. 315 Harry Minto Court, Everytown, Marion County, Oregon is a single story, wood framed ranch styled house with tan composite roof. 315 Harry Minto Court, Everytown, Marion County, Oregon is painted forest green in color with cream colored trim, gutters and double car garage. Affixed eight-inch, black metallic numbers "315" appear to the east of the garage door which fronts Harry Minto Court. The front door is natural wood in color and in a recessed alcove to the east of the garage door. The front door has a burnished brass appearing doorknob and deadbolt on the east side of the door. A white, eight-inch round sticker with red and black lettering appears on the window to the east of the front door that reads, "NO SOLICITORS." There is a RV parking pad to the west of the garage. The access to the backyard is controlled by a six-foot cedar fence. This premises is further identified with Marion County Tax Assessor account number 427886 and Map number12S02W340000395.

FACTS:

On the afternoon of 02/09/2022 I was on duty, wearing the uniform and badge of the Everytown Police Department (EPD) and operating a marked EPD patrol car. I was patrolling my assigned district when I received the following dispatch from EPD communications at 1:47 P.M.. This following *italicized* narrative has been cut and pasted from the original computer aided dispatch into this affidavit:

Respond to the north side of the fire tower near the intersection Mignano Street and Morrow Street. Anonymous report of two subjects loading items into a pickup. Caller is a passerby but advises caller knows that the location is private property and no one should be there.

I arrived on scene at 1:52 P.M. and noted a single subject later identified as Robert Gene Peterson DOB 07/08/1962, loading what appeared to be scrap metals into the rear of a 2006 Chevrolet 3500 pickup bearing Oregon License Plate ABC123. I performed records checks of this vehicle and learned it had been flagged in DMV records as "Flag 10 – sold" which means the Oregon DMV has received notice that the vehicle had been sold, but has not received the new owner's identity.

I approached Peterson who had aluminum metal frame metal scrap in his hands and noted in the back of the truck was numerous pieces of metal as well as scrap metal on the ground. The metal in the truck included aluminum window frames, small metal drums, steel pipe, aluminum flashing,

electrical panel boxes, conduit, fence posts, electrical wire, auto rims, brass pipe fittings, copper pipe scraps and the like. I also noted most of the metal in the truck, in Peterson's hands and on the ground, had a line of dark red spray paint applied, randomly across the pieces in a haphazard manner.

I introduced myself and advised Peterson of the reported activity and my concerns about criminal activity being afoot. Peterson was quick to tell me he had permission from the property owner to haul off scrap, telling me he was doing a service for the owner who did not want to deal with it. Peterson was very direct and confident in his statements. Peterson told me he did not have a metal transportation certificate as the stuff was just given to him.

When I confirmed Peterson was not the owner of the property he replied, "I don't own the property. The guy who owns it told us to haul all this away for him."

When I confirmed he was not being paid for this service Peterson told me, "He's not paying me to haul all this away. He said we could have it to sell. He doesn't want the hassle."

When asked who the owner was, Peterson told me, "His name, it's, uhh, umm, Tim!" when asked for "Tim's" full name or phone number, Peterson replied, "Nah, I don't have his last name or phone number. I made the deal with him in person."

When asked, Peterson advised he was not carrying any identification. Utilizing my mobile data terminal, I was able to verify his identity with a high degree of certainty by viewing Peterson's Oregon DMV file photograph as well as recent mugshots from the Marion County Jail.

While I was verifying Peterson's identity, the property owner Victoria Huerta arrived on scene and asked me what was going on. I advised her of the initial report and of Peterson's statement. Our conversation took place out of earshot of Peterson.

Of note, while speaking with Huerta, I noticed Peterson seemed to be suffering some physical stress, pacing about, looking over towards us and then quickly away. Peterson appeared very tense and worried, crossing his arms and running his hands through his hair repeatedly. Peterson only exhibited this behavior after the arrival of Huerta.

Huerta had identified herself as the owner of this property and I later confirmed this with on-line searches of Marion County Assessor's Office records. Huerta told me no-one in her employ or family was named "Tim."

When asked if Huerta had given Peterson permission to be present, and take possession of the metal she replied, "No way. I did not tell them him he could have any metal. I didn't give him permission to be on my property. I don't know him!"

When asked if she had been the original anonymous caller Huerta told me, “No, I didn’t call you guys but I’m glad someone did. This is a guy I’ve seen on my property before.”

Huerta told me she has twice previously been the victim of metal theft from this location, once she noted metal missing on 1/30/2022 and again on or about 2/4/2022. Huerta told me those thefts were not reported as she had not gotten her business license with the City of Everytown as of yet, and thought she may have gotten in trouble.

I reapproached Peterson and detained him without incident, advising him of this rights per Miranda from the EPD provided card. Peterson acted indignant telling me he had done nothing wrong. I placed him inside of a patrol car.

I returned to Huerta and spoke with her at greater length. Huerta told me she was a resourceful person who has found many different ways to make money. Huerta told me she was a licensed and bonded “handyman,” who own several rentals in the area, and this piece of property. Huerta’s long-term plan is to sell this parcel to a developer, but for now it is a great place to store all the scrap metal she picks up at both commercial and residential jobs. Huerta told me since she had the storage space she can hold onto the metal and watch the market, selling when it is high, and increasing her profit.

Huerta told me she was a generally a calm person and rolls with the punches, but she’s angry about the thefts and want the suspects prosecuted.

Huerta told me scrap metal prices vary but last she checked, local metal recyclers were paying $0.35 to $0.50 a pound for aluminum, $3.00-$3.50 a pound for copper and steel is about $0.09 per pound. Huerta looked at the collection of metal in the back of Peterson’s truck and estimated there was 200 pounds of steel, 50 pounds of aluminum and 30 pounds of copper for a value of roughly $120.00. Huerta estimated the remaining metals that had not yet been loaded up would be over $500.

When asked about the previous thefts she told me, “Yeah, two weeks ago, a couple days apart, I chased him off and he took off in a white truck.” Huerta was 100 percent positive in her identification of Peterson as the previous suspect, but could only tell me the Chevrolet truck on her property today matched for size, color and type. Huerta told me she could not be sure it was the same truck and was reluctant in a 100% identification because she didn’t get the license plate.

When asked about the total value of the metal from the previous thefts Huerta told me it was difficult to know without weighing it, but that a very conservative estimate would be $1000.00. Huerta told me aside from the red spray paint there wasn’t much identifiable metal stolen other than two lead shower liners she had wadded into a medicine ball size chunk of lead, and they were over 75 pounds apiece and had some gray plaster stuck inside of the lead sheeting. Huerta was unsure on the value of the scrap lead.

When asked about the red spray paint on the metal, Huerta told me, “Yeah, I did that. A buddy told me to mark everything so if it got stolen, I could prove it was mine.” Huerta told me she knows she needs a fence for security but can’t afford it right now. Huerta added she would have more money if “tweakers” would stop stealing from her.

I then turned my attention to Peterson and spoke with him in the back of my patrol car. I reminded him of his Miranda rights, and he acknowledged understanding of his rights and agreed to speak with me. This interaction was all recorded on my body camera and later downloaded into evidence at EPD.

Peterson told me, “Man, I don’t want to go to jail today, is there something we can do?” I told Peterson we would need to start with the truth about what going on today and go from there.

Peterson admitted he didn’t know the property owner and was stealing the metal when I first contacted him. Peterson told me he had stolen metal from this location on three previous occasions, not just the two Huerta reported.

Peterson told me he sells his stolen metal to a guy who then takes it to an out-of-town recycler every month. When asked for the identity of his co-conspirator, Peterson told me again he didn’t want to go to jail, obviously attempting to broker a deal in exchange for his continued cooperation.

I told Peterson, if he provided useful information against his co-conspirator that led to the arrest of the co-conspirator and the seizure of evidence of these crimes I would do the following: #1 Issue him a citation to appear for his crimes today in lieu of custodial lodging in jail. #2 Note his co-operation in my report with the recommendation that this cooperation be considered by the Marion County District Attorney when his case was evaluated. I added that I in no way could promise anything on the Marion County District Attorney’s behalf, only make a recommendation. Peterson accepted this and added, “I just can’t go to jail today.”

I asked Peterson to tell me more. Peterson told me he sells the metal he steals to John Anderson who hoards various stolen metal waiting for prices to rise, and then sells it at an out of town recycler, hauling it in his utility trailer and truck. Peterson told me he did not know where Anderson sells the metal, and they weren’t really friends. Peterson told me he is a user of methamphetamine and met Anderson through another methamphetamine user who steals metal and introduced them, out of a favor to Peterson. Of note, Peterson refused to name this other methamphetamine user, as well as the second subject he was with when surprised by Huerta earlier.

Peterson told me Anderson lived at 315 Harry Minto Court, Everytown, Marion County, Oregon, and he remembers the address because his sister used to live there years ago.

Peterson told me Anderson has a large scale inside of his garage and weighs the metal he receives then separates it by type into barrels and has a specially made hand truck that moves heavy drums. Peterson told me this scale looks like an antique from a farm with a 3 foot square base and various

weights and bars that slide back and forth for balance. Peterson told me he doesn't really know how the scale works but it seems pretty accurate. Peterson told me the only scales he knows how to use measure substances in grams. Peterson told me Anderson usually pays about half of the lowest going rate for metals over the previous month average. Peterson told me Anderson has a red computer tablet with a frayed leather holder he checks prices on via some scrap metal pricing internet website, and then tallys the metal he buys on a scratch pad and pays him in cash for the stolen metal. Peterson found it ironic that the scratch pad was a giveaway item from the crime prevention section of EPD. I know the EPD Crime Prevention section routinely gives away promotional material at community events and that promotional material includes paper scratch pads with the EPD logo, phone number and various crime prevention tips printed on them. Peterson told me after Anderson completes the tally, he goes into his house to get cash and pay him. Peterson told me Anderson always pays the exact amount and has exact change. Peterson believes Anderson doesn't keep his money with him when dealing with metal sellers out of fear of robbery. Peterson estimates Anderson has paid him over $3000 in the past six months for metal he, "collected."

Peterson told me the garage at 315 Harry Minto Court, Everytown, Marion County, Oregon is full of barrels containing metals separated by type such as copper, brass and aluminum, and there are some even stacked in the backyard. Peterson told me sometimes he goes over there the barrels are empty and Anderson has told him he made another "run" to drop a load and get paid. Peterson told me Anderson doesn't like to accept steel as its heavy and not worth as much.

Peterson told me he has never used drugs with or bought drugs from Anderson, but he is pretty sure Anderson uses methamphetamine. When asked how he knew this, Peterson told me, "You can just tell man, takes one to know one, besides we're talking about stolen metal right?" Peterson told me he knows other drug users drop off metal there as he has met them coming and going, some he has recognized from his time in jail, and others from the streets.

When asked, Peterson told me he had sold metal to Anderson at least 20 times in the past six months but didn't want to reveal his other sources for metal, but was quick to point out that not all of it was stolen, or at least not stolen by him.

Peterson told me Anderson has a metal grinder with cut off wheel, hydraulic press and cutting torch in his garage. Anderson will take metal he buys from the streets and cut, grind or flatten it to make it difficult to trace and recognize. Peterson told me with it being in smaller pieces, Anderson explained to him he could transport more of it and mix it up so it would be less identifiable. Peterson told me he offered to assist Anderson with this process for pay, but Anderson refused him. Peterson characterized Anderson as greedy and is likely trying to maximize his profits as much as possible.
.

I performed Computerized Criminal History Checks (CCH) of Peterson and learned in Oregon Peterson had been convicted of the following felony crimes: Burglary II, Unlawful Possession of Methamphetamine and Theft I. Peterson also lists multiple convictions for impeachable misdemeanors including Failure to Appear II, Theft II (2 counts), Theft III (4 counts).

I confronted Peterson about his criminal history and the fact that he was lying to me when we first met. I told him in order to make this information useable, I would need some substantial corroboration.

Peterson asked me to get his phone from his truck. Peterson explained he communicates with Anderson on a social app called Facebook messenger, to set up appointments to drop off metal. Peterson told me he has seen Anderson get messages on Facebook Messenger on the red computer tablet in the garage before from other metal sellers and Anderson has hurried him along in order to receive more metal from others who contact him on Facebook Messenger.

Peterson signed a consent to search form for his phone, and gave me verbal permission to look through it. I opened the Facebook Messager app and found a contact for John Anderson, complete with a thumbnail sized profile picture.

In a search of EPD computerized records I located a John Ray Anderson DOB 2/1/1966 who had been contacted by EPD officers on 12/25/2021 at 315 Harry Minto Court, Everytown, Marion County, Oregon on a noise complaint at 2:15 AM. I further researched this EPD call for service and learned an anonymous neighbor reported loud metal grinding sounds coming from the property that disturbed her. Officer Franck Poncherello arrived and documented contacting Anderson who admittedly had been grinding metal in his garage and agreed to stop for the night. This incident was documented in EPD call #2021359003 and no further action was taken by EPD.

I later searched the body camera files of the EPD for Officer Frank Poncerello's contact with Anderson documented in EPD call #2021359003 and viewed Anderson's image during the contact with Officer Frank Poncherello when he answered the front door to 315 Harry Minto Court, Everytown, Marion County, Oregon.

I checked with the Oregon Department of Motor vehicles and learned John Ray Anderson DOB 2/1/1966 had just renewed his driver license on 01/29/2022 listing his home address as 315 Harry Minto Court, Everytown, Marion County, Oregon.

I performed a CCH check of John Ray Anderson DOB 2/1/1966 and learned he is a convicted felon for Burglary I, Aggravated Theft, Unlawful Possession of Methamphetamine, Unlawful Manufacture of Methamphetamine and Theft I by Receiving.

In paging though the Facebook messenger posts between Anderson and Peterson, I noted the following conversation between them on 2/8/2022 at 12:10 AM:

Peterson: Hey ill have more 4 u you tomorrw :)
Anderson: after 6 works. Don't bring me anymore of that red paint shit get some acetone and wipe it off.
Peterson: cant U just cut it up?
Anderson: They take digital pictures now when you drop off I aint getting caught with your shit

At my request Peterson sent a message to Anderson at 3:21 PM today:

Peterson: Cool 2 come by?
Anderson: I'm going to drop a load. back after 6

I then contacted Officer Johnathan Baker and requested he respond to the area of 315 Harry Minto Court, Everytown, Marion County, Oregon to attempt make contact with Anderson if he appeared to be leaving. I completed citations in lieu of custody for Peterson for the crimes of Criminal Trespass II, Theft I and Criminal Conspiracy, and released him at the scene after supervising him unloading Huerta's stolen metal from the rear of his truck.

While Peterson was unloading the metal, I noticed a tan Home Depot shopping bag in the bed of the truck wrapped around a one gallon can of acetone that appeared un-opened. Also about the bag were numerous torn rags.

While en-route to 315 Harry Minto Court, Everytown, Marion County, Oregon Officer Baker called me at 3:31 P.M and advised Anderson walked out the front door of 315 Harry Minto Court, Everytown, Marion County, Oregon and began hooking up a gray painted, plywood paneled, single axle utility trailer with black metal frame and whitewall spare tire affixed to the trailer's tongue, to the rear of a black 2016 Chevrolet Silverado bearing Oregon License Plate #XYZ-222 with a Bart Simpson bobble head doll attached to the center of the dashboard in the RV parking area on the west side of the house. I obtained routine DMV records checks of this vehicle and learned it was registered to Anderson at 315 Harry Minto Court, Everytown, Marion County, Oregon. 315 Harry Minto Court, Everytown, Marion County, Oregon.

Officer Baker told me he approached Anderson, identified himself and said we would like to speak with him about a criminal matter, with the case officer currently en-route to their location and expected to arrive shortly. Anderson replied to Officer Baker with one word, "Lawyer."

I arrived at 315 Harry Minto Court, Everytown, Marion County, Oregon at 3:34 PM and confirmed his identification on sight from his DMV photo, previous Marion County Jail booking photos I had viewed and I also recognized him from the Facebook Messenger profile picture. While standing in the driveway, I advised Anderson of his rights per Miranda from my departmentally provided card and of my desire to speak with him in regards to a metal theft investigation. Anderson again replied with one word, "Lawyer." Believing this was a clear invocation of informed rights, no incriminating questions were asked of Anderson.

I did also make a request of Anderson for consensual search of 315 Harry Minto Court, Everytown, Marion County, Oregon for evidence of metal theft and related crimes, and he replied, "Lawyer."

While standing in the driveway, but also in clear view of the public street and sidewalk, the utility trailer and described Silverado pickup truck appeared to be devoid of cargo. We noted the west facing man door access to the garage was open and there was a hand truck with hoop bottom of the

type used to move heavy barrels or drums outside that open door. These views and vantage points were later photographed and entered into evidence.

At 3:35 P.M. I advised Anderson we were seizing his house pending application of search warrant.

I arrested Anderson for Theft I by Receiving and Criminal Conspiracy without incident. I noticed while handcuffing Anderson his hands were grimy with gray, black and rust colored residue as if handling scrap metal. Anderson was transported and lodged in the Marion County Jail by EPD Officer Gene Fritz.

At 3:36 P.M. Officer Baker and I entered the residence of 315 Harry Minto Court, Everytown, Marion County, Oregon via the unlocked front door after knocking and announcing our identity. We made sure there were no dependent persons or animals requiring care in Anderson's absence. We also checked for any additional suspects who may destroy evidence. None were found.

Officer Baker remained scene, to ensure the scene was not tampered with during this application process. I returned to the EPD headquarters to complete this affidavit for search warrant.

SEARCH WARRANT REQUESTED:

Through this affidavit, I have documented numerous facts showing probable cause that the following crimes, which are triable in Marion County Oregon have occurred: Theft I, Theft I by Receiving and Criminal Conspiracy. I further have probable cause to believe, and do believe, that evidence of these crimes, as well as Metal Property Offenses will be located within the described premises located at 315 Harry Minto Court, Everytown, Marion County, Oregon.

I pray the court to issue a search warrant to search the described premises located at 315 Harry Minto Court, Everytown, Marion County, Oregon for the following things:

Identifiable stolen metals, stolen metals with red spray paint on them, two wadded up lead shower liners with residual plaster inside. Tools consisting of grinders, presses, torches and the like used to conceal an items status as stolen or alter the appearance of stolen materials, U.S. Currency, business records consisting of tally sheets, metals payment receipts from commercial metals buyers, gas receipts and travel records pertaining to the transportation of stolen metals, a red computer tablet with worn/frayed leather cover for examination under the ambit of a separate warrant if located.

DATED this___ day of February 2022,

_____
J.D. Savage

SUBSCRIBED and SWORN to before me a judge of the above entitled court, this_____day of February, 2022.

_____
Circuit Court Judge

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION
IN THE NAME OF THE STATE OF OREGON
SEARCH WARRANT

To Any Police Officer of the State of Oregon: Upon information given under oath to me by an affidavit signed and sworn to by Officer J.D. Savage of the Everytown Police Department, this Court finds probable cause to believe that the items described below are presently located in the area described.

YOU ARE THEREFORE COMMANDED to make immediate search of the following premises and curtilage located at: 315 Harry Minto Court, Everytown, Marion County, Oregon. 315 Harry Minto Court, Everytown, Marion County, Oregon is sited on the southside of Harry Minto Court in the City Limits of Everytown. 315 Harry Minto Court, Everytown, Marion County, Oregon is a single story, wood framed ranch styled house with tan composite roof. 315 Harry Minto Court, Everytown, Marion County, Oregon is painted forest green in color with cream colored trim, gutters and double car garage. Affixed eight-inch, black metallic numbers "315" appear to the east of the garage door which fronts Harry Minto Court. The front door is natural wood in color and in a recessed alcove to the east of the garage door. The front door has a burnished brass appearing doorknob and deadbolt on the east side of the door. A white, eight-inch round sticker with red and black lettering appears on the window to the east of the front door that reads, "NO SOLICITORS." There is a RV parking pad to the west of the garage. The access to the backyard is controlled by a six-foot cedar fence. This premises is further identified with Marion County Tax Assessor account number 427886 and Map number12S02W340000395.

YOU ARE FURTHER COMMANDED to make the immediate search of the following vehicles located at: 315 Harry Minto Court, Everytown, Marion County, Oregon. 315 Harry Minto Court, Everytown, Marion County, Oregon:

- **2016 Chevrolet Silverado bearing Oregon License Plate #XYZ-222 with a Bart Simpson bobble head doll attached to the center of the dashboard.**

- **Gray painted, plywood paneled, single axle utility trailer with black metal frame and whitewall spare tire affixed to the trailer's tongue.**

TO SEARCH FOR, SEIZE and TEST or EXAMINE:

- **Identifiable stolen metals, stolen metals with red spray paint on them, two wadded up lead shower liners with residual plaster inside.**
- **Tools consisting of grinders, presses, torches and the like used to conceal an items status as stolen or alter the appearance of stolen materials.**
- **U.S. Currency.**
- **Business records consisting of tally sheets, metals payment receipts from commercial metals buyers, gas receipts and travel records pertaining to the transportation of stolen metals.**
- **A red computer tablet with worn/frayed leather cover for examination under the ambit of a separate warrant if located.**

And you shall return to this Court within five (5) days of the date of execution a signed list of those things seized, setting forth the date and time of the search.

You are further commanded to open closed containers.

This warrant shall be executed not later than ……on the…..….day of …….2022

……..…..……

Judge **Date**

I hereby certify that I have compared this copy with the original Search Warrant placed in my hands for execution and that this copy is a true and correct transcript of the whole thereof.

_____

Officer J.D. Savage

Basic Police Academy

Behavioral Health: Awareness



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Behavioral Health 1 & 2 - Awareness

Instructional Goal:

This course is designed to develop a new officer's understanding of behaviors commonly associated with mental illness, crisis, addiction, trauma, and developmental disabilities.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate how stigma impacts mental illness and addiction.
2. Articulate behaviors commonly associated with mental illness, addictions, and developmental disabilities.
3. Identify potential barriers to communication with a person experiencing a mental health crisis.

Content Outline:

Introduction
Impact of Stigma
Myths and Facts about mental illness
Impacts and characteristics of mental illness.
Introduction to Universal Communication Strategies
Schizophrenia
Bipolar Disorder
Major Depression
Suicide
Substance Dependence Disorders
Disabilities
Dementia
Introduction to Crisis Intervention
LEDS Medical Health Database

National Institute of Mental Health statistics (2019):

- 20.6% (about 51.5 million) of American adults suffer from mental illness
- In 2020, there were an estimated 14.2 million adults aged 18 or older in the United States with severe mental illness (SMI). This number represented 5.6% of all U.S. adults.
- In terms of the impact on emergency services:
    - Estimates 1 in 10 law enforcement calls for service involve someone with a mental illness
    - Estimates 2 in 5 people who are incarcerated have a history of mental
    - 1 in 3 are taken to the hospital by police

Stigma

Stigma

A mark of disgrace associated with a particular circumstance, quality, or person.

- The stigma that surrounds mental illness is powerful and pervasive.
- Is a barrier to accessing services for many who have mental illness as they fear being judged.
- Respect and empathy (Emotional Intelligence) can help overcome this.

Myths and Facts about Mental Illness

Myth	Fact
Psychiatric disorders are not true medical illnesses like heart disease and diabetes. People who have mental illness are just "crazy."	Brain disorders, like heart disease and diabetes, are legitimate medical illnesses. Research shows there are genetic and biological causes for psychiatric disorders, and they can be treated effectively.
People with a severe mental illness, such as schizophrenia, are usually dangerous and violent.	Statistics show that the incidence of violence in people who have a brain disorder is not much higher than it is in the general population. Those who have a psychosis such as schizophrenia are more often frightened, confused, and despairing than violent.
Mental illness is the result of bad parenting.	Most experts agree that a genetic susceptibility, combined with other risk factors, leads to a

	psychiatric disorder. In other words, mental illnesses have a physical cause.
Depression results from a personality weakness or character flaw, and people who are depressed could just snap out of it if they tried hard enough.	Depression has nothing to do with being lazy or weak. It results from changes in brain chemistry or brain function, and medication or psychotherapy often helps people to recover.
Schizophrenia means split personality, and there is no way to control it.	Schizophrenia is often confused with multiple personality disorder. Schizophrenia is a brain disorder that robs people of their ability to think clearly and logically. The estimated 2.5 million Americans with schizophrenia have symptoms ranging from social withdrawal to hallucinations and delusions. Medication has helped many of these individuals to lead fulfilling, productive lives.
Depression is a normal part of the aging process.	It is not normal for older adults to be depressed. Signs of depression in older people include loss of interest in activities, sleep disturbances, and lethargy. Depression in the elderly is often undiagnosed. Seniors and their family members need to recognize the problem and seek professional help.
Depression and other illnesses, such as anxiety disorders, do not affect children or adolescents. Any problems they have are just a part of growing up.	Children and adolescents can develop severe mental illnesses. In the United States, one in ten children and adolescents has a mental disorder severe enough to cause impairment. However, only about 20 percent of these children receive needed treatment. Left untreated, problems with mental illness can get worse. Anyone talking about suicide should be taken very seriously.
If you have a mental illness, you can will it away. Being treated for a psychiatric disorder means an individual has, in some way, “failed” or is weak.	Severe mental illness cannot be willed away. Ignoring the problem does not make it go away, either. It takes courage to seek professional help.
Addiction is a lifestyle choice and shows a lack of willpower. People with a substance abuse problem are morally weak or “bad.”	Addiction is a disease that generally results from changes in brain chemistry. It has nothing to do with being a “bad” person.

Electroconvulsive therapy (ECT), formerly known as "shock treatment," is painful and barbaric.	ECT has given a new lease on life to many people who suffer from severe and debilitating depression. It is used when other treatments such as psychotherapy or medication fail or cannot be used. Patients who receive ECT are asleep, and under anesthesia, so they do not feel anything.

Statutory References

Peace Officer Custody (POC) – ORS 426.228 will be covered in detail in the Mental Health – Legal Considerations Unit.

Impact and Common Characteristics of Mental Health Disorders

- Biologically based
- May negatively impact
    - Perception (hallucinations)
    - Orientation (person, place, time awareness, etc.)
    - Thinking (delusions, paranoia)
    - Judgment/insight (poor decision making)
    - Feeling (incongruent, variable, extreme)
    - Behaviors (actions, movements)
    - Environment (unusual items or unusual use of items)
- May have a significant negative impact on:
    - Independent Living (Social)
        - Difficulty maintaining necessities.
    - Occupational
        - Difficulty maintaining employment.
    - Interpersonal
        - Difficulty developing and maintaining relationships

Major Mental Illnesses

Psychotic (thought) Disorders	

	Severe mental disorders that cause abnormal thinking and perceptions. People with psychosis lose touch with reality. Characterized by: • Disorganized thinking/confused thinking. • Odd thoughts • Strange or unusual behavior • Disorganized speech • Tangential thoughts • Illogicality • Paranoia • Poor hygiene • Possess random items. • Minimal or inappropriate display or emotions • Suicidal thoughts and actions • Delusions (false belief) • Hallucinations (false sensory perceptions, i.e., hearing, seeing, olfactory, touch, taste, something not in current reality) Examples: Schizophrenia, Schizoaffective, Drug-Induced Psychosis, Delusional Disorder
Mood Disorders	A psychological disorder characterized by the elevation or lowering of a person's mood. Characterized by: • Feeling of sadness • Losing interest in life activities • Fluctuating between extreme moods • Hostility or aggression • Irritability • Fatigue • Poor hygiene • Difficulty concentrating • Feeling of euphoria • Suicidal thoughts and actions Examples: Bipolar, Major Depressive Disorder, Substance-induced mood disorder
Anxiety Disorders	Anxiety – worry about and fear about future events.

	Characterized by • Hypervigilance • Hyperarousal • Exaggerated Startle Response • Avoidance • Panic • Self-destructive behavior • Suicidal thoughts and actions Examples: Generalized Anxiety Disorder, Phobias, Obsessive-Compulsive Disorder, Post-Traumatic Stress Disorder, Panic Disorder

Universal Communication Strategies:

1. Remain Calm
2. Maintain even tone
3. Simplify questions, instructions and commands
4. Be patient. Give them time to process what you are saying
5. Ask for and use their name
6. Give them your first name
7. Reassure them you are there to help
8. Use active listening
9. Label emotions
10. Allow them time to process
11. Hands off equipment – unless tactically necessary
12. Non-threatening body posture
13. Continually assess for escalation
14. If what you are doing seems to be causing the person to become agitated and/or escalate, try a different tactic
15. Avoid triggers
16. Use “I” messages
17. Use grounding techniques
18. Show empathy
19. Don’t lie

20. Use your own experiences
21. Be aware of potential for re-traumatization
22. Don't get involved in their drama
23. Above all – Be yourself!

Schizophrenia

- A psychotic (thought) disorder with persistent defects in perception and expression of reality
- The first psychotic break generally occurs between 18 and 25 but can be earlier or later
- 1-2% of the population with no socio-economic or geographic boundaries
- Will last a lifetime

Symptoms:

Negative	Cognitive
Flat affect – no expression Lack of interest in pleasurable activities Lack of energy and inability to sustain activities	Disorganized thinking Difficulty focusing on thoughts or tasks May include memory loss or confusion issues
Hallucinations	**Delusions**
Effects senses (Auditory) is most common– Occurs in about 80% or cases Others include: (Visual) – second most common Tactile – feel Olfactory – smell Gustatory – taste	(False Belief) Examples: "The CIA is watching me"; "My neighbors have put listening devices in my teeth." Types: Persecutory – "The government is out to get me." Grandiose – "I am the king of the planet." Religious – "I am God." Nihilistic – "The world is going to end tomorrow."
Other chronic problems associated with schizophrenia	
Unusual behavior Inappropriate clothing for conditions Poor hygiene Difficulty following a thought process Disorganized or apparent nonsensical speech – "Word Salad" Emotions may not match the situation or may fluctuate randomly	

Treatment:

- Medications can help: Antipsychotics.
    - Examples: Seroquel, Thorazine, Haldol, Loxapine, Trilafon, Navane
- Assisted living conditions may be necessary for some consumers.

Suggested Approaches:

- Universal Communication Strategies
- In addition:
    - Don't get involved in their delusions or hallucinations
    - If you suspect voices are present, ask:
        - Are you hearing voices?
        - What are they saying?
        - Have you ever acted on what the voices tell you?
        - How do you cope with hearing these voices?

Anosognosia

Brain condition, not a mental illness. Anosognosia, also called "lack of insight," is a symptom of severe mental illness experienced by some that impairs a person's ability to understand and perceive his or her illness. It is the single largest reason why people with schizophrenia or bipolar disorder refuse medications or do not seek treatment. You will not be able to change their perception. Use your Universal Strategies for Engagement based on the observable behaviors you see and inform them of policies and procedures as needed.

Bipolar Disorder

- Formerly Manic-Depressive Disorder
- 2.6% of the US adult population
- Highs of Mania to lows of depression.
- Hypomania v. Mania
    - Hypomania does not reach the level of needing hospitalization and does not have psychotic features.

- Mania is much more severe, may have psychotic features and frequently will require hospitalization.

- Four or more cycles in a year – rapid cycling

Characteristics of Mania and Hypomania
Rapid/pressured speech High energy Rapid, animated or exaggerated movements Feeling of euphoria Risk-taking behaviors Extreme mania may feature psychotic symptoms such as hallucinations, delusions, and disorganized thinking Difficulty processing external stimuli

Treatment:

Medications can help:

- Mood stabilizers
- Antidepressants
- Antipsychotics
  - Examples: Lithium and Depakote

Talk Therapy

Suggested Approaches – Mania:

- Universal Communication Strategies
- Also
  - Let them talk – if their speech is coherent and productive. If not, use redirecting techniques.
  - Being a good listener is critical with the person with Bipolar disorder.

END OF UNIT 1

Clinical Depression

- Depression is a mood disorder.

- High correlation between depression and suicidal thoughts and actions
- Many never seek treatment.

Major Depression	Psychotic Depression	Postpartum Depression	Seasonal Affective Disorder (SAD)
Interfere with basic life functions Could have just one or several episodes over a lifetime	Depression with psychosis	Occurs for a woman after giving birth	Typically occurs during the winter months when there is less sunlight

Medication can help: Antidepressants.

Examples: Prozac, Zoloft, Paxil, Effexor, Wellbutrin

Medications take 4-6 weeks to take an effect. Many stop taking medications because they may have suicidal ideations in the beginning, and if having to begin a new medication after the previous did not work, will have to wait another 4-6 weeks to see if effective.

Medications and talk therapy are most effective.

Suggested Approaches:

- Universal Communication Strategies
- Also:
    - Ask directly about suicide

      Note- Asking a person if they are thinking about suicide or killing themselves will NOT cause them to consider suicide when they were not considering it in the first place.

Suicide

- **Died by suicide** is defined as death caused by self-directed injurious behavior with intent to die as a result of the behavior

- A **suicide attempt** is a non-fatal, self-directed, potentially injurious behavior with intent to die as a result of the behavior. A suicide attempt might not result in injury.
- **Suicidal ideation** refers to thinking about, considering, or planning suicide.

Suicidal ideations, attempts or dying by suicide are often the result of unresolved problems that reduce a person's ability to cope.

Not everyone that has a plan completes and some complete or attempt with no plan.
Facts:

- Males- 4 times more likely to die. More likely to use firearms or asphyxiation.
- Females- 3 times more likely to attempt. More likely to use medications.
- LGBTQ Adults - According to NIMH, researchers found that suicide risk was three to six times greater for lesbian, gay, and bisexual adults than for heterosexual adults across every age group and race/ethnicity category. Among gay and bisexual men, 12% to 17% had thought about taking their lives in the past year, 5% had made a suicide plan, and about 2% had made a suicide attempt. Among lesbian or gay women and bisexual women, 11% to 20% had experienced thoughts of suicide, 7% had made a suicide plan, and about 3% had made a suicide attempt.
- Youth- 2nd leading cause of death for 10-24 years olds.
- LGBTQ Youth - According to the CDCs Youth Risk Behavior Survey for grades 9-12, LGBTQ youth were disproportionally higher 23% vs. 6% of heterosexual youth to have attempted suicide.
- Elderly- Firearms used in 73% of completed suicides by those over 65 (2001)
- Cultural considerations - some cultures do not believe in suicidality and believe it is a dishonor or shameful to have ideations, attempts or even speaking about it. Some cultures do not believe in mental health being an issue or concern, so many never seek help. Be aware of some of these distinctions when working with those in your communities and do you own research on some of the cultural differences with those in your communities you serve.

Myths and Facts about Suicide

Myth	Fact

People who talk about killing themselves rarely die by or attempt suicide.	Most people who die by suicide have given some verbal clues or warnings of their intention.
The tendency toward suicide is inherited and passed from generation to generation.	Although suicidal behavior does tend to run in families, it does not appear to be transmitted genetically.
The person thinking about suicide wants to die and feels that there is no turning back.	People thinking about suicide are usually ambivalent about dying and frequently will seek help immediately after attempting to harm themselves.
All people who think about suicide are profoundly depressed.	Although depression is often closely associated with suicidal feelings, not all people who die by suicide appear depressed. Some people who are thinking about suicide appear to be happier than they've been in years because they have decided to "resolve" all of their problems by killing themselves and often feel "better" or feel a sense of relief at having made that decision. It is essential to be aware that a severely depressed person may lack the energy to carry out a suicide attempt but may attempt suicide later, once they regain their energy.
People thinking about suicide are individuals with mental illness.	Although many people dealing with suicidal thoughts are suffering from a mental illness, suicide can occur in undiagnosed people during periods of a socio-economic, family, or personal crisis (e.g., loss of a loved one, loss of a job, divorce).
Once someone attempts suicide, that person will always entertain thoughts of suicide.	People are at the highest risk of a second suicide attempt within the first three months to a year following the first attempt. If the person receives the proper support and treatment, he/she may never be suicidal again. Only about 10 percent of the people who attempt later die by suicide. [However, 40% of persons who complete suicide attempts have made a previous attempt.]
If you ask someone about their suicidal intentions, you will only encourage them to kill themselves	The opposite is true. Asking someone directly about their suicidal intentions will often lower their anxiety level and act as a deterrent to suicidal behavior by encouraging the ventilation

	of pent-up emotions through a frank discussion of their problems.
Suicide is quite common among the lower class.	Suicide crosses all socio-economic distinctions, and no one class is more susceptible to it than another.
People considering suicide rarely seek medical attention.	Research has consistently shown that most people who attempt suicide visit a physician within the month before they make a suicide attempt.

Sources:

Suicide Myths and Facts | HealthyPlace. https://www.healthyplace.com/gender/gay-is-ok/suicide-myths-and-facts

Frontiers | Suicide and Youth: Risk Factors | Psychiatry.

https://www.frontiersin.org/articles/10.3389/fpsyt.2018.00540/full

How Do You Cope? | Semel Institute for Neuroscience and .... https://www.semel.ucla.edu/dual-diagnosis-program/news_and_resources/how_do_you_cope

Every individual will be different in their process of considering suicide. However, there are risk factors that may help give us some insight into a person at risk for suicide. A person may have one or more risk factors, and it is unlikely that a person will have all of them.

Individual Risk Factors – personal factors that can contribute to risk.

- Previous suicide attempt
- History of depression and other mental illnesses
- Serious illness such as chronic pain
- Criminal/legal problems
- Job/financial problems or loss
- Impulsive or aggressive tendencies
- Substance use
- Current or prior history of adverse childhood experiences
- Sense of hopelessness
- Violence victimization and/or perpetration

Relationship Risk Factors - These harmful or hurtful experiences within relationships contribute to risk.

- Bullying
- Family/loved one's history of suicide
- Loss of relationships

- High conflict or violent relationships
- Social isolation

Community Risk Factors - These challenging issues within a person's community contribute to risk.

- Lack of access to healthcare
- Suicide cluster in the community
- Stress of acculturation
- Community violence
- Historical trauma
- Discrimination

Societal Risk Factors - These cultural and environmental factors within the larger society contribute to risk.

- Stigma associated with help-seeking and mental illness
- Easy access to lethal means of suicide among people at risk
- Unsafe media portrayals of suicide

Protective Factors - Protective factors, or circumstances that protect against suicide risk can include individual, relational, community and societal factors.

Individual Protective Factors

- Effective coping and problem-solving skills
- Reasons for living (for example, family, friends, pets, etc.)
- Strong sense of cultural identity

Relationship Protective Factors

- Support from partners, friends, and family
- Feeling connected to others
- Community Protective Factors
- Feeling connected to school, community, and other social institutions
- Availability of consistent and high quality physical and behavioral healthcare

Societal Protective Factors

- Reduced access to lethal means of suicide among people at risk
- Cultural, religious, or moral objections to suicide

Warning signs for suicidality:

- Threaten to harm self

- Prior suicide attempt(s)
  Disturbance in sleep/appetite/weight
- Constricted thinking, all or nothing, black or white
- Increased risk-taking behavior
- Has plan and means for suicide
- Emotionless/numb
- Angry/agitated
- Sad/depressed
- Hopeless, not future-oriented, giving away valued possessions
- Problems at work/home
- A recent loss (status, loved one)
- Under investigation
- Socially isolated/withdrawn
- Increased consumption of alcohol/drugs

Suggested Approach:

- Universal Communication Strategies
- Also:
  - Ask directly about suicide.
    - This will NOT cause the person to consider suicide if they were not already
  - If you ask and they answer "Yes", ask: How (means)? When? Where?
  - Have the means removed if possible

Victim Precipitated Homicide

- An act by a person that compels an officer to use deadly force.
- Some also refer to this as Victim Precipitated Homicide or Suicide by Cop.
- 10-15% of suicides are police assisted.
- 96% of police assisted suicides are by males.
- The suicidal person will display or claim firearms, stabbing instruments, firearm replicas.
- 50% of persons involved in police assisted suicides have a psychiatric diagnosis.
- Approximately 50% of persons are intoxicated at time of incident.

For those involved in a suicide by cop incident, their reactions, which are normal given the situation can be any of the following:

- Second guessing
- Repeating event over and over in mind
- Mixed or ambivalent feelings
- Blame
- Anger
- Critical Incident Stress
- Post Traumatic Stress Disorder

Critical incident stress debriefs are essential for those involved in these types of scenes, when appropriate.

Substance Use Disorders

Addictions – Overview and Meaning

Alcohol and drugs are experienced in the pleasure part of our brain. Not everyone who uses alcohol or drugs becomes addicted. Addiction is a brain disease. Addiction changes how the brain works. The need to continue using the alcohol/drug becomes a priority, and the individual cannot function normally without the use of the substance. Some problems associated with addiction include mood swings, memory loss, problems with making decisions. Addiction can have a significant impact on a person's life and may impair their ability to perform daily functions.
Behaviors associated with addiction:

Lying	Paranoia
Defensiveness	Slurred speech
Loss of interest in personal hygiene and grooming	Inability to concentrate
	Blackouts and other types of memory loss
Unexplained disappearances	Manic behavior
Mood swings	Excessive talking
Depression	Illogical thinking
Suicidal thoughts	Hallucinations

Withdrawal symptoms
Frequently ill from the night before
Accident proneness and clumsiness
Easily agitated

Source: Common Symptoms and Behavior of Addiction - Alcohol Rehab. https://alcoholrehab.com/alcohol-rehab/addiction-symptoms-behavior/

Substance Use Withdrawal

Symptoms can include, frequently ill from the night before, accident proneness and clumsiness, changes in mood, depression, fatigue, aches/pains, restlessness, shaking, nausea, vomiting.

Can be lethal if severe alcohol or benzodiazepine use. Seek medical attention if person is experiencing the following: delusions, having difficulty breathing, experiencing hallucinations, loss of consciousness, rapid heartbeat, or tremors or seizures.

The course and severity of alcohol withdrawal symptoms vary from person to person. The severity of symptoms may be increased by factors like age, co-occurring conditions, nutritional factors and overall health.

- Alcohol withdrawal symptoms can range from mild to life-threatening with the potential for severe medical complications.

Co-occurring Disorders

- An individual can have an addiction disorder and a mental health disorder.
- Substance use can cause a mental illness with substance-induced psychosis.
- A person with mental illness may use substances to self-medicate their mental illness symptoms.

Disabilities

Intellectual Disability

- Formerly known as "Mental Retardation"
- Definition - Impairment of overall intelligence and ability to process information
- Generally identified before the age of 18
- Not treatable with drugs
- Characterized by low IQ - below 70

- Can learn independence
- Does not lead to mental health issues

Impacts:

- Intellectual functioning (reasoning, learning, problem-solving) may be at a much younger age level
- Adaptive behaviors (social and practical skills) may be at a much younger age level
- Memory issues
- Inability to connect actions with consequences
- Behavior problems
- Difficult time problem solving or logical thinking
- Short attention span
- Eager to please – "Yes" may just be intended to please you as it is a pleasing answer
- Low tolerance for stress
- Thought process concrete and linear
- Dislike for terms "Mentally Retarded" and "MR"

Suggested Approaches:

- Universal Communication Strategies
- Also:
    - Use simple language
    - Avoid leading questions
    - Miranda – slow and one right at a time
    - Show compassion with and understanding of their disability
    - Be patient
    - Ask them how you can help them cope

      i.e. "What has helped you in the past when you feel like this?" "Is there someone we can call that helps you?"
    - Avoid questions involving:
        - Time
        - Complex sequences
        - Consequences or reasons

Autism Spectrum Disorder

- Broad-spectrum neurological disorder
- Symptoms vary greatly
- Impacts the brain in areas that control social interaction and communication skills
- No cure
- Four times more prevalent in boys
- No racial, ethnic, social or socio-economic boundaries
- Annual rate is growing dramatically
- Law enforcement may encounter an autistic person anywhere
- Common characteristics:
    - May be non-verbal
    - May be stubborn or belligerent
    - May say "No" or "why" in response to all questions
    - May not understand humor, especially sarcasm
    - May be passive or monotone
    - Usually very honest, blunt
    - Pain sensitivity – may be hypersensitive or non-responsive to pain
- Autistic children may be targets for:
    - Child abuse
    - Hate crimes
    - Other crimes, i.e., "scams," "opportunistic predators"
    - Sexual abuse/assault

Suggested Approaches:

- Keep questions or instructions short and simple
- Show compassion and patience
- Normalize difficulty understanding
- Give concrete examples
- Reassure them

- Have a friend or family help them understand
- Distract them
- Refrain from jokes or teasing

Suggestions to help officers advise families:

ID Cards
Photo ID and fingerprint cards
ID Bracelets

Clothing tags
LEDS Medical Health Database

Dementia

Is a term that describes a set of symptoms relating to loss of memory and changes in cognition. There are different types of dementia, with Alzheimer's disease being the most common. Over 6 million people, 70% living in community settings, and age being the biggest risk factor.

Impacts

- Memory.
- Ability to learn new information.
- Ability to communicate.
- Orientation, causing confusion.
- Judgement.
- Motor coordination.
- Personality disintegration.
- Ability to care for oneself independently.

Types of dementia:

- Alzheimer's Disease (most common)
- Vascular dementia
- Lewy Body dementia
- Frontotemporal dementia
- Parkinson's Disease related dementia

Types of calls for service with those with possible dementia:
Wandering – Subjects may have a blank/confused facial expression, be in inappropriate attire, are unbalanced or a shuffling gait, and unaware of unsafe actions or situations.
Driving concerns - Look for clues of Alzheimer's disease and help ensure a positive resolution. Issue a citation to create a paper trail, and do not let the person drive home. Follow local agency protocols for reporting the incident to the DMV.
Abuse & neglect – Can be complicated, as is the person with dementia the perpetrator or the victim? If perpetrator, continue to use suggested communication skills, though remember, cognition is severely affected. Be mindful of safety, and may need hospitalization for injury, and need to involve Adult Protective Services (APS).
Shoplifting - Likely the person did not realize they walked out with an item. Attempt to resolve the issue with the store manager as an alternative to arrest. If possible, inform person's caregiver about the incident.
Theft or burglary – May or may not be an actual theft or burglary.
911 requests - Don't assume based on history. May really require your help, even if they have called many times before.
Disaster response - Move person from danger & help keep calm during evacuation situations. Avoid physical force or restraint. Be creative, rather than rely on reality.
Provide simple, step-by-step instructions. Use distraction by giving person a simple task. Ensure the person is always watched.
Suggested approaches working with someone who may have a form of dementia:

- Universal Communication Strategies
- Crouch to their level (eye-to-eye)
- Speak slowly, gentle, even tone
- Allow time to answer questions, be patient
- Don't argue
- Rephrase rather than repeat if unable to understand
- Reassure them
- Turn negatives into positives
- Instead of saying..."Don't do that" say "Lets try this"
- May present with challenging behaviors
- Physical aggression

- Inability to follow directions
- Control environment
- Less noise, no flashing lights, eliminate distractions

LEDS Oregon Medical Health Database

ORS 181.735

- Voluntary inclusion into the database
- To assist law enforcement and public health agencies in providing services
- No HIPAA restrictions
- Qualifying mental illness:
    - Dementia
    - Developmental Disability
    - Mental Health diagnosis, i.e., schizophrenia
    - A physical or behavioral disorder that causes disorientation or impedes ability to interact effectively with law enforcement.

How to get entered

- Complete DHS LEDS Medical Health Database Volunteer Consent Form
- Deliver it to the local county health authority who verifies and entered into LEDS
- Voluntary submission
- Written consent from:
    - The individual
    - Guardian
    - Parent if under 14
    - Two adults must witness consent

How are records removed?

- Automatically removed after three years unless resubmitted by consent
- Consent may be revoked in writing from the individual or guardian

What information included in the database?

- Name

- Personal identifiers
- Last known address
- Physical description
- Information about the illness that may assist law enforcement
- Date entered and updated
- Contact info for at least two of the following:
    - Individuals primary care physician
    - Community Mental Health or Developmental Health Case Manager
    - Probation Officer
    - Family member
    - Another person willing to serve as an emergency contact

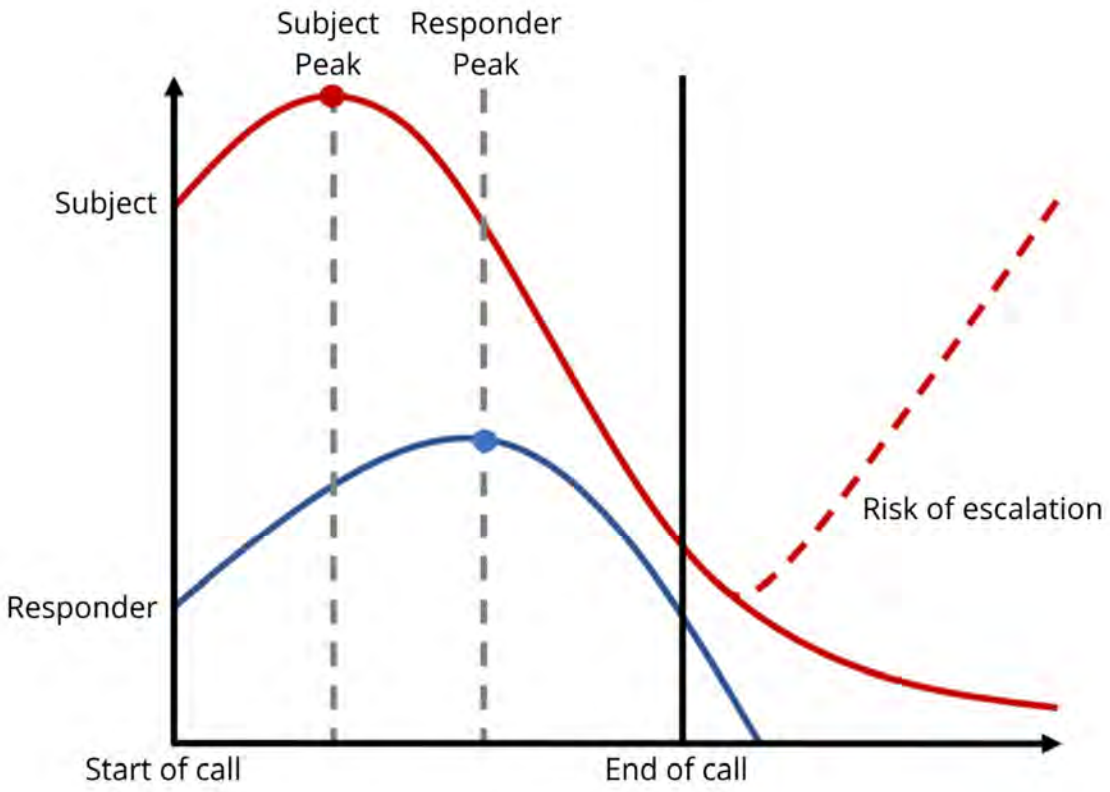
Introduction to Crisis Intervention

CRISIS CYCLE

What is a crisis?

"An event, series of events, or set of circumstances that are experienced by an individual as physically or emotionally harmful or threatening …. "(*SAMSHA*)

- Unique to an individual
- May or may not be apparent to the observer


Subject Peak
Responder Peak
Subject
Responder
Risk of escalation
Start of call
End of call

DHS Oregon Department of Human Services

Volunteer Consent Form
LEDS Medical Database

Purpose of this program:
By completing this form the signer is authorizing the release of protected health information to law enforcement agencies and other emergency responders.

The information in this form will be entered into the Law Enforcement Data System to help the responding agencies assist persons with a qualifying illness or condition in obtaining medical, mental health and social services when responding to a request for an emergency service. The information will only be accessed to provide necessary information will only be accessed to provide necessary information to responding law enforcement officers and other responding emergency personnel to assist in an emergency situation.

Please check one:
☐ Enrollment (first time) ☐ Renewal/re-enrollment ☐ Disenrollment/termination

Name of individual to be entered into the database:
Last: _____ First: _____ Middle: _____

Date of birth: ___/___/_____ Social Security number: ___-___-_____

Drivers license identification number: _____ State: _____ Gender: choose one

Drivers licenses expiration date: _____ CPMS number: _____

Description:
Height: _____ Weight: _____ Hair color: _____ Eye color: _____

Scars/marks/tattoos: _____
(Use proper codes when entering this into LEDS.)

Illness/condition information: REQUIRED
Provide symptoms, activities or other information that would be helpful for a responding officer to be aware of for the safety of this person and others. Please provide as much information as possible.

(If additional space is needed, please continue on a separate piece of paper. Indicate above that there are additional pages.)

Diagnosis (if known): _____

Last known address of person listed above: _____ _____
Street Apt./space #

_____
City/state/ZIP code

Phone numbers: ___-___-_____ ___-___-_____ ___-___-_____
Resident Cell Message

Contact information: Required to have a minimum of two (2) listed. This information will be provided to emergency personnel if the above person is contacted and in need of assistance. Please fill out as many as possible.

Emergency contact: Relationship to person listed above: _____
Name: _____ Phone: _____
Case manager: Name: _____ Phone: _____
Probation officer: Name: _____ Phone: _____
Primary care physician: Name: _____ Phone: _____

Page 1 of 2 DHS 3466 (4/10)

Volunteer Consent Form LEDS Medical Database *(continued)*

Please type or print clearly.
Name of person submitting this form: _____
Address: _____
Phone number: _____ Relationship: _____
Signature: _____ Date: _____

Witnessed by: To be valid, the express written consent of this form must be witnessed by at least two adults and at least one witness shall be a person ***who is not:***

(A) A relative of the individual by blood, marriage or adoption or;
(B) An owner, operator or employee of a health care facility in which the individual is a patient or a resident.

The individual's primary care physician or mental health services provider or any relative of the physician or provider, may not be a witness.

Witness number 1: *(Print clearly or type.)*
Name: _____
Address: _____
Phone number: _____
Relationship to person this form is being filed for: _____
Relationship to person submitting this form: _____
Signature: _____ Date: _____

Witness number 2: *(Print clearly or type.)*
Name: _____
Address: _____
Phone number: _____
Relationship to person this form is being filed for: _____
Relationship to person submitting this form: _____
Signature: _____ Date: _____

Date received: _____ Date entered into database: _____

A community mental health and developmental disabilities program director shall enter an individual's information into the medical health database no later than seven days after receiving a completed enrollment form and has: (1) verified that the individual has a qualifying illness or condition; and (2) obtained the express written consent of: (A) The individual; (B) A person authorized to make medical decisions for the individual, if the individual is subject to a guardianship, advanced directive for health care, declaration for mental health treatment of power of attorney that authorizes the person to make medical decisions for the individual; or (C) A parent of the individual, if the individual is under 14 years of age.

This document can be provided upon request in alternative formats for individuals with disabilities. Other formats may include (but are not limited to) large print, Braille, audio recordings, Web-based communications and other electronic formats. E-mail dhs.forms@state.or.us, call 503-378-3486 (voice) or 503-378-3523 (TTY), or FAX 503-373-7690 to arrange for the alternative format that will work best for you.

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MHD Sample Record

```
MEDICAL RECORD (BASED ON DOB,NAM)
EIP  OR037MHD0   NAM/MEDICAL,LEDS TEST                DOB/1969/09/09
 SEX/U  RAC/U  POB/    HGT/600  WGT/199  EYE/GRY  HAI/PLE  SKN/
 OCA/MEDICAL-TEST-2011A  SMT/SC L BUTTK
 OLN/4444444.OR.2015

   **RECORD INFORMATION**
 APPLICATION DATE/2011/01/21  RTP/MED
 MIS/* * THIS IS A TEST RECORD ONLY * * DO NOT TAKE ANY ACTION ON THIS TEST
    RECORD * * DO NOT REMOVE OR CANCEL RECORD * * TEST RECORD ENTERED BY OSP
    LEDS TRNG UNIT * * THIS IS A TEST RECORD ONLY * *

   **SUPPLEMENTAL INFORMATION**
 SMT/MC BEHAVIO / MISS PANCR  / MOLE ABDOM  / PRCD L EAR  / TAT WRS

   **ASSOCIATED ADDRESSES**
 SUBJECT HOME
    ADR/3225 STATE ST
   CITY/SALEM                ST/OR  ZIP/97309         DAC/2011/01/21
    PH1/(503) 378-1111

   **CONTACT INFORMATION**
 PRIMARY CARE PHYSICIAN/LEDS PHYSICIAN
   PH/(503) 378-3055  EXT/55015  REL/FAMILY DOCTOR
 CASE MANAGER/LEDS CASE MANAGER
   PH/(503) 378-3055  EXT/55013  REL/LEDS CO CASE WRKR
 PROBATION OFFICER/LEDS PROBATION OFFICER
   PH/(503) 378-3055  EXT/55014  REL/LEDS CO PROB OFCR
 EMERGENCY CONTACT/EMERGENCY CONTACT
   PH/(503) 378-5565  REL/MOTHER

 ENT: 2011/01/21 AT 0955 FROM LE63  BY/LEDS COUNTY MENTAL HEALTH PRO ()
 UPD: 2011/01/21 AT 1016 FROM LE63
 PURGEDATE: NOT PURGEABLE
LNU/W084867471             RECORD IN NCIC/NO
```

Report of Peace Officer Custody of an Allegedly Mentally Ill Person

TO THE TREATING PHYSICIAN OF AN APPROVED HOSPITAL OR NONHOSPITAL FACILITY:

Re:_____
a person alleged to be mentally ill

I, _____, a peace officer of _____, Oregon,
agency
Badge No. _____ took the above-named person, DOB:_____, whose address is:
_____
into custody at ____ m., on the _____ day of _____, 20_____ in
_____ County, Oregon for the following specific reasons: _____
_____
_____
_____
_____
_____.
pursuant to ORS 426.228(1) because the above factors establish probable cause to believe the above named person is a mentally ill person who is dangerous to self or other and in need of immediate care, custody or treatment for mental illness.

X_____
Peace officer's signature

The community mental health program director of the above-named county can reached by telephone at:
(____) _____-_____.

If more than one hour is required to transport the person to an approved hospital a physician must complete the following section prior to transport:

Physician's Certificate

I certify that I have personally examined the above-named person and believe the person is dangerous to self or other and in need of immediate care, custody or treatment for mental illness and that travel to _____
_____, a hospital or other approved non-hospital facility will not be detrimental to the person's physical health.

Signed at _____m., on the _____ day of _____, 20___.

X_____ M.D.
Signature

Deliver This Report to Treating Physician at Recieving Facility. Do Not File This Report With the Court.

Original: Treating physician
Copy: Peace Officer

5/1/94 MHD 436.228

Resources

- 211 (Resource information by zip code)
  - 211info.org
  - 211 App
- Alcohol & Drug Helpline
  - 800-923-4357
- Alzheimer's Association (Oregon)
  - www.alz.org/oregon
- Autism Society of Oregon
  - Autismsocietyoregon.org
- Crisis Intervention Teams International
  - Citinternational.org
- Lines for Life
  - www.linesforlife.org
- Military Helpline
  - 888-457-4838
- National Alliance on Mental Illness
  - www.nami.org
  - www.namioregon.org (Oregon specific)
- National Institute of Mental Health
  - https://www.nimh.nih.gov/index.shtml
- National Suicide Lifeline
  - 800-273-8255
    - Military press "1"
- Oregon Criminal Code Book
- Substance Abuse and Mental Health Services Administration
  - www.samhsa.gov
- Youth line
  - 877-968-8491

Behavioral Health: Crisis Interventio and De-Escalation Application

Police Career Officer Development



Behavioral Health: Crisis Intervention and De-Escalation

Instructional Goal:

This course is designed to develop a new officer's understanding of a behavioral health crisis and crisis de-escalation techniques.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify characteristics of a behavioral health crisis.
2. Describe considerations when responding to a behavioral health crisis.
3. Demonstrate an ability to interact with someone in a behavioral health crisis safely.
4. Practice de-escalation techniques that can be used in a crisis.
5. Identify options for resolving behavioral health crisis situations.

Content Outline:

- Crisis Cycle
- Crisis Communication
- Active Listening
- Universal Strategies for Communication
- The Crisis Call

De-escalation: "to decrease the scope, volume, or extent of an escalated event."
Modified from Merriam-Webster dictionary

Assessment is an ongoing, continuous process during a de-escalation. If the level of risk rises and threat assessment indicates officer safety and/or public safety is at risk, officers will need to change tactics to an appropriate level.

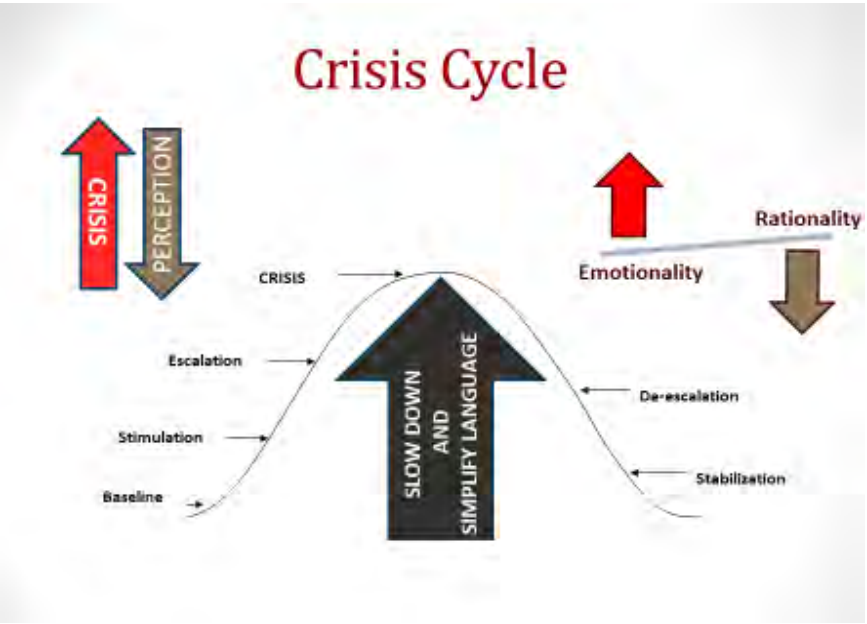
What is a crisis?

An event, series of events, or set of circumstances that are experienced by an individual as physically or emotionally harmful or threatening ...
SAMSHA

A crisis is unique to an individual and may or may not be apparent to the observer. De-escalation is about reducing the distress of the person in crisis. The goal of de-escalation is stabilization.

Crisis Cycle

When a person is in crisis, their ability to hear and process information is decreased. A person in crisis will have a more emotional response than a rational response. Their perception of the situation will be impacted. A person's crisis response will follow a pattern known as the crisis cycle.



Consider this- Where in the crisis cycle is the person when law enforcement arrives? A person contacted in a traffic stop may be at baseline and could escalate into the crisis cycle. Often law enforcement is not called until the person is at the escalation or crisis point in the cycle. Law enforcement may be walking into a situation where the ability to interact with the person in crisis

is already compromised. De-escalation IS a crisis intervention. Law enforcement responding to a person in crisis is intervening in the crisis cycle. The goal is to help the person return to stabilization by reducing distress.

Crisis Communication

Communication is the core of de-escalation. You have already received courses on Communication and Emotional Intelligence. The information from these courses can also be applied to de-escalation communications.

In Behavioral Health Awareness Unit 1, you received Universal Strategies for Communication, which includes both verbal and non-verbal communication. You will add to this list as you continue in your professional career.

Universal Communication Strategies

Verbal	Non-Verbal
Active listening – MORE PIE	Slow your breathing
Maintain a calm, even tone, even if the person in crisis is not doing so	Be observant of how your behavior is impacting their behavior
Tell them you are there to help	If what you are doing causes escalation or agitation, stop doing it and try a different tact
Introduce yourself by first name	Continually reassess
Ask for and use their name	Body language (your own), non-threatening
Acknowledge their concerns/feelings	Be ready, but relaxed
Don't argue or get positional, remain flexible	Eye contact – can be good or bad, so watch for reaction
Grounding	Get to eye level (*Only do this if you can without compromising officer safety)*
Ask them to breathe with you	Keep a good reactionary distance and be mindful of the person's personal space
Do not use sarcastic remarks or offensive terms	
Feedback loop	

Laugh with = OK. Laughing at = NOT OK Tell them what you are going to do, and why? *(Only do this if you can without compromising officer safety)* TIME – Slow It Down Don't make promises	Be patient when waiting for a response Guardian mindset (defender, protector) You may close the distance as the situation evolves and you feel safe doing Move slowly and limit sensory stimuli

You were introduced to active listening skills in the Communications class. Here, we will look at them in more detail, focusing on seven active listening skills. An acronym adapted from the FBI Hostage Negotiator Active Listening Skills Curriculum is **MORE PIE.**

M **Minimal Encouragers**	The responses need not be lengthy. By giving occasional, brief, and well-timed vocal replies, the officer demonstrates that they are following what the person says. Even relatively simple phrases, such as "yes," "OK, "or "I see," can effectively convey that the officer is paying attention to the person in crisis. These responses will encourage the person to continue talking and gradually relinquish more control of the situation to the officer. NOTE: Be careful of using the "OK" response as it may be interpreted that you are agreeing or approving of an inappropriate action. Benefits: Shows the officer is listening. Encourages the person to continue talking.
O **Open-Ended Questions**	These are designed to encourage a full, meaningful answer using the subject's own knowledge and feelings. It is the opposite of closed-ended questions, which encourages a short or single-word answer. Use questions that require more than a single word answer. Examples: What, How, Tell me more about... Avoid "Why" questions, as these may sound like an interrogation.

	When the person speaks, the officer gains greater insight into the person's intent. Effective communication focuses on learning what the person thinks and feels. If the officer does most of the talking, they decrease the opportunities to learn about the person. Benefits: Stimulates the person to talk, gain insight into the person's intent.
R **Reflecting / Mirroring**	By reflecting or mirroring, officers repeat only the last words or main idea of the person's message. It serves as both an attending and listening technique, as it indicates both interest and understanding. For example, a person may declare, "I'm sick and tired of being pushed around," to which the officer can respond, "Feel pushed, huh?" Mirroring can be especially helpful in the early stages of a crisis, as the officer attempts to establish a non-confrontational presence, gain initial intelligence, and begin to build rapport. This technique allows the officer to follow verbally wherever the person leads the conversation. Consequently, the officer learns valuable information about the circumstances surrounding the incident, while they provide the person an opportunity to vent. This technique also frees the officer from the pressure of constantly directing the conversation. Under stress, the officer may find they are unsure of how to respond to the person. Mirroring enables the officer to be a full partner in the conversational dance without having to lead. Using this skill also helps officers avoid asking questions interrogation-style, which blocks rapport building. Benefits: Non-confrontational; checks for understanding; allows the officer to verbally follow where the person leads; enables the officer to be a full partner in the conversation.
E	Because expressive people operate from an almost purely emotional framework, the officer must address the emotional dimensions of a crisis as the person sees them. Emotion labeling allows the officer to attach a tentative label to the feelings expressed or implied by the person's words and actions. Such labeling shows that

Emotion Labeling	the officer is paying attention to the emotional aspects of what the person is conveying. When used effectively, emotion labeling becomes one of the most powerful skills available to officers because it helps them identify the issues and feelings that are driving the person's behavior. Do not be afraid of labeling the emotions incorrectly; the person in crisis will correct you, which furthers their sense that you hear them. Benefits: Shows the officer is paying attention. Checks for understanding. Conveys message that the officer cares.
P **Paraphrasing**	Paraphrasing consists of the officer repeating, in their own words, the meaning of the person's messages back to them. This shows that the officer is not only listening but also seeking to understand what the person is conveying. Benefits: Shows the officer is listening and seeking to understand the message the person is conveying.
I **"I" Messages**	By using "I" messages, the officer ostensibly sheds the "officer" role and acts as any other person might in response to the person's actions. In an unprovocative way, the officer expresses how they feel when the officer does or says certain things. For instance, the officer might say, "We have been talking for a while now, and I feel frustrated that we haven't been able to come to an understanding." This technique also serves as an effective response when the person verbally attacks the officer, who can respond, "I feel frustrated when you scream at me because I am trying to help you." While employing this skill–and all active listening techniques–the officer must avoid being pulled into an argument or trading personal attacks with a person. An argumentative, sarcastic, or hostile tone could reinforce the person's already negative view of law enforcement and cause the person to rationalize increased resistance due to a lack of perceived concern on the part of the police. The use of

	"I" messages serves to personalize the officer. This helps to move the officer beyond the role of a police officer trying to manipulate the person into compliance. Benefits: Humanizes the officer; allows the officer to express concern in a non-confrontational way.
E **Effective Pauses**	By deliberately using pauses, the officer can harness the power of silence for effect at appropriate times. People tend to speak to fill spaces in a conversation. Therefore, officers should, on occasion, consciously create a space or void that will encourage the person to speak. In the process, the person may provide additional information that may help officers resolve the situation. Silence also is an effective response when a person engages in highly charged emotional outbursts. When they fail to elicit a verbal response, the person often calms down to verify that the officer is still listening. Eventually, even the most emotionally overwrought persons will find it difficult to sustain a one-sided argument, and they again will return to meaningful dialogue with the officer. Thus, by remaining silent at the right times, the officer can actually move the overall negotiation process forward. It is important when using effective pauses that the officer still demonstrates that they are engaged in the communication. Effective pauses do not mean you change your focus onto something else or ignore the person. Benefits: People tend to want to speak to fill the silent space. This may create an opportunity for the person to share information they might not have otherwise shared. It may tend to calm an agitated person.

The Crisis Call

Receiving and Responding to the Call

A crisis call begins when the call is received from dispatch and ends when the documentation and any follow up has been completed after the scene is cleared. We will look at each phase of the call: prior to arrival, arrival, engaging the person, stabilizing, and after the call.

Prior to Arriving at the Scene

- What information is available from dispatch? Is it accurate? 9-1-1 does a great job getting information from a caller, but many times the caller will be part of the crisis experience compromising their ability to completely and accurately relay information. You may find that information that was relayed to 9-1-1 may look different once you arrive at the scene.

- Weapons? What information was 911 able to get to determine if weapons are involved or accessible? Is there information on the type, location, and number of weapons? Does this information influence your response, and if so, how?

- Who? Is there information in the system on the person who is in crisis, prior contacts? If yes, what information is available (diagnosis, medication, therapist, family member, or friend support)? What was used to resolve prior contacts (hospitalization, transport to a location, call for family or friend, involuntary hold, an arrest)?

- Monitor your own emotional/physical state. Are you tired, angry, hungry, etc.? If you are aware of an emotional/physical state that is not optimal, what can you do at the moment to increase your effectiveness to respond to this crisis call?

- Be aware of your own biases and how they could impact the interaction. Do not overestimate prior history you may have with the person. Each contact is different, and complacency can threaten officer safety. In the Resiliency 1 class, you learned about tactical thinking errors, i.e., all or nothing, overgeneralizing. Be aware of any tactical thinking errors you may have before arriving at the scene.

Arriving at the scene

- Officer safety is a priority! A**ssessment is a continuous process.** Is there any new information about weapons being present or accessible?

- Fact gathering and re-evaluate information - Remember, you do not know what is going on; you only have information that was relayed to 9-1-1, which may be different from what you find. What is the story?

- What information is the person in crisis providing? What preliminary information is the person giving you? Remembering the crisis cycle – the information at your arrival will be at the upper level of the crisis cycle. The emotional response will be high, and rational thought will be lower.

- Are there other people present who can add information? What information is available from the people who may not be present but can be contacted? If it is an emergency, you may be able to get information from the caseworker, treatment provider, county mental health, or primary care doctor.

- What are the behaviors you observe in the person in crisis? Is the person crying? Angry? Shouting? Fearful? Intoxicated? In the Behavioral Health Awareness 1 class, you learned about behaviors that may be associated with a mental illness, i.e., hallucinations, flat affect, rapid and pressured speech are a few.

- Be aware; your presence can escalate the person. The presence of law enforcement can increase the amount of stress and the stress response the person in crisis may have.

- What is your legal standing? What is the governmental interest? Is this a law enforcement call, or would it be a call better suited for a mobile crisis team or another resource?

- What will your goal be for this situation? On arriving at the scene, you will begin to formulate an idea of what will be needed to resolve the situation. Remember, assessment is ongoing, so

you may change your goal for resolution as the call progresses, but you will start to formulate a plan at this phase.

- Assessment will be ongoing, and you will adjust as needed until the call is cleared.

Engaging the Person in Crisis

- Leave your notebook in your pocket – person-to-person engagement. You can use your notebook later to record information.

- Develop rapport. Use their name and introduce yourself. Use your first name unless there is a department policy that does not allow it.

- Establish immediate safety for the person – "you are safe right now." This is a trauma-informed response as the person in crisis may be a trauma survivor.

- **SLOW IT DOWN**. Control your breathing. First responder culture is one of speed and quick response. A person in crisis is following the natural curve of the crisis cycle. The cycle cannot be rushed, and time becomes the primary tool to move the person through the cycle to stabilization. If the situation is not getting worse, and it may feel like it is dragging, that is a sign it may be getting better. Work at THEIR pace.

- Establish common ground. "I am here to help you."

- Have one person act as the primary communicator - avoid multiple people talking. If the person engages with an officer who is not primary, step back and let the officer who is making the connection lead.

- Time and Space. Space = distance. Distance = time. Giving space allows the person to feel less anxious and gives the officer more choices to respond if a tactical response is needed.

- Validate the person. The person should feel heard and seen.

- Empathy. Showing you have empathy for their situation will make a difference in their ability to build trust. Be genuine, and do not fake it or make up an experience to try to relate. If you cannot relate to their experience, it is OK to say so and still be able to have empathy for them.
- If something is not working – try something different. Having a wide range of tools gives you the flexibility you need, as every crisis is different. It will keep you from being stuck in a process, which may not be the right one for the situation.

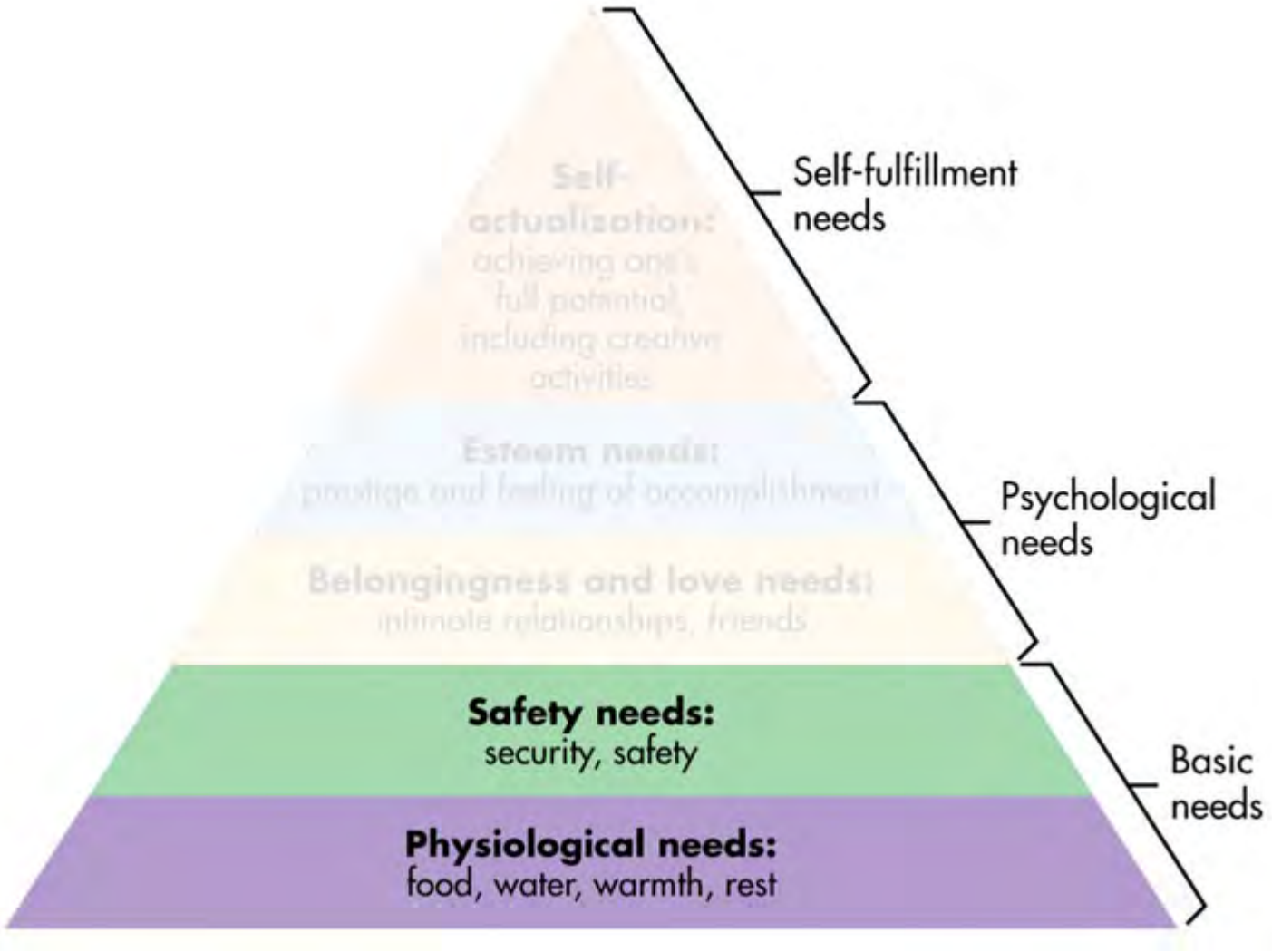
- De-escalation is a fight for time. More time gives more opportunities to develop a plan with the person towards resolution. It allows for opportunities to contact or give resources to the person. In addition, time is a significant consideration for the courts.

- Use verbal and nonverbal communication skills when talking to the person.

Five universal truths have been identified as important parts of human interactions. Understanding these truths can make a difference in your ability to engage with a person and to help them navigate a crisis.

Five Universal Truths of Human Interaction
• All people want to be treated with **DIGNITY** and **RESPECT**. • All people want to be **ASKED** rather than being **TOLD** to do something. • All people want to be told **WHY** they are being asked to do something. • All people want to be given **OPTIONS** rather than **THREAT.** • All people want a **SECOND CHANCE.** *Adapted from ICAT Module 4 Tactical Communications*

The Five Universal Truths are part of basic human needs. These are our survival needs. The first two on the triangle are immediate needs. Being able to address these needs with the person in crisis will be vital for them to feel safe and develop rapport and trust to work with you.



Video Debrief Questions:

1. What information does law enforcement have about the situation when they engage? What information do they develop as they continue their contact?

2. What additional information would the law enforcement like to have gotten during this incident? Did law enforcement identify missed opportunities for information gathering?

3. What were the observable behaviors of the person in crisis? How would they articulate them in a report? What basic needs were missing for the person?

4. What basic needs were missing for the person?

5. What active listening skills were used?

6. What Universal Communication Strategies were used?

7. What worked well?

8. What did not work well?

Is it against the law to be mentally ill? No.

When responding to a mental health crisis, the officer is not always responding to a potential crime. In a mental health crisis, the officer will assess what the immediate threat to the officer or others is. If there is no crime and no immediate threat to the officer or others (to include the person in crisis), then an officer may determine there is no governmental interest.

Custody of Persons in Need of Emergency Care and Treatment – ORS 426.228
(1) Discretionary peace officer custody- "A peace officer may take into custody a person who the officer has probable cause to believe is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness." "May" establishes that while actions are authorized, they are not required.

The person must be taken to a designated facility approved by the OHA.

Form: "Report of Peace Officer Custody of an Allegedly Mentally Ill Person" (See example in student handout for BH Legal class). The peace officer must present this report to the treating physician.

If *more than one hour* is required to transport the person to the facility from the location where the person was taken into custody, the peace officer shall obtain, *if possible*, a certificate from a physician licensed by the Oregon Medical Board. The certificate must state that the travel will not be detrimental to the person's physical health and that the person is dangerous to self or any other person and needs immediate care or treatment for mental illness. The physician shall have personally examined the person within 24 hours prior to signing the certificate.

If the officer decides that a person is dangerous to self or others, and in need of immediate care, they may choose to take the person into custody using a Peace Office Custody. The officer needs to be able to articulate the elements that they use to reach the 51% mark that the person was more likely than not to be a threat to self or others. This can be based on a single element or a combination of elements when reviewed in totality reaches the determination that the person is a danger to self or others.

Diffusing

Calm approach and presence- Maintain awareness of your non-verbal and verbal messages. Keep a calm, steady voice. Stand in a relaxed posture (for example, hands not on your weapon or your duty belt but in front of you in a non-threatening position).

Establishing safety- A feeling of being unsafe is part of being in a crisis. The person may feel unsafe because of their environment, the situation, or the intensity of the emotions they are experiencing. The sooner you can establish that the person is safe right now, the sooner they will be able to lower their anxiety and begin to engage with you.

Reducing stimuli- Can you turn off patrol car lights? Remove people from the scene? Reduce extra noise and visual stimuli.

Giving space- If it is possible and safe, allow the person to move around. Many people will pace when they are agitated and when they are telling their story. Always keep officer safety intact.

Clear, one-step instructions- Remember the crisis cycle. The person's ability to fully hear information may be compromised, and it may take longer for them to process information. You may need to repeat an instruction several times.

What is the immediate need for the person (basic human need)? The person may not be able to tell you, so fact-gathering and hearing their story will be important. What is the immediate need for the situation?

What has worked in the past for the person? The chances are this is not their first experience with a crisis, and they may have information on how they resolved a crisis in the past.

Grounding/breathing- Are you able to do some 4x4 tactical breathing with the person? Asking the person to take some deep breaths with you is a quick way to help them slow down and to lower their anxiety. Remember, the five senses grounding is a way you can get them to focus on something that they can see, touch, hear, smell, or taste. Using just three of the senses can be very effective. Some officers have found that having bottled water in their cars, they can offer the person or a protein bar

helps. What other grounding techniques have you used that you can share with the person? The more the person can focus on the here and now, the better able they will be to engage with you.

TIME- The crisis cycle shows the progression we go through when in a crisis. We can only be at the top of the crisis cycle for a limited time before we enter into the de-escalation phase. Time is the key to helping someone to get through the crisis cycle so you can work with them.

Suicide- In Behavioral Health Awareness Units 1 and 2, you reviewed suicide. The suggested approach with someone who is expressing suicidal thoughts is to ask them the question directly:

- Ask the question, “Are you thinking of killing yourself?” or “Do you want to die by suicide?
- If yes:
    - Do they have means (weapons, pills, etc.)?
    - Do they have a plan?
    - Have they made prior attempts?
    - What protective factors do they have? Family, friend(s), animals, work.
    - Is there someone you can contact and have them respond to the scene for the person?

Stabilizing the Call

Resources- What resources can be accessed immediately for the person in crisis?

- Does the person have family that could be helpful to them? Sometimes family can be an escalating factor, so this may not be an option in every situation.
- Does the person have friends, neighbors, work peers, a faith community that they can get support from? Is it possible to make contact with any of them to help get the person connected to them right away?
- Does the person have a mental health provider? Is it possible for the person to get in contact with the mental health provider and either arrange to see them immediately or get an appointment made?
- Is a Mobile Crisis Team available to make contact with the person at the scene or follow up with them? Officer notifies the Mobile Crisis Team to respond and stabilizes the scene until Mobile Crisis responds.

- Is the person willing to voluntarily go to the hospital if that level of care is needed? Is an involuntary custody indicated?

Referral/Resource Information

- Disengagement with a plan- there is no crime and no governmental interest. Officer will provide available resources at the time of call termination. There is a list of resources attached at the end of this unit, and you will get local resources from your agency to add. It is suggested that you always leave the suicide prevention line number 1-800-273-8255.

- An officer may contact a support person identified by the person in crisis (family member, friend, therapist, case manager) and notify them the person is requesting their assistance.

- Is it helpful for you to offer to check back with them later by phone? If you do make that offer, it is important to make sure that you follow up with the contact.

- A mental health crisis call can be resolved in several ways. These calls can be difficult with many factors, and it is the officer's assessment of the situation that gives them the discretion to determine the best resolution.

After Call

Documenting

It is important that the officer clearly articulates all information regarding the call in their report. In the Report Writing Unit, you received information on using Factual Observations, which are very important in a call involving a mental health crisis. You were provided general information around mental illness diagnosis' however; it is never the intent that you be asked or expected to diagnose a mental illness. The officer should clearly document their observations (disheveled appearance, dirty, odorous, crying, pacing, shouting, etc.). Frequently persons with mental illness can have numerous contacts with law enforcement. The clear documentation of the observable signs and symptoms of the mental illness, the context of the crisis, and the resolution of the call can help future contacts. A Mental Status Observations checklist is attached for your review.

Additionally, articulate the skills you used for de-escalation. This could include active listening, identifying immediate needs, establishing safety, giving time, focus on breathing, using grounding techniques. Many agencies provide the opportunity to refer your report to any agencies or mental health providers that you would like to inform of the contact.

Self-Care

Be aware of your physical, mental, and emotional status after a crisis call. In Resiliency, you learned about the impact that exposure to highly stressful situations can have on your well-being. Do a quick scan of yourself. You can do some breathing or grounding immediately after a call, which will have a direct impact on reducing your sympathetic nervous system response.

Not every contact will have a successful, positive de-escalation outcome. After the call, focus on what you can learn from the experience. Remember the information that you received on tactical thinking errors. Avoid second-guessing and suspend negative judgment. Debrief with co-workers or your supervisor. Be aware of any stress reactions you are having and address them quickly; do not put them aside.

Summary

When responding to a crisis, be information-driven. Be aware of your biases and potential tactical thinking errors. The more information you have about the crisis and the person's story, the more informed your approach will be. Information gathering starts on the way to the call and seeks out any sources of information that may be available. Active listening is critical. Your assessment of the situation will be ongoing until you clear the call. Be resource-oriented and know the resources in your area. Have the information accessible to you so you can provide it to the person in crisis. If possible, a warm handoff is most effective and safe.

Conclusion

This was an introduction to crisis de-escalation. We explored techniques and strategies that can be applied to engage with persons in crisis effectively. After the academy, you will have opportunities for additional training in mental health. These may include:

- Mental Health First Aid for Public Safety- An eight-hour course that provides basic information on mental illness and how to provide help and support. Participants receive a Mental Health First Aid responder card valid for two years and which can be renewed with a new class. This is part of the One Mind campaign that all officers receive this training. More information is available on the Mental Health First Aid website www.mentalhealthfirstaid.org

- CIT- The Crisis Intervention Team Program was developed in Memphis in 1988 and is now a part of mental health training nationally and internationally. Crisis Intervention Team (CIT) is a community partnership with law enforcement, behavioral health professionals (mental health and addiction), and mental health consumers. As part of the CIT Program, a 40-hour CIT training is provided, which is based on core elements identified as the Memphis Model. The primary goals of CIT training are:
  1. Improve Officer and Consumer Safety
  2. To help persons with mental disorders and/or addictions access to medical treatment rather than place them in the criminal justice system due to illness-related behaviors.

During your career, you should have an opportunity to attend CIT training, which will build on the foundational mental health training you received at the academy.

More information is available on the CIT International website www.citinternational.org

- ADEPT – Advanced De-escalation and Escalation Prevention (Advanced CIT)- A two and a half-day class that teaches an advanced verbal de-escalation protocol, and how the responder responds to a person in crisis. Requires successfully completing a 40-hour CIT and three-years working in the profession.

- Motivational Interviewing - Motivational Interviewing is most used to increase motivation toward behavioral change. It is an evidence-based approach designed to encourage individuals to talk themselves into making beneficial changes in their lives.

Report of Peace Officer Custody of an Allegedly Mentally Ill Person

TO THE TREATING PHYSICIAN OF AN APPROVED HOSPITAL OR NONHOSPITAL FACILITY:

Re:_____
a person alleged to be mentally ill

I, _____, a peace officer of _____, Oregon,
agency
Badge No. _____ took the above-named person, DOB:_____, whose address is:
_____
into custody at ____ m., on the _____ day of _____, 20_____ in
_____ County, Oregon for the following specific reasons: _____
_____
_____
_____
_____
_____.
pursuant to ORS 426.228(1) because the above factors establish probable cause to believe the above named person is a mentally ill person who is dangerous to self or other and in need of immediate care, custody or treatment for mental illness.

X_____
Peace officer's signature

The community mental health program director of the above-named county can reached by telephone at:
(___) _____-_____.

If more than one hour is required to transport the person to an approved hospital a physician must complete the following section prior to transport:

Physician's Certificate

I certify that I have personally examined the above-named person and believe the person is dangerous to self or other and in need of immediate care, custody or treatment for mental illness and that travel to _____
_____, a hospital or other approved non-hospital facility will not be detrimental to the person's physical health.

Signed at _____m., on the _____ day of _____, 20___.

X_____ M.D.
Signature

Deliver This Report to Treating Physician at Recieving Facility. Do Not File This Report With the Court.

Original: Treating physician
Copy: Peace Officer

5/1/94 MHD 426.228

Sources and Resources

- National Alliance on Mental Illness
  - www.nami.org
  - www.namioregon.org (Oregon specific)
- Substance Abuse and Mental Health Services Administration
  - www.samhsa.gov
- National Institute of Mental Health
  - https://www.nimh.nih.gov/index.shtml
- 211 (Resource information by zip code)
  - 211info.org
  - 211 App
- Alzheimer's Association (Oregon)
  - www.alz.org/oregon
- Autism Society of Oregon
  - Autismsocietyoregon.org
- Crisis Intervention Teams International
  - Citinternational.org
- Lines for Life
  - www.linesforlife.org
- National Suicide Lifeline
  - 800-273-8255
    - Military press "1"
- Military Helpline
  - 888-457-4838
- Youth Line
  - 877-968-8491
- Alcohol & Drug Helpline
  - 800-923-4357

Mental Status Observations

Appearance

- ❑ Good/poor hygiene
- ❑ Weather appropriate clothing
- ❑ Disheveled

Level of attention

- ❑ Sleepy
- ❑ Distractible
- ❑ Alert
- ❑ Hyper-vigilant

Orientation

- ❑ Person
- ❑ Place
- ❑ Time/Date
- ❑ Situation/Circumstances

Memory

- ❑ Immediate
- ❑ Short-term
- ❑ Long-term

Speech

- ❑ Volume ↑ or ↓
- ❑ Rate ↑ or ↓
- ❑ Non-stop
- ❑ Minimal
- ❑ Impaired (e.g., stutter, slurred)

Mood

- ❑ Normal
- ❑ Anxious
- ❑ Agitated
- ❑ Apathetic
- ❑ Depressed
- ❑ Irritable
- ❑ Angry
- ❑ Euphoric – mania

Affect (facial expression you see)

- ❑ Average range of expression
- ❑ Flat

Thought Process

- ❑ Coherent/incoherent
- ❑ Linear/logically connected
- ❑ Tangential (goes on tangents)
- ❑ Concrete

Thought Content

- ❑ Delusional
  - Paranoid
  - Persecutory
  - Grandiose
  - Somatic

Basic Police Academy

Behavioral Health: Legal



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Behavioral Health Series: Legal Considerations

Instructional Goal:

This course is designed to develop a new officer's understanding of state and federal statutes and case law related to interactions between law enforcement officers and people with mental illnesses.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Describe the officer's authority under ORS 426.228 (custody of persons in need of emergency care and treatment).
2. Articulate significant case law principles impacting interactions between law enforcement and mentally ill persons.
3. Understand the significance of the Americans with Disabilities Act as it relates to law enforcement interactions with mentally ill persons.

Content Outline:

- Custody of persons in need of emergency care and treatment – ORS 426.228
- Selected cases - Use of force and persons with mental illness
- Discussion: The Americans with Disabilities Act

Custody of Persons in Need of Emergency Care and Treatment – ORS 426.228

A. Discretionary peace officer custody – ORS 426.228 (1)
   1. "A peace officer may take into custody a person who the officer has probable cause to believe is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness."
   2. "May" establishes that while actions are authorized, they are not required. Scovill v. City of Astoria, 324 Or 159 (1996).
   3. The person must be taken to a designated facility approved by the OHA.
   4. Form: "Report of Peace Officer Custody of an Allegedly Mentally Ill Person" (See example in student handout). The peace officer must present this report to the treating physician.
      a) In their report, the officer must articulate:
         i. The reason for custody, describing observable behaviors and statements made by the person in crisis;
         ii. The date, time and place the person was taken into custody; and
         iii. The name of the community mental health program director and a telephone number where the director may be reached at all times.
   5. See ORS 426.228 (3) for the procedure when a transport will take more than one hour.

B. Mandatory peace officer custody – "Director's custody" – ORS 426.228 (2)
   1. "A peace officer shall take a person into custody when the community mental health and developmental disabilities program director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to believe that the person is imminently dangerous to self or to any other person."
   2. "Shall" when used in a statute "ordinarily is mandatory." Scovill.
   3. The person must be taken to a designated facility approved by the OHA.
   4. The community mental health and developmental disabilities program director shall prepare the written report for the peace officer to deliver to the treating physician.
   5. See ORS 426.228 (3) for the procedure when a transport will take more than one hour.

C. Custody of a foreign national - ORS 426.228 (9)(a) "When a peace officer takes a person into custody under this section, and the peace officer reasonably suspects that the person is a foreign national, the peace officer shall inform the person of the person's right to communicate with an official from the consulate of the person's country."

D. Legal authority to enter a residence related to a mental health crisis
   1. Nothing in ORS 426.228 provides authority to enter a residence forcibly.
   2. Absent a warrant, which is unlikely as this is a mental health crisis, not a crime, must have a valid warrant exception.
   3. "Community caretaking" statute, ORS 133.033, is NOT a warrant exception, though the statute expressly provides: "'Community caretaking functions' includes, but is not limited to: (a) the right to enter or remain upon the premises of another if it reasonably appears to be necessary to: (A) Prevent serious harm to any person or property...."
   4. Oregon courts and Ninth Circuit have held that law enforcement making an entry for community caretaking purposes may only enter based on a valid exception to the warrant requirement. "A lawful community caretaking search, in other words, must first be within the universe of police action described in ORS 133.033, and then it must also fall within one of the constitutional exceptions to the warrant requirement." State v. Martin, 222 Or App 138 (2008).
   5. The Oregon Supreme Court has articulated that the "need to render emergency aid or prevent serious injury or harm is an appropriate justification for an immediate warrantless entry under Article 1, Section 9." In State v. Baker, 350 Or 641 (2011), the Court thus concluded that an "emergency aid" exception to the warrant requirement is justified when: "Police officers have an objectively reasonable belief, based on articulable facts, that a warrantless entry is necessary to either render immediate aid to persons, or to assist persons who have suffered, or who are imminently threatened with suffering, serious physical injury or harm."

E. What happens next after taking a person into custody, as described above?

1. When a peace officer delivers a person to a designated facility, a physician licensed by the Oregon Medical Board shall examine the person immediately. If the physician finds the person to need emergency care or treatment for mental illness, the physician shall proceed under ORS 426.232; otherwise, the person shall not be retained in custody. If the person is to be released from custody, the peace officer **or** the community mental health and developmental disabilities program director **shall** return the person to the place where the person was taken into custody unless the person declines that service. Pursuant to ORS 426.130, after hearing all of the evidence, and reviewing the findings of the examiners, the court shall determine whether the person has a mental illness and needs treatment.
2. Refer to ORS 426.130 in your student resource.
3. The court will either find the person is or is not a person with mental illness. The court's options vary depending on this finding. A "person with mental illness" can be committed, conditionally released, or released to pursue treatment voluntarily. One who is "not a person with mental illness" must be released, and the case is either dismissed or the person is ordered to participate in "assisted outpatient treatment" per ORS 426.133. You will find that statute in your resource.

Selected Cases - Use of Force and Persons with Mental Illness

A. Graham v. Connor:

1. We measure the objective reasonableness of force applied by weighing the "governmental interest in the need for force" against the "nature and quality of force used" or "quantum of force."
2. "Governmental interest" is analyzed by assessing the "Graham factors":
    a) What was the severity of the crime?
    b) Was the subject an immediate threat to the officer or others (the Ninth Circuit has emphasized this is the most important factor)?
    c) Did the subject actively resist arrest or seizure?
    d) Did the subject attempting to evade arrest or seizure by flight.
3. The "Graham factors" were not intended to be exclusive. The federal appellate courts were free to interpret Graham in such a way as to "add additional factors."

B. Deorle v. Rutherford 272 F3d 1272 (9th Cir. 2001)

1. Deorle was acting erratically and became suicidal, and was screaming and banging on the walls of his residence. His wife called 911, and a number of officers responded. Officers surrounded Deorle's residence and began talking with Deorle. He was verbally abusive but generally followed the officers' instructions. Deorle was carrying a crossbow and what appeared to be a can of lighter fluid.
2. Officers told Deorle to drop his crossbow, which he did, and then he started walking toward the officers. Deputy Rutherford was one of the officers on the scene, and he was armed with a 12-gauge shotgun loaded with less-lethal "bean bag" rounds. Deorle continued to walk towards the officers, and when Deorle reached a point where Deputy Rutherford had predetermined he would not allow Deorle to cross, Deputy Rutherford fired a beanbag round striking Deorle in the face. Deputy Rutherford did not warn Deorle that he was going to shoot, did not tell Deorle to drop the can, and did not order him to halt.
3. The court first examined the nature and quality of force used. It concluded the force was sufficient to cause "grave physical injury" even though the "bean bag" rounds were designed to render an individual incapable of resistance without resulting in death. The

court concluded, "... the degree of force used by Rutherford is permissible only when a strong governmental interest compels the employment of such force."

4. The court then looked at the governmental interests at stake, evaluating the crime at issue, whether the suspect posed an immediate threat to the safety of the officer or others, and whether he was actively resisting arrest or attempting to evade arrest by flight. The court said a desire to quickly resolve a potentially dangerous situation is not the type of governmental interest that, standing alone, justifies the use of force that may cause serious injury. There must be other significant circumstances that warrant such a degree of force at the time it is used.
5. The court said Rutherford's failure to provide Deorle any warning that he would be shot if he approached any closer, also supports their conclusion that the force was not justified.
6. "The problems posed by, and thus the tactics to be employed against an unarmed, emotionally distraught individual who is creating a disturbance or resisting arrest are ordinarily different from those involved in law enforcement efforts to subdue an armed and dangerous criminal."
7. "Even when an emotionally disturbed individual is 'acting out' and inviting officers to use deadly force to subdue him, the governmental interest in using such force is diminished by the fact that the officers are confronted, not with a person who has committed a serious crime against others, but with a mentally ill individual. We do not adopt a per se rule establishing two different classifications of suspects: mentally disabled persons and serious criminals. Instead, we emphasize that where it is or should be apparent to the officers that the individual involved is emotionally disturbed, that is a factor that must be considered in determining, under Graham, the reasonableness of the force employed."
8. "In the case of mentally unbalanced persons, the use of officers and others trained in the art of counseling is ordinarily advisable, where feasible, and may provide the best means of ending a crisis."

C. Hayes v. San Diego 736 F 3d 1223 (9th Cir. 2013)

1. Mr. Hayes was shot after two deputies, King and Greer, entered his residence. They observed Hayes's right hand behind his back. When ordered to show his hands, Hayes raised them, revealing a large knife pointed tip down in his right hand. King testified he believed Hayes was a threat to his and Greer's safety because Hayes took one to two steps toward them as he raised his hands. Hayes's girlfriend, Neill testified Hayes, was not "charging" at the deputies. Neither deputy ordered Hayes to stop before shooting. King testified he didn't believe he had time to give that command. He testified only four seconds elapsed between "show your hands" and the first shot.
2. Deputies had been called to Hayes's residence by neighbors who heard an argument between Hayes and Neill. Neill told King they argued about Hayes's attempt that night to commit suicide by inhaling exhaust from his car. Neill told King Hayes had harmed himself before. Neill told King there were no guns in the house but did not tell King Hayes might have a knife. Neill denied any physical confrontation between herself and Hayes.
3. King did not ask Neill about the manner of the previous suicide attempts and was therefore unaware Hayes had previously stabbed himself with a knife. King briefed Greer that there was a suicidal man in the residence. They decided to enter to check on Hayes's welfare as they were concerned he might harm himself. They did not check to see if there were any prior calls for service regarding Hayes and did not know he attempted suicide with a knife four months prior and was taken into protective custody.
4. The court found reasonable jurors could conclude the deputies' use of deadly force was not objectively reasonable. Hayes "was complying with Deputy King's order when he raised the knife and posed no clear threat at the time he was shot without warning." Hayes was still six to eight feet away from King at the time he was shot. There was no clear evidence Hayes was "threatening" the officers with the knife here. "The mere fact that a suspect possesses a weapon does not justify deadly force." Hayes's unexpected possession of the knife alone, when he had committed no crime and was confronted in his own home, was not sufficient reason to employ deadly force.
5. The court also ruled, applying California law to the plaintiff's negligent wrongful death claim, that the deputies' duty to act reasonably when using deadly force extended to their *pre-shooting* conduct. This ruling suggests the Ninth Circuit is interested in officers'

actions and/or inactions before the use of force in determining whether or not the force is justified. Officers will apparently be expected to conduct a comprehensive investigation about the person before approaching, especially if the person is believed to be emotionally disturbed or suicidal.

D. Glenn v. Washington County 661 F3d 460 (9th Cir. 2011)

1. Glenn's mother had called 911 for help with her distraught and intoxicated 18-year-old son. Glenn was threatening to kill himself with a pocketknife and was breaking household property. Glenn had no history of violence or criminal activity. Glenn's mother told dispatchers her son would not leave until the cops come and shoot him. She thought her son had attempted suicide before and was "so suicidal right now."
2. The dispatcher relayed a "fight with a weapon," and that Glenn threatened to kill himself if officers arrived. Officers were told Glenn was suicidal and very intoxicated, and had broken a window and was out in the driveway. There were rifles in the house, but officers were told Glenn could not get to them. Officers were told the front door could not be secured because Glenn had "busted" through it.
3. Once the first two officers, Gerba and Mateski, arrived, they found Glenn in the driveway in front of the garage, near his parents. His two friends were there as well. Seeing Glenn with the knife at his neck, officers started yelling commands to drop the knife, etc. Witnesses would later state the commands conflicted. They didn't know if Glenn understood them, owing to his intoxication, and that they did not feel threatened by Glenn. Eventually, the officers ordered the friends to exit behind the officers, and the parents to go in the house. The officers knew when they did so, that the front door could not be secured. They did not position themselves between Glenn and the front door. The court found they could have done so without closing any distance with Glenn. These officers did not have a Taser or a beanbag gun.
4. A third officer, Pastore, arrived with a beanbag shotgun and a Taser. Mateski immediately ordered him to "beanbag" Glenn. Pastore yelled "beanbag, beanbag" and shot six beanbag rounds at Glenn. Glenn responded to the beanbag fire by putting his hands down, grabbing his pants, and moving toward the alcove between the house and the garage. Mateski and Gerba determined that if Glenn made a move toward the house

with his parents inside, they would use deadly force. After Glenn took about two steps, they both fired at him. All the lethal fire occurred before the last beanbag round was fired, and less than four minutes after the first officer arrived on the scene. Glenn was shot eight times and bled to death.

5. The lower court had found the officers were justified in using less-lethal force to prevent Glenn's suicide. The Ninth Circuit assumed officers could have used some reasonable level of force to try to prevent Glenn from committing a suicidal act. However, they found no case law holding it is reasonable to use a *significant* amount of force to try to stop someone from attempting suicide. "It would be odd to permit officers to use force capable of causing serious injury or death in an effort to prevent the possibility that the person might attempt to harm only himself."
6. As an aside, Oregon law states physical force, not deadly force, may be used to thwart a suicide. ORS 161.205 (4) provides, "The use of physical force upon another person that would otherwise constitute an offense is justifiable and not criminal under any of the following circumstances:...(4) A person acting under a reasonable belief that another person is about to commit suicide or to inflict serious physical self-injury may use *physical force* upon that person to the extent that the person reasonably believes it necessary to thwart the result."
7. As for the lower court's finding that officers were justified in shooting Glenn with the beanbag gun because he posed an immediate threat to the officers and bystanders, the Ninth Circuit felt that issue should go to trial. While Glenn did not comply with officers' orders to drop the knife during the three minutes that elapsed before he was shot with the beanbag gun, "by all accounts Glenn was suicidal on the night in question and the threats of violence known to the responding officers focused on harming himself rather than other people." Officers were "informed that Glenn was intoxicated and emotionally disturbed and that he was the teenaged son of the homeowners rather than an intruder or criminal." Glenn was obviously "emotionally disturbed, a factor to which the officers should have assigned greater weight."
8. Officers "need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable." ... However, "police are 'required to consider [w]hat other tactics if any were

available,'" and if there were "clear, reasonable and less intrusive alternatives" to the force employed, that "militate against finding [the] use of force reasonable."

9. "We...recognized in Deorle, that when dealing with an emotionally disturbed person who is creating a disturbance or resisting arrest, as opposed to a dangerous criminal, officers typically use less forceful tactics."
10. As for the deadly force used after Glenn's response to the beanbag rounds was to move toward the house, the court observed, "the officers' decision to employ the beanbag gun is critical to the resolution of the reasonableness of the lethal force as well because the use of less-lethal force precipitated the use of deadly force." Here, the Court applied its "provocation" analysis, referencing a doctrine fairly unique to the Ninth Circuit. "Where an officer intentionally or recklessly provokes a violent confrontation, if the provocation is an independent Fourth Amendment violation, he may be held liable for his otherwise defensive use of deadly force." The Court ordered that issue should go to trial as well. NOTE: THE US SUPREME COURT HAS SINCE ELIMINATED THE NINTH CIRCUIT'S PROVOCATION RULE, EFFECTIVE MAY 30, 2017, WITH ITS RULING IN COUNTY OF LOS ANGELES V. MENDEZ. THE COURT RULED THAT ONCE A USE OF FORCE IS DEEMED REASONABLE UNDER GRAHAM V CONNOR, IT MAY NOT BE FOUND UNREASONABLE IN REFERENCE TO A SEPARATE CONSTITUTIONAL VIOLATION.

Jury instructions after Ninth Circuit ruled Glenn lawsuit needed to go to trial

- Is the suspect presenting an immediate threat?
- What is the severity of the crime or circumstances to which the officer is responding?
- Is the suspect actively resisting arrest or attempting to escape?
- How much time did the officer have to make a decision, and were there any environmental factors or changing circumstances that impacted the decision to use force?
- What was the type and amount of force used?
- Is it feasible to warn the suspect prior to using force? (If not, we must articulate why)

- Is the suspect emotionally disturbed or mentally distraught – including under the influence of drugs/alcohol?
- Did the officer consider/implement alternatives to using force or de-escalation of the situation?
- Was the suspect in close proximity or had access to weapons?

E. Sheehan v. City and County of San Francisco - 743 F3d 1211 (9th Cir. 2014) (Ninth Circuit ruling which was appealed to US Supreme Court) and 135 S Ct 1765 (2015) (US Supreme Court ruling)

1. Ms. Sheehan's federal lawsuit (Title 42 USC Sec. 1983) alleged violations of Fourth Amendment rights pertaining to warrantless search and excessive force, as well as violations of rights protected by the Americans with Disabilities Act. (See below under ADA for that part of the discussion)
2. Sheehan lived in a group home for individuals with mental illness. After Sheehan began acting erratically and threatened to kill her social worker, police officers were dispatched to help escort Sheehan to a facility for temporary evaluation and treatment. When the officers first entered Sheehan's room, she grabbed a knife and threatened to kill them. They retreated and closed the door. Concerned about what Sheehan might do behind the closed door, and without considering if they could accommodate her disability, the officers reentered her room. Sheehan, knife in hand, again confronted them. After pepper spray proved ineffective, the officers shot Sheehan multiple times.

The Supreme Court ruled that the officers were entitled to qualified immunity from liability for the injuries Sheehan suffered. (Students were trained on the law of Qualified Immunity in their Civil Liability class). The Court found officers did not violate the Fourth Amendment when they opened Sheehan's door the first time, and that there was no doubt that they could have opened her door the second time had she not been disabled. The officers' use of force after the second entry was ruled reasonable. The Court reasoned the "real question" was whether officers violated the Fourth Amendment when they decided to reopen Sheehan's door rather than attempt to accommodate her disability. Rather than resolving that question, the Court instead noted that there was no clearly established law that would identify the officers' conduct as a Fourth Amendment violation. Therefore, the Court ruled the officers were entitled to qualified immunity. Because the Court deemed the

qualified immunity analysis as "straightforward," it determined it "need not decide whether the Constitution was violated by the officers' failure to accommodate Sheehan's illness.

The Americans with Disabilities Act

Basic protections- background

- Review from Civil Rights and Liabilities
- Title II of the ADA provides that subject to certain exceptions, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.
- Law enforcement agencies would be considered public entities and, therefore, are among those that must abide by the law prohibiting exclusion due to disability.

Sheehan v. City and County of San Francisco

1. The US Supreme Court did NOT rule on the ADA claim that the city and county had originally sought to be resolved, which was whether the ADA "requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody." They refused to rule on this question, finding that the city and county changed the nature of their argument from what they initially represented on appeal. The net result of their refusal to do so means, for the time being, that the ruling issued by the Ninth Circuit stands as regards what it said about the ADA.
2. So, what did the Ninth Circuit say about the ADA *generally*?
    i. We agree with the majority of [federal] circuits to have addressed the question that Title II [of the ADA] *applies to arrests.*
    ii. Title II of the ADA provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity...Discrimination includes a failure to *reasonably* accommodate a person's disability.
    iii. [However], we agree with the Eleventh and Fourth Circuits that exigent circumstances inform the reasonableness analysis under the ADA, just as they inform the distinct reasonableness analysis under the Fourth Amendment...Just as the constraints of time figure in what is required of police under the Fourth Amendment, they bear on what is reasonable under the ADA.

3. What did the Ninth Circuit say about the ADA *as specifically applied to Ms. Sheehan?*
    i. Courts have recognized at least two types of Title II claims applicable to arrests: (1) wrongful arrest, where police wrongly arrest someone with a disability because they misperceive the effects of that disability as criminal activity; and (2) reasonable accommodation, where although police properly investigate and arrest a person with a disability for a crime unrelated to that disability, they fail to reasonably accommodate the person's disability in the course of investigation or arrest, causing the person to suffer greater injury or indignity in that process than other arrestees. Sheehan raised the second type of claim.
    ii. It is undisputed that Sheehan had a disability and that the officers knew it at the time they encountered her. We turn, therefore, to whether the city discriminated against Sheehan by failing to provide reasonable accommodation during the second entry. [The court having ruled the first entry was lawful under the emergency aid warrant exception].
    iii. A reasonable jury could ... find that the situation had been defused sufficiently, following the initial retreat from Sheehan's room, to afford the officers an opportunity to wait for backup and to employ less confrontational tactics, including the accommodations that Sheehan asserts, were necessary.
    iv. Because the reasonableness of an accommodation is ordinarily a question of fact...we hold that the city is not entitled to judgment as a matter of law on Sheehan's ADA claims. [As the lower district court had ruled]
4. So, where is Ms. Sheehan's claim now? Where are we after Sheehan?
    a. The net effect of what the Ninth Circuit said in 3.d above, is that the lower district court's ruling in favor of the city and county, which essentially dismissed Ms. Sheehan's ADA claim, was reversed. But that does not mean the Ninth Circuit found in favor of Ms. Sheehan on her ADA claim. It only means the claim needs to go to trial, where factual findings regarding the reasonableness of the accommodation she sought, can be made.
    b. To repeat, the Ninth Circuit did not rule that the officers violated Ms. Sheehan's rights under the ADA when they made their second entry into her room. The Court did rule that because a reasonable jury could agree with Ms. Sheehan's version of the facts, and with her assertion of what would have been a reasonable accommodation, it was not appropriate to dismiss her ADA claim as a matter of law.

c. Therefore, broadly, post-Sheehan, in the Ninth Circuit, the ADA applies to arrests. However, discrimination under the ADA requires a failure to *reasonably* accommodate a disability. When assessing the reasonableness of an accommodation sought, exigent circumstances (such as a person's violence and perceived dangerousness) will inform this analysis.

Supplemental Resource

OREGON REVISED STATUTES

Definitions for ORS 426.005 to 426.390.

(1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

(a) "Community mental health program director" means the director of an entity that provides the services described in ORS 430.630 (3) to (5).

(b) "Director of the facility" means a superintendent of a state mental hospital, the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at other treatment facilities.

(c) "Facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility or such other facility as the authority determines suitable that provides diagnosis and evaluation, medical care, detoxification, social services or rehabilitation to persons committed to the Oregon Health Authority under ORS 426.130.

(d) "Nonhospital facility" means any facility, other than a hospital, that is approved by the authority to provide adequate security, psychiatric, nursing and other services to persons under ORS 426.232 or 426.233.

(e) "Person with mental illness" means a person who, because of a mental disorder, is one or more of the following:

(A) Dangerous to self or others.

(B) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.

(C) A person:

(i) With a chronic mental illness, as defined in ORS 426.495;

(ii) Who, within the previous three years, has twice been placed in a hospital or approved inpatient facility by the authority or the Department of Human Services under ORS 426.060;

(iii) Who is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in subparagraph (ii) of this subparagraph; and

(iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a person described under either subparagraph (A) or (B) of this paragraph or both.

(f) "Prehearing period of detention" means a period of time calculated from the initiation of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

(2) Whenever a community mental health program director, director of the facility, superintendent of a state hospital or administrator of a facility is referred to, the reference includes any designee such person has designated to act on the person's behalf in the exercise of duties.

426.130 Court determination of mental illness; discharge; release for voluntary treatment; conditional release; commitment; prohibition relating to firearms; period of commitment.

(1) After hearing all of the evidence, and reviewing the findings of the examiners, the court shall determine whether the person has a mental illness and is in need of treatment. If, in the opinion of the court, the person:

(a) Is a person with mental illness based upon clear and convincing evidence, the court:

(A) Shall order the release of the person and dismiss the case if:

(i) The person is willing and able to participate in treatment on a voluntary basis; and

(ii) The court finds that the person will probably do so.

(B) May order conditional release under this subparagraph subject to the qualifications and requirements under ORS 426.125. If the court orders conditional release under this subparagraph, the court shall establish a period of commitment for the conditional release.

(C) May order commitment of the person with mental illness to the Oregon Health Authority for treatment if, in the opinion of the court, subparagraph (A) or (B) of this paragraph is not in the best interest of the person. If the court orders commitment under this subparagraph:

(i) The court shall establish a period of commitment.

(ii) The authority may place the committed person in outpatient commitment under ORS 426.127.

(D) Shall order that the person be prohibited from purchasing or possessing a firearm if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to self or others or to the community at large as a result of the person's mental or psychological state as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court makes an order under this subparagraph, the court shall cause a copy of the order to be delivered to the sheriff of the county who will enter the information into the Law Enforcement Data System.

(b) Is not a person with mental illness, the court shall release the person from custody if the person has been detained under ORS 426.070, 426.180, 426.228, 426.232 or 426.233 and:

(A) Dismiss the case; or

(B) Order the person to participate in assisted outpatient treatment in accordance with ORS 426.133. The court may continue the proceeding for no more than seven days to allow time for the community mental health program director to develop the person's assisted outpatient treatment plan.

(2) A court that orders a conditional release, a commitment or assisted outpatient treatment under this section shall establish a period of commitment or treatment for the person subject to the order. Any period of commitment ordered for commitment or conditional release under this section shall be for a period of time not to exceed 180 days. A period of assisted outpatient treatment shall be for a period of time not to exceed 12 months.

(3) If the commitment proceeding was initiated under 426.070 (1)(a) and if the notice included a request under ORS 426.070 (2)(d)(B), the court shall notify the two persons of the court's determination under subsection (1) of this section.

(4) If the court finds that the person is a person with mental illness and either orders commitment under subsection (1)(a)(B) or (C) of this section or enters an order under subsection (1)(a)(D) of this section, the court shall notify the person that the person is prohibited from purchasing or possessing a firearm under state and federal law unless the person obtains relief from the prohibition from the Psychiatric Security Review Board under ORS 166.273 or under federal law.

426.133 Assisted Outpatient Treatment

(1) As used in ORS 426.005 to 426.390, "assisted outpatient treatment" may not be construed to be a commitment under ORS 426.130 and does not include taking a person into custody or the forced medication of a person.

(2) A court may issue an order requiring a person to participate in assisted outpatient treatment if the court finds that the person:

(a) (A) Is 18 years of age or older;

(B) Has a mental disorder;

(C) Will not obtain treatment in the community voluntarily; and

(D) Is unable to make an informed decision to seek or to comply with voluntary treatment; and

(b) As a result of being a person described in paragraph (a) of this subsection:

(A) Is incapable of surviving safely in the community without treatment; and

(B) Requires treatment to prevent a deterioration in the person's condition that will predictably result in the person becoming a person with mental illness.

(3) In determining whether to issue the order under subsection (2) of this section, the court shall consider, but is not limited to considering, the following factors:

(a) The person's ability to access finances in order to get food or medicine.

(b) The person's ability to obtain treatment for the person's medical condition.

(c) The person's ability to access necessary resources in the community without assistance.

(d) The degree to which there are risks to the person's safety.

(e) The likelihood that the person will decompensate without immediate care or treatment.

(f) The person's previous attempts to inflict physical injury on self or others.

(g) The person's history of mental health treatment in the community.

(h) The person's patterns of decompensation in the past.

(i) The person's risk of being victimized or harmed by others.

(j) The person's access to the means to inflict harm on self or others.

(4) The community mental health program director may recommend to the court a treatment plan for a person participating in assisted outpatient treatment. The court may adopt the plan as recommended or with modifications.

(5) As part of the order under subsection (2) of this section, the court may prohibit the person from purchasing or possessing a firearm during the period of assisted outpatient treatment if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to self or others or to the community at large as a result of the person's mental or psychological state, as demonstrated by past behavior or participation in incidents involving unlawful violence or threats of unlawful violence, or by reason of a single incident of extreme, violent, unlawful conduct. When a court adds a firearm prohibition to an order under subsection (2) of this section, the court shall cause a copy of the order to be delivered to the sheriff of the county, who shall enter the information into the Law Enforcement Data System.

(6) The court retains jurisdiction over the person until the earlier of the end of the period of the assisted outpatient treatment established under ORS 426.130 (2) or until the court finds that the person no longer meets the criteria in subsection (2) of this section.

(7) This section does not:

(a) Prevent a court from appointing a guardian ad litem to act for the person; or

(b) Require a community mental health program to provide treatment or services to, or supervision of, the person:

(A) If the county lacks sufficient funds for such purposes; or

(B) In the case of a county that has declined to operate or contract for a community mental health program, if the public agency or private corporation that contracts with the Oregon Health Authority to provide the program, as described in ORS 430.640, lacks sufficient funds for such purposes.

426.228 Custody; authority of peace officers and other persons; transporting to facility; reports; examination of person.

(1) A peace officer may take into custody a person who the officer has probable cause to believe is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness. As directed by the community mental health and developmental disabilities program director, a peace officer shall remove a person taken into custody under this section to the nearest hospital or nonhospital facility approved by the Oregon Health Authority. The officer shall prepare a written report and deliver it to the treating physician. The report shall state:

(a) The reason for custody;

(b) The date, time and place the person was taken into custody; and

(c) The name of the community mental health and developmental disabilities program director and a telephone number where the director may be reached at all times.

(2) A peace officer shall take a person into custody when the community mental health and developmental disabilities program director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to believe that the person is imminently dangerous to self or to any other person. As directed by the community mental health and developmental disabilities program director, the peace officer shall remove the person to a hospital or nonhospital facility approved by the authority. The community mental health and developmental disabilities program director shall prepare a written report that the peace officer shall deliver to the treating physician. The report shall state:

(a) The reason for custody;

(b) The date, time and place the person was taken into custody; and

(c) The name of the community mental health and developmental disabilities program director and a telephone number where the director may be reached at all times.

(3) If more than one hour will be required to transport the person to the hospital or nonhospital facility from the location where the person was taken into custody, the peace officer shall obtain, if possible, a certificate from a physician licensed by the Oregon Medical Board stating that the travel will not be detrimental to the person's physical health and that the person is dangerous to self or to any other person and is in need of immediate care or treatment for mental illness. The physician shall have personally examined the person within 24 hours prior to signing the certificate.

(4) When a peace officer or other authorized individual, acting under this section, delivers a person to a hospital or nonhospital facility, a physician licensed by the Oregon Medical Board shall examine the person immediately. If the physician finds the person to be in need of emergency care or treatment for mental illness, the physician shall proceed under ORS 426.232, otherwise the person shall not be retained in custody. If the person is to be released from custody, the peace officer or the community mental health and developmental disabilities program director shall return the person to the place where the person was taken into custody unless the person declines that service.

(5) A peace officer may transfer a person in custody under this section to the custody of an individual authorized by the county governing body under ORS 426.233 (3). The peace officer may meet the authorized individual at any location that is in accordance with ORS 426.140 to affect the transfer. When transferring a person in custody to an authorized individual, the peace officer shall deliver the report required under subsections (1) and (2) of this section to the authorized individual.

(6) An individual authorized under ORS 426.233 (3) shall take a person into custody when directed to do so by a peace officer or by a community mental health and developmental disabilities program director under ORS 426.233.

(7) An individual authorized under ORS 426.233 (3) shall perform the duties of the peace officer or the community mental health and developmental disabilities program director required by this section and ORS 426.233 if the peace officer or the director has not already done so.

(8) An individual authorized under ORS 426.233 (3) may transfer a person in custody under this section to the custody of another individual authorized under ORS 426.233 (3) or a peace officer. The authorized individual transferring custody may meet another authorized individual or a peace officer at any location that is in accordance with ORS 426.140 to affect the transfer.

(9)(a) When a peace officer takes a person into custody under this section, and the peace officer reasonably suspects that the person is a foreign national, the peace officer shall inform the person of the person's right to communicate with an official from the consulate of the person's country.
(b) A peace officer is not civilly or criminally liable for failure to provide the information required by this subsection. Failure to provide the information required by this subsection does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

FEDERAL LAW

Excerpts of the Americans with Disabilities Act of 1990:
SEC. 2. FINDINGS AND PURPOSES.
(a) Findings --The Congress finds that--

(1) Some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;

(2) Historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) Discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) Unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) Individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) Individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) The Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(9) The continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductively.

(b) Purpose--It is the purpose of this Act—

(1) To provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) To provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) To ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and

(4) To invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

SEC. 3. DEFINITIONS.
As used in this Act:

(1) Auxiliary aids and services--The term "auxiliary aids and services" include
- (A) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;
- (B) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;
- (C) Acquisition or modification of equipment or devices; and
- (D) Other similar services and actions.

(2) Disability--The term "disability" means, with respect to an individual—
- (A) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;
- (B) A record of such an impairment; or
- (C) Being regarded as having such an impairment.

(3) State--The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Report of Peace Officer Custody of an Allegedly Mentally Ill Person

TO THE TREATING PHYSICIAN OF AN APPROVED HOSPITAL OR NONHOSPITAL FACILITY:

Re:_____
a person alleged to be mentally ill

I, _____, a peace officer of _____, Oregon,
agency
Badge No. _____ took the above-named person, DOB:_____, whose address is:

_____

into custody at ____ m., on the _____ day of _____, 20_____ in

_____ County, Oregon for the following specific reasons: _____

_____

_____

_____

_____

_____

pursuant to ORS 426.228(1) because the above factors establish probable cause to believe the above named person is a mentally ill person who is dangerous to self or other and in need of immediate care, custody or treatment for mental illness.

X_____
Peace officer's signature

The community mental health program director of the above-named county can reached by telephone at:

(____) _____-_____.

If more than one hour is required to transport the person to an approved hospital a physician must complete the following section prior to transport:

Physician's Certificate

I certify that I have personally examined the above-named person and believe the person is dangerous to self or other and in need of immediate care, custody or treatment for mental illness and that travel to _____ _____, a hospital or other approved non-hospital facility will not be detrimental to the person's physical health.

Signed at _____m., on the _____ day of _____, 20___.

X_____ M.D.
Signature

Deliver This Report to Treating Physician at Recieving Facility. Do Not File This Report With the Court.

Original: Treating physician
Copy: Peace Officer

5/1/94 MHD 426.228

Basic Police Academy

Behavioral Health: Trauma and Trauma Informed Practices



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Behavioral Health Series – Trauma and Trauma Informed Practices

Instructional Goal:

This course is designed to...

1. Develop a new officer's understanding of causes and behaviors commonly associated with trauma.
2. Provide a new officer with opportunities to practice conducting trauma-informed, safe, lawful, and effective interactions involving persons experiencing a possible trauma related crisis.

Learning Outcomes:

Upon completion of instruction, student will be able to:

1. Recognize and articulate potential symptoms associated with an individual who has experienced trauma, or is experiencing a reaction to trauma.
2. Increase understanding and awareness of the impact of trauma.
3. Identify potential challenges when engaging with an individual experiencing a trauma response, and develop trauma-informed responses.

Trauma

Individualized trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening and that has lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being. (SAMSHA, 2014).

Simplified definition: Anything that overwhelms one's ability to cope.

History

The public's awareness of an individual's response to traumatic experiences has evolved drastically over the past century.

There are three notable instances where trauma response has reached public notice and paved the way for a better understanding of trauma and the impact it may have on an individual.

At the end of 19th century, 'hysteria' (meaning from the uterus), was used to describe a disease with 'wastebasket' of incoherent and incomprehensible symptoms. Many physicians believed it was a women's disease and originating from the uterus, as many women with these unexplainable symptoms were often placed in insane asylums. The Catholic church referred to these sufferers as involved in witchcraft or possessed by the devil, and were condemned to asylums, or death.

In 1880, Jean-Martin Charcot, a French neurologist, offered another viewpoint of this condition. By studying the symptoms, Charcot identified that these problems didn't have anything to do with the uterus and found evidence that it was a neurological problem. This discovery won him notoriety as it supported the anticlerical movement, denouncing the church, replacing metaphysical or theological explanation with evidence by observations and evidence.

Men returning from World War I who had experienced the horrors of war began to behave like women who were experiencing 'hysteria,' and these men were found screaming, crying uncontrollably, becoming frozen, or mute and unresponsive. At first, it was called 'shell shock' as the symptoms were like those of concussive effects of exploding shells, though it soon became clear this similar response was found in soldiers who had not been exposed to physical trauma.

In 1941, Abram Kardiner, an American Psychiatrist published The Traumatic Neuroses of War, which he wrote about his observations of World War 1 veterans in anticipation of the flood of shell-shocked soldiers expected to return from World War II. His findings included that traumatic neurosis (what we call PTSD today) develops a chronic vigilance and sensitivity to threats and has a physiological basis.

It wasn't until 1980, due to the recognition of psychological trauma as an inevitable casualty of combat experience, it became a diagnosis. The American Psychiatric Association included it in a new category, called post-traumatic stress disorder.

Types of Traumas

Trauma can be a one-time event (acute) or a series of events (chronic) consisting of multiple traumatic exposures, lasting months, or years (complex).

Acute trauma refers to trauma brought on by a single incident that can last moments or hours. Examples of acute trauma are physical assault, sexual assault or rape, natural disaster, mass shooting, terrorist attack, car crash, or major injury.

Chronic stress (trauma) refers to an emotional or physical tension caused by a repeated event or prolonged exposure to highly stressful events. Examples of chronic stress include bullying, hostile or dangerous work environment, living in a home of domestic violence, poverty, neglect, starvation, homelessness, chronic illness, or frequent invasive procedures.

Complex trauma describes one's exposure to multiple traumatic events, cumulative and repeatedly, often within specific relationships or contexts. This type of trauma could be the result of child abuse/sexual abuse, witnessing domestic violence, or multiple military deployments to dangerous areas.

Trauma can be experienced in different ways, which can impact individuals differently. Experiencing trauma can have lasting adverse effect on an individual's functioning and physical, social, emotional or spiritual well-being. It can have an impact on every area of someone's life (social, interpersonal, occupational, etc.).

Is it important to recognize that not everyone exposed to these events will have a traumatic response. Traumatic responses are based of the individual's perception of the event at a particular point. That perception is unique to each individual and what traumatizes one person at any particular time, may not traumatize the other. There are many intersections of an individuals life that can affect their experience of the traumatic event.

Trauma can be experienced in several different ways. In this unit, we'll discuss the following:

Direct

A trauma experience that happens directly to a person.

Indirect

Witnessing a trauma event that happen(s) to another person or people.

Vicarious Trauma

Psychological negative response that is associated with the disturbing experiences and traumatic events of another person, often victims or crime or abuse, and includes a range of psychosocial symptoms.

Secondary Traumatic Stress

Traumatic stress is the emotional duress that results when an individual hears about the firsthand trauma experiences of another. Its symptoms mimic those of post-traumatic stress disorder (PTSD) (NCTSN, 2022).

Often, vicarious trauma and secondary trauma are used interchangeably. The difference between the two is that vicarious trauma happens over time, whereas secondary trauma can be an isolated event, or over time, and symptoms mimic PTSD.

Critical Incident Stress

Any event that has a stressful impact sufficient to overwhelm your usual coping strategies. These incidents that cause this stress can be sudden, shocking or outside the range of ordinary

human experience. It may also be an event that has a specific personal significance to the individual and may result in strong emotional and/or physical reactions.
Emergency services personnel may be exposed to critical incidents at any time during their careers.

Community/Collective/Historical

Community, collective and historical trauma at times, are used interchangeably. While there are similarities between them, there are slight variances in each one that would be used to describe an experience more accurately. It is not to memorize the subtle differences between each one, but to realize the impact on the community, cultural, racial, or ethnic groups affected.

Community trauma affects social groups or neighborhoods long subjected to interpersonal violence, structural violence, and historical harms. Research suggests that the causes of community trauma lie in the historic and ongoing root causes of social inequities, including poverty, racism, sexism, oppression and power dynamics, and the erasure of culture and communities (Pinderhughes, Davis, and Williams 2015).

This may occur because of public housing communities where there is disinvestment in certain neighborhoods, environment (poor housing and public space quality), or interpersonal connections (violence, lack of stability or consistency). The legacy of forced displacement, historic disinvestment, and inconsistent services can create a pervasive and deep sense of distrust of new programs, staff, and city-led initiatives while community violence has led to high levels of stress and isolation. Additionally, experiencing or witnessing persistent and sustained community violence, such as shootings, stabbings, and assaults— as well as less serious but prevalent types of violence, such as robberies or drug dealing. Communities may be at increased risk for experiencing psychological symptoms such as depression and anxiety, or aggressive and violent behaviors. Researchers have also discovered that development can be negatively impacted even if individuals are not directly exposed to violent events. Other types of community trauma could include those who have experienced natural disasters, public health crisis (COVID), tragic social events, terrorist attacks.

Collective trauma refers to a shared traumatic event(s) that involve large groups of people and can be transmitted across generations and communities. Families may share collective traumatic events in addition to entire societies. Natural disasters, war, genocide, slavery, famine, pandemics, recession, acts of terrorism and community violence are examples, which are shared experiences not shared subjectivity.

The effects of collective trauma can change the ways in which one thinks, feels, and acts, and can impact decisions such as the way in which one works, goes to school, or parents their children. A person does not need to directly experience a collective traumatic event to be impacted on some level. An example of this may be watching the news or social media, which can trigger emotionally charged responses.

Historical trauma is a multigenerational trauma experienced by a specific cultural, racial or ethnic group. It is an intergenerational (generation to generation) trauma experienced by a specific cultural group that has a history of being systematically oppressed. Examples are slavery, discrimination, genocide, colonialism, forced relocation, and other historically traumatic events. The effects of historical trauma can include: Chronic emotional and physical pain, high mortality rates, depression, anxiety, substance use, and child abuse and intimate partner violence.

Intergenerational Trauma

An occurrence in which the descendants of a person who has experienced a terrifying (traumatic) event(s) demonstrate adverse emotional and behavioral reactions to the event that are similar to those of the person himself or herself (APA, 2022).

Intergenerational trauma was introduced in the psychiatric literature through descriptions of emotional and behavioral problems in children of Holocaust survivors, who first-hand did not experience the Holocaust.

Children of Vietnam veterans experienced similar symptoms to the children of Holocaust survivors, and was called 'secondary traumatization.' The idea did not imply an intergenerational transmission, but referred to the stressful nature of living with an individual who has experienced trauma and may have been expressing symptoms and reliving these

horrific experiences in the presence of their offspring. Studies have demonstrated that heritability of PTSD has been estimated between 30 - 70%; stress at specific stages in pregnancy are associated with an increased risk for autism spectrum disorders, schizophrenia, and attention deficit hyperactivity disorder in offspring; and non-biological ways trauma has been found to be passed down between generations include: Dysfunctional family dynamics that result from trauma (codependency, unhealthy attachment styles and parental dissociation); family stories of traumatic events; and memories shared through photos, letters or heirlooms.

Institutional Trauma (betrayal)

Institutional betrayal, developed from betrayal trauma theory, occurs when the institution you trust or depend upon mistreats you. It can be overt, but it can also be less obvious, for instance, a failure to protect you when protection is a reasonable expectation.

In response to the trauma, in the individual's mind who had the experience makes the event seem less bad than it was, or the event is forgotten entirely, to protect themselves. If the person felt they were betrayed in a major way, it would make it difficult to ever trust people (or institutions) again.

Sanctuary Trauma

Sanctuary trauma occurs when an individual who suffers a severe stressor next encounter what was expected to be a supportive and protective environment and discovers only more trauma. Sanctuary trauma is unique, as it is initially caused by institutions that are expected to provide care. For example, some veterans who face mental or physical injuries from service are finding themselves in a second battle with the bureaucracy upon return.

Other types of traumas include developmental, medical, and trauma by grief.

Trauma Impact

Trauma can impact anyone, at any time.

The impact of a traumatic event on an individual depends on many factors:

- Characteristics of the individual
- Type and characteristics of the event(s)
- Developmental processes
- The meaning of the trauma
- Sociocultural factors

The trauma experience is unique to the individual, and not all individuals who experience a traumatic event(s) will be affected by them.

Some individuals may clearly display criteria associated with acute stress disorder (ASD) or posttraumatic stress disorder (PTSD), but many more individuals will be able to recover quickly or experience brief low grade symptoms or consequences that fall outside of diagnostic criteria for PTSD.

Trauma Reactions

When our nervous system perceives it is threatened or perceives it to be threatened either physically or emotionally, our amygdala, and our entire limbic system, sounds an alarm, and this change in the brain allows the body to focus on survival.

- Our autonomic nervous system releases adrenaline and cortisol.
    - Adrenaline, the stress hormone, is used to trigger the “fight or flight” mode.
    - Cortisol, also a stress hormone, assists in de-sensitizing us from pain, and gives us extra energy.
- In order for the brain to allow the body to focus on survival, it takes the problem solving and decision-making part of our brain, the prefrontal cortex, offline.

- It also tells the hippocampus, the filing system of the brain, that also manages functions of feelings and reactions, to stop filing memories. This is why some trauma survivors cannot recall certain details of their traumatic experience.

- This switch in the brain can cause someone to react impulsively on edge, or even overwhelmed emotionally. It is supposed to be short-lived, however, the response can vary person to person and if an individual is unable to self-regulate, or has support to help regulate, the symptoms can cause an increase in dysregulation and continue to escalate until they come to a crash point.

5 Responses to Trauma Exposure

1. **Fight**– Facing the perceived threat aggressively.
2. **Flight**– Running/walking away from the danger.
3. **Freeze**– Unable to move or act against the threat.
4. **Fawn** - An unconscious response to please, appease, or pacify a threat.
5. **Faint**– An extreme form of freeze where the individual will appear to be dead, unconscious or asleep.

Post-Traumatic Stress Disorder

According to the National Center for Post-traumatic Stress Disorder, about 7 or 8 out of every 100 people will experience PTSD at some point in their lives. After the trauma, post-traumatic stress disorder is higher in women (8%) than in men (4%). Studies have shown that the rates vary depending upon the specific population being considered.

- Higher among veterans, police, fire and emergency medical personnel
- Highest rates among survivors of rape, military combat and captivity and ethnically or politically motivated internment and genocide.
- Compared to U.S. non-Latino white individuals, higher rates reported among U.S. Latinos, African Americans and Native American Indigenous populations.

The Diagnostic Statistical Manual of Mental Disorders (DSM5) uses the following criteria to apply to adults, adolescents and children older than 6 years to identify PTSD.

1. Exposure to actual or threatened death, serious injury, or sexual violence (directly, witnessing, learning of the traumatic event occurred to a close family member or friend, or by replete or extreme exposure to aversive details of the traumatic events).
2. Re-experiencing: nightmares, flashbacks, intrusive thoughts, or prolonged psychological distress.
3. Persistent avoidance of distressing memories, thoughts or feelings, or external reminders (people, places, activities, etc.).
4. Negative cognitions and mood associated with the traumatic event. For example, inability to remember important aspects of the event, persistent or distorted beliefs, thoughts or negative emotional state, diminished interest or activity, and/or becoming detached from others.
5. Arousal is marked by aggressive, reckless or self-destructive behavior, sleep disturbances, hypervigilance or related problems.
6. Lasting longer than one month.
7. Disturbances cause significant distress or impairment in social, occupational or other areas of functioning.
8. Not attributable to psychological effects of substances or other medical conditions.

Acute Stress Disorder, and *Adjustment Disorder* are other types of trauma- or stressor related disorders that an individual exposed to traumatic events may experience.

Risk and Resiliency Factors to Developing PTSD

Some factors that increase risk for PTSD include:

- Living through dangerous events and traumas;
- history of abuse, childhood trauma;
- family history of PTSD or depression;
- poor coping skills;
- having little or no social support after a traumatic event;
- dealing with additional stress after the event, such as loss of a loved one, pain and injury, or loss of a job or home;
- having a history of mental illness or substance abuse.

Some factors that may promote recovery/resiliency after trauma include:

- Seeking out support from other people, such as friends and family;
- finding a support group after a traumatic event;
- learning to be confident about one's own abilities in the face of danger;
- having a positive coping strategy, or a way of getting through the trauma event through cognitive restructuring, meaning making and problem solving;
- being able to act and respond effectively despite feeling fear;
- mindfulness, psychotherapy;
- understanding that these are normal reactions to abnormal situations.

Observable Behaviors of Trauma Survivors

- Substance use (alcohol, drugs)
- Addictive behaviors (eating disorders, gambling, sex addiction)
- Reckless or self-destructive behaviors
- Irritable, anger, rage, violent behaviors
- Isolation, avoidant behaviors
- Jumpy, nervous, easily startled, over reactive to noises, anxious
- Children – magical thinking (hide under a blanket and I will be invisible)
- Diminished activity
- Physical symptoms (unexplained aches or pains)
- Sleep disturbances
- Depression
- Self-harm

General Strategies for Engagement

- Trauma informed approach
    - Realize the impact of trauma
    - Recognizes the signs and symptoms of trauma
    - Responds by integrating knowledge of trauma
    - Resists re-traumatization
- Establish safety
- Inform of next steps
- Reduce stimuli
- Validate them and their experience
- Demonstrate empathy
- Body language
- Give them time
- Utilize grounding
- Provide resources
- Universal Communication Strategies (in student materials)
- Suicidal thoughts and actions

Strategies for Specific Populations

Children

Immediate signs of distress in *infants*:

- Inconsolable crying, body flailing, extreme body tension or rigidity, demanding physical closeness, but not soothed by it.
- The opposite may also occur, which might be inconsistent with the situation, though should be of even greater concern; calm, quiet, docile, lethargic, glassy-eyed, or asleep amid crisis.

Immediate signs of distress in *toddlers* exposed to traumatic events:

- Screaming, crying, clinginess, loud or vocal commands demanding attention, whining, or withdrawn.
- Similar to infants, responders should be of greater concern with calm, quiet, docile, lethargic, or overly friendly or familiar with law enforcement or other unknown responding adults.

Additional observable signs for preschool, elementary and middle/high school children:

Preschool Children	Elementary School Children	Middle and High School Children
• Feel helpless and uncertain • Fear of being separated from their parent/caregiver • Cry and/or scream a lot • Eat poorly and lose weight • Return to bedwetting • Return to using baby talk • Develop new fears • Have nightmares • Recreate the trauma through play • Are not developing to the next growth stage • Have changes in behavior • Ask questions about death	• Become anxious and fearful • Worry about their own or others' safety • Become clingy with a teacher or a parent • Feel guilt or shame • Tell others about the traumatic event again and again • Become upset if they get a small bump or bruise • Have a hard time concentrating • Experience numbness • Have fears that the event will happen again • Have difficulties sleeping • Show changes in school performance • Become easily startled	• Feel depressed and alone • Discuss the traumatic events in detail • Develop eating disorders and self-harming behaviors such as cutting • Start using or abusing alcohol or drugs • Become sexually active • Feel like they're going crazy • Feel different from everyone else • Take too many risks • Have sleep disturbances • Don't want to go places that remind them of the event • Say they have no feeling about the event • Show changes in behavior

Adapted from Northwestern University Feinburg School of Medicine, Center for Child Trauma Assessment Services and Interventions (https://cctasi.northwestern.edu/child-trauma, 2022)

What can you do for children?

- Ensure the child is in the least chaotic part of the environment.
- Whenever possible, do not remove the child from the caregiver, unless unsafe for the child, or find an alternative caregiver.
    - As noted in the previous video, children need to feel safe in their environment, and with a secure caregiver.
- Support caregiver in remaining calm.
- Engage the child in an activity (drawing, playing with toy cars, dollhouses, talk about their likes (ie sports), etc.)
- Get at their eye level and use simple language.

Veteran's

It is important to understand the following when working with our veteran communities. Those include identify, awareness and intervene:

- Identifying vehicle license plates, service ribbons, ranks and awards; clothing; tattoos; language used/terminology.
- Awareness of actions in vehicle operations to include excessive speed, no turn/or excessive use of signals, rapid sudden lane changes, hovering over center line, extreme avoidance of fog lane or debris.
- Interventions/strategies:
    - High risk – use appropriate training and follow policy and procedures
    - Low risk – may be able to use de-escalation skills
    - Take extra safety precautions – most veterans will own weapons (guns, knives) and responsible gun owners.
    - Allowing space will help reduce sensory stimuli and help with not feeling confined.
    - Inform of next steps – helps reduce any surprises, allows veterans the opportunity to cooperate and reduce arousal, and enables them to feel like they have some control.
    - Body language – if possible, open body posture, avoid quick/sharp movements, calm voice, mirroring what you would like to see in the veteran.
    - Ask about physical injuries or limitations.

- Gift of time. The heightened stress cycle for those who remain in that phase for an extended amount of time needs additional time in the tension reduction phase to bring someone back to baseline.
- Grounding (bring them to the here and now).
- If what you're doing isn't working, know your veteran officers, and utilize that resource if available.
- Universal Communication Strategies

- Additional Strategies for Traumatic Brain Injury:
  - Reduce stimuli
    - Lights – Blue & red strobe, flashlights, etc.
    - Sound – Radio chatter, public/passersby
    - Touch – Clothing, handcuffs, temperature, in/outdoors
  - Clear, concrete (and 1 step instructions)
  - Listen to the veteran's account of problem
    - Allow them to tell their story. Silence is ok.
    - Reflective listening
  - Ask who is in their support group/trusted person?

Older Adults

- Older women are often underrepresented in previous studies about the effects of traumatic events experienced.
- Due to growing research examining the effects of traumatic events more frequently experienced by women, such as rape and domestic violence, current research is assessing long-term consequences of these interpersonal traumas, and the prevalence of PTSD in women.
- Predominantly more research on older adults has been through the veteran communities.
- PTSD is less prevalent in older veterans than in younger veterans.
- Older veterans report more somatic complaints such as appetite, sleep, or memory problems

and fewer PTSD symptoms (especially arousal and numbing symptoms); they also report less depression, hostility, and guilt than younger Veterans.

- Older adults who experienced trauma later in life report more avoidance, sleep problems, and hyperarousal than younger adults.
- Apart from having a diagnosis of PTSD, older adults are likely to experience additional psychiatric diagnoses, including major depression, other anxiety disorders, somatic conditions, cognitive disturbances, and alcoholism.

These differences in symptom presentation may be partially explained by selective mortality. For example, research in veteran samples shows that some veterans with more severe symptoms died before reaching older age.

- In a sample of 181,000 veterans aged 55 and over, those with PTSD were more than twice as likely to develop dementia over a six-year follow-up. In another study, almost 10,000 veterans aged 65 and older were categorized according to PTSD status (yes or no). There was a greater incidence and prevalence of dementia in the older veterans with PTSD.

Additional considerations to include are:

- Medications, hearing, vision, cognitive (thoughts), chronic pain, suicide
- Specific resources for older adults

Common Causes of Re-traumatization

Individual response to those who experienced trauma or are experiencing trauma reactions:

- Non-collaborative or rigid
- Doing things for, not with
- Shaming, punishing or coercive language
- Not being seen or heard
- Violation of trust
- Oppressive language
- Emotional safety disregarded

System response to those who experienced trauma:

- Repeatedly having to tell story
- Having to revisit places that are traumatizing (ie. courthouse, victim services, police station, agency).
- Being a number, not a name
- Labeling
- Not having a choice in service or treatment
- Not having an opportunity to give feedback about their experience with services or delivery

Trauma-Informed Interview/Report Writing Best Practices

There are classes available that we encourage you to take to further your knowledge in the trauma-informed interview, and trauma-informed report writing best practices. Here are some:

- Express compassion and empathy
- Use open-ended questions
- Listen. Do not interrupt.
- Allow the narrative to be uninterrupted.
- Wait for a pause in the narrative to ask clarifying questions.
- Use the victim's words and descriptions.

Types of Questions

- Probing: Who, What, Where, When, How
- Closed: Invites "Yes" or "No" response
- Open ended "Tell..." "Describe..." "Talk to me about..."
- Leading: "You chose to stay, right?"
- Forced choice: "Did you fight back, or did you just tell him no?"
- Opinion: "I wonder..." "I believe..."
- Multiple/Compound: More than one question at the same time.
- Clarification: For understanding

Ask	Don't Ask
Where would you like to start?	And then what happened?
What are able to say about your experience?	Explain to me...
Is there anything more about....	Why?
Please help me to understand...	
What were you feeling when....	
What were your thoughts when....	

Report Writing Language

Just as the words we use during an interview are important, so are the words used when writing reports. Consider the following:

- Use trauma-informed words
- Use the victim's language
- Document what the victim was thinking/feeling
- Use the senses (what did they hear, see, smell, taste, touch)
    - Emotional memory establishes an element – fear, force, or coercion
        - "Would you help me understand what your were **thoughts** when (a specific event happened)...?"
        - "What were your **feelings** while you were in (the room, the car, the house, etc.)?"
        - "What was going on **in your mind** when you realized you were in danger?"
        - "How did you **feel** when/after/before (specific event happened)?"
- Use accurate and appropriate descriptive wording
- Avoid the language that implies something happened (ie. the victim complied)
- Use the statutory language

Thorough Report Writing

- If you didn't write it down, it didn't happen.
- What you write down, becomes fact.
- Let your interviews and investigative work speak for itself, do not include opinions/assumptions.
- Don't rely on the reader to put the pieces together, we have to connect the dots.
- Summarize all evidence, this is the only place the evidence can be placed in context.

Vicarious Trauma/Compassion Fatigue/Secondary and Critical Incident Stress

We return to this discussion of vicarious trauma as a reminder that in this profession, taking care of yourself is paramount, and recognizing the symptoms of vicarious trauma, compassion fatigue and secondary traumatic stress.

We experience vicarious trauma/compassion fatigue/secondary traumatic stress when we work with trauma survivors and are exposed to their stories and experience and witness the impact (terror, fear, injury, pain, grief). We can experience trauma response symptoms based on our exposure even though we did not directly experience the trauma. This can occur in both sworn and non-sworn personnel, through hearing others' experiences, listening to dispatched calls on the radio, reading CADs, exposure to indecent images, etc.

Vicarious Trauma

A transformation in the helper's inner sense of identity and existence that results from utilizing empathy when listening to clients' trauma-content narratives.

Also called compassion fatigue and is a combination of physical, emotional, and spiritual depletion or strain of exposure associated with working with those suffering from the consequences of traumatic events (Figley, 1995).

For example: This work-related trauma exposure can occur from such experiences as listening to individual clients recount their victimization; looking at videos of exploited children; reviewing case files; hearing about or responding to the aftermath of violence and other traumatic events day after day; and responding to mass violence incidents that have resulted in numerous injuries and deaths (OVC, 2022).

Law enforcement and first responders, and other allied professionals are more susceptible to vicarious trauma, due to their continuous exposure to victims of trauma and violence.

Signs and symptoms of vicarious trauma/compassion fatigue:

- Ability to function is interfered with or altered;
- Situation or incident does not seem "typical or ordinary", it feels traumatic;
- Feeling as if you are working harder but accomplishing less;
- Becoming frustrated/irritated easily;
- Losing compassion for some people while becoming over involved in others;
- Routinely feeling bored or disgusted
- Experiencing illness, aches and pains
- Difficulty managing emotions;
- Feeling emotionally numb or shut down;
- Fatigue, sleepiness, or difficulty falling asleep;
- Physical problems or complaints, such as aches, pains, and becoming ill more frequently;
- Being easily distracted, increasing one's risk of accidents or mistakes;
- Loss of a sense of meaning in life and/or feeling hopeless about the future;
- Interpersonal relationship problems (e.g., withdrawing from friends and family, increased interpersonal conflicts, avoiding intimacy);
- Feeling vulnerable or worrying excessively about potential dangers in the world and loved ones' safety;
- Increased irritability; aggressive, explosive, or violent outbursts and behavior;
- Destructive coping or addictive behaviors (e.g., over/under eating, substance abuse, gambling, taking undue risks in sports or driving);
- Lack of or decreased participation in activities that used to be enjoyable;
- Avoiding work and interactions, calls; and
- a combination of symptoms that comprise a diagnosis of Posttraumatic Stress Disorder (PTSD).

Secondary Traumatic Stress

Traumatic stress is the emotional duress that results when an individual hears about the firsthand trauma experiences of another. Its symptoms mimic those of post-traumatic stress disorder (PTSD) (NCTSN, 2022).

Critical Incident Stress

Any event that has a stressful impact sufficient enough to overwhelm your usual coping strategies. These incidents that cause this stress can be sudden, shocking or outside the range of ordinary human experience.

We each interpret and process stress differently. When someone experiences a critical incident, they may react differently than someone else exposed to the same incident. These experiences are unique to the individual, though could impact others as well in the same incident.

Awareness of how cumulative stress/trauma/critical incidents may look in ourselves provides opportunities for us to identify it in our employees/peers. We can engage in early interventions to mitigate the impact.

- Reach out and talking to them individually about the impact of the challenging work they do;
- Help them establish a consistent work-to-home transition that creates an important boundary and safe place outside the workplace;
- Encourage a work-life balance, take time off, use mental health days;
- Encourage them to attend to the basics—sleep, healthy eating, hygiene, and exercise;
- Support their connections with family, friends, and coworkers;
- Refer them to organizational supports such as a peer support team, employee assistance program, therapist or chaplain; and
- Encourage them to discuss their experience with their supervisor.

We Can Prevent Childhood Adversity

The Science of Adverse Childhood Experiences (ACEs) Shows We Can Improve People's Lives and Help Them Thrive

What Are Adverse Childhood Experiences?

Adverse childhood experiences, or **ACEs**, mean **potentially traumatic events in childhood (0-17 years)** such as neglect and experiencing or witnessing violence.

ACEs can negatively impact **physical**, **mental**, **emotional**, and **behavioral** development.



ACEs can also have lasting effects on **health**, **well-being**, and **prosperity** well into adulthood.

Types of ACEs

ABUSE
- Emotional
- Physical
- Sexual

NEGLECT
- Emotional
- Physical

HOUSEHOLD CHALLENGES*
- Substance misuse
- Mental illness
- Suicidal thoughts and behavior
- Divorce or separation
- Incarceration
- Intimate partner violence or domestic violence

**The child lives with a parent, caregiver, or other adult who experiences one or more of these challenges.*

OTHER ADVERSITY
- Bullying
- Community violence
- Natural disasters
- Refugee or wartime experiences
- Witnessing or experiencing acts of terrorism

Many People Report ACEs

According to data collected from **more than 144,000 adults across 25 states** between 2015 and 2017:

61% reported experiencing **AT LEAST ONE** type of ACE.

16% reported experiencing **FOUR OR MORE** types of ACEs.

Some Groups Are More Likely to Have Experienced ACEs

Multiple studies show that people who identified as members of these groups as adults reported experiencing **significantly more ACEs:**

- Black, Hispanic/Latino, or multiracial people
- People who are unemployed or unable to work
- People making less than $15,000 per year
- People with less than a high school education
- Lesbian, gay, bisexual, or transgender people

ACEs Can Accumulate and Their Effects Last Beyond Childhood

The effects of ACEs can add up over time and affect a person **throughout their life.**

- Children who repeatedly and chronically experience adversity can suffer from **toxic stress**.
- Toxic stress happens when the brain endures **repeated stress or danger**, then releases fight or flight hormones like cortisol.
- This internal alarm system **increases heart rate** and **blood pressure** and **damages the digestive** and **immune systems**.
- Toxic stress can disrupt **organ, tissue, and brain development**. Over time, this can limit a person's ability to process information, make decisions, interact with others, and regulate emotions. **These consequences may follow a person into adulthood.**

ACEs Can Echo Across Generations

The consequences of ACEs can **be passed down from one generation to the next** if children don't have protective buffers like...

positive childhood experiences

OR

a caring adult in their lives.

Also, when families experience **historical and systemic racism** or living in **poverty for generations**, the effects of ACEs **can add up over time.**

ACEs Can Increase Risk for Disease, Early Death, and Poor Social Outcomes

Research shows that **experiencing a higher number of ACEs** is associated with **many of the leading causes of death** like heart disease and cancer.

CHRONIC HEALTH CONDITIONS
Coronary heart disease • Stroke • Asthma
Chronic obstructive pulmonary disease (COPD)
Cancer • Kidney disease • Diabetes • Obesity

MENTAL HEALTH CONDITIONS
Depression

HEALTH RISK BEHAVIORS
Smoking • Heavy drinking or alcoholism
Substance misuse • Physical inactivity • Risky sexual behavior • Suicidal thoughts and behavior

SOCIAL OUTCOMES
Lack of health insurance • Unemployment • Less than a high school diploma or equivalent education

We Can Create Positive Childhood Experiences

Strengthen families' financial stability
Paid time off, child tax credits, and flexible and consistent work schedules

Promote social norms that protect against violence
Positive parenting practices and prevention efforts involving men and boys

Help kids have a good start
Early learning programs and afforable preschool and childcare programs

Teach healthy relationship skills
Conflict resolution, negative feeling management, pressure from peers, and healthy non-violent dating relationships

Connect youth with activities and caring adults
School or community mentoring programs and after-school activities

Intervene to lessen immediate and long-term harms
ACEs education, therapy, and family-centered treatment for substance abuse

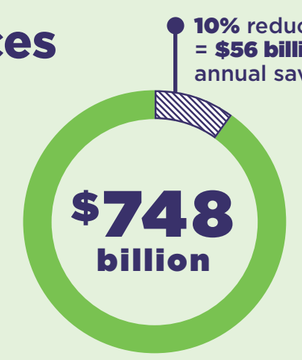
What Could Happen If We Prevent ACEs?

- **15%** reduction — in the number of adults who are unemployed
- **16%** reduction — in the number of adults with kidney disease
- **24-27%** reduction — in the number of adults with respiratory problems such as asthma and COPD
- **33%** reduction — in the number of adults who smoke
- **44%** reduction — in the number of adults with depression

Positive Childhood Experiences Improve the Economy

The primary prevention of ACEs — **stopping ACEs before they start** — would benefit the economy and relieve pressures on healthcare systems.

ACEs-related illness accounts for an estimated **$748 billion** in financial costs in North America each year. A **10% reduction in ACEs** could equate to an annual savings of **$56 billion.**



Healthy childhoods start now.

Working together, we can help create neighborhoods, communities, and a world in which every child can thrive.

Learn how you can help! › vetoviolence.cdc.gov/apps/aces-training

Centers for Disease Control and Prevention
National Center for Injury Prevention and Control

Adverse Childhood Experience (ACE) Questionnaire

Finding your ACE Score ra hbr 10 24 06

While you were growing up, during your first 18 years of life:

1. Did a parent or other adult in the household **often** …
   Swear at you, insult you, put you down, or humiliate you?
   or
   Act in a way that made you afraid that you might be physically hurt?
   Yes No If yes enter 1 _____

2. Did a parent or other adult in the household **often** …
   Push, grab, slap, or throw something at you?
   or
   Ever hit you so hard that you had marks or were injured?
   Yes No If yes enter 1 _____

3. Did an adult or person at least 5 years older than you **ever**…
   Touch or fondle you or have you touch their body in a sexual way?
   or
   Try to or actually have oral, anal, or vaginal sex with you?
   Yes No If yes enter 1 _____

4. Did you **often** feel that …
   No one in your family loved you or thought you were important or special?
   or
   Your family didn't look out for each other, feel close to each other, or support each other?
   Yes No If yes enter 1 _____

5. Did you **often** feel that …
   You didn't have enough to eat, had to wear dirty clothes, and had no one to protect you?
   or
   Your parents were too drunk or high to take care of you or take you to the doctor if you needed it?
   Yes No If yes enter 1 _____

6. Were your parents **ever** separated or divorced?
   Yes No If yes enter 1 _____

7. Was your mother or stepmother:
   Often pushed, grabbed, slapped, or had something thrown at her?
   or
   Sometimes or often kicked, bitten, hit with a fist, or hit with something hard?
   or
   Ever repeatedly hit over at least a few minutes or threatened with a gun or knife?
   Yes No If yes enter 1 _____

8. Did you live with anyone who was a problem drinker or alcoholic or who used street drugs?
   Yes No If yes enter 1 _____

9. Was a household member depressed or mentally ill or did a household member attempt suicide?
   Yes No If yes enter 1 _____

10. Did a household member go to prison?
    Yes No If yes enter 1 _____

Now add up your "Yes" answers: _____ This is your ACE Score

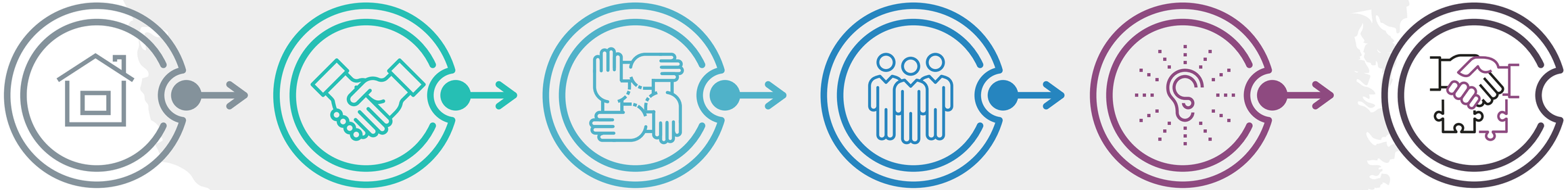
Behavioral Health- Universal Communication Strategies

- Remain calm
- Maintain even tone
- Simplify questions, instructions, and commands
- Be patient. Give them time to process what you are saying
- Ask for and use their name
- Give them your first name
- Ask if they know why you are there
- Ask what caused the crisis today
- Reassure them you are there to help
- Use active listening (covered in detail in de-escalation unit)
    - Minimal Encouragers
    - Open-ended Questions
    - Reflecting/Mirroring
    - Emotional Labeling
    - Paraphrasing
    - "I" Messages
    - Effective Pauses
- Allow them time to process
- Hands off equipment – unless tactically necessary
- Non-threatening body posture
- If possible to do so safely, get down to their eye level
- Eye contact – this can be helpful with some people and could be a trigger for others
- Continually assess for escalation
    - If what you are doing seems to be causing the person to become agitated and/or escalate, try a different tactic
- Avoid triggers
- Use grounding techniques - Orientation
    - Time
    - Place
    - Person
- Show empathy
- Don't use sarcasm
- Don't lie
- Use your own experiences
- Be aware of potential for re-traumatization
- Don't get involved in their drama
- If you suspect suicidality, ask directly
- Ask if they are taking any medications
- Ask what has worked for them to get through past crises
- Laughing with = OK / Laughing at = NOT OK
- Above all - Be yourself!

6 GUIDING PRINCIPLES TO A TRAUMA-INFORMED APPROACH

The CDC's Center for Preparedness and Response (CPR), in collaboration with SAMHSA's National Center for Trauma-Informed Care (NCTIC), developed and led a new training for CPR employees about the role of trauma-informed care during public health emergencies. The training aimed to increase responder awareness of the impact that trauma can have in the communities where they work.

Participants learned SAMHSA'S six principles that guide a trauma-informed approach, including:



1. SAFETY
2. TRUSTWORTHINESS & TRANSPARENCY
3. PEER SUPPORT
4. COLLABORATION & MUTUALITY
5. EMPOWERMENT VOICE & CHOICE
6. CULTURAL, HISTORICAL, & GENDER ISSUES

Adopting a trauma-informed approach is not accomplished through any single particular technique or checklist. It requires constant attention, caring awareness, sensitivity, and possibly a cultural change at an organizational level. On-going internal organizational assessment and quality improvement, as well as engagement with community stakeholders, will help to imbed this approach which can be augmented with organizational development and practice improvement. The training provided by CPR and NCTIC was the first step for CDC to view emergency preparedness and response through a trauma-informed lens.

Veteran's Organization List

BOOT CAMPAIGN/ WWW.BOOTCAMPAIGN.COM

AMERICAN EX-PRISONERS OF WAR / (817) 649-2979

AMERICAN FORCES NETWORK / WWW.MYAFN.NET / (951) 413-2351

AMERICAN LEGION / WWW.LEGION.ORG / (800) 433-3318

BLINDED VETERANS' ASSOCIATION HTTP://BVA.ORG / (*00)669-7079

CALL OF DUTY ENDOWMENT / WWW.CALLOFDUTYENDOWMENT.ORG

CODE OF SUPPORT / WWW.CODEOFSUPPORT.ORG / (571) 527-3240

DISABLED AMERICAN VETERANS / WWW.DAV.ORG / (859)441-7300

HEALING HEROES / WWW.HEALINGHEROES.ORG / (727)781-4376

HEART STRINGS FOR HEROES / WWW.HEARTSTRINGSFORHEROES.COM/OUR- HEROES (727)686-6887

HELPING HOMETOWN HEROES / WWW.HELPINGHOMETOWNHEROES.ORG / (301) 351-4484

IAVA: IRAQ AND AFGHANISTAN VETERANS OF AMERICA / HTTP://IAVA.ORG / (212)982-9699

JARED ALLEN'S HOMES FOR WOUNDED WARRIORS

WWW.HOMESFORWOUNDEDWARRIORS.COM (952) 474-2235

LONE SURVIVOR FOUNDATION / WWW.LONESURVIVORFOUNDATION.ORG

MARINE FOR LIFE ORG / WWW.MARINEFORLIFE.ORG / (617) 29-4102

MILITARY FAMILY ASSISTANCE MAINE NATUIONAL GUARD / WWW.ME.NGB.ARMY.MIL/FAMILY

MILITARY OFFICERS ASSOCIATION OF AMERICA / WWW.MOAA.ORG / (703-549- 2311

MILITARY VETERANS OF ALBANY – GOOD FRINEDS & GREAT CAUSES / (518) 376- 3998

NATIONAL ASSOCIATION FOR BLACK VETERANS / WWW.NABVETS.COM / 1-877- NABVETS

NATIONAL ASSOCIATION OF AMERICAN VETERANS / WWW.NAAVETS.ORG / (202) 465-3296

NATIONAL COALITION FOR HOMELESS VETERANS / WWW.NCHV.ORG / (202)5467-1969

NELLIS AIR FORCE BASE / WWW.NELLIS.AF.MIL

NEW BATTLE FRONT / WWW.NEWBATTLEFRONT.ORG / (203)805-8055 OPERATION HOMEFRONT / WWW.OPERATIONHOMEFRONT.NET/WAYSTOGIVE OPERATION INJURED SOLDIERS / WWW.INJUREDSOLDIERS.ORG / (248)437-1144 OPERATION SACRED TRUST / WWW.411VETERANS.COM / (954) 703-4533 X810

OPERATIONS SECOND CHANCE / WWW.OPERATIONSECONDCHANCE.ORG / (301)972-1080

OPERATION STAND DOWN NASHVILLE / WWW.OSDNASHVILLE.ORG / (615) 248- 1981

OPERATION STAND DOWN RHODE ISLAND / WWW.OSDRI.ORG/ (401)383-4730

PARALYZED VETERANS OF AMERICA / WWW.PVA.ORG / (800)424-8200

REAL WARRIORS / WWW.REALWARRIORS.NET

RIDE2RECOVERY / WWW.RIDE2RECOVERY.COM / (818)888-7091 EXT.2

ROCK 4 RECOVERY / WWW.ROCK4RECOVERY.NET / (910)977-3734

ROCK FOR THE FALLEN (FORMER NAVY SEALS) / WWW.WESTCOASTSEALS.ORG

SEMPER FI FUND / WWW.SEMPERFIFUND.ORG

SILVER STAR FAMILIES OF AMERICA / WWW.SILVERSTARFAMILIES.ORG / (573)230-7456

SOLDIERS ANGELS / WWW.SOLDIERSANGELS.ORG / (218)779-7271

THE BATTLE BUDDY FOUNDATION / WWW.TBBF.ORG / (844) 822-3674

THE ENLISTED ASSOCIATION / WWW.TEA.ORG / (303) 752-0660

THE RAIDER PROJECT / WWW.RAIDERPROJECT.ORG / (910)467-1254

US MARINES / WWW.MARINES.MIL / (505)878-6483; (440)243-4010

VETERANS ADVANTAGE / WWW.VETERANSADVANTAGE.COM / (203)422-2526

VETERANS FAMILIES UNITED / WWW.VETERANSFAMILIESUNITED.ORG / (405)535- 1925

VETERANS FOR AMERICA / WWW.DAV.ORG / (877)426-2838

VETERANS MEMORIAL BRANSON / WWW.VETERANSMEMORIALBRANSON.COM / (417)336-2300

VETERANS OF FOREIGN WARS / WWW.VFW.ORG

WOUNDED WARRIOR PROJECT / WWW.WOUNDEDWARRIORPROJECT.ORG / (303)510-5678; (702)521-2751

WOUNDED WARRIOR PROJECT (LAS VEGAS) / WWW.WOUNDEDWARRIORPROJECT.ORG / (202)510-5679

WOUNDED WARRIOR PROJECT (MILWAUKEE) / WWW.WOUNDEDWARRIORPROJECT.ORG / (608)449-1202

PROFESSIONAL QUALITY OF LIFE SCALE (PROQOL)

COMPASSION SATISFACTION AND COMPASSION FATIGUE (PROQOL) VERSION 5 (2009)

When you *[help]* people you have direct contact with their lives. As you may have found, your compassion for those you *[help]* can affect you in positive and negative ways. Below are some-questions about your experiences, both positive and negative, as a *[helper]*. Consider each of the following questions about you and your current work situation. Select the number that honestly reflects how frequently you experienced these things in the *last 30 days*.

1=Never 2=Rarely 3=Sometimes 4=Often 5=Very Often

_____ 1. I am happy.
_____ 2. I am preoccupied with more than one person I *[help]*.
_____ 3. I get satisfaction from being able to *[help]* people.
_____ 4. I feel connected to others.
_____ 5. I jump or am startled by unexpected sounds.
_____ 6. I feel invigorated after working with those I *[help]*.
_____ 7. I find it difficult to separate my personal life from my life as a *[helper]*.
_____ 8. I am not as productive at work because I am losing sleep over traumatic experiences of a person I *[help]*.
_____ 9. I think that I might have been affected by the traumatic stress of those I *[help]*.
_____ 10. I feel trapped by my job as a *[helper]*.
_____ 11. Because of my *[helping]*, I have felt "on edge" about various things.
_____ 12. I like my work as a *[helper]*.
_____ 13. I feel depressed because of the traumatic experiences of the people I *[help]*.
_____ 14. I feel as though I am experiencing the trauma of someone I have *[helped]*.
_____ 15. I have beliefs that sustain me.
_____ 16. I am pleased with how I am able to keep up with *[helping]* techniques and protocols.
_____ 17. I am the person I always wanted to be.
_____ 18. My work makes me feel satisfied.
_____ 19. I feel worn out because of my work as a *[helper]*.
_____ 20. I have happy thoughts and feelings about those I *[help]* and how I could help them.
_____ 21. I feel overwhelmed because my case [work] load seems endless.
_____ 22. I believe I can make a difference through my work.
_____ 23. I avoid certain activities or situations because they remind me of frightening experiences of the people I *[help]*.
_____ 24. I am proud of what I can do to *[help]*.
_____ 25. As a result of my *[helping]*, I have intrusive, frightening thoughts.
_____ 26. I feel "bogged down" by the system.
_____ 27. I have thoughts that I am a "success" as a *[helper]*.
_____ 28. I can't recall important parts of my work with trauma victims.
_____ 29. I am a very caring person.
_____ 30. I am happy that I chose to do this work.

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YOUR SCORES ON THE PROQOL: PROFESSIONAL QUALITY OF LIFE SCREENING

Based on your responses, place your personal scores below. If you have any concerns, you should discuss them with a physical or mental health care professional.

Compassion Satisfaction _____

Compassion satisfaction is about the pleasure you derive from being able to do your work well. For example, you may feel like it is a pleasure to help others through your work. You may feel positively about your colleagues or your ability to contribute to the work setting or even the greater good of society. Higher scores on this scale represent a greater satisfaction related to your ability to be an effective caregiver in your job.

If you are in the higher range, you probably derive a good deal of professional satisfaction from your position. If your scores are below 23, you may either find problems with your job, or there may be some other reason—for example, you might derive your satisfaction from activities other than your job. (Alpha scale reliability 0.88)

Burnout_____

Most people have an intuitive idea of what burnout is. From the research perspective, burnout is one of the elements of Compassion Fatigue (CF). It is associated with feelings of hopelessness and difficulties in dealing with work or in doing your job effectively. These negative feelings usually have a gradual onset. They can reflect the feeling that your efforts make no difference, or they can be associated with a very high workload or a non-supportive work environment. Higher scores on this scale mean that you are at higher risk for burnout.

If your score is below 23, this probably reflects positive feelings about your ability to be effective in your work. If you score above 41, you may wish to think about what at work makes you feel like you are not effective in your position. Your score may reflect your mood; perhaps you were having a "bad day" or are in need of some time off. If the high score persists or if it is reflective of other worries, it may be a cause for concern. (Alpha scale reliability 0.75)

Secondary Traumatic Stress_____

The second component of Compassion Fatigue (CF) is secondary traumatic stress (STS). It is about your work related, secondary exposure to extremely or traumatically stressful events. Developing problems due to exposure to other's trauma is somewhat rare but does happen to many people who care for those who have experienced extremely or traumatically stressful events. For example, you may repeatedly hear stories about the traumatic things that happen to other people, commonly called Vicarious Traumatization. If your work puts you directly in the path of danger, for example, field work in a war or area of civil violence, this is not secondary exposure; your exposure is primary. However, if you are exposed to others' traumatic events as a result of your work, for example, as a therapist or an emergency worker, this is secondary exposure. The symptoms of STS are usually rapid in onset and associated with a particular event. They may include being afraid, having difficulty sleeping, having images of the upsetting event pop into your mind, or avoiding things that remind you of the event.

If your score is above 41, you may want to take some time to think about what at work may be frightening to you or if there is some other reason for the elevated score. While higher scores do not mean that you do have a problem, they are an indication that you may want to examine how you feel about your work and your work environment. You may wish to discuss this with your supervisor, a colleague, or a health care professional. (Alpha scale reliability 0.81)

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WHAT IS MY SCORE AND WHAT DOES IT MEAN?

In this section, you will score your test so you understand the interpretation for you. To find your score on **each section,** total the questions listed on the left and then find your score in the table on the right of the section.

Compassion Satisfaction Scale

Copy your rating on each of these questions on to this table and add them up. When you have added then up you can find your score on the table to the right.

3. _____
6. _____
12. _____
16. _____
18. _____
20. _____
22. _____
24. _____
27. _____
30. _____

Total: _____

The sum of my Compassion Satisfaction questions is	And my Compassion Satisfaction level is
22 or less	Low
Between 23 and 41	Moderate
42 or more	High

Burnout Scale

On the burnout scale you will need to take an extra step. Starred items are "reverse scored." If you scored the item 1, write a 5 beside it. The reason we ask you to reverse the scores is because scientifically the measure works better when these questions are asked in a positive way though they can tell us more about their negative form. For example, question 1. "I am happy" tells us more about the effects of helping when you are *not* happy so you reverse the score

You Wrote	Change to
	5
2	4
3	3
4	2
5	1

*1. _____ = _____
*4. _____ = _____
8. _____
10. _____
*15. _____ = _____
*17. _____ = _____
19. _____
21. _____
26. _____
*29. _____ = _____

Total: _____

The sum of my Burnout Questions is	And my Burnout level is
22 or less	Low
Between 23 and 41	Moderate
42 or more	High

Secondary Traumatic Stress Scale

Just like you did on Compassion Satisfaction, copy your rating on each of these questions on to this table and add them up. When you have added then up you can find your score on the table to the right.

2. _____
5. _____
7. _____
9. _____
11. _____
13. _____
14. _____
23. _____
25. _____
28. _____

Total: _____

The sum of my Secondary Trauma questions is	And my Secondary Traumatic Stress level is
22 or less	Low
Between 23 and 41	Moderate
42 or more	High

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Case Scenario #1

Molly, 21, experienced sex trafficking at the age of 19 and has a prostitution charge on her record. You stop her on her way to meet with working an attorney to get the charge expunged so she can apply for jobs. Her tags are expired, and you run her plates and there is no insurance on the vehicle. Molly disclosed her story to you and used the word, "boyfriend", to describe her trafficker. How should you respond?

Case Scenario #2

You arrive on scene for a domestic call, and Zoe, 25, is visibly upset, crying, and holding her two young children, approximately 3- and 5- years old closely by her side, who also appear upset and crying. You need to ask Zoe some questions about what happened. What considerations do you make given the situation?

Case Scenario #3

You stop Norman, 49, for weaving in and out of traffic, and at times, using excessive speed. During the stop, you learn Norman, is a military veteran, having served several tours in both Afghanistan and Iraq, and is coming home from court ordered substance abuse treatment. Norman states that he led convoys during his tours and had experienced multiple roadside IED explosions during his time overseas, and used substances to overcome his migraines and PTSD. How do you proceed with questioning Norman in this situation?

Case Scenario #4

A fellow deputy comes into a substation which you are at catching up on reports. The deputy appears numb and withdrawn, almost distant with little or no facial expression, and when you ask what's going on, they state, 'nothing', though you know they had just been on several crash calls in the last few days, and at one of those calls, a young infant had died. This deputy also recently had a child. What would your approach be with this deputy?

Case Scenario #5

You arrive on a call to an area of town which is primarily low income, known for seizing meth and other illegal substances, and which is frequented by calls for gang violence. A middle-aged Hispanic woman, Estella, calls for service as her home had recently been broken into, and she would like to make a report. Estella has called several times over the last few hours, though you are the first officer to respond as other calls have taken priority by officers as they were immediate in nature. Upon arrival, Estella appears angry, and makes several statements that if she was of different ethnicity, you would have responded earlier, and that you'll likely not do anything anyways, and this was a waste of time. What could you say in this scenario which addresses Estella and her experience?

Basic Police Academy

Bias Crimes



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Bias Crime Investigations

Instructional Goal:

This course is designed to introduce a new police officer to basic factors related to bias crime response and investigations.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the elements of bias crimes using the Oregon Criminal Code Book
2. Identify potential indicators of a bias indicators
3. Articulate strategies for investigating bias crimes
4. Understand bias crime reporting requirements for law enforcement agencies

Content Outline:

- Bias Crime defined
- Oregon Revised Statutes
- Proving motive
- Victim and witness interviews
- Suspect behavior and statements
- Importance of bias crime investigations
- Mandatory victim service referrals for bias incidents
- Bias Crime reporting requirements
- Bias crime resources

This course will focus on bias crime investigations and bias crime reporting requirements. Students will discuss the elements of different bias crimes, how to identify possible bias indicators, the unique challenges to bias crime investigations, and investigative strategies to overcome those challenges.

What is a Bias Crime and why are they so Important?

Bias crimes are commonly referred to as "hate crimes" and are crimes motivated by the suspect's perception of the victim's race, color, religion, gender identity, sexual orientation, disability, or national origin. Under Oregon law, these types of crimes are called bias crimes. Federal law also has statutes that criminalize bias crimes. In 2019 the Oregon Legislature extensively updated the laws surrounding bias crimes. These updates included expanding the conduct covered in the bias crime statutes, and significantly increased the amount of resources available for victims of bias crimes and bias incidents.

Bias crimes include many different types of criminal conduct such as physical assaults, harassment, threats, and tampering with someone's property - but all bias crimes require that the suspect is motivated, in whole or in part, by their perception of the victim's race, color, religion, gender identity, sexual orientation, disability, or national original. These different groups are sometimes referred to as a "protected group" or "protected class." Since bias crimes include many different types of conduct, it is important that law enforcement officers are familiar with the bias crime statutes and know what types of "bias indicators" to look for when responding to a possible bias crime call.

Bias crimes impact more than just the individual victim of the crime. When a person is targeted because of their protected class it can also have a traumatic effect on friends, family, witnesses, and entire local and national communities. Bias crimes and bias incidents should be handled with compassion and thoroughly investigated. Holding bias crime offenders accountable is an important way to demonstrate that the significance of these incidents is recognized, and that these types of crimes will not be tolerated or ignored.

Because of the widespread and significant effect bias crimes have on the community, these investigations are highly publicized and heavily scrutinized by the media and the public. Law enforcement agencies are required to report statistics related to bias crime investigations and arrests, and those statistics are made available to the public.

Bias Crime Offenses

Bias Crime II – ORS 166.155

(1) A person commits bias crime II if the person, **because of the person's perception of the other person's race, color, religion, gender identity, sexual orientation, disability or national origin:**

a) Tampers or interferes with property, having no right to do so nor reasonable ground to believe that the person has such right, with the intent to cause substantial inconvenience to another person [*See* Criminal Mischief III];

b) Intentionally subjects another person to offensive physical contact [*See* harassment]; **or**

c) **because of the person's perception of the race, color, religion, gender identity, sexual orientation, disability or national origin member of the other person's family**, subjects the other person to alarm by threatening:

(A) To inflict serious physical injury upon or to commit a felony affecting the other person or a member of the other person's family; or

(B) To cause substantial damage to the property of the other person or a member of the other person's family.

(2) Bias Crime in the Second Degree is a Class A misdemeanor.

"Gender identity" means an individual's gender-related identity, appearance, expression or behavior, regardless of whether the identity, appearance, expression or behavior differs from that associated with the gender assigned to the individual at birth.

Bias Crime I – ORS 166.165

(1) A person commits bias crime I if the person, **because of the person's perception of the other person's race, color, religion, gender identity, sexual orientation, disability or national origin,**

(a) Intentionally, knowingly or recklessly causes physical injury to another person [*See* Assault IV];

(b) With criminal negligence causes physical injury to another person by means of a deadly weapon [*See* Assault IV]; or

(c) Intentionally places another person in fear of imminent serious physical injury [*Note*: this is more than Menacing, i.e., this requires actually placing the other person in fear; Menacing requires attempting to do so].

(2) Bias Crime in the first degree is a Class C felony.

Bias Crime II/I are unique because they reclassify certain acts or other crimes based on WHY the suspect committed them.

Practice Examples: Is it a Bias Crime? If so, is it Bias Crime II or I?

1) Female suspect is walking through the parking lot of a large department store and sees a Native American teenage boy in a parked car. The suspect walks in front of the Native American teen's car, displays a small knife, and says to him, "I'll be shoppin' for about 10 minutes. If you're here when I come out, I'm gonna tell my husband to get outta the car and come over and scalp you. Go back to your casino." The suspect then puts the knife back into her pocket and walks into the store. Once she's gone, he drives around to the other side of the store and calls police. He tells police he was not actually scared he would be hurt, but he was alarmed enough to call the police.

Bias Crime: Yes No
If Yes: Bias Crime I or Bias Crime 2

2) The suspect robs two business at gun point on the same night and then carjacks a third victim. The robberies occurred in a largely Asian-American community and all of the victims are of Asian descent. The suspect is white. After the suspect is identified and arrested, investigators learn that the suspect lives in the immediate area and does not have a driver's license or access to a car of his own. There is no other evidence of a bias motive.

   Bias Crime: Yes No
   If Yes: Bias Crime I or Bias Crime 2

The suspect in Example 1 clearly acted because of her perception that the victim was Native American. What would the correct crime be? Bias Crime II or I, and why?

The suspect in Example 2, however, is motivated to commit the Robbery I / Unlawful Use of a Weapon in order to obtain money or property, rather than to menace or rob the victims based upon his perception of their national origin. Without more evidence of bias, the racial similarity between victims is likely a result of where the suspect lives/was able to access victims to rob.

It is appropriate to charge suspect #1 with Bias Crime II. Suspect #2 should be charged with Robbery I and Unlawful Use of a Weapon.

Motive as an Element of Bias Crimes

Just like other crimes, bias crimes require proof of a culpable mental state and criminal conduct. But bias crimes are unique because they also require proof of the suspect's **motive.** In order to prove a bias crime, the state must prove WHY the suspect committed a crime against the victim. The suspect's motive must, at least in part, be because of the suspect's perception of the victim's race, color, religion, gender identity, sexual orientation, disability, or national origin.

The word "perception" in the bias crime statutes is important. The word perception allows for the suspect to be incorrect about the victim but still be charged with a bias crime. It does not matter if the victim actually belongs to the protected class that the suspect believed they did – it only matters what the suspect *perceived* about the victim. Also note that age, political affiliation, and occupation are not listed in the statute.

Example:

The suspect sees the victim pull into the parking lot of a synagogue. The suspect approaches the victim and yells anti-Semitic slurs at them. After the victim enters the synagogue the suspect scratches a swastika onto the hood of the victim's car. The victim is Methodist and not actually a member of the Jewish faith.

- Even though the suspect was incorrect about the victim being Jewish, the suspect still committed a bias crime II because he damaged the victim's property and was motivated by what he *perceived* the victim's religion to be.

The suspect's perception does not have to be the *only* motive for committing the crime. If the suspect's perception of the victim was *any* part of the suspect's motivation for the crime, then the suspect has committed a bias crime. Proving a suspect's bias motive can be difficult, especially when there are other possible reasons the suspect committed the crime. It is important that law enforcement officers are aware of the types of things that indicate a possible bias motive and conduct a thorough investigation.

Just because a victim belongs to a protected class does not automatically mean that every crime committed against them is a bias crime. Likewise, just because a suspect has a bias or animus towards a particular protected class, does not automatically mean that if they commit a crime against a person they perceive to be a member of that protected class, that they have committed a bias crime. The

suspect's motive for committing the specific criminal act against that specific victim must be motived, at least part, by their perception of the victim's protected class.

Example:

A male suspect and a male victim are rooting for different teams while watching a sporting event at a bar. The victim is watching the game with his boyfriend. The victim and the suspect yell insults about each other's team during the game. The game is very close, and the victim and suspect become increasingly hostile towards each other. After the victim's team wins, the victim yells offensive things at the suspect, and the suspect punches the victim in the face and causes injury. After punching the victim the suspect calls him a homophobic slur.

- The suspect in this case may been motivated by the victim's sports team affiliation, by the victim's insults after the game, by the victim's sexual orientation, or a combination of some/all. In order to determine what the suspect's motive was to commit the assault, law enforcement would need to conduct further investigation.

- If any part of the suspect's motive to commit the assault was the suspect's perception of the victim's sexual orientation, then the suspect has committed a misdemeanor assault IV and bias crime I. If the suspect's perception of the victim's sexual orientation can't be proven as part of his motive, then the suspect has committed a misdemeanor assault IV.

- Think about the types of questions you would ask the victim, witnesses, and the suspect in this case. What other evidence and investigate strategies could help prove motive?

Proving Motive

"Bias Crime Indicators" are objective facts, circumstances, or patterns attending a criminal act(s) which, standing alone or in conjunction with other facts or circumstances, suggest that the offender actions were motivated in whole, or in part, by any form of bias - (*Massachusetts Model Protocol for Bias Crime Investigations)*

To help determine if a bias crime was committed, law enforcement should look for "bias indicators." Bias crime indicators are the facts, circumstances, or patterns surrounding a criminal act that suggest bias as a motive for the crime. Even if a call is not initially reported as a bias crime, the presence of bias indicators should alert law enforcement that there may have been a bias crime committed. The presence of a bias indicator(s) does not always mean a bias crime has been committed, but law enforcement should be familiar with these indicators and conduct appropriate follow-up investigation.

Bias indicators:

- Statements the suspect made before, during, and after the crime.
- Evidence of the suspect's bias from their clothing, tattoos, etc.
- Perceived differences between the suspect and the victim
- Bias-related damage, graffiti, or markings at the scene
- The significance of the place or time the crime occurred
    - If the crime occurred at a location that is a gathering place, place of worship, or safe space for the protected group
    - If the crime occurred on a holiday or day of significance for the group
    - If the victim was participating in activities that promoted or were related to the protected group
    - Pattern of criminal incidents in the same area against members of the same protected group
- The victim's perception that they were targeted because of their protected class
- Lack of other motives for the crime
- If there is an identified suspect:

- If the suspect is known by family or friends to have bias towards a particular protected group
- Suspect's affiliation or participation in an organized hate group
- Prior bias incidents the suspect has been involved in
- Social media postings and social media group membership
- Internet search history of the suspect
- Digital evidence such as text messages, photos, etc.
- Suspect's behavior and statements to law enforcement

Example:

The white male suspect and the black male victim are both looking for parking in a crowded parking lot. They both try to park in the same space, but the victim cuts off the suspect and is first into the parking space. The suspect parks directly behind the victim and gets out of his car to confront the victim. After the victim gets out of his car, the suspect charges at him and assaults him. The victim says the suspect was yelling that victim was going to "get what someone like you deserves".

The initial call comes out as an assault without any mention of being a bias crime. When you arrive on scene you notice the suspect has a confederate flag bumper sticker. You also notice that the suspect has a tattoo you recognize as being a symbol of a white-supremacist organization. The suspect may have only been motivated to commit the assault because of parking spot, but given the presence of these bias indicators a possible bias crime should also be investigated.

Law enforcement officers should thoroughly document and investigate evidence of the suspect's bias motive. This includes documenting and photographing property damage, graffiti, or symbols the suspects drew or left at the scene, documenting and photographing any injuries the victim has, and documenting any other possible evidence of a bias motive. Officers should do thorough canvass of the area to locate possible witnesses and surveillance cameras that may have captured the incident.

In cases where there is possible evidence located on social media accounts, officers should take investigative steps to preserve that evidence. Preservation letters are requests that law enforcement can send to social media companies to ensure the content of a social media account is not deleted or tampered with while the investigation is ongoing or a search warrant affidavit is being written. In cases where a social media account is related to, has evidence of, or is being used to commit a bias crime, law enforcement can subpoena the subscriber information used to create the account to help identify a suspect.

Suspect Behavior and Statements

Even if a suspect denies that their crime against the victim was motivated by their perception of the victim's protected class, observations of the suspect during their contact with law enforcement can still be helpful evidence of their motive for committing the crime:

- If the suspect's behavior towards an officer the suspect perceives to be in the same protected group as the victim is different than how the suspect interacts with other officers
- If the suspect uses derogatory words or slurs when referring to the victim or other people in the same protected group
- Statements the suspect makes that suggest bias
- If the suspect admits to any sort of bias or belief about the particular protected group – even if they deny that's why they committed the crime
- Document **specific quotes** and **exact words** the suspect uses

A suspect's bias motive does not always mean that the suspect actually hates the protected group they believed the victim was a part of. A suspect who targets a particular group because they believe that group is more easily victimized, is still motivated by bias and can be charged with a bias crime.

Examples:

While investigating a bias crime where the suspect was motived by the victim's gender identity as a female, any of the following would be important evidence of the suspect's motive:

- The suspect has been cooperative with male officers during the investigation, but when he sees a female officer on the elevator at the police station suddenly refuses to get inside
- The suspect denies that he committed the crime because of the victim's gender, but uses derogatory terms when referring to women or when addressing a female officer
- When the suspect learns the investigating detective is a female, he is heard saying, "I can't believe they let women be detectives"

While investigating a bias crime where the suspect was possibly motivated by their perception of the victim's disability:

- A suspect robbed a victim who was in a wheelchair at gun point. The suspect denies that she has any hatred or animosity towards people in wheelchairs, but says she specifically targeted the victim because she believed a person in a wheelchair would be more easily frightened and not resist giving her their property.

Victim and Witness Interviews

Law enforcement's response to and treatment of victims and witnesses of bias crimes have a significant impact on effective bias crime investigations. It is important that officers are sensitive to the trauma that victims and witnesses of bias crimes may experience, and treat all victims and witnesses with kindness and dignity. There may be additional challenges such as language barriers, cultural barriers, or victims and witnesses being fearful of retaliation if they cooperate with law enforcement.

Strategies for conducting successful victim and witness interviews:

- Treat victims with respect and acknowledge the significance of what happened to them
- Be patient and understanding about the fear victims and witness may have about retaliation
- If there are language barriers, make a translator available as needed

- Understand there may be cultural barriers, and some victims and/or communities may be distrustful of law enforcement
- Avoid stereotyped or biased terminology
- Don't make assumptions about the victim or how they identify
- Don't make assumptions about what happened – let the victim tell you in their own words
- Ask specific questions about what the suspect said before, during, and after the incident
- Document **specific quotes** and **exact** words the suspect used
- Ask more than just, "do you think this was a bias crime." Ask specific questions about the suspect's statements and behaviors.
- Refer the victim to support services

Bias Incidents and Victim Referrals

> **"Bias incident"** means a person's hostile expression of animus toward another person, relating to the other person's perceived race, color, religion, gender identity, sexual orientation, disability or national origin, of which criminal investigation or prosecution is impossible or inappropriate. "Bias incident" does not include any incident in which probable cause of the commission of a crime is established by the investigating law enforcement officer. (ORS 147.380 (1)(b))

Oregon law requires law enforcement to refer victims to appropriate victim services when they have been the victim of a bias incident. Bias incidents are when a person subject's another to a "hostile expression of animus" based on their perception of the other person's protected class, but a criminal investigation or prosecution for a crime is impossible or inappropriate. A bias incident does not include an incident where there is probable cause that the commission of a crime established.

If a law enforcement officer responds to a bias incident, the law enforcement officer shall refer the victim of the bias incident to local victims' services. If local victims' services are not available, then the law enforcement officer shall refer the victim to the hate crimes hotline established by the Oregon Department of Justice. Links to information about victim resources on the Oregon Department of Justice website are included at the end of the handout. Officers should be familiar with the victim resources that are available in their jurisdiction.

Enhanced Sentences for Crimes Motivated by Bias

The bias crime statutes do not include every type of criminal conduct, and it is possible for a criminal act that was motivated by bias to not fit into a bias crime ORS. If a person's criminal act was motivated by the victim's race, color, religion, ethnicity, national origin, gender identity, or sexual orientation, it is considered an "aggravating factor" - this means a judge can take the bias motive into consideration when deciding what sentence the person should receive for their crime(s), even if they were not charged with a bias crime. For non-bias crime felony charges that are motivated by bias, a judge can impose up to double the amount of time a person would usually spend in jail or prison for that criminal conduct. The decision to request these enhanced sentences is the responsibility of the District Attorney's Office, but it is law enforcement's responsibility to make sure possible bias motives are thoroughly investigated and documented.

Example:
A suspect walks into a convenience store and says, "I'm sick of you illegal Mexicans taking our jobs, so give me the money from the register or I will shoot you," and motions to her waistband. The victim is not scared and does not believe the suspect actually has a weapon. The victim tells the suspect to get out and he's calling the police. The suspect runs away without getting any money from the victim.

Under this fact pattern, the suspect has committed a robbery II (purported weapon) and the motive for committing the robbery against the victim is because of the victim's national origin. However, unless the victim was actually in fear of imminent serious physical injury (bias crime I) or alarmed by the suspect's threat to inflict serious physical injury/commit a felony against the victim (bias crime II) then there would not be a bias crime ORS to charge in addition to the Robbery II.

The bias motive is still important to investigate/document in your report because the bias motive for the robbery II can be used to significantly increase the defendant's sentence after conviction. And if the evidence also supported a bias crime charge (the victim was alarmed, or in fear of imminent SPI), the person could be charged and convicted of both the bias crime and the robbery II – and could still be sentenced more severely on the robbery charge because of the bias motive.

Bias Crime Reporting Requirements

All law enforcement agencies are required to report statistics concerning bias crime arrests to the Department of State Police. Each agency should have policies and procedures in place for how those statistics get reported, but it is important that individual officers understand the reporting requirements so they can ensure they are accurately documenting information related to bias crimes.

Reporting of Crime Statistics – ORS 181A.225

(1) All law enforcement agencies shall report to the Dept. of State Police statistics concerning crimes:

(a) As directed by the department, for purposes of the Uniform Crime Reporting System of the Federal Bureau of Investigation.

(b) As otherwise directed by the Governor concerning general criminal categories of criminal activities *but not individual criminal records*.

(c) **Motivated by prejudice based on the perceived race, color, religion, national origin, sexual orientation, disability, or gender identity of the victim**.

(d) And other incidents arising out of domestic disturbances under ORS 133.055(2) [Mandatory Arrest for DV] and ORS 133.310(3) [Stalking, TRO, etc. Order violations].

(2) The department shall prepare:

(a) Quarterly and annual reports for the use of agencies reporting under subsection (1) of this section, and others having an interest therein;

(b) An annual public report of the statistics on the incidence of crime motivated by prejudice based on the perceived race, color, religion, national origin, sexual orientation, disability or gender identity of the victim;

(c) Quarterly and annual reports of the statistics on the incidence of crimes and incidents of domestic disturbance; and

(d) Special reports as directed by the Governor.

(3) In addition, the department shall report all data in (1) above to the Oregon Criminal Justice Commission (CJC). *This data is only to be used for statistical purposes, not for any other purposes, and public disclosure of personal identifiers is prohibited.*

The data law enforcement officers must collect and report includes at least the following:

(a)Charge(s) for which you arrested the suspect(s);

(b) When and what charge(s) the district attorney files;

(c) What charge(s) the district attorney did not file for such cases and the reason(s) for declining to file;

(d) Charges for which the suspect is indicted;

(e) Sentence enhancements the prosecutor seeks;

(f) What sentence(s), including supervision conditions, the court imposes;

(g) Charges to which a defendant pleads; and

(h) Trial outcomes.

Bias Crime Resources

The Oregon Department of Justice provides resources for victims of bias crimes and bias incidents. Oregon ODJ also has resources and educational material for law enforcement related to bias crime investigation. Their website also includes a list of partner organizations and community groups that may be able to provide support for victims. The link to the Oregon DOJ Bias Crime resources website is included in the list of links below.

Resource links and contact information:

- Oregon Department of Justice Bias Crime Resources - Bias and Hate - Oregon Department of Justice (state.or.us)
- Oregon Bias Response Hotline – 844-924-2427
- Federal Department of Justice hate crimes prevent and enforcement website - United States Department of Justice-Hate Crimes

Basic Police Academy

Bias



Bias Parts 1-4

Instructional Goal:

Introduce students to the concept of cognitive bias and the implication on policing.

Part 1 Brains and Decision Making

Learning Outcomes:

1. Contrast System 1 and System 2 thinking.
2. Describe the role of heuristics in decision making.
3. Identify how cognitive bias can influence our perceptions.
4. Describe how heuristics and System 1 thinking relate to stereotyping.
5. Describe what is meant by implicit associations.

Part 2 Bias and Policing

Learning Outcomes:

1. Identify implicit associations that can impact public safety.
2. Describe how police work can contribute to negative stereotyping.
3. Identify situations where police decisions are at risk of being impacted by bias.
4. Describe the concept of profiling by proxy.
5. Understand the potential consequences of biased policing.

Part 3 Reducing and Mitigating Bias

Learning Outcomes:

1. Describe the role of emotional intelligence in reducing and mitigating bias.
2. Identify situations that increase the likelihood of bias.
3. Explain the importance of counter-stereotyping in policing.
4. Describe the importance of officer wellness in decision-making.
5. Identify strategies to reduce or mitigate bias in a given situation.

Part 4 Lived Experience

1. Apply concepts learned in Parts 1-3 to a person's lived experience (not tested).

Part 1- Brains and Decision Making

Learning Outcomes:

1. Contrast System 1 and System 2 thinking.
2. Describe the role of heuristics in decision making.
3. Identify how cognitive bias can influence our perceptions.
4. Describe how heuristics and System 1 thinking relate to stereotyping.
5. Describe what is meant by implicit associations.

Introduction

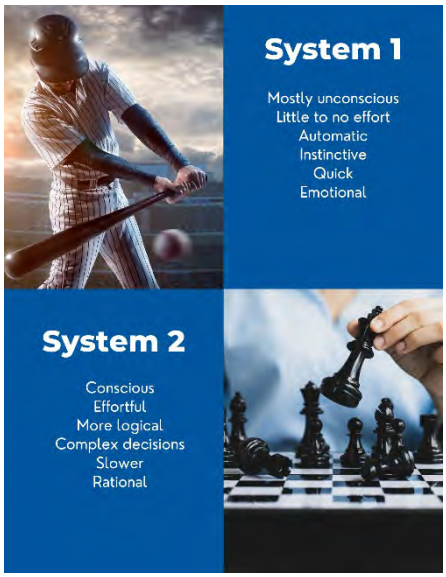
The human brain is incredible. It allows us to constantly make judgements and decisions. It is estimated that an individual makes around 35,000 decisions each day. The reason we can do this without becoming overwhelmed, is our brain has a processing system that is designed for this purpose.



This course will explore this processing system and the features which allow us to operate each day. This course will also examine the ways this system can fail us.

Information Processing Systems

To survive physically or psychologically, we sometimes need to react automatically, for example in a dangerous or threatening situation. Other times, we need to deliberately slow down and think, for example to figure out a complex problem. According to psychologist Daniel Kahneman, there are two systems in our brain that processes information: the fast-thinking System 1, and the slow thinking System 2. The following is an excerpt from an article by Kahneman *Of 2 Minds: How Fast and Slow Thinking Shape Perception and Choice.*



System 1 operates automatically and quickly. It takes no effort and no sense of voluntary control. It relies on mental shortcuts to make quick decisions. Considering the number of decisions we make each day it is no surprise that most of our decisions are a product of System 1 thinking.

In contrast, System 2 gives attention to the effortful mental activities it demands. It constructs thoughts in an orderly series of steps. System 2 can overrule the impulses and associations of System 1.

Systems 1 and 2 are both active whenever we are awake. System 1 runs automatically, and System 2 is normally in a comfortable low-effort mode, in which only a fraction of its capacity is engaged. System 1 continuously generates suggestions for System 2: impressions, intuitions, intentions, and feelings. If endorsed by System 2, impressions and intuitions turn into beliefs, and impulses turn into voluntary actions. When System 1 runs into difficulty, it calls on System 2 to support more detailed and specific processing that may solve the problem of the moment.

The division of labor between System 1 and System 2 is highly efficient: it minimizes effort and optimizes performance. The arrangement works well most of the time because System 1 is generally incredibly good at what it does: its models of familiar situations are accurate, its short-term predictions are usually accurate as well, and its initial reactions to challenges are swift and generally appropriate. System 1 has biases, however, systematic errors that it is prone to make in specified circumstances.

Conflict between an automatic reaction and an intention to control it is common in our lives. One of the tasks of System 2 is to overcome the impulses of System 1. In other words, System 2 is in charge of self-control.

Heuristics

The mental shortcuts which make the fast-thinking System 1 possible are called heuristics. They are automatic cognitive processes; we use them in decision-making situations without necessarily being aware that we are doing so. In addition to using heuristics to make quick decisions, or when we have little time, we also use them in other conditions, such as:

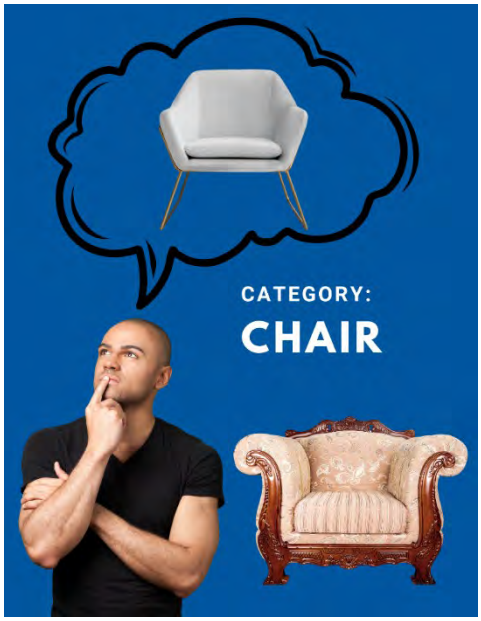
- When we have too much information
- When we have too little information
- When the decision is unimportant
- When a suitable heuristic happens to come to mind in the same moment

While there are numerous types of heuristics, we are going to focus on one, representativeness.

Representativeness Heuristic
A mental shortcut which helps us make a decision by comparing information to our mental prototypes.

Our brains group similar things into categories (dogs, cats, chairs, tables). During this categorization process, our brains create a prototype, or an image that represents the category.

We make judgments about the likelihood that a person/object/situation belongs in a category based on the extent to which the object in question is like the prototypical example of that category. For example, we all have a prototypical example of what a chair looks like. Using System 1, we can quickly identify new items as chairs based on our prototype.



When Heuristics Fail

Despite their necessity, mental shortcuts can fail us. Heuristics are simplifications, and while simplifications use fewer cognitive resources, they also can lead us to make hasty, sometimes incorrect decisions. It can cause us to overlook information that is relevant in favor of information that is not.

Consider the representativeness heuristic that we use every day. The representativeness heuristic has to do with superficial similarities between persons/objects/situations, leading to assumptions that appear correct but are, in fact, false. Relying on these superficial similarities to guide our perception of others can result in stereotyping, discrimination, and prejudice.

Simplifying and speeding up the decision-making process can lead to cognitive biases.

Cognitive Bias

A cognitive bias is an unconscious error in thinking that leads us to misinterpret information from the world around us, and affects the rationality, and accuracy of decisions and judgments. Biases are part of human nature. There are many types of cognitive bias.

1	Anchoring Bias	The tendency to rely too heavily on pre-existing information, or the first piece of information (an anchoring fact) when making a decision. *Example: A restaurant in New York City placed a $69 hot dog first on their menu. Once customers saw it on the menu, the $18 cheeseburger seemed like a reasonable price and sales of cheeseburgers skyrocketed.*
2	Availability Bias	The tendency to use information we can readily recall when evaluating a topic or idea—even if this information is not the best representation of the topic or idea. We believe the information we can most easily recall as valid and ignore alternative solutions or opinions. Our brain thinks things that have happened recently or stand out in our minds are more likely to happen again. It's because things that have just happened are top of mind, so it comes to mind quickly and easily. *Example: After a shark attack on a beach, people are less likely to go swimming even though you are no more likely to be attacked by a shark.*
3	Bandwagon Bias	The tendency to form an opinion or take action because others have already done so. *Example: Wine shoppers will often go for a bottle that appears well depleted on the shelf because surely this signifies that this brand has been a popular purchase. Shoppers are persuaded into purchasing because other shoppers have bought before them.*
4	Confirmation Bias	The tendency to interpret new information as confirmation of your preexisting beliefs and opinions. This happens when you look for information that supports your existing beliefs and reject data that goes against what you believe. This can affect the way that people interpret statistics. People tend to infer information from statistics that support their existing beliefs, even when the data supports an opposing view. This is pervasive on internet and social media. For example, we tend to read online news articles that support our belief and do not seek out sources that challenge them.

		Example: You read an article about a political scandal, confirming everything you thought about a politician you dislike. You discuss it with a friend, who supports the politician, and they think the article completely vindicates the politician. How did you both read the same article and come to different conclusions?
5	Cultural Bias	The tendency to perceive another culture as being abnormal, outlying, or exotic based on comparison to one's own culture. We interpret situations from our own cultural perspective. *Example: The concept of punctuality varies across cultures. In North America, a 9:00 am meeting is at 9:00 am. In South America, the cultural definition of "on time" may vary by 30 minutes to two hours. People in North America may view this flexible time standard as irresponsible or lacking motivation. In contrast, people from South America may view this as being unreasonable or bossy.*
6	Decline Bias	The tendency to compare the past to the present, leading to the decision that things are worse or becoming worse in comparison with the past simply because change is occurring. *Example: Older generations might think that younger generations are not good employees and people were more hardworking in their era.*
7	Dunning-Kruger Effect	The tendency for people to perceive a concept or event to be simplistic because their knowledge about it may be simplistic or lacking. The less you know about something, the less complicated it may appear. However, this form of bias limits curiosity—people do not feel the need to further explore a concept, because it seems simplistic to them. This bias can also lead people to think they are smarter than they are because they have reduced a complex idea to a simplistic understanding. This refers to people's ability to accurately assess their own and others' competence. In general, low-skilled people tend to overestimate their own abilities, and highly skilled people tend to underestimate theirs. *Example: You took a psychology class in high school and got an A. You now think you have a good grasp on psychology and know all there is to know. However, you don't know what you don't know.*

8	Fundamental Attribution Error	The tendency to attribute someone's behaviors to their character or personality, while attributing your own behavior to external factors out of your control. *Example: You justify that were late to work because you woke up to a flat tire, but you criticize a similarly late co-worker and presume they are just not responsible.*
9	Halo Effect Horn Effect	The tendency for a person's positive traits to spill over from one area of their personality to another in others' perception of them. *Example: An attractive person being perceived as successful and competent overlooking any negative characteristics.* The tendency for a person's negative traits to cloud your judgment of them or their abilities. *Example: An overweight person being viewed as being irresponsible or lazy.*
10	Inattentional Blindness	The tendency to fail to notice a stimulus that is right in front of you because your attention is directed elsewhere. *Example: An often-used video depicts a group of individuals passing a basketball, viewers are asked to complete a task, such as count how many times the ball is passed. During the video a person walks through the circle in a gorilla suit. A number of viewers will not have seen the gorilla despite the individuals passing the ball round the gorilla.*
11	In-Group Bias	The tendency to support or believe someone within one's own social group over an outsider. *Example: While driving on I-5 to the UO football game, a car is trying to get into the right-hand lane to exit the freeway in front of you. You honk your horn at them. Shortly after another car is trying to get into the right-hand lane and they have been flying a UO flag. You wave them over and let them in.*
12	Overconfidence Bias	The tendency to place too much faith in your own knowledge, abilities, and ideas. You may also believe that your contribution to a decision is more valuable than it is. *Example: People believe they are more ethical than others and therefore take ethical issues lightly. They assume they have*

		good character and will do the right thing when an ethical challenge comes up.
13	Selection Bias	The tendency to notice things more when something has happened to make us notice that thing more. *Example: You buy a car and suddenly notice more models of that car on the road.*
14	Mere Exposure Effect	The mere exposure effect, or "familiarity principle," occurs when "repeated exposure of the individual to a stimulus object enhances his attitude toward it." In decision making, this bias can manifest itself as a preference for opinions, people, or information that you've already seen or heard before. *Example: In advertising, companies will use methods (music, colors, logo placement, push notifications, ecommerce banners, pinning product to search results, etc.) to make products familiar in customer's minds so they will select the familiar item when shopping.*

Stereotyping

When we think about people, it is the features that distinguish them most from other groups that form our prototypical examples. Stereotypes highlight the differences between groups. They consist of features that automatically (System 1) come to mind when thinking about a group. Our human brains selectively recall these features based on representativeness, but also based on what is easily available. This may be due to recency or frequency of exposure.

Stereotype- A widely held but fixed and oversimplified image or idea of a particular type of person or thing.

Oxford Dictionary

As humans, we attach stereotypes to racial groups, religions, genders, political parties, demographic groups, neighborhoods, activities, and more. Sometimes these features hold a high degree of validity and sometimes not. Inaccurate stereotypes generalize to an entire group a trait that might be infrequent.

Judgments based on stereotypes are especially frequent when the individuals in question are out-group members. People tend to hold positive attitudes toward members of their own groups (in-groups).

An explicit stereotype is the kind that you deliberately think about and report.	An implicit stereotype is one that is relatively inaccessible to conscious awareness and/or control.

Positive vs Negative Stereotypes

Are all stereotypes bad? While we often think of negative stereotypes, not all stereotypes focus on negative projections. So-called "positive" stereotypes associate certain characteristics (race, gender) with positive expectations (athleticism, cognitive abilities, nurturing). However, "positive" stereotypes are no more valid than negative stereotypes. "Positive" stereotypes can be harmful to individuals by creating expectations and unrealistic standards. "Positive" stereotypes affect how people are perceived by others and themselves.

Research suggests "positive" stereotypes are unlikely to set off red flags in observers. Yet these also reinforce beliefs about group differences. Consider the following from *The Insidious (and Ironic) Effects of Positive Stereotypes*:

> The more people are willing to entertain sweeping generalizations about groups based on social categories (i.e., endorse, rather than deny or try to inhibit, stereotypes), the more likely they should become to believe these differences are the result of something fundamentally and naturally different about the group. If positive stereotypes about a specific group are less likely to be coded as biased or trigger negative emotions, they may be a particularly effective means of enhancing beliefs that a group is genetically, biologically, or otherwise "naturally" different. Positive stereotype exposure may also increase the likelihood of perceivers applying negative stereotypes to members of the target group.

While stereotypes allow for a quick and intuitive assessment of groups, they may also cause distorted judgment and biased behavior, such as discrimination and inter-group conflict.

Bias

Research has found that implicit bias impacts everyone, with specific studies showing bias manifesting among members of various professional groups, such as doctors, other health professionals, medical students, educators, judges, and lawyers.

Bias- Prejudice in favor of or against one thing, person, or group compared with another, usually in a way considered to be unfair.

Oxford Dictionary

According to Dr. Lorrie Fridell, bias starts with our automatic tendency to categorize individuals. We then attribute to these individuals the stereotypes associated with their group. These processes do not occur for all situations and people, but instead are most likely when we are facing ambiguous stimuli. This means that categorizing individuals and linking them to stereotypes is most likely to occur when we encounter people we do not know. Our tendency to link individuals to the stereotypes associated with their group(s) is automatic and occurs outside of conscious awareness (System 1). These automatic and largely unconscious attitudes that influence behavior is called implicit bias.

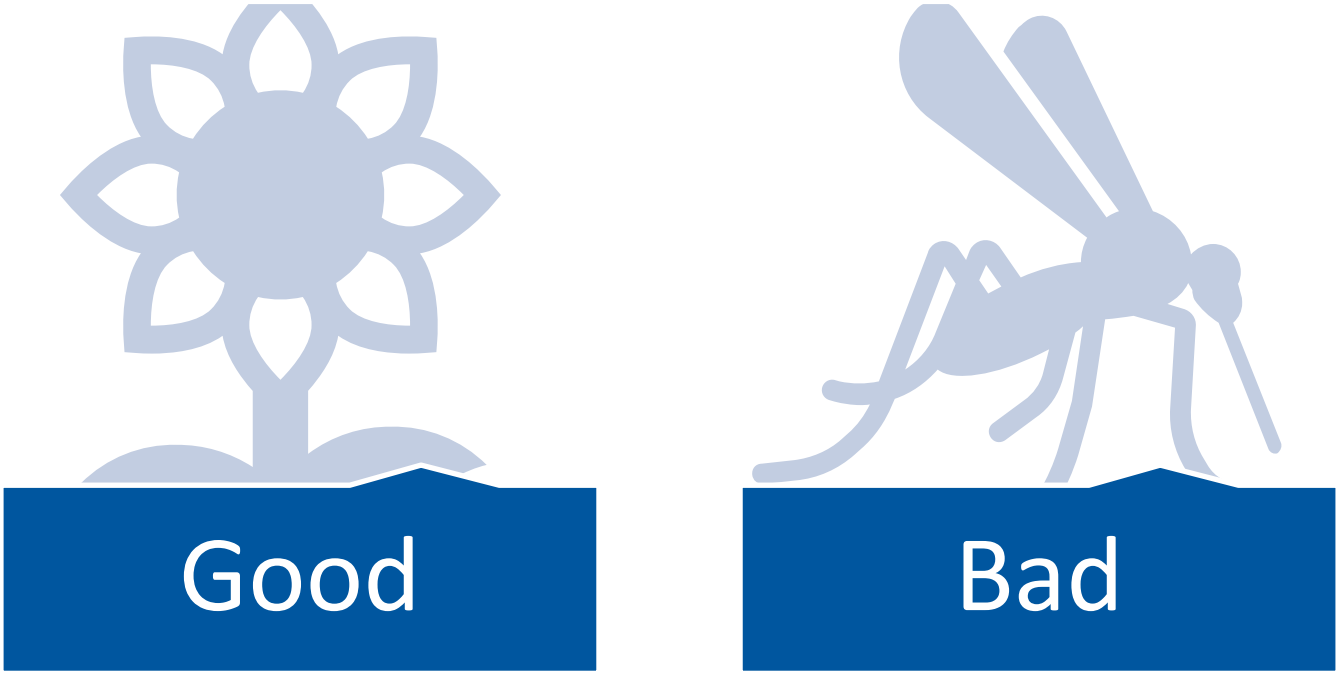
What is the difference between implicit and explicit bias? The National Center for Cultural Competence at Georgetown University supplies the following:

Explicit Bias	Implicit Bias
In the case of explicit or conscious bias, the person is clear about their feelings and attitudes, and related behaviors are conducted with intent.	Implicit or unconscious bias operates outside of the person's awareness and can be in direct contradiction to a person's espoused beliefs and values. Implicit bias can seep into behaviors.

Implicit biases can manifest even in people who, at the conscious level, reject prejudice and stereotyping. Our implicit associations do not necessarily line up with our conscious beliefs.

Implicit Associations

Whereas explicit bias could be measured by asking someone to identify their beliefs, implicit bias is measured in an indirect way. The Implicit Association Test (IAT) is one of the primary methods of measuring attitudes and beliefs that a person may be unwilling or unable to report. The test, which was first introduced in 1998, analyzes how strongly a person mentally associates two separate concepts.



In the IAT, participants are presented with words or images and asked to categorize them. The time it takes for participants to respond to different combinations of stimuli is thought to shed light on the mental associations they make, even when they are not aware of them. For example, respondents are typically faster to respond when a flower is paired with a desirable attribute than when a bug is paired with a desirable attribute (Greenwald, McGhee, & Schwartz, 1998). This is presumably because it takes longer to complete the task when the pairs are cognitively less compatible.

Dr. Lois James explains, researchers have used the IAT to measure how strongly people associate attributes with certain social groups. For example, Nosek, Banaji, and Greenwald (2002) found participants more strongly associated men with science and women with liberal arts. There has been considerable debate surrounding the interpretation of these findings. While the creators of the IAT have argued that associations indicate a preference, that is positive or negative evaluations of certain social groups compared to others (Dasgupta, Greenwald, & Banaji, 2003). However, others counter that the associations reflected in the IAT merely indicate familiarity or exposure to certain stereotypes (Kinoshita & Peek-O'Leary, 2005; Rothermund, Wentura, & De Houwer, 2005). In other words, differences reflect passively acquired attitudes, not personal feelings.

If my IAT shows that I have an implicit preference for one group over another, does that mean I am prejudiced?

Many people use the word 'prejudice' to describe people who report negative attitudes toward social groups. By this definition, most people who show an implicit preference for one group (e.g., White people) over another (e.g., Black people) are not prejudiced. The IAT shows biases that are not necessarily endorsed and that may even be contradictory to what one consciously believes. So, no, we would not say that such people are prejudiced.

-Project Implicit FAQ

Why Should I Take the IAT?

When we hold implicit associations that we are not aware of, it can affect our behaviors and interactions with others. The developers view the IAT feedback as an educational tool to get people thinking about implicit bias and how it may color their interactions with the world. It is not intended to be a diagnosis.

Despite early beliefs, research tells us that our implicit biases can be changed. While raising awareness is often the first approach, this must be paired with effective strategies to reduce and mitigate bias. These strategies will be further discussed in Part 3.

Part 2: Bias and Policing

Learning Outcomes:

1. Identify implicit associations that can affect public safety.
2. Describe how police work can contribute to negative stereotyping.
3. Identify situations where police decisions are at risk of being impacted by bias.
4. Describe the concept of profiling by proxy.
5. Understand the potential consequences of biased policing.

Introduction

Dr. Lois James explains, given the extensive body of research demonstrating that implicit biases exist in people across many walks of life, it is to be expected that police officers also have implicit biases. Further, the possibility that police behavior may be guided by implicit bias against social groups, as opposed to legally defined criminal behavior, is a major concern among the American public.

The International Association of Chiefs of Police states the science-based understanding of bias can help negate the polarizing views that have impacted police community relations and can assist in bringing law enforcement and community members together around a common understanding of the issue.

What is known:

- The assumption that biased policing comes from "racist" police is incorrect.
    - This is not a discussion about racism.
- Even good/well-intentioned officers have biases.
    - Bias is a naturally occurring process in the human brain.
    - Our implicit biases may not align with our known beliefs.
- Biases impact what we perceive and can influence our decisions.

Implicit Associations and Public Safety

Research has found widely held stereotypes linking minorities with crime. Perhaps the most well-documented is the association of Black males with crime and violence. How can this impact public safety? Studies have identified the impact in inaccurate eyewitness reports, people's categorization of nonweapons as weapons, and how people interpret ambiguous behavior. Consider the implication on calls to dispatch and how this information primes officer response. This association impacts officer decisions as well. Officers acting on bias can produce disparities in outcomes.

Implicit Bias and Policing

Police officers must frequently assess civilians' ambiguous behavior to decide whether to take action, and stereotypes linking Black people with aggression have been shown to cause people to judge the behavior of a Black person as more aggressive than the identical behavior of a White person (Duncan, 1976; Sagar & Schofield, 1980). Other studies have uncovered pervasive implicit and explicit stereotypes of African Americans as dangerous, violent, and hostile (Bargh, Chen, & Burrows, 1996; Devine, 1989; Devine & Baker, 1991; Devine & Elliot, 1995; Dovidio et al., 1986; Jackson, Lewandowski, Ingram, & Hodge, 1997; Schaller, Park, & Mueller, 2003). All of these traits are closely related to criminality. They are also important factors in deciding whether someone poses a threat to personal safety, which is a critical component of officers' decisions to use force and the legal analysis of those decisions.

K. Spencer, A. Charbonneau, and J. Glaser

Similarly, consider the potential influences of **Adultification Bias**. This is a phenomenon where adults perceive Black youth as being older than they are.

Research indicates:

- Black boys are perceived as older and less innocent when compared to their white counterparts.
- Black children are more likely to be misperceived as angry.
- Black children experience higher levels of discipline in the school system than other groups.
- Black children are subject to harsher penalties within the legal system, increasing their vulnerability to the negative consequences of that contact.
- Black girls are less likely to be seen as victimized than Black boys and White girls.

Police Work Can Contribute to Bias

To further complicate the matter, the nature of an officer's day-to-day work may contribute to the development of negative stereotypes which can lead to bias. Policing inherently involves dealing with criminality and other negative behavior, so if an officer is consistently, repeatedly exposed to negative stimuli and contacts within a given community, they may develop negative stereotypes about the members of that community. Consider the following:

> *If an officer works in a predominately African American neighborhood with a high crime rate, they may begin to believe African Americans are more dangerous than Whites. This bias could be explicit (i.e., they would claim it when asked about their attitudes), or it may be subtle and implicit (i.e., they may not be aware they have an association between African Americans and crime).*

How Bias Can Manifest in Policing

In *Producing Bias Free Policing*, Dr. Lorrie Fridell explains biased policing means that groups are being treated differently by police without justification. There are many day-to-day activities that are at risk of bias seeping in. For example:

- Whom to watch or investigate as a "suspicious person"/ whom to ignore
- Who to stop (applies to pedestrians and drivers)
- Who to treat with dignity and respect
- What questions to ask
    - "Do you own this car?"
    - "Are you on probation?"
    - "Where are you coming from?"
- Whether to search or from whom to seek consent to search
- Who to arrest/cite and release/warn
- What types of crimes do you choose to enforce vigorously/what crimes do you choose to ignore
- Who do you believe in an investigation?
- Against whom to use force or higher levels of force

It is important to acknowledge that the actuality that stereotypes are based in part on fact does not justify the use of stereotypes in making policing decisions. Police err when they treat individuals as if they fit the group stereotype. Policing based on stereotypes can be ineffective, unsafe, as well as unjust.

Profiling By Proxy

Another type of bias that has become increasingly talked about in policing is profiling by proxy. This occurs when police are summoned to a situation by a biased caller. The National Policing Institute describes the following:

- The most viral incidents involved white female complainants calling the police in response to Black men, women, and even children who were engaged in rather mundane activities which, at most, might constitute a minor violation of law.

- Less viral, but undoubtedly more common in society is the concerned resident calling about a "suspicious person" or "suspicious vehicle" in their neighborhood. Frequently, the individual walking down the street or occupying the vehicle in question is a person of color. Unknown in these instances is the counterfactual; would the complainant have contacted the police for the same behavior or activity by whites?

The Vera Institute explains that profiling by proxy can be a problem when an officer's perception of inappropriate behavior aligns with the caller, even in absence of criminal conduct. In these situations, officers are likely to act on their own bias to address the matter or find a pretext to disperse the persons at issue to serve the caller's agenda. When an officer's perception of behavior differs from that of the caller, however, the officer is more likely to recognize the caller's bias and dismiss the complaint.

Consequences of Biased Policing

Biased policing can lead to a number of undesirable outcomes ranging from decreased community trust to safety issues for both police and community members.

Consequences of biased policing can include:

- Violation of an individual's Constitutional rights
- Ineffective policing
    - Inadequate investigations
    - Poor crime control strategies
    - Decreased officer safety
- Disparate policing
    - Over-policing (targeting of communities)
        - Produces unequal outcomes
        - Harms historically disadvantaged groups
    - Under-policing (neglecting communities)

Commitment to Bias Free Policing

Oregon has taken a number of steps to reduce the risk of biased policing by focusing on the concern of profiling. According to ORS 131.915 "profiling" means that a law enforcement agency or a law enforcement officer targets an individual for suspicion of violating a provision of law based solely on the real or perceived factor of the individual's age, race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, homelessness or disability unless the agency or officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law.

In 2015, through HB 2002, Oregon banned racial profiling by police and established procedures for complaints alleging profiling.

Unsure if the 2015 law was having any effect, the Oregon legislature passed HB 2355 in 2017. For decades, advocacy groups cited anecdotal evidence supporting the notion that law enforcement applies different standards to minority drivers and pedestrians concerning various police citizen interventions. House Bill 2355 mandated that by 2021, all Oregon law enforcement agencies must submit data regarding officer-initiated traffic and pedestrian stops to the Oregon Criminal Justice Commission, so the Commission could analyze the submitted data for evidence of racial or ethnic disparities on an annual basis.

Required Data:

- Date of Stop
- Time of Stop
- Location of Stop
- Race
- Ethnicity
- Age
- Sex
- Nature/Reason for Stop
- Disposition of Stop- warning, citation, summons
- Search Conducted
- Type of Search
- Search Results
- Arrest Made as a Result of Contact

The data is analyzed by the Oregon Criminal Justice Commission and a report released each year. The analysis examines the following:

Initial Decision to Stop	Stop Outcome	Rates of Successful Searches *(Resulting in seizure or contraband)*
Are minority individuals more likely to be stopped when race can be determined?	Are minority individuals cited, searched, or arrested more often than similarly situated white individuals?	Are search success rates lower for minority individuals than white individuals?

Any law enforcement agencies showing statistically significant disparate results in two out of the three analyses, are referred to DPSST for technical assistance. In the first three years of analysis, (2019, 2020, and 2021) only three agencies have met this threshold.

Part 3- Reducing and Mitigating Bias

Learning Outcomes:

1. Describe the role of emotional intelligence in reducing and mitigating bias.
2. Identify situations that increase the likelihood of bias.
3. Explain the importance of counter-stereotyping in policing.
4. Describe the importance of officer wellness in decision-making.
5. Identify strategies to reduce or mitigate bias in a given situation.

Introduction

As was covered in Part 1, research tells us that our implicit biases can be changed. In this section we will cover three strategies for reducing and mitigating bias: practicing self-awareness, exposing ourselves to counter-stereotypes, and practicing self-care.

Awareness

You learned about the importance of self-awareness (recognition) and self-management (regulation) in Emotional Intelligence, and those concepts apply here as well. Being aware that implicit biases exist is the first step. Digging deeper to explore our own biases through an IAT or other means is one way to increase our self-awareness. This knowledge can help a person recognize when their own implicit biases manifest. That is, even though implicit biases can activate outside of conscious awareness, once educated, a person can become aware of them. When we are motivated to be fair and impartial, self-regulation helps to control our responses. Awareness also includes knowing when to be on the lookout for our biases seeping in. According to Dr. Lorie Fridell (Producing Bias-Free Policing, 2017), situations that increase the likelihood of bias include:

Situations that involve discretionary activities	Ambiguous situations	Fast-moving situations

Discretionary Activities

It is the discretionary activities on the part of police that are susceptible to bias; or, in other words, decisions for which officers have no discretion will not be affected by their biases. An example of a non-discretionary activity is a search incident to a lawful arrest. While it is possible that the selection of the person for arrest was based on biases, once the arrest is made, the person will be searched. This search is non-discretionary and thus cannot be impacted by officer biases.

The science implies, however, that, barring any direction to the contrary, officers told to engage in some high-discretion activity geared toward preventing or solving crimes will default to the group(s) they most link to crime and violence. In most humans, this will be males of color between 18 and 25. This requires no animus towards those groups; it does not require conscious intention to target those groups. It requires only a human with the best of intentions—wanting to serve the community members by reducing crime in the area.

Ambiguous Situations

We fill in with stereotypes when individuals or situations are ambiguous, when it is not readily clear what another person is doing or is going to do. Individuals rely more, consciously, or unconsciously, on prejudice and stereotypes when attempting to resolve uncertain circumstances. Implicit biases are activated when a person is facing ambiguous situations.

Fast Moving Situations

Time pressures can increase the risk of implicit bias activation (Bertrand et al. 2005). Fast-moving events can be more prone to implicit biases. The two factors—ambiguity and fast moving—can easily coexist. If an officer enters an ambiguous situation that requires quick action, that means they cannot gather more information to understand the situation at hand. Similarly, in a quick-moving situation, the officer has less time to reflect on their first-impression interpretations of the situation and to make corrections. As will be discussed below, having time to reflect on the possibility of a bias-produced misinterpretation of a situation and deciding to override those biases, is helpful for producing bias-free behavior (Lambert et al. 2003; Payne 2001).

Counter-Stereotyping

Counter-stereotyping or exposing individuals to information that goes against their established attitudes in an attempt to alter them, is a foundation of law enforcement implicit bias training (L. James et al., 2016). The act of altering one's environment could create opportunities for counter-stereotyping.

> *If a police officer who is implicitly biased against Latinos moves from an impoverished and high crime Latino neighborhood to an affluent and low crime Latino neighborhood, they are likely to experience changes in their attitudes about Latinos. This could consequently alter their beliefs, stereotypes, and even behaviors towards Latinos (Dasgupta, 2013).*

The research shows that even exposure to counterstereotype information can reduce biases. Similarly, processes/activities that help reduce the distinction between "we" and "they" and taking the perspective of others can reduce both explicit and implicit biases.

Officer Wellness- Fatigue

Research tells us that bias may be harder to overcome when stressed or fatigued. Research on the effect of shift work across industries links shift work-related fatigue with impaired performance and errors. Fatigue is like alcohol impairment; being awake for 24 hours straight has the same effects on an individual as if they were to blow a .10 blood alcohol content, and 17 to 19 hours awake is the same as a .05 BAC. Alcohol affects the prefrontal lobe of the brain where the higher decision making occurs, and fatigue does the same thing. Furthermore, this region tends to be impacted the quickest by fatigue.

Research Review
The Stability of Implicit Racial Bias in Police Officers (2018)
Dr. Lois James

This study explored the stability of implicit racial bias among police officers— who could vary in their attitudes about people not only based on their interactions with them but also based on internal stressors such as lack of sleep.

To recap, 80 police officers were tested using the Weapons IAT across four separate test sessions, each separated by approximately six weeks. IAT scores varied significantly between test sessions (within subject), indicating that implicit racial bias is a variable state, rather than a stable trait. Furthermore, officers' sleep prior to each test session significantly predicted variability in IAT score.

When officers received less sleep preceding each test session, they were significantly more likely to associate Black Americans with weapons compared with when they had received more sleep. In other words, sleep restriction appeared to increase anti-Black bias.

Regarding the debate about the stability of implicit bias, this study's findings clearly support prior research that has demonstrated implicit attitudes are variable (Blair, 2002; Dasgupta, 2009; Gawronski & Bodenhausen, 2006). Several possibilities exist for explaining variation across the four IAT testing sessions. First, as indicated by the second research hypothesis, internal stressors such as sleep restriction may have been responsible. The wide range of sleep officers had received preceding testing—from 150 minutes (2:30 hours) to 870 minutes (14:30 hours)—revealed a significant impact of sleep on implicit racial bias. This may have been due to a fatigue effect.

It is well established that sleep-related fatigue increases reaction time testing. For example, S. M. James and Vila (2015) found that police officers had significantly slower reaction times on the psychomotor vigilance task (PVT) when they had received less sleep. The key difference between the PVT and the IAT (which at its core is another reaction time test) is that the PVT does not use stimuli that could bring about cognitive dissonance. The PVT simply instructs participants to press the space bar when a number appears on screen. When participants take longer to press the space bar following the presentation of the stimulus, fatigue is inferred. With the IAT on the other hand, differences in reaction time between paired concepts indicate implicit bias. If it takes a participant longer to associate Black faces with neutral objects on the Weapons IAT, one assumes it is because they expect to see Black faces paired with weapons. Thus, cognitive dissonance is responsible for increased reaction times when pairing concepts that a participant would not automatically associate. It is possible, therefore, that fatigue increases reaction time on the IAT more so in cases where cognitive dissonance occurs.

It is worth noting that the study was conducted between 2012 and 2013, before the events of Ferguson brought race relations to such prominence in policing.

Summary: Strategies to Reduce/Mitigate Bias

- Develop awareness of one's own potential biases (emotional intelligence: self-awareness)
- Commit to being fair and impartial (emotional intelligence: self-regulation)
- Practice conscious awareness in highly discretionary activities (risk of discretionary activities)
- When feasible, slow down the encounter (risk of fast-moving situations)
    - Do you have time to make some observations before engaging?
    - Do you have time to wait for backup?
    - Do you have time to talk through the situation with the individual?
- Get more information (reduce ambiguity)
- Watch out for "profiling by proxy"
    - Make an independent and professional assessment of the caller's claims.
- Get to know the community you serve (reduce ambiguity, make them un-ambiguous)
- Seek opportunities to interact with cultures that are different from your own (counter-stereotyping)
- Actively seek positive examples to offset negative examples experienced on the job (counter-stereotyping)
- Practice scenarios that force making split-second decisions without being influenced by suspect characteristics. Focus attention not on demographics and other aspects of appearance, but on indicators of threat.
- Mitigate fatigue, practice good sleep hygiene, be aware of the risks of shift work related fatigue on performance and decision making.

Basic Police Academy

Bombs and Explosives



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Introduction to Bombs and Explosives

Instructional Goal:

This course is designed to develop a new officer's understanding of safe and effective tactics when responding to incidents involving or potentially involving bombs or explosive devices.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate characteristics of a suspicious device or package.
2. Explain the role of an officer in responding to a bomb threat.
3. Identify procedures to take when a suspicious item is located.

Content Outline:

- Safety Rules
- Law Enforcement Response
- Effects of an Explosion
- Types of Explosions
- Types of Explosives
- Improvised Explosives
- Bomb Threats

Bombs and Explosives in the United States

Explosive-

A chemical substance or mixture capable of producing an explosion.

Bomb-

A device containing an explosive, incendiary, or chemical material designed to explode.

According to the United States Bomb Data Center Explosives Incidents Report, in 2018, there were 17,968 explosives related incidents in the United States. Of these incidents, 289 were bombings. There were 7,305 recoveries reported in 2018, with the majority being non-improvised explosive devices (IEDs). Reports of suspicious/unattended packages increased, with 7,408 incidents reported in 2018. Education, office/business, residential, and assembly remain the top four targets of bomb threats during 2018. The number of reported incidents targeting offices/businesses has doubled since 2017.

What do police need to know about the threat of bombs and explosive devices? Most police agencies will have policies and procedures specific to responding to bombs and explosives. These policies often outline the responsibilities of patrol, including provide an initial response to the scene, provide a first assessment of the bomb threat, make a decision regarding evacuation, and provide a safe approach and work area for the Explosives Disposal Unit (EDU).

Policy and good practice are first and foremost about safety. The remainder of this course will provide information about bombs and explosives to help you make decisions in the field that offer you and the community safety.

Three Rules of Safety

1	2	3
If a suspected device is encountered it should not be handled and the area should be secured.	Always assume that there is more than one device present, whether it is a bombing, a threat, or a device that has been located.	Never pick up or disassemble a pipe bomb or any other IED, even if someone else has.

General Response for Law Enforcement

Familiarize yourself with your agency policy on responding to bomb threats or explosions. Following are some guidelines from the U.S. Department of Justice:

- Preliminary Evaluation of the Scene- First responders must assess the scene quickly yet thoroughly to determine the course of action to be taken. This assessment should include the scope of the incident, emergency services required, safety concerns, and evidentiary considerations.

- Exercise Scene Safety- Safety overrides all other concerns. First responders must take steps to identify and remove or mitigate safety hazards that may further threaten victims, bystanders, and public safety personnel. They must exercise due caution while performing emergency operations to avoid injuries to themselves and others.

- Administer Lifesaving Efforts- First responders' primary responsibility is to rescue living victims and provide treatment for life-threatening injuries. While performing emergency operations, they are to preserve evidence and avoid disturbing areas not directly involved in the rescue activities, including those areas containing fatalities.

- Establish Security and Control- First responders will establish control and restrict scene access to essential personnel, thereby aiding rescue efforts and scene preservation. First responders will initiate documentation.

Effects of an Explosion

Blast Pressure	Fragmentation	Collapse of Building	Tertiary	Incendiary or Thermal
The air blast shock wave is the primary damage mechanism in an explosion. The sudden increase in pressure that occurs as a blast wave passes includes two phases: Positive Phase- Rise from atmospheric pressure to a peak overpressure. Negative Phase- As the shock front expands pressure decays back to ambient pressure, a negative pressure phase occurs that is usually longer in duration than the positive phase It can cause injury to pressure-sensitive human organs, such as the ears and lungs.	The impact of fragments and debris from sources not originating from the explosion source are secondary effects. Airborne glass fragments typically cause penetration or laceration-type injuries. Larger fragments may cause non-penetrating, or blunt trauma, injuries. **Most common cause of death*	Humans inside collapsing buildings are subjected to the impact of heavy structural parts. Pictures taken after earthquakes or bomb attacks reveal that vertical members usually fail, leaving a stack of floors on top of another.	Air particles in a blast wave have a certain velocity which, in general, flow in the same direction as the propagation of the blast wave. This explosion wind can sweep people away, carry them for some distance, and throw them against obstacles.	The blast may also produce high heat and a fireball that could start secondary fires or explosions.

Source: FEMA

There are three basic types of explosions:

Mechanical	Chemical	Nuclear
Over pressurization of a container causes it to fail. *Examples: pressure cooker, dry ice bomb, etc.*	Chemical reaction resulting in a substantially instantaneous release of heat and gas (high explosives).	Energy released at the atomic level.

Explosives are classified according to the speed at which they react.

Low Explosives	High Explosives
Pyrotechnics- Create smoke, light, and heat. *Examples:* *Black powder, smokeless powder, flash powder* Propellants- Designed to produce the controlled release of gases to propel objects.	Designed to produce an almost immediate release of super-heated gases, which rapidly expand into a greater volume. *Examples:* *Dynamite, Trinitrotoluene (TNT) and C-4*

FYI

The first commercially successful high explosive product was dynamite. Alfred Nobel found that nitroglycerin could be made safer to handle by mixing it with an absorbent substance, thus creating dynamite. Most dynamite contains some amount of nitroglycerine with oxidizers and binder material in a cylindrical form with a buff or white-colored wax paper wrapper. Common sizes in Oregon range from 1 ¼" x 8" to 2" x 16". Over time, the dynamite will "sweat" or crystallize its nitroglycerine, which can then pool in the bottom of the box. You can also encounter dynamite that has formed sensitive salts.

Do not move or handle.

Detonating explosives are usually subdivided into two categories, primary and secondary:

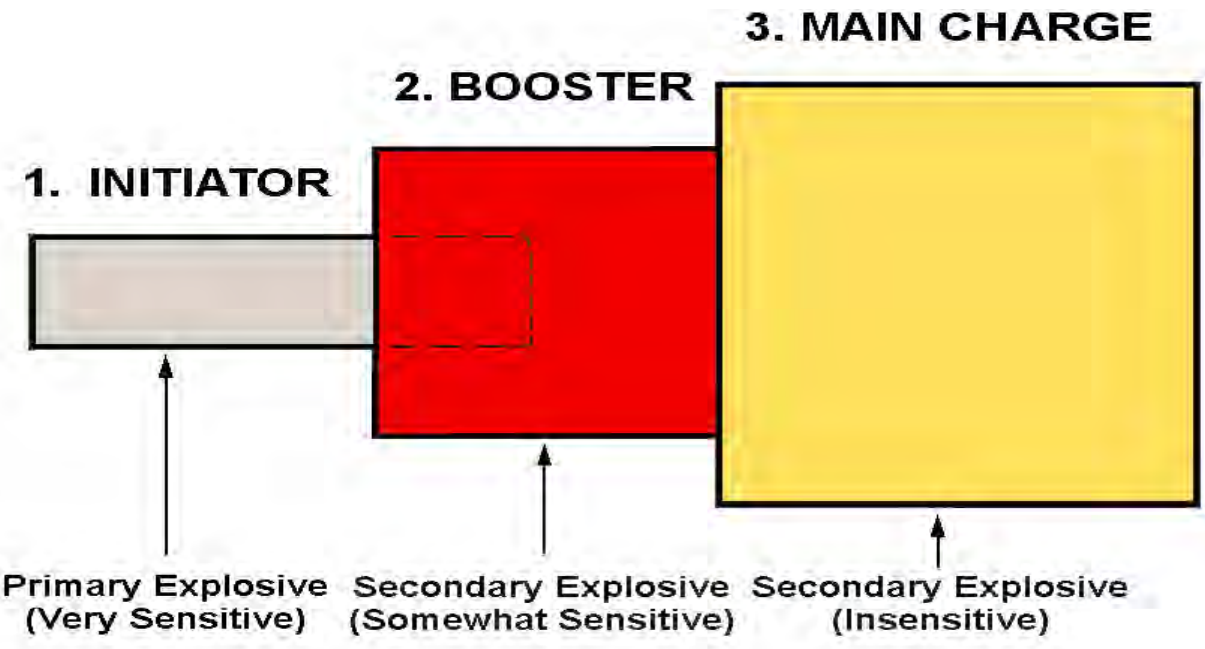
Primary explosives detonate by ignition from some source such as flame, spark, impact, or other means that will produce heat of sufficient magnitude.

Secondary explosives require a detonator and, in some cases, an additional booster.

A few explosives can be both primary and secondary, depending on the conditions of use.

A low explosive material, such as gunpowder, smokeless powder, or fireworks, burns much slower. Low explosives are often used as a propellant. A low explosive must be confined to explode. Note: for low explosives, this is referred to as a deflagration, not detonation, since the reaction occurs at a rate below the speed of sound.

Explosive Train



Improvised Explosives

An improvised explosive device (IED) needs:

An Explosive (main charge)	Initiator (initiates the main charge)	Fuzing System (switch)	Power Source

Types of IED's

- Victim Activated
- Timed
- Command/ Remote Controlled
- Suicide Bomber



Pipe Bombs

- Most common IED
- Generally constructed of PVC or metal pipe
- Often fused with cannon or hobby fuse
- Most common fillers are Black powder or Smokeless powder



Crickets- CO2 cartridges filled with powder.



Chemical Devices- Improvised Incendiary Device



- Molotov Cocktail
- Hypergolic Molotov Cocktail
- Bottle Bombs

Fireworks

- More deaths each year than other explosives;
- Illegal fireworks are manufactured without standardization;
- "M" devices are illegal explosive devices;
- If you suspect fireworks are being produced, DO NOT ENTER & CALL THE BOMB SQUAD!!!
- The energetic material inside fireworks is unstable, and EXCEPTIONALLY DANGEROUS!

Bomb Threats

Bomb Threat-	Explosive Device Located-
A situation where an explosive device has been reported or is suspected to be at a given location.	When a suspected or actual explosive device has been located or has been detonated.

Source: International Association of Chiefs of Police

Statistically, in the U.S., there is a minimal chance of an actual improvised explosive device being found after a bomb threat is received. If someone wants to injure people, no warnings will be given, but bomb threats are effective in disrupting normal activities. Other than unique IRA situations, bomb threats are historically not given if there is a real device.

Reasons for a Bomb Threat:

- To prevent death or injury
- To disrupt normal activities
- Extortion

Despite this, bomb threats:

- Can never be disregarded
- Must be evaluated
- Must take appropriate action
- Must be taken seriously

Threats come in a variety of forms, including:

- Phone
- VOIP
- Fax
- E-Mail
- Voicemail
- Written Notes
- Social Media
- Graffiti

Evaluating the Threat

Carefully evaluate all threats. One must consider the facts and the context, and then conclude whether there is a possible threat.

There are two types of threats:

Non-Specific	Specific
Most common Includes limited or no detail.	Least common Includes greater detail: a reason for the bombing, warning to evacuate to avoid injury, type of bomb, the time set to go off, where the bomb is located

The FBI and DHS Office for Bombing Prevention offers the following threat assessment:

Low Risk	Medium Risk	High Risk
Lacks realism: A threat that poses minimal risk to the victim and public safety. The probable motive is to cause disruption.	Increased level of realism: Threat that could be carried out, although it may not appear entirely realistic.	Specific and realistic: Threat appears to pose an immediate and severe danger to the safety of others.
The threat is vague and indirect. Information contained within the threat is inconsistent, implausible, or lacks detail. The threat was discovered instead of delivered (e.g., a threat written on a wall).	The threat is direct and feasible. The wording in the threat suggests the perpetrator has given some thought on how the act will be carried out. May include indications of a possible place and time. No strong indication the perpetrator has taken preparatory steps, although there may be some indirect reference pointing to that possibility. Indication, the perpetrator, has details regarding the availability of components needed to construct a bomb. Increased specificity to the threat (e.g. “I’m serious!” or “I mean this!”)	The threat is direct, specific, and realistic; it may include names of possible victims, specific time, and location of the device. Perpetrator provides his/her identity. Threat suggests concrete steps have been taken toward carrying out the threat. Perpetrator indicates they have practiced with a weapon or have had the intended victim(s) under surveillance.

The options available include:

- Take no action
- Search without evacuation
- Initiate a partial evacuation and search
- Initiate a complete evacuation and search

Searching

Source: The following information on searching is from the Office of Homeland Security

If the decision is made to conduct a search, it is advisable to use more than one individual to search any area or room, no matter how small. Searches can be performed by supervisory personnel, area occupants, or trained search teams. There are advantages and disadvantages to each method. Using supervisors to search causes fewer disturbances. However, using only supervisors to search may not be as thorough because of their unfamiliarity with many areas. Using area occupants to search their areas is the best method for a rapid search. The occupants are familiar with what does or does not belong. The drawback is that this method is disruptive, requires the training of an entire workforce, and, ideally, several practical training exercises. A search conducted by a trained team is the best for safety, morale, and thoroughness.

Search Techniques

Any room to be searched should be divided into two virtually equal parts. This equal division should be based on the number and type of objects in the room and not on the actual size of the room. The room should be searched in systematic 'sweeps.' The first sweep should cover all items resting on the floor up to the selected height (for example – waist height). The second, third, and fourth sweep should work progressively higher until the entire room has been searched, including any drop ceilings and overhead fixtures. It is imperative that personnel involved in a search be instructed that their only mission is to search for and report suspicious objects. Under no circumstances should anyone move, jar, or touch a suspicious object or anything attached to it.

Divide a Room by Height:
Initial- Floor to Hip
Secondary- Hip to Chin
Tertiary- Chin to Ceiling
Final- False Ceilings

In general:

- Search assigned areas
- Overlap for better coverage
- Start from the bottom and work up
- Start back to back and work toward each other
- Go around the walls and then to the center
- If a suspicious object is found, don't touch it!

Unattended verses Suspicious Packages

A package is suspicious if it is **HOT**:

- The package is **H**idden
- The package is **O**bviously suspicious (pipe parts, compressed gas cylinder with something attached, items with dead animals around it, radioactive, biological, wires, leaking, making noise.
- The package is not in a **T**ypical area.

If the package meets criteria or there is any doubt, notify the bomb team.

R	A	I	N
Recognize	Avoid	Isolate	Notify

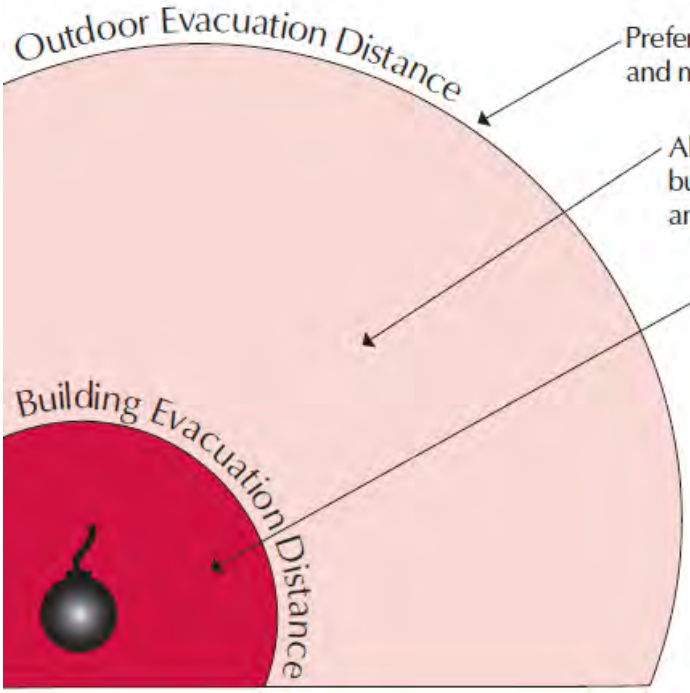
Procedures

- Do not touch the item.
- Get a good description of the item and its location.
- Mark the item without touching it.
- Do not place anything on top of the item.
- Always be alert for secondary devices.
- Place protective material near sensitive equipment
- Open doors and windows to vent blast
- Don't introduce unnecessary RF into the area.
- Do not transmit the radio near it.
- Start evacuation if not already done and have everyone take their items (i.e., purse, backpack, etc.)
- People should be moved to a safe area, and that area searched for secondary devices.
    - A minimum distance of 300 feet for a safe area
- Allow no re-entry into the building until it has been deemed safe to return

Bomb Threat Stand-Off Distances

Threat Description	Explosives Capacity[1] (TNT Equivalent)	Building Evacuation Distance[2]	Outdoor Evacuation Distance[3]
Pipe Bomb	5 LBS/ 2.3 KG	70 FT/ 21 M	850 FT/ 259 M
Briefcase/ Suitcase Bomb	50 LBS/ 23 KG	150 FT/ 46 M	1,850 FT/ 564 M
Compact Sedan	500 LBS/ 227 KG	320 FT/ 98 M	1,500 FT/ 457 M
Sedan	1,000 LBS/ 454 KG	400 FT/ 122 M	1,750 FT/ 533 M
Passenger/ Cargo Van	4,000 LBS/ 1,814 KG	600 FT/ 183 M	2,750 FT/ 838 M
Small Moving Van/ Delivery Truck	10,000 LBS/ 4,536 KG	860 FT/ 262 M	3,750 FT/ 1,143 M
Moving Van/ Water Truck	30,000 LBS/ 13,608 KG	1,240 FT/ 378 M	6,500 FT/ 1,981 M
Semi-Trailer	60,000 LBS/ 27,216 KG	1,500 FT/ 457 M	7,000 FT/ 2,134 M

This table is for general emergency planning only. A given building's vulnerability to explosions depends on its construction and composition. The data in these tables may not accurately reflect these variables. Some risk will remain for any persons closer than the Outdoor Evacuation Distance.



Preferred area (beyond this line) for evacuation of people in buildings and mandatory for people outdoors.

All personnel in this area should seek shelter immediately inside a building **away from windows and exterior walls.** Avoid having anyone outside—including those evacuating—in this area.[4]

All personnel must evacuate (both inside of buildings and out).

1: Based on maximum volume or weight of explosive (TNT equivalent) that could reasonably fit in a suitcase or vehicle.

2: Governed by the ability of typical US commercial construction to resist severe damage or collapse following a blast. Performances can vary significantly, however, and buildings should be analyzed by qualified parties when possible.

3: Governed by the greater of fragment throw distance or glass breakage/ falling glass hazard distance. Note that pipe and briefcase bombs assume cased charges that throw fragments farther than vehicle bombs.

4: A known terrorist tactic is to attract bystanders to windows, doorways, and the outside with gunfire, small bombs, or other methods and then detonate a larger, more destructive device, significantly increasing human casualties.

Source: The National Counterterrorism Center

Subject-Object Threat Assessment

- Attempt to verify the recipient
  - Is the package expected?
  - What are the contents?
- Attempt to verify the sender
  - Did indicated party send the package?
- If unsuccessful, consider package suspicious (RAIN)
  - Do not move.
  - Isolate and Evacuate area.
  - Notify Bomb Techs.
  - Limit radio traffic near the object

Basic Police Academy

Building Search and Tactical Movement



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Building Search and Tactical Movement

Instructional Goal:

This series is designed to develop a new officer's understanding of tactics and movements related to safe and effective building approaches and searches.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate authority to search a given structure
2. Demonstrate safe building and room entry
3. Identify a structure by a labeling system
4. Demonstrate safe weapon handling while moving
5. Identify appropriate search speed for a given situation

Content Outline:

- Principles of Searching
- Building Identification
- Speed of Movement
- Structural Challenges
- Room Entries
- Low Light

Searching a structure or area is not something that can be fully understood by reading text. This section serves as both a pre-read and follow up to the practical portion of the class. Movement to and through a structure must be practiced like any other physical skill.

Principles

Why are you there –	Angles & Spacing –	Communication –
You must have a clear understanding of why you are where you are and what you are looking for. Do you have the legal authority to enter the area you are about to search?	Searching structures is largely dependent on understanding angles and spacing. As you move around an object, your lines of sight shift along with you, as does your exposure to potential danger.	The importance of communication cannot be overstated. If you are working with one or more officers, your ability to communicate concisely under stress is vital.

If at all possible, AVOID searching a structure alone.

The act of searching a structure is mainly to gather information, such as information about a person's location or evidence of criminal activity. It may also serve to render aid to a victim or to rescue a downed officer. Sometimes it is to intervene during an active threat situation or other "immediate need" event. Searching buildings is inherently dangerous, and may not be necessary if you can gather the same information another way.

We will focus on two main search reasons:

1. Attempting to locate a dangerous person
2. Rendering aid to an injured person

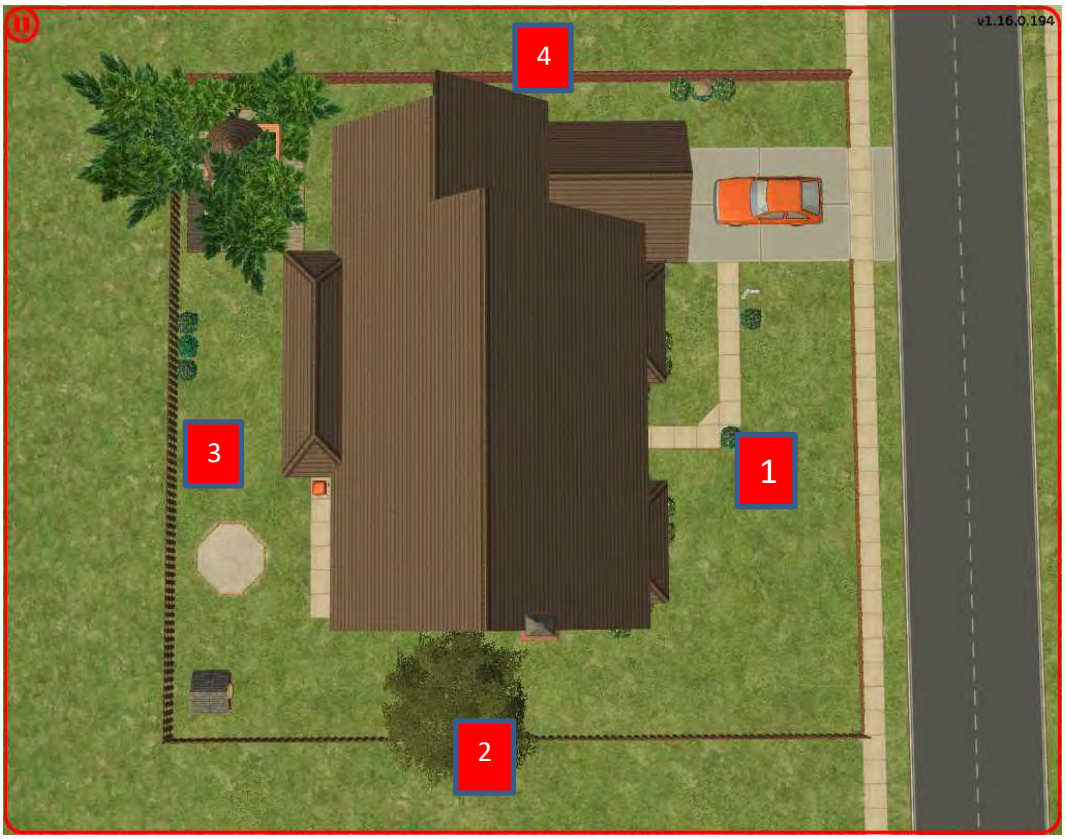
The principals of these two search types will translate easily into other scenarios, but these will likely be the most common and share many of the same principals.

Another consideration we must be aware of is how many officers will be moving together. There is a difference between clearing a structure as a single officer and working with a partner or team. We will go over these differences in detail during the practical portion of the class, as this is the most likely circumstance you will encounter on patrol.

BUILDING IDENTIFICATION

Across the state, there are variations on how to identify different points of a target building. We will go over how to indicate the different sides of a building to officers arriving on the scene, and leave individual window and door designations to your agency.

Generally, the sides of a building to be searched will be given a numerical value, beginning with the main entrance side and working clockwise around the building.



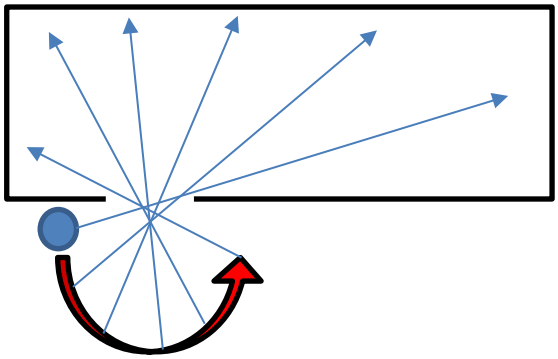
Speed of movement – There are two primary speeds with which an officer or team will enter a room or structure.

The first and most Hollywood friendly is **Dynamic entry.** The benefits of a dynamic entry when done correctly include overwhelming the threat and limiting the time available for the threat to engage officers effectively. The downside of dynamic entries is that it also limits the officers' ability to evaluate the room or structure, and takes a significant amount of practice learning to move as a team, communicate as a team, shoot while moving, acquire targets and discriminate between threat and non-threat subjects.

Controlled entry is the second and currently most popular method of movement in and around a structure. Controlled movement is done at a walking pace and with a purpose. Movements are controlled and deliberate, allowing officers to THINK about what they are doing and about to do. Nowhere in this description do we suggest movement to be slow, instead it should be done with thought and communication but without needless delay. Dynamic entries and movement have their place, and it may become necessary to shift gears during a search, but walking speed should be the default option in most cases.

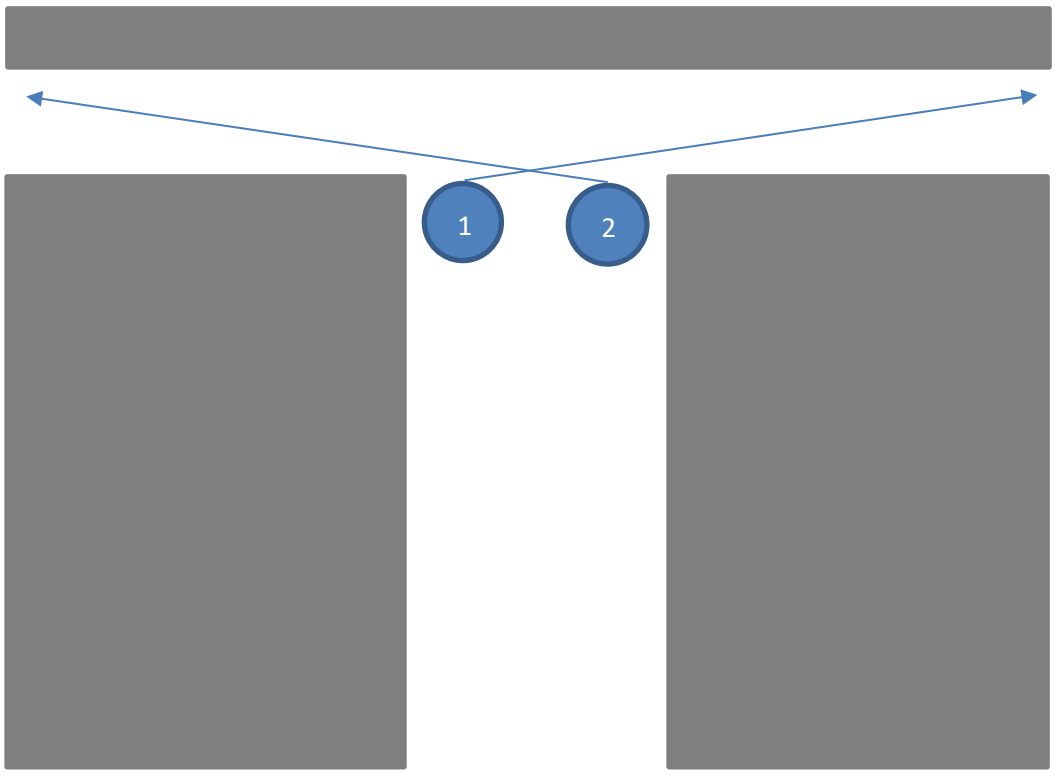
Structural problems to solve – Every structure is different and will present its' own unique set of challenges, but there are similarities for which we can train. Some of the most common include doorways, hallways, intersections, and stairwells.

Doorways – Doorways have often been called "fatal funnels." That term is sometimes misunderstood and misused. Doorways become problems when we pause in them. If doorways are used as intended, to pass through or pass by, then the danger is limited (limited but not eliminated). What way the door opens is essential to know as well. Just remember, if you can see the hinges, the door swings out or towards you. If you cannot see the hinges, the door will open in, or away from you. When dealt with properly, doorways can give the officer lines of sight into most of the room and eliminate many potential danger spots before making entry. This process can be done by slowly moving in an arc across the doorway to the far side of the opening without passing through the opening. This technique is often called "slicing the pie."



Hallways – Hallways by themselves aren't difficult to navigate, but usually offer little to no cover. The main issue with hallways is they almost always come with additional problems to solve like doorways or intersections. If you come to a doorway, you will almost always need to clear that room before moving on, an exception being an active threat situation where the threat's location is known. If the hallway has a 90-degree angle, the corner can be cleared, much like clearing a doorway; deliberately working in an arc out from the corner until you can see the majority of the adjacent hallway while being careful not to expose yourself to potential incoming fire. If you are moving in a pair, one of you should focus on upcoming doorways or angles, while the other focuses on long cover or, maintaining awareness of the far end of the hallway.

T Intersections - Solo	T Intersections - Team
T intersections in a hallway can be complicated to manage as a solo officer. If you have to work this problem alone, start on one side of the hallway you are in, and primarily focus on the corner across from you. Move along your hallway as far as you can towards the near corner without entering the intersection, getting as good a look as you can down the opposite end of the adjoining hallway. Once complete, move back away from the intersection, cross your hallway to the opposite side while watching the opposite corner of the one you just cleared. Repeat your actions on this side of the hallway to gain the best picture of the other end of the adjacent hallway. Once complete, you will have to decide which way you want to move. This decision will depend on several factors at the time. Avoid exposing yourself to multiple lines of sight as much as possible.	Having one additional officer makes a significant difference when working at a T intersection. The preferred method is for each to work along separate sides of the hallway and maintain cover towards the opposite side of the approaching intersection. You must be very aware of your partners' position, and avoid sweeping them with your firearm. As you both move closer to the intersection, you will gain better lines of sight down the opposite ends of the adjacent hallway. Once you both reach the end of your hallway, pause about one full stride back from the corner. On signal, both pivot or "snap" around your corner. Now, you are looking down the same side of the adjacent hallway you are closest too or the opposite side of the one you had just been monitoring.



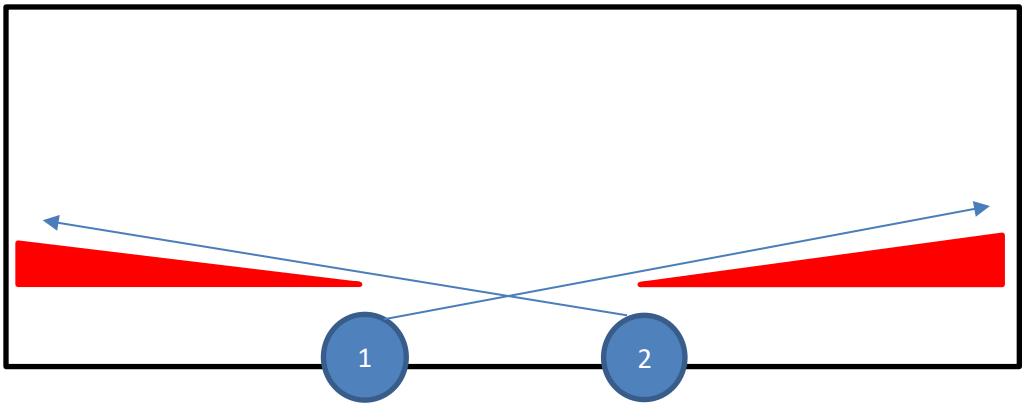
Stairwells – Stairwells present several issues, and none of them are good. When moving through a hallway or around a corner, you will usually be breaking a single visual plane at a time; with stairwells, you are likely breaking multiple planes at once, given the vertical nature of the stairs. When clearing up, you and your partner must be aware of not only what is in front of you, (landings, corners, doorways) but also what is above you. When clearing down, your feet and legs will be the first things to break the visual plane, especially if the stairs have open backs like basement stairs. Consider proning out at the top of the stairs or using a pole mirror if available to get a better line of sight before moving down the stairs.

ROOM ENTRIES

The more information you can gather before making entry into a room, the better. This can be done by arcing across the doorway from one side to the other as we spoke about earlier (slicing the pie.) This technique will let you see much of the room before stepping through the doorway and limiting the areas that haven't been cleared. Until you are making entry into the room, you must also be aware of the hallway you are standing in, monitoring for potential threats. If you have additional team members, these duties can be split between you.

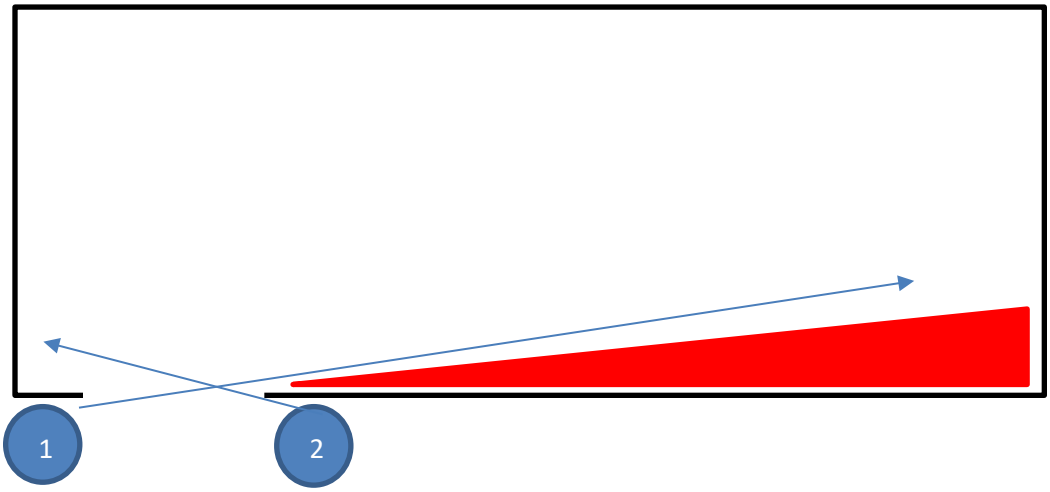
There are two main theories for entering a room for the first officer, driving to the **known** vs. driving to the **unknown**. Driving the known means the first person through the door moves to the area they can see the best, and the second officer goes the opposite direction through the doorway, or to the unknown area. Driving to the unknown means the first officer moves directly to the unknown portion of the room or the area with the highest probability of danger. Skilled entry teams tend to drive to the known first. This takes near-perfect timing and significant practice to avoid leaving the first person into the room exposed. When working with other individual officers or those from other agencies, driving to the unknown still requires timing and teamwork. Yet, it can be accomplished by officers who may not have worked together before. This also helps with consistency from officer to officer.

Center fed rooms – This type of room has the doorway roughly in the middle of one wall, and has a portion of the room to either the right or left of the doorway. This presents additional challenges to the officers attempting to make entry as there is more opportunity for suspects to be at either end of the room.



There will be areas of the room (the area covered by the triangles) you are unable to see from outside, but the majority of the room should be cleared with good teamwork before entering. These areas should be your first area of focus when entering the room.

Corner fed rooms – The advantage of entering a corner fed room is the majority of the room is off to one side of the door, limiting potential dead spots that you can't clear before entering.



LOW LIGHT

If you are moving through a structure that has less than perfect lighting conditions, there are several additional considerations to be aware of. Your eyes' ability to adjust to reduced lighting is a significant factor that can affect how well you see and assess threats. The same can be true when moving from dark to bright light. Before your eyes dilate, the white light can overwhelm them temporarily, causing blind spots.

Backlighting – When you use your flashlight, avoid backlighting yourself or your partner. Meaning do not shine your light into an area with your partner standing in front of your light source. This silhouettes them to a potential threat. The same effect will happen if you move from a lit room into a darker room. Consider turning the lights off in the room you are in, or if possible, turn the lights on in the room you are entering. If you have to move from a lighted room into a dark area, use your flashlights to dominate the darkened space with as much light as possible.



Light as a control device – If you locate a subject while searching, use your light source to help control their position and to maintain visual contact with them. Keep the light up in their eyes until you have determined whether they are a threat or not. This will most likely be your handheld light, but depending on the circumstances may be your weapon-mounted light. If using your weapon-mounted light, you must be aware you are also pointing your firearm at the subject.



When you are approaching a structure to search, be sure that you can answer the following questions:

P	Is what we are doing **P**roportionate?
L	Is it **L**egal?
A	Can we **A**ccount for our behavior / justifiable?
N	Is it **N**ecessary?

Basic Police Academy

Child Abuse and Neglect



Child Abuse and Neglect Investigations

Instructional Goal:

This course is designed to introduce a new police officer to factors related to child abuse investigations.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Describe police officer duties under Karly's Law.
2. Articulate the meaning of suspicious physical injury.
3. Analyze a situation and determine if there is an applicable ORS offense represented

Content Outline:

- Child Abuse Defined
- Oregon Revised Statutes
- Karly's Law
- Suspicious Physical Injuries
- Department of Human Services
- Mandatory Reporting
- Risk Factors
- Types of Child Abuse
- Distinguishing Between Accidental and Abusive Physical Injuries

This course will focus on a vulnerable population, children. According to the Oregon Department of Human Services, there were 84,233 reports of child abuse and neglect in 2018. Twenty-six children died in Oregon as a result of abuse and/or neglect in 2018.

You will apply the information previously covered in your criminal and procedural law series, criminal investigation, and report writing series. Topics include elements of a crime, interviewing (exception- interviewing children), photography, and evidence identification and collection.

This course will introduce you to different types of child abuse, investigation techniques unique to child abuse, and resources available to assist you.

Oregon Law- Definitions under ORS 419B.005

Oregon law defines a child as an unmarried person under 18 years of age. Abuse includes the following:

Assault and Physical Injury	Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused other than by accidental means, including any injury which appears to be at variance with the explanation given of the injury.
Mental Injury	Any mental injury to a child, which shall include only cruel or unconscionable acts or statements made, or threatened to be made, to a child if the acts, statements or threats result in severe harm to the child's psychological, cognitive, emotional or social well-being and functioning
Sexual Abuse & Exploitation	Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration, and incest, as those acts are described in ORS chapter 163. Sexual abuse, as described in ORS chapter 163. Sexual exploitation, including but not limited to: Contributing to the sexual delinquency of a minor, using a child in a display of sexually explicit conduct, prostitution, trafficking, etc.

Neglect	Treatment or maltreatment of a child, including but not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the health or welfare of the child.
Threatened Harm to a Child	Subjecting a child to a substantial risk of harm to the child's health or welfare.
Buying or Selling	Buying or selling a person under 18 years of age as described in ORS 163.537
Manufacture of Methamphetamine	Permitting a person under 18 years of age to enter or remain in a place where methamphetamines are manufactured.
Exposure to controlled substances	Unlawful exposure to a controlled substance that subjects a child to a substantial risk of harm to the child's health or safety.

Note, abuse does not include reasonable discipline unless the discipline results in one of the conditions described above.

Laws Related to Child Abuse and Neglect

In addition to the assault and sexual abuse statutes you covered in Criminal Law, statutes focus on children and vulnerable populations.

Endangering Welfare of Minor ORS 163.575

Knowingly:

- Induces, causes, or permits unmarried person under 18 to witness or remain in a place:
  - Sexual activity
  - Drugs
  - Gambling
  - Paraphernalia

Criminal Mistreatment I ORS 163.205

Parent or caretaker:

- Withholds necessary and adequate food, physical care, or medical attention, OR
- Intentionally or KNOWINGLY
    - Causes physical injury/injuries
    - Deserts with the intent to abandon
    - Leaves unattended –likely to endanger
    - Leaves in place Manufacture of a Controlled Substance

Criminal Nonsupport ORS 163.555

Parent or caretaker charged with support of a child under 18:

- Fails to provide *support*.
    - *Support* is defined as necessary and proper shelter, food, clothing, medical attention, and education.

Causing Another to Ingest ORS 475.908

Intentionally or knowingly:

- Causes a person to ingest controlled substance, marijuana, or controlled substance analog without consent
- Includes breastfeeding

Child Neglect I ORS 163.547

A person having custody/control of a child under 16:

- In a vehicle with DCS/MCS of controlled substances or cannabinoid extracts
- In or upon premises with DCS/MCS of a controlled substance or cannabinoid extracts for profit
- In/upon premises where chemical reaction involving one or more precursor substances

Child Neglect II ORS 163.545

A person having custody/control of a child under 10:

- With criminal negligence, leaves a child unattended in any place for such period of time likely to endanger the health or welfare of the child

Criminal Law Review

Assault I	Assault III	Assault IV
Intentionally or knowingly Serious physical injury Child under 6	Intentionally or knowingly Causes physical injury Child 10 or younger	Felony if domestic violence and: A child is present "seeing or hearing"; or Previous assault to the same victim

Karly's Law ORS 419B.022- 419B.024

The most significant statute related to child abuse investigations in Oregon is Karly's Law. Following the murder of Karla (Karly) Sheehan in 2005, a collaborative task force, including law enforcement, medical, and the legal community, developed standard protocols for investigating physical abuse cases involving children.

Karly's Law requires investigations of suspicious physical injuries on a child to be addressed in a coordinated and comprehensive way.

Three Essential Requirements of Karly's Law

Any person conducting an investigation who observes a child who has suffered a suspicious physical injury must immediately photograph the injuries or cause to have photographs of the injuries taken.	Each MDT must identify a designated medical professional (DMP) who is trained and regularly available to conduct medical assessments, as described in ORS 418.782(2).	Any person conducting an investigation who observes a child who has suffered a suspicious physical injury must ensure a DMP conducts a medical assessment within 48 hours.

Note- MDT stands for Multi-Disciplinary Team. Each county is required to have a collaborative team consisting of law enforcement, DHS, legal, and other community stakeholders who review all reports of child abuse.

Suspicious Physical Injuries

The legislation gives a detailed definition of suspicious injury, which includes, but is not limited to:

- Burns or scalds
- Extensive bruising or abrasions on any part of the body
- Bruising, swelling, or abrasions on the head, neck, or face
- Fractures of any bone in a child under the age of three
- Multiple fractures in a child of any age
- Dislocations, soft tissue swelling, or moderate to severe cuts
- Loss of the ability to walk or move normally according to the child's developmental ability
- Unconsciousness or difficulty maintaining consciousness
- Multiple injuries of different types
- Injuries causing serious or protracted disfigurement or loss of impairment of the function of any bodily organ
- Any other injury that threatens the well-being of a child

Department of Human Services (DHS)

The Department of Human Services Office of Child Protective Services (CPS) responds to child abuse reports. CPS-trained caseworkers across the state listen to abuse reports, assess the situations, and prepare safety plans to assist children and families.

Each county has a CPS office that will serve as a resource and collaborative partner in child abuse cases.
CPS and law enforcement agencies have a shared legal responsibility for taking child abuse reports and responding to them.

What is a DHS Referral?
When individuals are concerned about a child's welfare, they call a CPS hotline, which generates a report (DHS referral). Not all referrals are criminal concerns and do not require law enforcement intervention. In possible criminal cases, this report is sent to the appropriate investigating agency.

Mandatory Reporting

In Juvenile Law, you covered mandatory reporting. There is a 24/7 legal obligation for certain private and public officials to report child abuse. Remember as soon as possible to make a report to DHS via telephone or in writing. Mandatory reports make nearly 80% of abuse reports in Oregon.

According to the Oregon State Bar, reports and records compiled under the mandatory child abuse reporting law are confidential. The name, address, or other identifying information about the reporter cannot be disclosed except by court order. Recipients of records under the DHS's mandatory or permissive disclosure authority are also required to maintain the records' confidentiality. However, confidentiality is not absolute, as a reporter may be required to testify in court proceedings relating to the report.

A person who acts in good faith in making a report of child abuse and who has reasonable grounds for doing so is immune from civil or criminal liability for making the report and the report's content. However, this immunity provision will not shield a reporter from civil or criminal liability if they knowingly made a false report. It is a Class A violation to knowingly make a false child abuse report to influence custody, parenting time, visitation, or child support decision. Note, if a false report is made to a law enforcement agency, consider ORS 162.375 Initiating a False Report, which is a Class A Misdemeanor.

Child Abuse Risk Factors

Perpetrators of abuse are most often family members at 93%. After mothers and fathers at 76%, the next largest perpetrator is a parent's live-in companion at 10%, followed by other relatives at 7%. Other perpetrators include foster parents and other legal guardians, neighbors, friends, and daycare providers. Unknown perpetrators make up 1.4% of founded cases in Oregon.

According to the Centers for Disease Control and Prevention, risk factors are those characteristics linked with child abuse and neglect, but they may or may not be direct causes. A combination of individual, relational, community and societal factors contribute to the risk of child abuse and neglect. Although children are not responsible for the harm inflicted upon them, certain factors have been found to increase their risk of being abused and neglected.

Role of the Investigating Officer

There are three critical investigative questions following a report of abuse: Is the injury natural or caused by a medical condition? Is the injury accidental? Is the injury inflicted?



The following content is from the U.S. Department of Justice Publication titled Recognizing When a Child's Injury or Illness is Caused by Abuse.

Ruling Out Natural Phenomena or Medical Conditions

There are medical and genetic practices that can appear to be abusive injuries but are not.

- Mongolian spots and some birthmarks that occur in dark-skinned individuals can be mistaken for bruises.
- Impetigo can imitate cigarette burns.
- Excessive bruising, or petechiae, may result from low platelet counts or clotting disorders, such as hemophilia or Von Willebrand disease.
- Some infections, such as Fifth Disease, can cause rashes that appear to be slap marks on the face.
- Rarely, a young infant may have an abnormality of bone or collagen (e.g., osteogenesis imperfecta) that causes bone fractures.

Obtaining a medical history from the child's pediatrician or family practitioner can help determine if the child has any medical conditions with symptoms that may look like injuries and if abuse can be ruled out.

Distinguishing Between Accidental and Abusive Injuries

Accidental injuries usually occur along areas commonly known as bony prominences (elbows, knees, hands, nose, chin, and forehead). They generally involve less force than nonaccidental injuries, except in some well-described circumstances such as falls or motor vehicle collisions. Nonaccidental injuries are typically found in an area called the primary target zone (an area for inflicted injury, such as corporal punishment, that extends from the back of a child's neck to the area behind his or her knees). Injuries in the primary target zone should be viewed with suspicion and investigated to determine whether the punishment force was criminal.

Physical Abuse

The most common forms of child abuse involve skin lesions (such as bruises and burns) and bone fractures; they are also the most common accidental injuries. Because of variations in the appearance of bruises and burns and the time it takes for healing to occur, it can be challenging to determine whether the injury was caused by accident or abuse and when it occurred.

Examples of physical abuse include:

- Bruises
- Fractures
- Head Injuries
- Abdominal Trauma
- Burns

Physical Injuries- Bruises

Contusions result from trauma to the skin, which causes ruptures in underlying blood vessels that leak blood into the surrounding tissues. The appearance of the bruise depends on many factors.

No one can precisely assess the age of bruises based on their color. Even physicians disagree on how to determine the age of a bruise by its color. Their age predictions are no more accurate than chance because the color changes that occur as a bruise heals are not predictable and may not provide an accurate timeline of injury. In fact, color changes are quite variable. The earliest color (yellow) is seen about 18 hours after onset; red, blue, purple, and black can be seen at any time from onset to resolution. Bruises sustained simultaneously on different parts of a person's body may also change color at different rates. Thus, the investigation should not rely on opinions that assign an age to bruises.

How do we know if a bruise was caused by normal accidental means or as a result of abuse? Factors to consider:

- Child's age and development- consider the child's mobility
    - Infants who are not mobile rarely have bruises.
    - However, once they are ambulating, babies' bruises occur mainly on the legs, shins, and forehead.
    - Bruises on the head, face, and ears of a young infant are very suspicious

Activity	Age
Rolling Over	About 4 months
Sitting Up	About 6 months
Crawling	About 9 months
Cruising	About 10 months
Walking	About 12 months
Running	About 18 months

- Location
  - Falls are the most common cause of childhood injury, and the corresponding bruises occur where bones are closest to the skin and on the front of the body (e.g., knees, shins, forearms, chin, and the forehead in toddlers).
  - Bruises on the body's soft parts (e.g., cheeks, neck, buttocks, thighs, calves) are uncommon in accidental injury.
- Distribution
  - Bruises that are symmetric, located on both sides of the body, or located on multiple body surface planes suggest that abuse occurred.
  - Groups or clusters of bruises often seen on the upper arms, outside of the thighs, the trunk, and adjacent extremities should be considered suspicious.
- Size and Number
  - Accidental bruises are characteristically few in number and small in size (1 to 2 cm).
  - Abusive bruises are typically greater in number (averaging 5 to 10) and larger (>10 cm).
- Patterned Bruises
  - Patterned bruises often indicate abuse and may show the imprint of an object.
  - For example, common patterned bruises include a handprint caused by slapping; linear marks caused by blows with belts, cords, or sticks; imprints caused by a household item, such as a wooden spoon or flyswatter; bite marks; ligature marks from ropes, cords, or other bindings; and fingertip bruises caused by forceful grabbing or squeezing.

Bruises Suggesting Abuse
Any bruise on an infant younger than about nine months old or a non-cruising child.
Bruises in areas other than bony prominences.
Bruises on the ears, face, abdomen, buttocks, back, arms, thighs, hands, and feet.
Multiple bruises in clusters or large bruises.
Patterned, symmetric, or bilaterally located bruises.

Written Documentation of Bruises

- Describe the injury you observe, not the suspected cause.
- Do not attempt to date it, just describe what you see.

Physical Injuries- Fractures

Accidental fractures can occur in children who are mobile and active. Household accidents and falls produce the most common accidental fractures: linear skull, clavicle, forearm, and lower leg "toddler's" fractures. Most abusive fractures occur in infants and young toddlers. Like bruises, accidental fractures are rare in infants because they do not have the strength or mobility to cause them. Infants' bones, which are more flexible than older children and adults, can bend significantly before breaking.

When assessing the likelihood of abuse, the most critical component is a detailed history of how the injury occurred. The history should include:

- The child's age and developmental abilities (e.g., some babies are learning to stand at 12 months, while others are running)
- The presence of possible contributing medical conditions (e.g., vitamin D deficiency or osteogenesis imperfecta, also known as "brittle bones").
- The timeline of events from the initial injury to when the caregiver sought medical treatment.

Investigators should obtain as much information as possible about the child's position and motion just before, during, and immediately after the injury. The questions should focus on details of the surroundings, including the height of the fall, nearby objects' location, and type of landing surface (e.g., carpet or tile). Confirm whether the child was alone when they fell, if the child was dropped, or if the child was being held and fell along with another person. Injuries can be more severe when a baby falls while being carried; the adult's mass falling along with the child creates significantly more force than when a baby falls alone from the same height. Ask how the child acted and behaved immediately after the injury and later during daily activities (such as diaper changes). When a fracture is

suspected, children younger than age two should have x rays of all bones to look for older healing fractures from previously undetected injury or abuse. A complete survey of the skeleton (full body scan) should be conducted; this includes separate exposures of each of the long bones, spine, head, hands, and feet.

Location	Type of Fracture	Type of Force	Examples of Accidental Injury	Examples of Abusive Injury
Shaft of long bone (e.g., femur, humerus)	Spiral, oblique	Twisting (rotating)	Child falls while running, twists leg	Caregiver grabs or twists an arm
Shaft of long bone (e.g., femur, humerus)	Transverse	Direct blow, bending	Child runs into edge of coffee table	Femur is struck with baseball bat
Shaft of long bone (e.g., femur, humerus)	Buckle, impaction	Compression	Child falls onto outstretched arm	Child is slammed onto knees on a table
Shaft of long bone (e.g., femur, humerus)	Greenstick	Bending	Child's arm hits edge of step with a fall	Child's arm is grabbed and yanked upward
Metaphysis of long bone (near growth plate)	Metaphyseal "corner" fractures (classic metaphyseal lesions)	Tension, shearing	Traction on limb during physical therapy (unusual)	Violent shaking of infant
Skull	Simple, linear	Direct blow	Infant rolls off the changing table onto the floor	Caretaker throws infant onto the floor
Skull	Complex, depressed	Direct blow	Child falls off bunk bed, hitting head on corner of wooden toybox	Child is hit in the head with a hammer
Ribs	Transverse	Bending during compression of chest; direct blow (uncommon)	Infant is resuscitated by two-handed CPR	Infant's chest is squeezed during violent shaking

Features Strongly Suggesting Fractures are the Result of Abuse

Fractures in infants who are not independently mobile.
Unexplained fractures.
Inconsistency between the movement necessary to cause a fracture and the description of how the injury occurred.
Severity of the injury out of proportion to the event described.
Fracture accompanied by other evidence of abuse or neglect.
Significant delay in seeking medical care.
Multiple fractures of different ages.
Metaphyseal fractures.
Rib fractures.
Complex, depressed skull fractures.

Physical Injuries- Head and Eye Injuries

The most common signs of head injury are vomiting, seizures, stupor, and coma. However, sometimes the signs and symptoms of abusive head trauma are nonspecific, such as irritability, lethargy, or poor appetite.

Investigators should determine whether a head injury is consistent with the reported injury and whether the events surrounding the incident explain the severity. Severe or life-threatening injuries generally do not occur from short falls, falls down stairs, or minor accidents when children are playing. These injuries usually require more force, such as a high-speed auto collision or a fall from several stories in height. An evaluation of a severe head injury usually requires blood tests and imaging, and it may involve surgeons, neurologists, neurosurgeons, and other specialists.

Abuse or Accident: Falls & Childhood Deaths

Is an allegation a result of abuse or an accidental fall? There are decades of studies examining the relationship between falls and injuries in children. This research body gives us information about the practicality of injury or deaths resulting from a fall, as may be reported by a caregiver.

Helfer, Scovis, & Black (1977)	Chadwick (1991)	Williams (1991)	Chadwick & Salerno (1993)
Study: 266 children under 5 years of age Witnessed falls from bed in a hospital or home	Study: 523 falls 188 fell 10' or more Longest fall 40'	Study: 106 children All multi-witnessed falls	Study: 35,000 children over seven years Multi-witnessed falls in daycare centers
Results: 1 single linear skull fracture Zero deaths	Results: 6 severe injuries (all fell 8+ feet) Zero deaths	Results: Zero deaths falling 1' to 40' 1 death (70' fall)	Results: 1 loss of consciousness Zero fractures Zero deaths

Most fatalities from child abuse involve serious head injuries. The depth of the injury within the skull has been correlated to the amount of force used (i.e., deeper injury means more force). Bruising to the face, ears, eyes, and neck is often associated with abuse in children who are not walking or younger than age 3.

The following are some common types of head injuries:

Injury	Possible Cause
Hair loss or baldness (alopecia) or bleeding into the scalp or eyes	May be caused by hair pulling as a means of discipline.
A subdural, subarachnoid, or epidural hemorrhage under a skull fracture	Is caused by direct impact to the head and often features overlying bruising or swelling of the scalp. May be associated with an intentional blow to the head, such as when a child is struck or thrown against a hard object, or with an accidental injury.
Subdural hematomas without external injury	Correlates with whiplash or shaking.

Abusive head trauma may present as retinal hemorrhages or trauma to the eye and its surrounding structures. Abuse should always be considered in children younger than age three who have these symptoms without an adequate accidental injury history.

It is also important to observe the child's living situation for cues of abuse. For example, increased rates of abusive head trauma have been associated with a crying infant who lives in a home with adults who are not related to each other.

Isolated external eye injuries are so common in children that they seldom show clear evidence of abuse. Investigators should use their best judgment based on the caregiver's explanation and the nature of the injury. For example, two black eyes seldom occur together accidentally unless the nose is broken. Also, internal eye injuries (such as retinal hemorrhages in multiple layers of the retina that are diffuse and numerous) strongly suggest whiplash or shaking as the means of injury. An ophthalmologist should examine the child to determine if internal eye injuries, such as retinal hemorrhages, have occurred.

Physical Injury- Abdominal Trauma

Abdominal trauma is the 2nd leading cause of death by abuse. Pain and poor appetite may be the only symptoms of abdominal trauma because there is often no external bruising. Severe symptoms resulting from damage to internal organs (liver, spleen, pancreas, stomach, and intestines) can be delayed. This, in conjunction with a false or misleading history, often causes delayed recognition and treatment, leading to high rates of serious complications (internal bleeding, organ death, infection) and death.

Accidental abdominal injuries are usually caused by a long fall to a flat surface or a motor vehicle accident. A contact sport or bicycle accident may cause an abdominal injury in an older child in rare circumstances. These patients usually seek medical attention immediately. Abusive abdominal injuries occur more often in younger children with a delayed presentation for medical care. Punching, kicking, and striking with objects can cause internal organ damage. Sometimes an external bruise can help to identify the means of injury.

Physical Injuries- Burns

Burns are classified as:

Superficial (first-degree)	Affects only the outer layer of skin, the epidermis.	The burn site is red, painful, dry, and with no blisters.
Partial-thickness (second-degree)	Involves the epidermis and part of the lower layer, the dermis.	The burn site looks red, blistered, and may be swollen and painful.
Full-thickness (third-degree)	Destroys the epidermis and the dermis. May go into the innermost layer of skin, the subcutaneous tissue.	The burn site may look white or blackened and charred.
Fourth-degree	Goes through both layers of skin and the underlying tissue.	Possibly involving muscle and bone.

The most common burns in young children are contact burns and scalds. An overview of burn types (above) is helpful in determining how this type of injury may have occurred and whether it was accidental or abusive.

Contact Burns
Cause: Contact with a hot object Note: Prolonged contact with a hot object may reflect the size and shape of the part of the object that contacted the skin. Examples: flames/fire, open oven doors, stovetop burner, curling iron, clothes iron, lighter, cigarettes Risk: Children younger than age 6 (especially 2- to 4-year-olds) are the most frequent victims of abusive burns. Accidental Indicators: Usually have indistinct or smeared edges because the child quickly pulls away from the hot object. Inflicted Indicators: Due to prolonged exposure to heat, there is more uniformity of depth, sharply demarcated edges, and distinct patterns. Contact burns are unlikely to occur on clothed parts of the body. Example: "Running into a cigarette" produces an indistinct, superficial burn that is oval or comet-shaped; this is in contrast to an inflicted cigarette burn, which is typically a deep partial-thickness, round to oval-shaped lesion with well-defined edges.

Scalds
Cause: Contact with hot liquids. Note: Burns caused by hot liquids are some of the most difficult cases to assess. Example: Most scald burns in children result from household accidents involving spills or splashes by hot coffee, soup, or cooking oil. Accidental Indicators: Typically, accidental burns have indistinct margins, are usually located on one side of the body, exhibit a trailing-off pattern (the hot liquid cools as it runs down the body), and have areas that are spared or relatively spared because of the presence of clothing. Inflicted Indicators: Most abusive scald burns are caused by hot tap water, typically by immersing the child in standing hot water (e.g., in a sink or bathtub) or holding the child under running hot water. When feet and hands are submerged, the scald creates a "stocking or glove distribution" pattern. Characteristics of forced-immersion scalding include: • Burns that are of uniform depth and sharply demarcated (indicating the child was restrained). • Bilateral, symmetric burns. • Sparing of the flexion creases, indicating the body's position at the time of the injury (drawing up the arms and legs will minimize burning in the area behind the knees and where the thighs touch the abdomen). • Areas of relative sparing where the body is in contact with a cooler surface (e.g., soles of the feet pressing against the bottom of the bathtub).

General Indicators of Abusive Skin Injuries
Many injuries are present. Injuries occur in unusual locations. Injuries cover a large area. Medical care is delayed. Injuries are inconsistent with family history and the child's developmental abilities. Injuries show a pattern.

Summary

Karly's Law requires investigations of suspicious physical injuries on a child to be addressed in a coordinated and comprehensive way. The three requirements for Karly's Law include:

Any person conducting an investigation who observes a child who has suffered a suspicious physical injury must immediately photograph the injuries or cause to have photographs of the injuries taken.	Each MDT must identify a designated medical professional (DMP) who is trained and regularly available to conduct medical assessments, as described in ORS 418.782(2).	Any person conducting an investigation who observes a child who has suffered a suspicious physical injury must ensure a DMP conducts a medical assessment within 48 hours.

Examples of physical abuse include:



Child Neglect

The Centers for Disease Control and Prevention (CDC) defines neglect as failure to meet a child's basic physical and emotional needs. In Oregon, neglect is the negligent treatment of a child, by the parent/caregiver, including but not limited to the failure to provide adequate food, clothing, shelter, supervision, protection, nurturing, or medical care that is likely to endanger the health or welfare of the child.

The Oregon Department of Human Services (DHS) describes "welfare" as well-being or quality of life. Neglect can occur in a single circumstance or over a period of time (circumstantial vs. chronic neglect). Circumstantial neglect can be an action or passive inaction, an act, or omission. Chronic neglect is a persistent pattern of family functioning in which the parent/caregiver does not sustain or meet the child's basic needs, resulting in an accumulation of harm that can have long-term negative effects on the child.

The DHS Child Welfare Manual identifies the following factors for consideration:

- Neglect would be the appropriate allegation when the child either tests positive or is experiencing signs of being a substance affected infant (withdrawal signs).

- Inadequate Food: The child is not provided with the necessary quantity and quality of food to sustain physical health and development. The simple absence of food in the home does not, in and of itself, rise to the level of neglect. Reports of "no food" need to be thoroughly assessed for availability, frequency, duration, other contributing factors, other means of sustenance (eating at school, with family, etc.) before deciding that inadequate food is creating or likely to soon create a significant threat to child safety.

- Inadequate Clothing: The parent/caregiver periodically or consistently fails to provide clothing required for physical comfort and protection from the environmental elements, or the child is not given sufficient clothing in the context of their cultural and social norms. This does not include the parent/caregiver lacking the financial ability to do so. This is not a measure of style, fashion, or quantity but is meant to ensure that a child has sufficient clothing for their health and well-being.

- Inadequate Shelter: The child's living conditions are unsanitary, hazardous, or dangerous to the point they have already, or reasonably could, compromise the child's safety or health, as the result of the parent/caregiver's failure to act to correct the conditions.

- Inadequate Supervision: The parent/caregiver does not provide and/or arrange for supervision appropriate to the child's age, mental ability, and physical condition. The child has been placed in circumstances that are likely to require judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate.

- Inadequate Protection: The parent/caregiver fails to protect a child from abuse or exploitation caused by the acts of another when there is information to support that the parent/caregiver had the ability to prevent the abuse. This may include situations in which, but not limited to, a parent/caregiver who allows a child to have contact with someone known to the parent/caregiver to be unsafe, someone known to have previously abused a child, someone impaired by substances, or someone court-ordered not to have contact with children. This does not apply in domestic violence cases for which the adult victim's ability to act would likely compromise safety. Not all children who live in a home where domestic violence (DV) is present are subject to neglect. The impact on the child and the danger posed to the child must be considered. If there is an allegation of abuse directly related to the DV, the alleged perpetrator is the parent/caregiver who is the DV's alleged batterer/perpetrator. The DV adult victim should not be given an allegation of neglect related to inadequate protection/failure to

protect solely due to the child being exposed to DV. There are significant reasons adult victims do not leave a relationship in which there is power and control; staying may be a protective measure if leaving puts the adult victim and their child in more danger.

- Inadequate Nurturing: The parent/caregiver fails to provide affection, interaction, and stimulation necessary for bonding/attachment and development. This includes supporting, consoling, and being responsive to the physical and emotional needs of the child.

- Inadequate Medical care: "Medical care" may include physical health, dental health, or mental health care. This lack of care is categorized as Medical Neglect. Inadequate medical care is the failure to obtain or follow through with medical treatment for a health problem or condition which, if untreated, could endanger the child's life or become severe enough to constitute serious or long-term harm to the child. Consider the child's anticipated impact if the medication or treatment is withheld regardless of the parent/caregiver's reason for withholding medical care. Failure to provide the child with immunizations or routine well-child care alone does not constitute medical neglect.

- Unlawful Exposure to a Controlled Substance: By law, a parent/caregiver cannot allow access to controlled substances unless prescribed by a physician or under the direction of a physician. Note, substances may have a safety impact on a child, whether they are legal or illegal, such as alcohol or cannabis. Access may include not being locked or secured, being within reach, or providing the substances. While exposure to state-legalized cannabis is not "Unlawful Exposure to a Substance," exposure to cannabis may be another form of neglect.

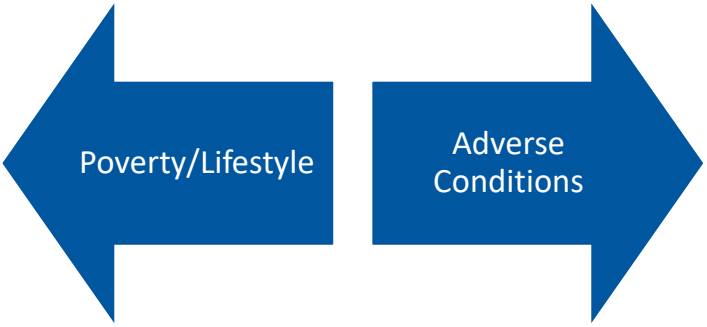
Absent a pattern, regularity, or an allegation of abuse; neglect does not include a situation in which the only concern is that the parent/caregiver is late picking up the child from school, daycare, or a parental custody exchange.

Risk Factors

A Portland State University (PSU) study identified ten risk factors associated with child neglect and mistreatment in Oregon:

1. Poverty (children 0-17)
2. Unemployment
3. Food stamp usage
4. Single parenthood
5. Low maternal/paternal education (less than high school)
6. Teen pregnancy
7. Low infant birth weight
8. Domestic violence
9. Violent crime
10. Drug arrest rates

While similarly, the CDC finds children living in poverty experience more abuse and neglect (rates are five times higher); the investigative issue for law enforcement is to separate poverty or lifestyle factors from those conditions that will adversely affect the child's health and safety.



Investigating Abuse and Neglect

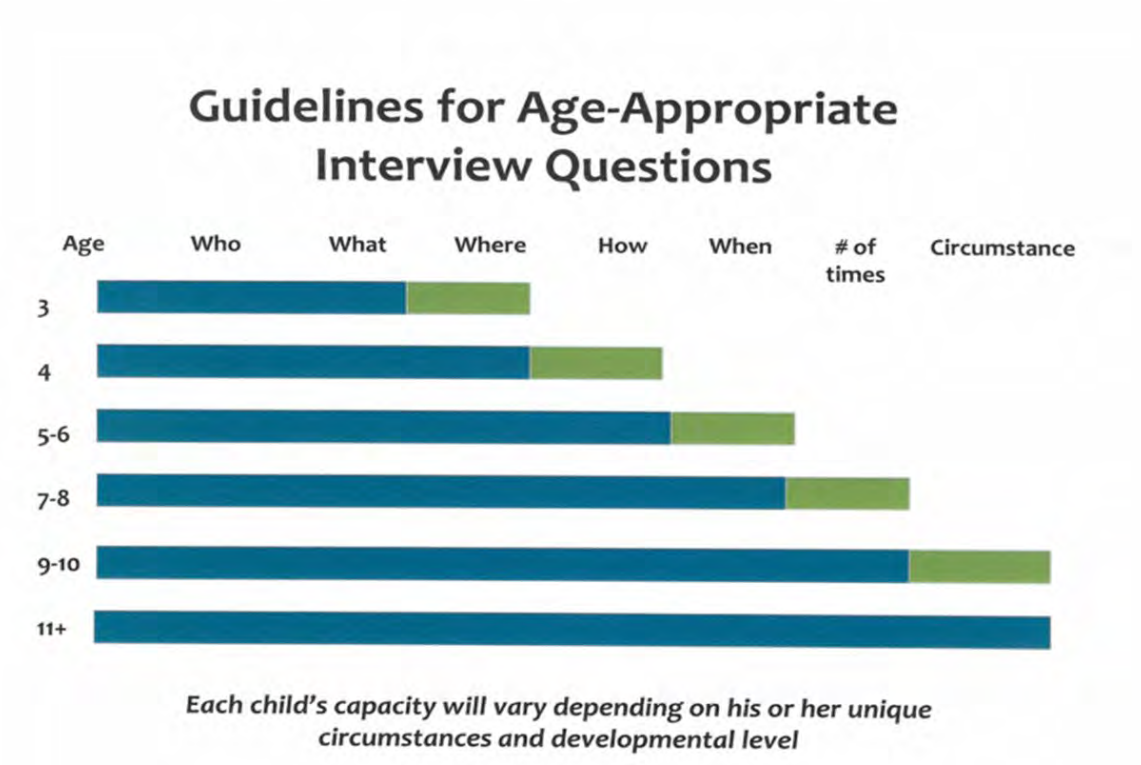


You have already covered the basics of a criminal investigation. Unique to a child abuse investigation, you will need to contact the DHS CPS worker to conduct a co-investigation.

Once a suspicious injury has been reported, it is critical that law enforcement conduct an immediate assessment of the situation, ensure that the child receives medical care, identify witnesses, and collect evidence from the incident scene.

Interviews in Child Abuse Investigations

The most significant difference with a child abuse investigation is how you contact and interview the child. Under these circumstances, police can be scary to a child, and therefore making the child feel at ease is essential. The nature of the abuse is also a factor. Interviewing a child about physical abuse is different than interviewing about sexual abuse. There is a state protocol regarding interviewing child victims of sexual abuse, called the *Oregon Interviewing Guidelines*. These guidelines indicate that children under the age of 12 should be forensically interviewed at a child abuse intervention center (more on these later).



Helpful Hints for Interviewing Children:

- Kneel to eye level
- Children are suggestible, use open-ended and not leading questions
- If a child unexpectedly discloses sexual abuse to you, allow a natural finish to their disclosure and do not ask probing questions. When they are done, tell the child you want to help them and will work with their non-offending parent to talk with someone who talks with kids all the time about this type of issue.

Additional considerations include the location/setting for interviewing children. ORS 419B.045 sets parameters regarding child abuse investigations at school. The statute includes:

- The school administrator shall first be notified that the investigation is to occur unless the school administrator is a subject of the investigation.
- The Department of Human Services or the law enforcement agency conducting the investigation is not required to reveal information about the investigation to the school as a condition of conducting the investigation.
- The school administrator or a school staff member designated by the administrator may be present at the investigator's discretion to facilitate the investigation.
- The investigator shall be advised by a school administrator or a school staff member of a child's disabling conditions, if any, prior to any interview with the child.
- A school administrator or school staff member may not notify any person, including a child's parents or guardian, other than the department or law enforcement agency of an investigation described in this section and may not disclose any information obtained during an investigation, nor shall the information become part of the child's school records.
- The school administrator or school staff member may testify at any subsequent court proceeding relating to the investigation and may be interviewed by the respective litigants prior to any court proceeding.

Interviewing Potential Suspects

When conducting interviews in child abuse investigations, what special lines of questioning might be valuable? It is helpful to be aware of common excuses and explanations from suspects. These include statements like the child's injuries were accidental, or another person caused the injuries. Your role is to eliminate excuses and benign explanations for the abuse through a thorough interview.

A statement from the parent or guardian and any witnesses regarding how the child sustained the injury will help determine whether the injury is accidental or abusive. A statement from the parent or guardian explaining why he or she delayed seeking medical treatment is important to the investigation because caretakers often postpone medical treatment or fail to provide treatment for an injured child to hide physical abuse. You must determine whether the explanation of how an injury occurred and the reason for the delay in seeking treatment are plausible or if a discrepancy exists.

A credible explanation of how an injury occurred should be

1. Reasonable and supported by fact
2. Consistent with the type, location, and severity of the child's injury.

The absence of details, failure to mention the injury, and/or presence of any contradictory or unconvincing explanations may provide clues about whether an injury was accidental or the result of abuse or neglect. Investigators should thoroughly report and investigate any explanations that seem contrary to the injury observed.

Questions to Consider:

- Who was caring for the child at the time of the injury?
- When?
- Where?
- Were they alone?
- What were they doing?
    - Feeding child?
    - Diaper change?
    - Traveling?
- What developmental milestones has the child achieved?
    - Crawling?
    - Walking?
- What steps were taken to provide medical care?

Investigation Red Flags

- Lack of memory
    - The inability to pinpoint details about major injuries should raise eyebrows.
- A delay in reporting
    - Possibly an attempt to cover behavior
    - Possibly waiting for the injury to heal
    - Possibly hiding evidence
    - Possibly waiting out any signs of injury
- Attempts to treat injuries without formal medical intervention
- The injury does not match the explanation given
- Different explanations are given over time
- The child has a different explanation
- The "clumsy" child doesn't have accidents when the suspect is not around

- The child is repeatedly injured in the care of one person/one group of people

Evidence in Child Abuse Investigations

Careful examination and documentation of a child's injuries is a critical part of evidence collection in child abuse investigations. Collect evidence even if an accident or natural cause is possible. In addition to taking photos of visible injuries, if the report indicates an injury and you do not see one, still document by taking photos.

Evidence considerations:

- Is there a constellation of injuries?
- What are the injuries?
    - Broken ribs/brain injuries
    - Subdural hematoma/retinal hemorrhages
- Are there old, healing, and new injuries?

Observation considerations:

- You are not always looking for a traditional weapon
- Check washer, dryer, clothes hamper
- Check trash
- Is there food for adults, but a starving child?
- Are there locks on the fridge?
- Are there a means to lock children in?
- Is there isolation of one child?

Some Additional Abuse Investigation Considerations

There are numerous considerations to work through in abuse investigations. The following sections provide some insight into various issues that could be considered in a child abuse investigation.

Abuse or Discipline?

Is an allegation abuse, or is it a parent appropriately disciplining their child? How does an officer determine the difference? Oregon law (ORS 161.205(1)) permits spanking as long as it is reasonable and necessary to "maintain discipline or to promote the welfare of the minor."

What is reasonable?

- No injury or bruising
- No dangerous instrument
- Not protracted period of time
- Applied to a safe place (area padded from bones and delicate organs)

Abuse or Medical: SIDS?

According to the Centers for Disease Control and Prevention, sudden unexpected infant death (SUID) is a term used to describe the sudden and unexpected death of a baby less than one-year-old in which the cause was not apparent before investigation. These deaths often happen during sleep or in the baby's sleep area. Sudden unexpected infant deaths include sudden infant death syndrome (SIDS), accidental suffocation in a sleeping environment, and other deaths from unknown causes.

The items in a baby's crib and his or her sleeping position can combine with a baby's physical problems to increase SIDS risk. Examples include:

- Sleeping on the stomach or side- Babies placed in these positions to sleep might have more difficulty breathing than those placed on their backs.

- Sleeping on a soft surface- Lying face down on a fluffy comforter, a soft mattress, or a waterbed can block an infant's airway.
- Sharing a bed- While the risk of SIDS is lowered if an infant sleeps in the same room as his or her parents, the risk increases if the baby sleeps in the same bed with parents, siblings, or pets.
- Overheating- Being too warm while sleeping can increase a baby's risk of SIDS.

Abuse or Medical: Factitious Disorder?

Factitious Disorder by Proxy
A mental disorder when a person acts as if a person in their care has an illness when they do not. The term "by proxy" means "through a substitute."

One category of factitious disorder is Munchausen Syndrome by Proxy. This is a mental health disorder most often occurring with mothers and usually involves a child under six. Munchausen Syndrome by Proxy is considered a form of abuse. This is a rare disorder. With Munchausen Syndrome by Proxy, the suspect intentionally harms their children or describes non-existent symptoms to receive attention. This may include lying about symptoms, altering or falsifying tests, and falsifying medical records.

Munchausen Syndrome by Proxy is serious. The suspect may induce symptoms through various means, such as poisoning, suffocating, starving, and causing infection. Additionally, the suspect is willing to have the child undergo painful or risky tests and operations to gain the sympathy and special attention given to genuinely ill people and their families. This can lead to continued abuse, multiple hospitalizations, and the death of the victim.

Child Warning Signs:

- Child has a history of hospitalizations (possibly in different hospitals), often with a strange set of symptoms.
- Worsening of symptoms generally is reported by the mother and is not witnessed by hospital staff.
- The child's reported condition and symptoms do not agree with the results of diagnostic tests.
- There might be more than one unusual illness or death of children in the family.
- The child's condition improves in the hospital, but symptoms recur when the child returns home.
- Blood in lab samples might not match the blood of the child.
- There might be chemicals in the child's blood, stool, or urine.

Concluding the Investigation

Removing a Child from the Home- Protective Custody

As the initial investigation concludes it may be appropriate to remove a child from their home and place them into protective custody. Be aware that law enforcement's legal authority to interview and/or remove a child from their home exists, but this is not without careful action. Substantial case law exists, which may put additional parameters around investigations and removals.

ORS 419B.150 states a child may be taken into protective custody without a court order when there is *reasonable cause* to believe:

- The child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare.
- There is an *imminent threat* of ***severe harm*** to the child;
- The child poses an *imminent threat* of ***severe harm*** to self or others; or
- There is an *imminent threat* that the child's parent or guardian will cause the child to be beyond the reach of the juvenile court before the court can order that the child be taken into protective custody.
- If there is reason to know that the child is an Indian child, the child may be taken into protective custody without a court order only when it is necessary to prevent *imminent* physical damage or harm to the child.

Case Law Considerations for Warrantless Removal:

- Reasonable cause that the child is in imminent danger of serious bodily injury.
- Even where there is reasonable cause to believe that a child is in imminent danger, the scope and degree of state interference must be justified by the alleged exigency.

Case Dispositions

Child abuse and neglect investigations have some different dispositions than standard criminal cases.

The Department of Human Services lists the following:

- Founded- Substantiated. There is reasonable cause to believe the abuse occurred.
- Unfounded- Unsubstantiated. There is no evidence the abuse occurred.
- Unable to determine- Inconclusive. There is some indication the abuse occurred. However, there is insufficient evidence to conclude there is reasonable cause to believe that abuse occurred.

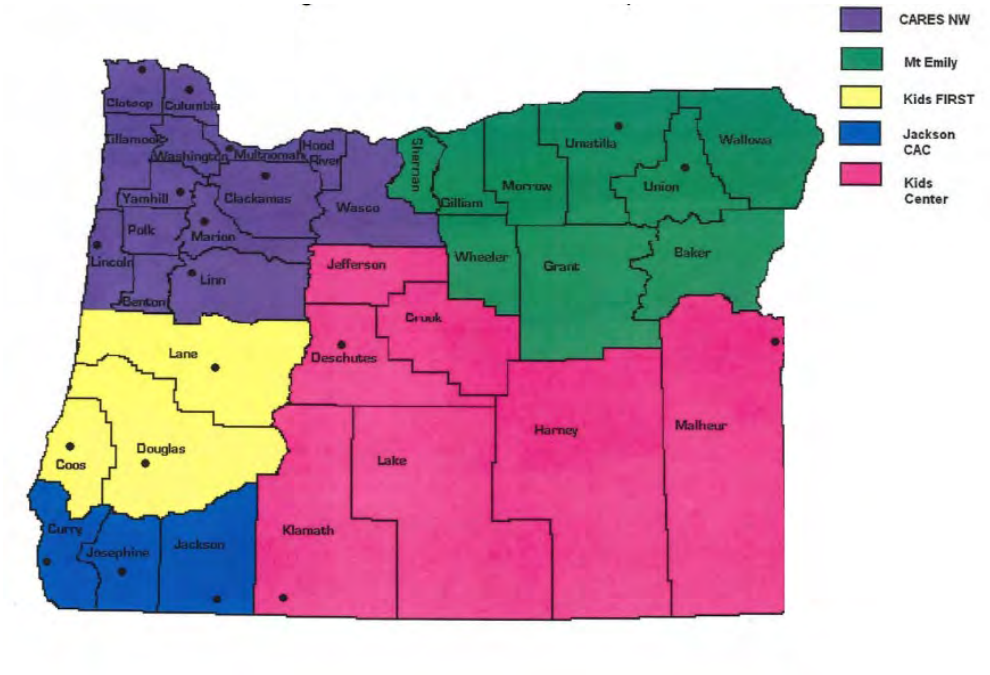
Law enforcement conclusions may include the following:

- Discontinue, insufficient evidence
- Suspect is arrested
- Grand jury and indictment
- Service contract with DHS

Child Abuse Intervention Centers (CAIC)

This course will conclude with an introduction to a key child abuse and neglect resource, the Child Abuse Intervention Centers (CAIC).

A child abuse intervention center is a neutral, child-sensitive community-based facility to which a child may be referred to receive a thorough child abuse medical assessment to determine whether the child has been abused or neglected. Services also include forensic interviewing, treatment, and support services for child victims. Children are referred to an assessment center through DHS, law enforcement, or medical providers.



A CAIC medical exam is conducted by physicians specializing in the recognition and treatment of child abuse. This head-to-toe check-up includes a complete social and medical history. Any physical signs of abuse are documented and may be used as evidence in the abuse investigation. Equally important, children have the opportunity to ask questions about how the abuse may have affected their bodies and development and to receive reassurance from trained staff.

Basic Police Academy

Civil Rights and Liabilities



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Civil Rights and Liabilities

Instructional Goals:

This course is designed to develop a new officer's understanding of the Constitution, duty to protect the rights of all citizens, and how to reduce civil liability risks.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Explain the role of an officer in protecting the rights of citizens.
2. Identify types of encounters that could expose an officer to potential criminal or civil action.
3. Articulate steps that law enforcement officers/agencies can take to reduce exposure to civil liability.

Content Outline:

- Constitutional Rights
- Significance of Civil Liability
- Legal Authority for Civil Liability / Civil Rights Violations Claims
- Consequences and Costs
- Qualified Immunity
- Preventing/Reducing Exposure to Civil Liability

Introduction – "To uphold the constitution"

Constitutional rights are the cornerstone of our free society, and for obvious reasons, the law imposes special responsibilities for the preservation and protection of those rights on law enforcement officers. Every law enforcement officer, federal, state, and local, has the sworn duty to uphold the Constitution and to protect the rights of all citizens. That duty imposes on law enforcement officers the corresponding obligations of knowing the fundamental rights which the Constitution protects and secures.

Constitutional Rights

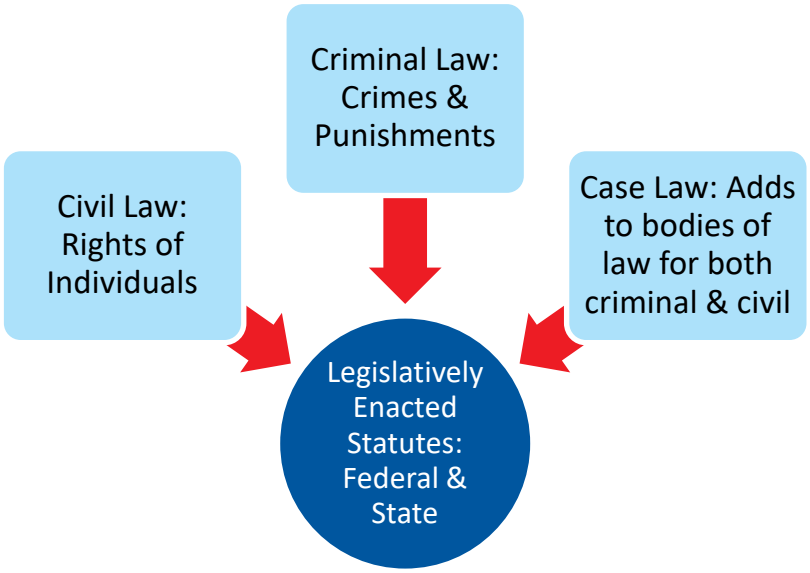
The Supreme Court of the United States has held that the protections of the Bill of Rights run only against the federal, city, state, and county governments and their agents, not against private individuals. Similarly, the protections of the Fourteenth Amendment run only against the States and their agents, not against private individuals.

Why is Civil Liability Important?

Actions of law enforcement officers are being scrutinized more and more every day. There is an increasing number of lawsuits filed against police, and an accompanying increase in the number of distinct areas in which officers are being held liable.

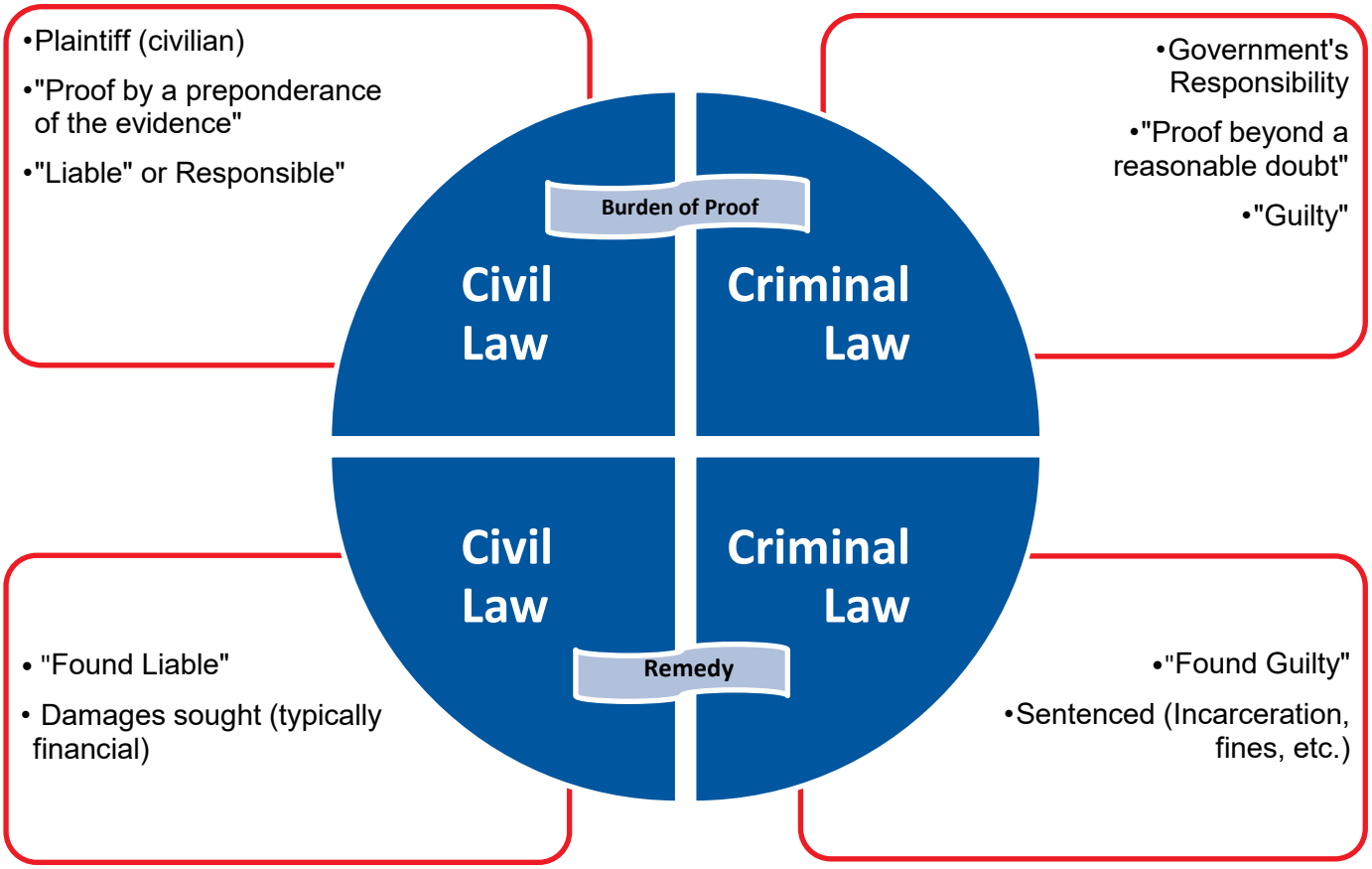
Differences between Civil and Criminal Law

Any discussion of civil liability benefits from a basic understanding of the differences between civil and criminal law. In the United States' legal system, criminal law is generally understood as that body of legislatively enacted statutes that define crimes and their punishments. These laws are enacted by state legislatures and by Congress as well. Therefore, criminal law is both state and federal. Criminal law is also quite obviously connected to the provisions of the state and federal constitutions. These documents are the source of those "constitutional rights" frequently referred to in the context of criminal prosecution. The court made law, or "case law" interprets statutes and constitutional provisions, and further adds to the body of law known as "criminal law."



By contrast, civil law is generally understood as that body of law more concerned with the rights of individuals, both concerning one's relationship with and to the government (state and federal) and with and to one's fellow citizens. As is the case with criminal law, civil law is also outlined in legislatively enacted statutes at both the state and federal level. And, like criminal law, civil law is understood by reference to constitutional provisions. Lastly, the court made "case law" continually grows the body of law we know as "civil law."

One way by which civil law and criminal law differs is concerning what we call the "burden of proof." In a criminal case, where a crime has been charged against a "criminal defendant," the government's burden of proof, which must be met for the defendant to be found "guilty" of the crime, is "proof beyond a reasonable doubt." This burden is explained by reference to a need for jurors to find "to a moral certainty" the guilt of the defendant. Further, jurors are advised that this certainty is such as they would apply to the most serious of their personal affairs. By contrast, the burden of proof in a civil case, where a "plaintiff" has sued a "defendant," is "proof by a preponderance of the evidence." The plaintiff, who is represented by his or her attorney usually, must meet this burden before the defendant may be held "liable" or "responsible," according to the plaintiff's claim or claims. Proof to a preponderance of the evidence is a "more
likely than not," standard. Many refer to this as a "51%" standard, though this reference is not found in the legal instructions given to civil juries.



A significant difference between civil and criminal law concerns what we call the "remedy." In a criminal case, if a criminal defendant is "found guilty," the potential remedy for the government, who is the "party" bringing the case, is the imposition of a sentence of incarceration. Additionally, the defendant may be fined, he may be ordered to forfeit property, he may be ordered to pay compensatory restitution to his victim, and he may be placed on some sort of supervision, with conditions related to his crime of conviction. Conversely, when a civil defendant is "found liable" for the plaintiff's claim/s, the plaintiff's remedy is typically financial. When a civil plaintiff sues, the plaintiff will seek "damages" for their harm or injury, or deprivation of rights. However, even if the plaintiff prevails, they may not necessarily be awarded the amount of damages they seek.

Civil Liability

Applying the principles discussed above, "civil liability" describes the potential responsibility for payment of damages, and sometimes for other court-enforced conditions, in a civil "lawsuit." Fundamentally, civil liability is established on the concept of a "tortuous" act or conduct, resulting in damages.

So, what is a "tort?" The Oregon Tort Claims Act, which we will discuss later in greater detail, defines a tort as, "the breach of a legal duty that is imposed by law, other than a duty imposed from contract or quasi-contract, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or protective remedies." More generally speaking, a tort is a civil wrong or wrongful act, recognized by law, from which injury occurs to another. Keep in mind that "injury" here does not necessarily mean "bodily injury." One can suffer financial injury, reputational injury, etc.

Torts include negligence actions as well as intentional wrongs. It is important to note that not all unfortunate outcomes result in "tort liability." "Negligence" is the failure to exercise that degree of care, which a person of ordinary reasonable prudence would exercise under the same or similar circumstances. Practically speaking, if the injury in question does not result from conduct which at least rises to the level of negligence, it is unlikely that the conduct would be recognized as a tort.

An example of a tort of negligence might be the personal injury that results from an automobile crash, where the "at fault" driver was negligent for texting while driving, and consequently collided with a vehicle in an intersection who had the right of way.

An example of an intentional tort would be "assault" and/or "battery." Here things get interesting; "assault" is also the name of a crime. There are actually many torts, the names of which also describe crimes.

A civil lawsuit will be initiated by an aggrieved party, who we refer to as the plaintiff. The plaintiff will either allege the commission of a tort or torts, as discussed above, or that an alleged injury was caused by some other act, or omission, in violation of a statutory or constitutional right. The civil defendant may be a private person or persons, such as in the example of the automobile crash above. Or, it may be a person who works for a governmental entity, such as an officer. The "status" of the defendant in a civil lawsuit, will directly affect the plaintiff's options, in terms of which claims they bring, and under which authority.

The most likely claim an officer might face from a would-be plaintiff is "failure to perform a duty owed another." This claim would most likely be alleged as a tort claim. There are four requirements for a successful tort claim. Remember, the plaintiff bringing the civil lawsuit has the burden of proving all of these requirements by a preponderance of the evidence. Failing to prove any one of them would mean the plaintiff cannot prevail.

Four Requirements for a Successful Tort Claim

Plaintiff is responsible for proving all of these, by a preponderance of the evidence.



The first requirement is the establishment of a legal duty owed to the plaintiff. How might this be demonstrated as regards to an officer? "Dial 9-1-1" is everywhere. It is in the phone book, online, in public service announcements, etc. It is taught to our children in grade school. It is painted on police patrol vehicles. Arguably, this admonition assures the public of help if that number is called. This implied practice of "Call 9-1-1 for help" is bolstered by readily available evidence that the public has been helped before by doing so. The plaintiff, however, would have the burden of proving that these realities equate to a legal duty to the plaintiff him or herself.

The next requirement assumes that a legal duty has been sufficiently proved and that there has been a breach of that duty. In other words, there has been a failure to perform a duty owed another. For example, the plaintiff might argue that telling a caller that help is on the way when help has not been dispatched, might be interpreted as a failure by commission or omission of an act of duty.

The next requirement for a successful tort claim is evidence of damage resulting in an injury. Again, we must broadly interpret the term "injury" here. Possible examples would be loss of life, physical injury, loss of property, emotional damage, or loss of wages or earning capacity. And lastly, the plaintiff has the burden of proving "cause and effect." There must be a causation relationship between the alleged breach of duty and the claimed damage. A successful tort claim requires proof of all four elements. A defendant would successfully disprove the plaintiff's claim by disproving even only one element.

Sources of Legal Authority for Civil Liability Claims

The Oregon Tort Claims Act (ORS 30.260 to 30.300)

The Oregon Tort Claims Act (ORS 30.260 to 30.300) allows persons to assert claims and to sue public bodies, and in some instances, their officers, employees, and agents – for torts, subject to certain conditions and limitations. Because some form of governmental entity will always employ officers, the Oregon Tort Claims Act will be the vehicle by which a would-be plaintiff would sue an officer for a tort alleged to have occurred on the job. (We will not be discussing here the potential torts which an officer could face in their private life.)

The Oregon Tort Claims Act is found at ORS 30.260 to 30.300. Subject to certain damage limitations, "every public body is subject to a civil action for its torts and those of its officers, employees, and agents acting within the scope of their employment or duties, whether arising out of a governmental or proprietary function...." A "public body" for purposes of the act would include the officer's employer. For example, "Metcom 911" would be a public body. The act further provides that "the *sole cause of action* for a tort committed by officers, employees or agents of a public body acting within the scope of their employment or duties ... is an action under ORS 30.260 to 30.300.

The remedy provided by ORS 30.260 to 30.300 is exclusive of any other action against any such officer, employee, or agent of a public body whose act or omission within the scope of the officer's, employee's or agent's employment or duties gives rise to the action. No other form of civil action is permitted." This has the potential to be confusing because we have discussed above the possibility of a plaintiff suing an officer not for a tort, but rather for a violation of statutory or constitutional rights. That is an entirely different sort of legal action and may be pursued in addition to an Oregon Tort Claims Act lawsuit.

What the Oregon Tort Claims Act makes clear is that it is the only means by which a plaintiff may sue an officer, for example, employed by a public body, for a **tort**.

The Office of the Oregon State Court Administrator calculates the annual adjustment to the liability limits for actions against public bodies pursuant to the act. New liability limits for injury, death, and property damage claims brought against state and local public bodies are adjusted annually on July 1st and apply to all causes of action arising between that date and the following July 1st.

Lastly, the Oregon Tort Claims Act provides that employees of public bodies enjoy "indemnity protection." The act states, "The governing body of any public body shall defend, save harmless and indemnify any of its officers, employees, and agents, whether elective or appointive, against any tort claim or demand, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of duty." However, the act also states that the above provisions "do not apply in case of malfeasance in office or willful or wanton neglect of duty."

The Oregon Tort Claims Act provides employees of public bodies with "Indemnity Protection."

Federal Civil Rights Violations

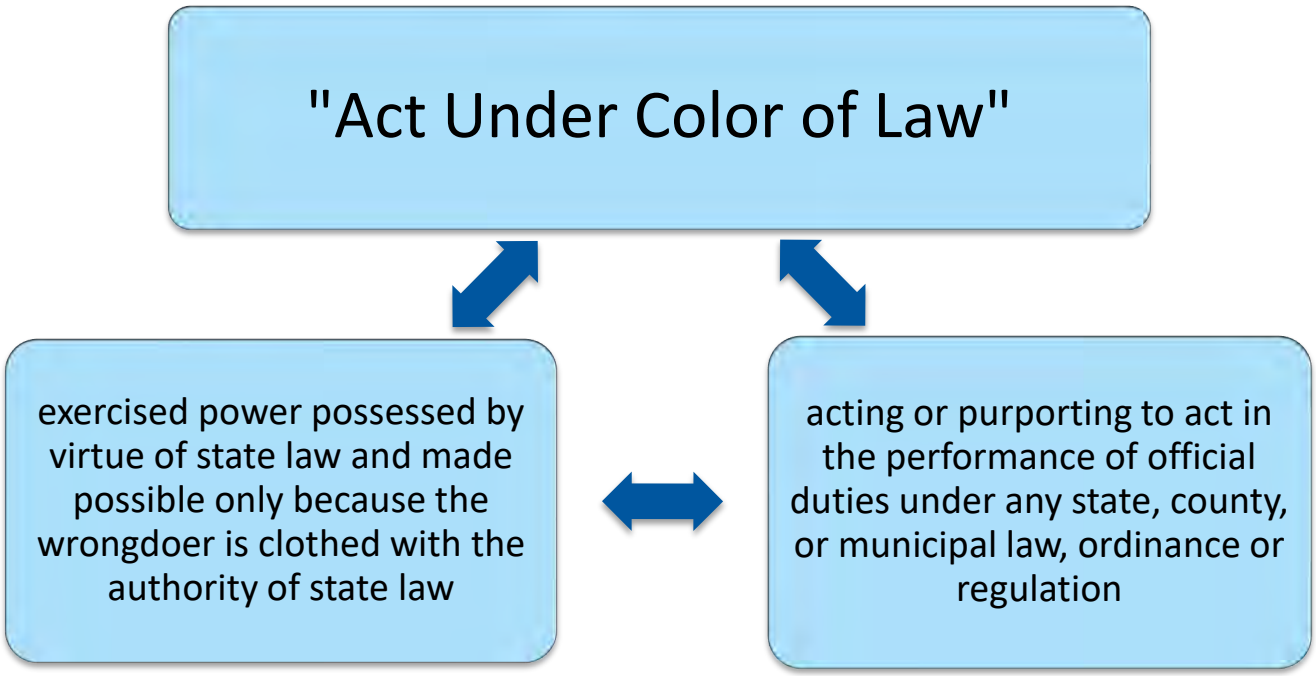
Title 42, U.S.C., Section 1983

The Civil Rights Act of 1871 was an Act of the United States Congress, which empowered then President Grant to suspend the writ of habeas corpus to combat the Ku Klux Klan and to bring to justice those who were violating the civil rights of newly freed African Americans. Several of the act's original provisions still exist today in codified statutes, but arguably the most known, and most significant still-existing provision is Title 42, United States Code, (U.S.C.) Section 1983: Civil action for deprivation of rights.

It provides, "Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory, or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceedings for redress."

Title 42, Section 1983, serves as one of the most significant legal authorities by which the courts may protect those whose rights are deprived. This statute provides a way for persons to sue when their federally protected rights are violated. The requirements one seeking relief under this statute must prove are: (1) the defendant/s acting under color of state law (2) deprived plaintiff/s of rights secured by the Constitution or federal statutes.

So, what does it mean to "act under color of law?" A civil defendant has acted under color of state law where he or she has "exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." This has also been explained as "acting or purporting to act in the performance of official duties under any state, county, or municipal law, ordinance or regulation." A person deprives another of a federally protected right, within the meaning of Section 1983, "if he does an affirmative act, participates in another's affirmative act, or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made."



Title 42, Section 1983, made money damages relief available to those whose federally protected rights had been violated by a person acting under "color of law." Without Section 1983, a potential plaintiff could make out an actionable claim for a constitutional violation or violation of a federally created statutory right. Still, there would be no meaningful remedy for the violation. Negligence is NOT a violation of a person's federally protected civil rights.

While these civil liability claims are usually filed in federal courts, a claim may be brought against a color of law actor in state or federal court. An essential feature in Section 1983 lawsuits is that if the plaintiff wins, they are often awarded their attorney fees, which may be as much as or even exceed the money damage award.

Title 18, U.S.C., Section 242

"Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death."

a. This provision makes it a crime for someone acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.
    - The offense doesn't need to be motivated by racial bias or by any other animus.

b. Defendants act under color of law when they wield power vested by a government entity.
   - Those prosecuted under the statute typically include police officers, sheriff's deputies, and correctional officers.
   - However, other government actors, such as judges, district attorneys, and other public officials, can also act under the color of law and can be prosecuted under this statute.

c. Section 242 does not criminalize any particular type of abusive conduct. Instead, it incorporates by reference rights defined by the Constitution, federal statutes, and interpretive case law.
   - Cases charged by federal prosecutors most often involve physical or sexual assaults.
   - The Department of Justice has also prosecuted public officials for thefts, false arrests, evidence-planting, and failing to protect someone in custody from constitutional violations committed by others.

d. The F.B.I investigates these federal crimes, and are triable only in a federal court.

e. Federal prosecutors working in the Criminal Section of the Civil Rights Division of the United States Department of Justice will try these cases.

The US DOJ website provides the following history of the Criminal Section:

> One of the oldest of the Civil Rights Division's units, the Criminal Section, enforces laws that date to the post-Civil War Reconstruction Era.
>
> The Criminal Section is unique within the Division, prosecuting criminal cases while the remainder of the Division handles civil matters. Some of the Criminal Section's earliest prosecutions involved the murder of minorities and civil rights workers in the South during the 1960s prior to desegregation. In 1968, Congress broadened the scope of protection afforded by civil rights statutes by passing a law that made it a crime to interfere by force or threat of force with certain rights (such as employment, housing, use of public facilities, etc.) because of someone's race, religion, color or national origin...

Another section of the US DOJ Civil Rights Division of particular interest to public safety professionals is that of the Special Litigation Section:

> The Special Litigation Section is one of several Sections in the Civil Rights Division. We work to protect civil rights in the following areas: 1) the rights of people in state or local institutions, including jails, prisons, juvenile detention facilities, and health care facilities for persons with disabilities; 2) the rights of individuals with disabilities to receive services in their communities, rather than in institutions; 3) the rights of people who interact with state or local police or sheriffs' departments; 4) the rights of youth involved in the juvenile justice system; 5) the rights of people to have safe access to reproductive health care clinics, and 6) the rights of people to practice their religion while confined to state and local institutions. We can also act on behalf of people at risk of harm in these areas.

More information about this section and cases specifically involving this section can be found at https://www.justice.gov/crt/special-litigation-section

The Americans with Disabilities Act (A.D.A.)

We have been discussing the remedy of seeking money damages for violation of a "federally protected right." We have seen that these rights may be found in the federal Constitution, or may be created by federal statute. One such statute which creates rights enforceable under Title 42, Section 1983, would be the Americans with Disabilities Act, or the A.D.A. This act was signed by President George H.W. Bush in 1990 and made it illegal to discriminate against a person based on visual, speech and hearing impairments, AIDS, alcoholism and drug addiction, and serious medical conditions.

The A.D.A. is a federal civil rights law. It gives federal civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in state and local government services and public accommodations, among other guarantees. An individual is considered to have a "disability" if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.

Title II of the A.D.A. prohibits discrimination against people with disabilities in state and local governments' services and programs. Law enforcement agencies are covered because they are programs of state or local governments. The A.D.A. affects virtually everything that officers, deputies, and troopers do, for example:

- Receiving citizen complaints
- Interrogating witnesses
- Arresting, booking and holding suspects
- Operating 911 emergency centers
- Providing emergency medical services,
- Enforcing laws

HIPAA - Health Insurance Portability and Accountability Act of 1996

Another example of a federal statute that creates rights enforceable under Title 42, Section 1983 is HIPAA. HIPAA is federal legislation that provides data privacy and security provisions for safeguarding medical information. The language of the act was mainly concerned with controlling the electronic transfer of health information. While Congress passed the act itself in 1996, its stringent medical privacy regulations are known as the "privacy rule" did not go into effect until 2003. "Health care organizations," were required to comply with the privacy rule beginning in April 2003. The goal of the privacy rule, according to drafters of the rule, was to give patients more control over the release of their medical information.

HIPAA applies to "health care organizations." If the organization electronically bills for health care or **transmits health information**, HIPAA applies. Most HIPAA disputes which would be of interest to officers' focus upon the "required by law" exception for "protected health information." That provision allows HIPAA-covered entities to disclose such information to the extent that it is "required by law." Otherwise, "protected health information" is NOT to be disclosed. The history of HIPAA suggests it was not intended to preempt state disclosure/public records laws.

If officers provide "health care" in a given circumstance, the medical information in a record generated appears likely to be protected from disclosure, that is, "exempt" under Oregon's public records laws. Therefore, it is likely protected under HIPAA, and disclosure could subject the involved persons to civil liability.

What are our Agencies doing about Civil Liability?

- Department administrators are changing their expectations of law enforcement officers employed in their agencies.
    - Examples: A higher level of professionalism, proactive liability reduction, etc.

- To ensure officers know what they can and cannot legally do, agencies are providing more training for their officers.
    - Officers would feel more comfortable in exercising their authority and powers if they know what the courts are saying.
    - This should reduce potential exposure to lawsuits as well.

- Educating the public
    - Examples: Citizens' academies, ride-a-longs, computer-simulated demonstrations, neighborhood meetings, and community-based policing all enhance the public's understanding of our job as police officers.

    - If the public better understands the challenges officers face, shouldn't that reduce the potential for a successful lawsuit?

    - Promoting a sense that the safety of the community is a responsibility shared by the police and the members of the community.

Why Police Get Sued – Some examples (*this list is not exclusive*)

General Liability – These examples involving general activities you do on the job

- False arrest
- Excessive force
  - Property handling
  - Personnel and employment practices
  - Medical care
  - Search and seizure
- Investigation
- Constitutional/federal statutory rights violated
- Contacts with mentally ill persons

Vehicle Liability – These examples arise out of the operation of a vehicle in an official capacity. Few of these cases result from pursuits – most arise from routine or emergency responses. However, pursuits ending in death have the potential for a large monetary wrongful death settlement. Further, even cases resulting in serious physical injury may result in considerable verdicts for the plaintiff. Negligence is the most common theory of liability for lawsuits related to vehicle operation. Examples of vehicle operations alleged in lawsuits:

- Rear-ending vehicle in front while using MDT
- Moving object struck
- Lane change/merge
- Emergency vehicle operation
- Fixed object struck

<u>Possible Consequences and Costs of Litigation</u>

1. Damages
2. Attorney Fees
3. Criminal penalties, state and federal
4. Employment, disciplinary issues
5. Deadly force resulting in death?

Qualified Immunity

Public officials are immune from suit under 42 U.S.C. Sec. 1983, unless they have "violated a statutory or constitutional right that was 'clearly established' at the time of the challenged conduct." This is an exacting standard that "gives government officials breathing room to make reasonable but mistaken judgments."

"Qualified immunity" is what is known as an affirmative defense, which means that a civil defendant must raise it, or else it is lost. If successful, qualified immunity is immunity from civil suit rather than a mere defense to liability and entitles an officer to avoid standing trial. As a practical matter, qualified immunity is rarely granted before the discovery process is complete.

Qualified immunity permits officers to perform their duties without fear of constantly defending themselves against insubstantial claims for damages. At the same time, it still allows the public to recover damages where officers unreasonably violate a person's constitutional or federally protected rights. The doctrine of qualified immunity is designed to protect all but "the plainly incompetent or those who knowingly violate the law."

In 2001, in Saucier v. Katz, the U.S. Supreme Court announced a two-part test for analyzing claims made in federal civil rights lawsuits. First, the lower court must consider whether there was a violation of the plaintiff's constitutional or federally protected rights. If the lower court decides the plaintiff's rights were violated, the officer still may not have liability if the appellate courts had not given prior direction. Therefore, for the second part of the test, the lower court must determine whether the right was "clearly established" at the time of the alleged violation. The court is free to consider either part of the test first. It is common for courts to determine that qualified immunity applies because the right was not clearly established, and to grant qualified immunity without making a determination of whether a constitutional right was violated.



Two-Part Test for Analyzing Qualified Immunity (as determined by the Courts)

In 2017, in White v. Pauly, the Supreme Court observed that over the last five years, it had overturned numerous denials of qualified immunity by the lower courts. The court admonished the lower court in Pauly for "misunderstanding" the "clearly established analysis." The court noted that "qualified immunity is important to society as a whole," and it "is effectively lost if a case is erroneously permitted to go to trial." While the court's case law "does not require a case directly on point" for a right to be clearly established, "existing precedent must have placed the statutory or constitutional question beyond debate." The court found it "necessary to reiterate" the longstanding principle that "clearly established law" should not be defined "at a high level of generality." While the court acknowledged that "general statements of the law are not inherently incapable of giving a fair and clear warning" to officers, it held that "in light of the pre-existing law, the unlawfulness must be apparent."

Qualified immunity is an affirmative defense ONLY available in federal civil rights *lawsuits*, filed under Title 42, Sec. 1983. It has no application to federal civil rights violation *prosecutions*. Further, this doctrine of qualified immunity does not shield civil defendants from state law tort claims. Therefore, it is not an affirmative defense to a claim filed under the Oregon Tort Claims Act.

What can I do to reduce my "exposure" to Civil Liability?

Officers should always be aware of their exposure to tort or civil rights violation lawsuits. Awareness is not hypersensitivity or paranoia. Simple strategies will go a long way towards reducing unnecessary exposure to these claims.

1. Members of our community serve on juries. We need to educate them, to promote understanding of police procedures and challenges.

2. Understand that an individual officer's attitude and approach can positively or negatively affect citizen and community perception of the police.

3. Take time to explain your actions, particularly if asked.

4. Establish a positive relationship with members of your community. Know, respect, and talk with them.

5. One of the reasons for your department's policies and procedures is to reduce your exposure to liability. Know them and follow them. Failing to follow policy or performing incompletely or inadequately not only increases your exposure to liability, but it also makes it more likely your agency will not be required to indemnify you. Indemnification of an employee is only required if the employee is performing within the "course and scope of employment." An employee "acting out of policy" should presume they will not be indemnified.

6. Training is CRITICAL to reducing your exposure to liability.

7. Examples of proactive actions you can take, which are not only the right thing to do; they are the smart thing to do:
    - Monitor your custodies at all times, especially after a use of force.
    - Avoid leaving your custodies unattended.
    - Use appropriate restraint devices and ensure they are properly applied.
    - Do not restrain anyone in a "hog-tie" position.

- Ensure appropriate aftercare and/or medical care after utilizing defensive devices.
- Ensure timely medical care for other obvious significant medical problems.
- Protect your custodies from harmful environmental conditions.
- Avoid engaging in any enforcement actions while a custody is in your vehicle.
- Build a respectful rapport with your custody, if possible.
- Prepare a thorough and complete report. Record pertinent facts. Never plan to rely on your memory. There are many ways to document. Follow policy unless you can show good cause why an alternate method of documentation was used. Use common sense.
- Everyone has a cell phone camera. Always assume you are being recorded while on duty, and conduct yourself accordingly.
- ALWAYS ACT IN GOOD FAITH.

SOURCES/RESOURCES

Civil Rights Division (USDOJ) - https://www.justice.gov/crt

Criminal section (within Civil Rights Division of USDOJ) - https://www.justice.gov/crt/criminal-section-overview

Civil Rights Division Overview - https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/division_booklet.pdf

Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present - https://www.justice.gov/crt/file/922421/download

Special Litigation Section (within Civil Rights Division of USDOJ) - https://www.justice.gov/crt/special-litigation-section

Basic Police Academy

Communication for Policing



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Communication for Policing

Instructional Goals:

This course is designed to:

1. Develop a new officer's ability to communicate effectively with others.
2. Develop a new officer's ability to recognize communication challenges and apply adaptive approaches toward resolution.

Learning Outcomes:

Upon completion of instruction, students will be able to:

1. Demonstrate effective communication in a variety of circumstances
2. Analyze a situation and choose the appropriate communication approach to result in a positive interaction

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There are various methods of communication, including verbal, non-verbal, and written. As a police officer, you need to have strong skills in all three. This series will introduce verbal and non-verbal communication, which will be carried over into other courses such as Legitimacy and Procedural Justice, Use of Force, Vehicle Stops, and more. The final course in the Communication series will focus on radio communication. Additionally, you will complete a Report Writing series, which will address written communication for policing.

Policing and Communication

Tactical Communications

Today's police officers have better equipment and technology than ever before. Still, the fact remains that nearly every encounter between a police officer and a member of the public starts and ends with words. Officers are more effective—and safer—when they can use communication skills to their tactical advantage. The goal is to obtain voluntary compliance and resolve a situation without force, making the encounter safer for everyone, including the officer. These tactical communication skills are essential in dealing with persons in crisis due to mental illness or other conditions.

Police Executive Research Forum

An effective police officer uses communication skills far more than any other skill. Police use communication to gain voluntary compliance, negotiate a challenging situation, persuade others to take specific actions, gather information, etc. Police need to be fluid and adaptable, making adjustments depending on whom they are communicating with and depending on the outcome they are working toward.

Consider the following:

You conduct a traffic stop and the driver complies.	You participate in a neighborhood watch meeting.	You respond to a call about a suspicious person in a neighborhood, when you ask the person for their ID, they keep walking.
You interview the victim in a sexual assault investigation.	You want to gain consent to serach a person's backpack.	You respond to a heated domestic call where everyone in the house is screaming at one another.
You respond to a large fight in a store parking lot, everyone is yelling. Someone pulls their phone out and is recording you.	You respond to a parent calling about their adult child who is suicidal and locked in the bathroom with a knife.	You deliver a death notification to a grieving parent.

What is needed in these different situations? At times, police must be direct and authoritative. Learning to give clear and concise commands is an essential part of this series. However, not every encounter is best handled with the issuance of an order or command. Often circumstances call for listening, an empathetic response, or giving the person a voice.

- Part 1 of this series will focus on some foundational communication skills, including active listening, establishing rapport, and empathy.
- Part 2 will begin to apply these concepts to field interviews, traffic stops, and situations involving high emotions.
- Part 3 introduces assertive communication and dealing with conflict.
- Part 4 addresses clear and concise commands, interactions that require a transition in strategy or an escalated approach such as crisis communication, de-escalation, and use of force.

Part 1

Law enforcement officers must have strong interpersonal skills to effectively communicate with peers, supervisors, community members, other law enforcement, other organizations, and the courts. To complicate matters, effective policing requires a variety of communication skills for a variety of circumstances. Does the task at hand require persuasion? Directing? Obtaining information? Community building? What is needed for effective investigative interviewing compared to de-escalating a crisis? What is needed for a conversation with a frustrated business owner compared to making an arrest?



Officers must not only be good at all of these; they must be able to transition among them fluidly. Law enforcement officers who build their communication skills toolbox are the most effective because they understand how to communicate with people from different backgrounds under a host of different circumstances. They can make transitions at appropriate times. They can leverage their skills toward achieving a positive outcome. They use communication to gain voluntary compliance.

This course begins with a look at the communication process and the elements of effective communication.

Effective Communication

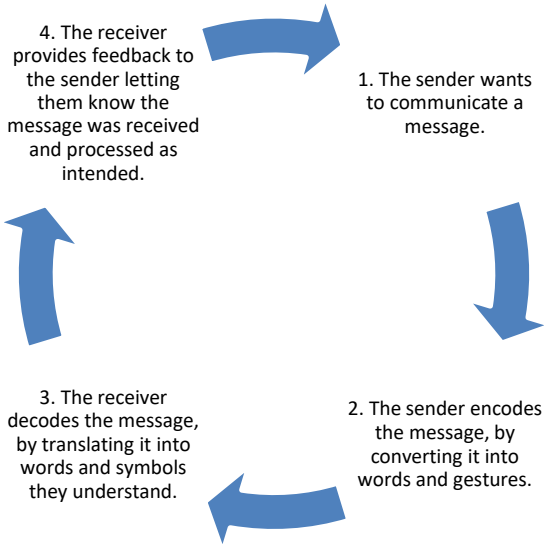
Communication is essentially conveying a message, which results in a shared understanding between parties. There are multiple models in existence that try and explain the human communication process. Most models involve a sender, a message, and a receiver. Many popular models also include processes of encoding and decoding.



The Communication Process

Under optimal circumstances, both the sender and receiver can transmit, receive, and process information. Consider the optimal process:

1. The sender wants to communicate a message.
2. The sender encodes the message by converting it into words and gestures.
3. The receiver decodes the message by translating it into words and symbols they understand.
4. The receiver provides feedback to the sender, letting them know the message was received and processed as intended.



While this seems like a simple process, consider all of the things that can go wrong or disrupt this process. For example, words have different meanings for different people, external factors can disrupt the process, individual life experiences influence understanding or intent, people have biases, etc.

Forms of Communication



Although word choice is important, sending a message is more than the words said. It is also about how words are expressed (para-verbal) and the body language (non-verbal) accompanying the message. Failure to consider how we (as senders) encode a message or failure (as receivers) to decode a message can result in a communication failure. In policing, a communication failure can have significant negative impacts.

Verbal	Para-Verbal	Non-Verbal
What we say. The spoken (and written) word.	How we say it. Tone, pitch, volume, and rate.	The physical means by which we send messages. The facial expressions, eye movements, physical gestures, posture, stance.

Choose your words wisely. Effective verbal communication includes word choice. Choose words that are appropriate for the situation. Avoid the use of inflammatory language. Focus on being clear and concise when asking questions or giving commands. This includes avoiding the use of jargon, acronyms, and legalese.

It's not what you say but how you say it. Para-verbal communication makes what you say easier or harder to understand. It impacts the meaning of your words. Think about this, para-verbal communication is what makes a sarcastic comment sarcastic. Is your voice calm? It's what makes you sound afraid or in-control. It is the difference between coming across as meek, assertive, or aggressive. It can make the difference between sounding empathetic or robotic.

Actions speak louder than words. Our non-verbal communication constitutes a larger fraction of our communication than our verbal communication. Similar to para-verbals, our non-verbal communication contributes to the (ill-defined) concept of officer presence. Understanding non-verbal communication is an essential skill for policing. Consider this, where do you rest your hands while talking to someone? Is it resting near your gun? Are your thumbs hooked in your vest? What might these different stances communicate?

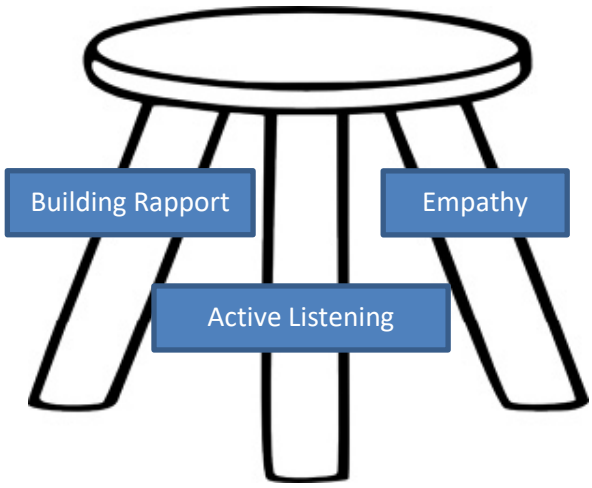


It is essential that officers do not just consider their own verbal, para-verbal, and non-verbal communication but are also attuned to what is being communicated by others. Observing and making a note of a subject's non-verbal behaviors may give you insight into their intent. Are they about to run? To assault you? Verbal, para-verbal, and non-verbal observations can give you insight into a subject's truthfulness. Does what they are saying align with how they are saying it? Observing these cues help us assess whether a person is in crisis, whether a person has experienced a trauma, and what the person needs.

These forms of communication serve as a foundation for many topics to be covered in the academy. You will revisit these in Use of Force and Vehicle Stops, to name a few. You will build on these in Legitimacy and Procedural Justice, De-Escalation, and Investigative Interviewing. Most importantly, you will practice these weekly in Fragment Drills and Scenarios.

Tools for Effective Communication

How does one enhance the likelihood of a message resulting in a shared understanding? Countless tools could be considered important. This course will focus on three key elements, each supporting one another: building rapport, active listening, and empathy.



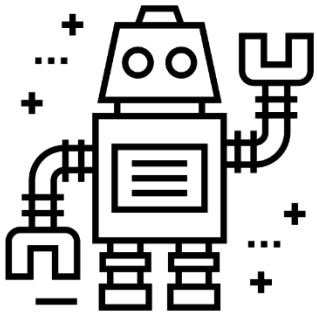
As you work through the three tools, consider how each might contribute to the various goals of an interaction.

Tool #1 Rapport Building

A critical police communication skill is rapport building. Rapport building is about building a relationship, establishing trust, and making a connection with someone. In policing, rapport building is important for developing and maintaining community relations, and the first several weeks of the academy will further highlight this. However, rapport building is not limited to coffee shop or town hall-type interactions. Rapport building is also the foundation for successful de-escalation and investigative interviewing, which will be covered later in the academy.

> Rapport is the feeling of commonality. People like people like themselves or whom they would like to be.

How does one create a sense of commonality as a police officer? While it might be easier to imagine this with a neighborhood business owner, or even a crime victim, it can be hard to picture commonality with a suspect in a child abuse case. First, regardless of who the individual is, just be human. While this seems obvious, building rapport can be difficult for some people, and adding a uniform and a badge can make this suddenly feel unfamiliar.



Depending on the situation, consider asking questions about the person's work, life, or interests. Try to relate or express interest. While a more superficial topic (sports teams, video games, music) may be sufficient in day-to-day interactions, a successful suspect interview may require connecting over something more in-depth, for example, something you both value (family, children, friends, the future).

Another tool for building rapport is to remember an individual's name and use it. Similarly, introduce yourself!

Later you will learn about the concepts of legitimacy and procedural justice and how these can help improve police/community relationships.

Tool # 2 Active Listening

Active listening is about staying engaged with the person who is speaking; it is listening attentively. Active listening contributes to both rapport building (establishing trust) and empathy. Listening is a critical component of de-escalation. Allowing the person to vent may be enough to de-escalate, or it may provide the officer an opportunity to understand what is going on and respond appropriately. Active listening is often considered the most important skill for crisis negotiators.



Consider another benefit of active listening during a suspect interview; you are so focused on your response to what the person is saying that you forget to listen to the critical information they tell you! Active listening allows us to obtain and retain critical information.

Common mistakes we make when listening include:

- Thinking about something else while the person is speaking (I need to write that report before I go home).
- Thinking of what to say next (I'm going to ask him whose car he was driving on Saturday)
- Judging what the other person is saying (He is lying)
- Listening with a specific goal/outcome in mind (I am arresting this guy)

Does the sender feel like you are not listening to them? How might that impact this interaction? What information have you missed while you were not listening?

Effective listening includes taking in the verbal, para-verbal, and non-verbal behaviors and any other contextual or situational factors to understand what the other person wishes to get from the interaction. Paying attention to all of the words and behaviors can give you a better indication of the person's intent. Are they verbally expressing compliance but demonstrating non-compliance? When you understand what a person is trying to accomplish, it is easier to gain voluntary compliance.

> Come into an interaction with the goal of understanding.

To understand, the listener (receiver) may need to utilize some additional methods such as asking questions or paraphrasing what the person (sender) has said.

Asking Questions. While this seems simple enough, there are numerous ways to think about asking questions. Different questions lead to different outcomes, so it is essential to ask questions in accordance with the situation. Consider the following question types and when you might use each:

- Fact-finding Questions: Asks for specific data *(who, what, when, where, why, and how)*
- General Questions: Open-ended *(What happened here today?)*
- Opinion-Seeking Questions: Asks for an opinion and allows latitude *(Is there some way we can solve this problem?)*
- Direct Questions: yes/no questions *(Did you set fire to the dumpster?)*
- Leading Questions: Use with caution! *(Isn't it true that...?)*

When might you use an open-ended question versus a direct or closed-ended question?

Type	General or Open-Ended Questions	Direct or Closed-Ended Question
Description	Requires more than a "yes" or "no" Likely to receive a long answer Allows for an unlimited response	Requires a simple "yes" or "no" answer or short statement of fact Limits the amount or scope of information
Characteristics	Asks the respondent to think and reflect Will give you opinions and feelings	Gives you facts Are easy to answer Are quick to answer
Usage	To follow up on closed questions To develop a conversation and open up someone quiet To find out more about a person, their wants, needs, problems, and so on To get people to realize the extent of their problems To develop rapport by demonstrating concern or interest in them	As opening questions in a conversation, makes it easy for the other person to answer, and doesn't force them to reveal too much about themselves. Testing their understanding (asking yes/no questions). This is also a great way to break into a long ramble. Achieving closure of a persuasion.
Words	What How When Why Describe	Is Can How many Does
Examples	What can you tell me about the car?	What color was the car?

Tool # 3 Express Empathy

You will cover empathy in greater detail in the Emotional Intelligence series. Empathy is about understanding another person. It is understanding their feelings or at least their emotional reaction to something. To empathize is to recognize there are feelings and emotions attached to a situation. Note empathy does not mean you agree with the individual, share in their emotions, or even understand because you have had a similar circumstance.



Empathy is a powerful communication tool, especially in difficult encounters, because it builds trust and absorbs tension.

Being empathetic requires a good sense of our self-awareness and awareness of others (social-awareness). To be an empathetic communicator, one must first listen intently (review tool #2). While there is no script for empathy, consider the following:

- Acknowledge how the other person is feeling
  - "That must be hard."
  - "I can see how that would be difficult."
  - "I am sorry you are going through this"
- Admit that you don't know what to say
  - "I can't imagine what you must be going through."
  - "It makes me really sad to hear this happened."
- Acknowledge their vulnerability
  - "Thank you for sharing that with me."
  - "This must be hard to talk about."
- Connect by listening
  - "I want to make sure I understand."
  - "What I am hearing is that you are feeling ___."
- Encourage without fixing or looking to the "bright side."
  - "You are brave."

Putting the Tools Together - The LEAPS Approach

Listen to what the person has to say	• Starts rapport building • Be open, receptive, unbiased, • Listen to the whole message: verbal, para-verbal, non-verbal • Look at the person • Provide encouragers (nod)
Empathize with what is being said by trying to understand their feelings	• Demonstrates an understanding of their emotional reaction • Builds trust • Absorbs tension
Ask questions to get more information	• Fact-finding Questions • *General Questions (open-ended) • *Opinion-Seeking Questions • Direct Questions (closed-ended) • Leading Questions • Use pauses to allow response *Note- General and opinion-seeking questions generate more voluntary compliance.*
Paraphrase into your own words	• Put another person's meaning into your own words and deliver it back to them. • Check your understanding *(Let me be sure I heard what you just said)* • Allows the person to clarify
Summarize by giving a possible solution	• Condensing all that has been said into a simple and concise statement • Reconnects communication when it's been interrupted • Be brief, concise, and inarguable (sets the conclusion)

Communication Breakdown

Communication breakdowns can lead to an escalation in emotions and even lead to conflict. Many different factors can cause a breakdown in communication.

Overload	Caused when a person receives too many messages at the same time. *Examples: multiple officers giving commands*
Complexity	Caused when messages are too complex for the recipient. *Examples: technical language, jargon, acronyms, ambiguous words or phrases*
Physiological Barriers	Caused by personal distress or discomfort *Examples: health, wellness, eyesight, hearing, fatigue, drugs, alcohol*
Physical Barriers	Caused by distractions in the surrounding environment. *Examples: background noise, lighting, temperature, physical items such as vehicles, desks, counters*
Attitudinal Barriers	Caused by perceptions and beliefs. *Examples: stereotypes, bias, discrimination, racism*
Non-Matching Behavior	Conflict between what is said and how it is said.
System Errors	Lack of role clarity and/or expectations
Culture	Caused by a lack of understanding between the participants Note- Even when both parties want the same outcome, these differences can lead to conflict. What you say (verbal communication) and how you say it (para-verbal communication) can be misunderstood.

Part 2

Communication during "Common" Encounters

There are some types of interactions that are more common than others in policing. Before moving on to more complex interactions, we will focus on two of these: field interviews and traffic stops.

Field Interview Reports

A Field Interview Report (FIR) is a record of an officer's contact with an individual or vehicle. The officer uses the FIR to gather information about an individual, who is acting suspiciously, may have had the potential of committing a crime, or is being checked while passing through a jurisdiction's boundary. It is the informal questioning of a subject at the location of the contact. You will cover the legal parameters of field interviews in your Procedural Law series, but a field interview is generally considered a non-coercive interaction where the subject is free to leave, although it can also be a stop.

A field interview will involve verbal, para-verbal, and non-verbal communication. It will require rapport building, active listening (including asking various types of questions), and/or expressing empathy.

The purpose of a field interview is to gather basic information. It is not the same as a full interview or an interrogation. In a FI, you want to identify the person you are communicating with so that you can re-contact them later if needed. They may provide identification such as a driver's license, military ID, or other photo identification. If these are not available, any document could help but would not positively identify the person.



Information for the FIR:

- Contact information
  - Date, time, and duration of contact
  - Location of contact

- Person information
  - Contact's full name
  - Contacts date of birth
  - Contact's race, ethnicity, and language
  - Contact's gender
  - Contact's address and phone number
  - Description of the person being contacted (for example, hair and eye color, tattoos, and identifying marks)

- Type of identification provided (driver's license and number, state-issued ID, etc.)

- Vehicle information (if applicable)
  - License plate number, registration, State, and Expiration
  - Description of vehicle: year, make, model, and color

You will cover more about interviews as well as interrogations later in the academy.

Traffic Stops

The most frequently occurring police-community contact is during a traffic stop for a violation. The most common complaint against police is for perceived verbal disrespect. Years of research indicate that people care as much or more about the process's fairness as they do the outcome (legitimacy and procedural justice). If people do not believe that they are treated with dignity and respect, they are less likely to believe that any part of the criminal justice system is fair or legitimate. How YOU treat people not only impacts your fellow officers, but it affects police everywhere.

> How they were treated matters as much or more than whether they were issued a ticket.

So, what does respectful and appropriate communication look like during a traffic stop? Studies have identified some consistent preferences from citizens:



- Professionalism and empathy are essential during a traffic stop.
- Most citizens prefer that the officer introduce him or herself and state his or her department.
- Most citizens prefer that the officer allow them to explain their reason for committing the violation and that the officer empathizes with their excuse even if a ticket is still issued.
- Most citizens prefer that the officer smile and use a friendly tone (although they are not offended by a professional yet unemotional demeanor).
- Most citizens prefer that the officer explain their options for how to handle their traffic ticket best.
- Most citizens do not appreciate an officer who calls them by their first name.
- Most citizens do not appreciate an officer who speaks in a harsh, angry tone.
- Most citizens do not appreciate awkward silence or small talk while an officer writes a ticket (but there is no clear indication of what is preferred here).
- How an officer behaves is more important than the official enforcement outcome of the stop.

Communication and Tactical Considerations

You will cover the tactical considerations for field interviews, vehicle stops, and other interactions later in the academy. For now, just imagine how these added complexities affect the interaction, both for you and the subject. How does thinking about where you are standing impact your ability to listen? How does actively listening impact your attention to your surroundings? How does focusing on the subject's hands impact your strategic use of questions? Because all of these details impact the interaction, it is essential to practice even what seems like simple interactions.

Contact Models

So, what should you practice? In addition to the tenants of procedural justice *(voice, respect, neutrality, trustworthiness)*, a commonly used contact model in policing is Verbal Judo. While Verbal Judo (which came out in the 1980s) is significantly different from procedural justice (which gained popularity after the President's Task Force on 21st Century Policing Report was released in 2015), the two share some commonalities relating to their role in enhancing voluntary compliance and cooperation.

Verbal Judo (Thompson, 1983)	Procedural Justice
Verbal Judo is meant to provide officers with the tools necessary to resolve situations without the need for coercive force wherever possible to achieve voluntary compliance through the gentle art of persuasion.	The procedural justice model is built around developing consensus and cooperation with the community. Research suggests that procedural justice policing can build legitimacy and heighten willing deference and cooperation.

Let's compare and contrast the two models. Both models share the following characteristics:

- Improving outcomes in situations where there is no immediate jeopardy to police or others.
- Ensuring that citizens, even criminal suspects, are able to retain their dignity in interactions with police.
- Removing biased assumptions about citizens and suspects and "slowing down" police decision making.
- Encouraging empathy towards citizen well-being.

Source: Giacomantonio, C., Goodwin, S., & Carmichael, G. (2020). Learning to de-escalate: Evaluating the behavioural impact of Verbal Judo training on police constables, Police Practice and Research, 21(4), 401-417.

How are the models different? How might their application vary? Where might they overlap?

	Verbal Judo	Procedural Justice
What is It	A scripted model including an 8-step contact model (below) for non-confrontational individuals and a 5-step intervention model for individuals who are not moving towards compliance.	A model that emphasizes listening and responding to people in the community, explaining police policies and practices in interactions with civilians, and treating the public with dignity, courtesy, and respect.
Actions	Greeting statement Identify self and department Explain the reason for contact Justifiable reason? Ask for identification Request additional information Make a decision Close the encounter	Give people a voice, let them tell their side of the story, listen Make impartial decisions and explain how they were reached Demonstrate trustworthiness by being open and honest Treat people with dignity and respect
Focus	Here and Now: "Winning" the encounter by gaining compliance.	Now and Future: The individual's perception of the event affects current and future interactions.
Pros/Cons	Straightforward and easier for officers to apply, but narrowly focused on the encounter at hand.	More conceptual and challenging to apply, but holistically focused on enhancing relationships.
Outcomes	It's polite. It is more likely to lead to voluntary compliance. The structure creates a presence for you. It deflects verbal abuse.	It's polite. It is more likely to lead to voluntary compliance. Builds legitimacy

The Verbal Judo 8-Step Contact Model

1	Give an appropriate greeting statement	"Good evening, sir/ma'am."	• Note this is a statement and not a question. • Be sincere • Smile
2	Identify yourself and your department	"I'm Officer _____, from _____"	• Establishes your authority for the contact. • Personalizes the encounter by putting a name to your face.
A	Advise recording if appropriate	"I'm going to advise you that I am recording"	• Oregon law requires you to notify people that you are recording their voice.
3	Explain the reason for the contact/stop	"The reason for the traffic stop today is that _____."	• Make your justification clear upfront before asking for someone's identification • People have a right to know why police are detaining them.
4	Any justifiable reason for their actions?	"Is there some reason for such excessive speed this evening?"	• Could there be any justifiable reason that they have violated the law?
5	Ask about location of documents then ask for license, papers, and cooperation	"Without reaching for it where do you keep your _____ at? "Can you please get that for me?" "Thank you"	• Knowing where hands are going before they go there is safer. • Knowledgeable, clear, command presence, and polite.
A	Request additional information	"Is this your current address?"	• Anything more you need to know?
6	Set expectations for vehicle occupants	"Please stay in the vehicle, I will be right back"	• Sets expectations for occupants of the vehicle • Verbally restricts movement of occupants

7	Decision	Options: • Warn - "I am going to issue you a warning today for -------". Provide education as to safety issues associated with violation • Cite - "You are being issued a citation for ---". Pr0vide information regarding how to handle the citation (Guilty, Not Guilty, No Contest, Appear in person, Send a letter, Trail by affidavit) • Optional step: search and seize (contraband, car stolen, person wanted)	
8	Close	Warn: "Have a safe day." Cite: "Thank you for your cooperation. Do drive carefully."	• Non-confrontational • Personable and professional

Now consider some of the model policies related to procedural justice and traffic stops:

- Officers should incorporate procedural justice principles into their interactions with individuals during investigatory stops and traffic stops in the manner described below.
    - Officers should use their professional judgment in determining when in the course of an interaction to incorporate the following scripts.

- Officers should inform suspects of the need to investigate the suspected commission of criminal offenses and enforce traffic laws.
    - Example script: "It's not our business to hassle you for something minor, but we do have to keep the community safe by investigating serious criminal conduct."

- Officers should explicitly articulate the basis for their reasonable suspicion or probable cause when they make an investigatory or traffic stop.
    - Example script: "The reason you are being stopped today is because _____."

- Officers should express appreciation for a suspect's cooperation during an investigatory or traffic stop.
    - Example Script: "Thank you for your cooperation," or "I understand that it is an inconvenience to have to take time out of your day to answer our questions."

Source: Principles of Procedurally Just Policing (2018).
The Justice Collaboratory at Yale Law School.

While the use of these models may contribute to fewer use of force incidents, it is also important to learn what to do when words fail and be prepared to take action. You will cover assertive communication and commands in the next Communication unit.

Part 3

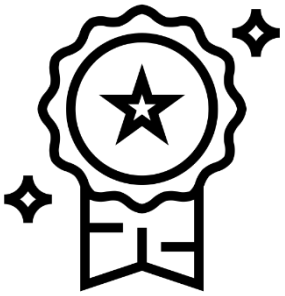
There are four basic styles of communication: passive, aggressive, passive-aggressive, and assertive. Each influences how you speak and how you act and react in various situations. When individuals have different communication styles, it can lead to misunderstandings and conflict. Understanding the various characteristics can help our interactions with others. Recognizing our style can help us learn to be more effective communicators.

Style	Description	Characteristics
Passive	A style in which individuals have developed a pattern of avoiding expressing their opinions or feelings, protecting their rights, and identifying and meeting their needs	• Speaks softly or apologetically • Poor eye contact • Poor body posture • Fails to assert self • Allows others to infringe on their rights • Fails to express feelings, needs, opinions
Aggressive	A style in which individuals express their feelings and opinions and advocate for their needs in a way that violates others' rights.	• Speaks in a loud, demanding, overbearing voice • Has an overbearing or intimidating posture • Tries to dominate others • Has a low frustration tolerance • Uses humiliation to control others • Is impulsive • Criticizes, blames, or attacks others • Acts threateningly and rudely • Does not listen well • Interrupts frequently • Can be seen as lacking control • Generates fear and hatred in others

Passive-Aggressive	A style in which individuals appear passive on the surface but are really acting out anger in a subtle, indirect, or behind-the-scenes way.	• Mutter to self rather than confront the issue • Have difficulty acknowledging their anger • Communicate with body language • Facial expressions do not match with how they feel • Use sarcasm • Deny there is a problem • Appear cooperative while purposefully doing things to annoy and disrupt • Use subtle sabotage to get even • Silent treatment • Spreading rumors
Assertive	A style in which individuals clearly state their opinions and feelings and firmly advocate for their rights and needs without violating others' rights.	• Express own needs, ideas, and feelings clearly, appropriately, and respectfully • Considers the needs of others • Communicates respect for others • Listens well without interrupting • Feel in-control of self • Has good eye contact • Has a relaxed body posture • Speaks in a calm, clear voice • Feels competent and in control • Does not allow others to manipulate or abuse them • Stands up for their rights • Feels connected to others

Sources: UK Violence Intervention and Prevention Center, Indeed Career Guide

Assertive communication is considered the most effective communication style, giving you the best chance to deliver your message successfully. Because assertive communication is based on mutual respect, it also lends itself to increased legitimacy.



How to Be Assertive

The assertive person will use all their verbal, para-verbal, and non-verbal communication skills effectively and appropriately.

Do:

- Act confident even if you are not feeling it
- Keep your posture upright
- Know your legal authority at all times
- Use "I" statements
- Keep your requests simple and specific
- Speak with a conversational yet firm tone and volume
- Address the main issue
- Look at the other person
- Keep your emotions in check (emotional intelligence: self-regulation)
- Value yourself equal to others
- Listen to the other person's point of view
- Express empathy for the other person's situation
- Express gratitude for compliance, cooperation, information, patience

There will, of course, be instances when your best assertive communication skills may not be enough. Individuals may be difficult, confrontational, and even aggressive and you must be prepared to adapt and respond appropriately.

Human Behavior

It is helpful to understand some tenants of human behavior. All human beings share several basic needs, including the desire to feel safe and control their lives. Because these needs are fundamental, people will go to great lengths to protect them. When people feel threatened or controlled, they can act in negative, aggressive, and in some cases, violent ways to reestablish a sense of safety and self-determination.

Strategies:

- Allow people to think of something as their own decision or idea, even if it is not true.

- Officers can also help people feel safe by reducing uncertainty by explaining their decisions and actions (procedural justice), as well as what to expect.

Another tenant of human behavior is nobody wants to feel stupid, inferior, or wrong. Questioning motives or judgment can trigger defensiveness and justifications. Officers can avoid this by refraining from any form of personal attack, insult, or condescending behavior.

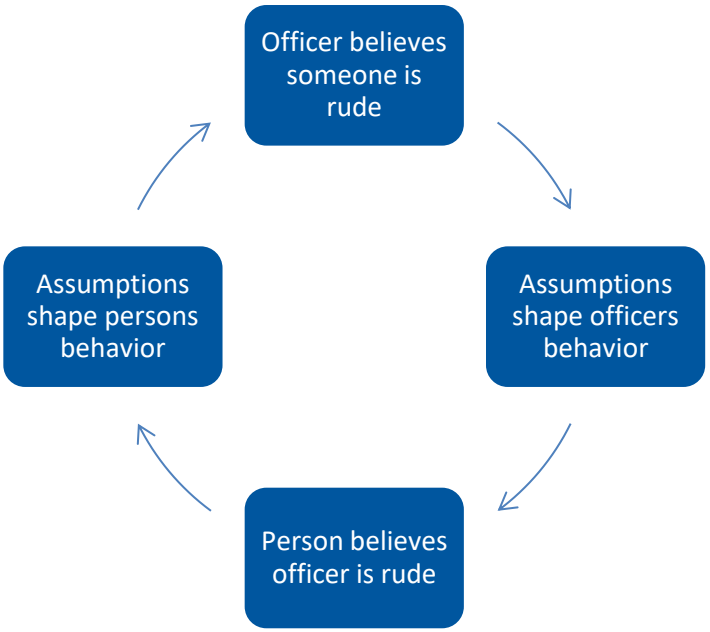
Strategies:

- Rather than attacking someone's motives or intent, concentrate on the person's actual conduct. For example, "So, you were driving northbound, did not see the red light, and struck the vehicle making a left turn" is more beneficial than stating, "Obviously you weren't paying attention because, if you were, you would have seen the red light."

- Officers should focus on separating problems from people.

The last issue of human behavior to consider is perspective. Everyone makes conscious and unconscious choices about what to notice and what judgments to make. People tend to believe that they see the world as it is, and not merely that it is their perception of the world. People use their perspective to make sense of their own experiences and interpret others' behavior. Most people seldom, if ever, question the accuracy of their worldview or assumptions.

Officers' worldviews, beliefs, and assumptions influence their interactions with others. If an officer believes that someone is difficult or rude, the officer's assumptions will affect the communication with that person. The officer's assumptions may influence the tone of voice or nonverbal communication in any number of subtle yet perceptible ways that shape how people interpret the officer's behavior and, in turn, their response. If a person believes that an officer is rude or inconsiderate, that person is likely to respond discourteously, confirming the officer's initial assumption that the person is rude. In essence, a phenomenon referred to as a self-fulfilling prophecy. In other words, the officer believes a person is rude, treats the person as a rude individual, and, by doing so, and causes the person to be rude.



Strategies:

- Suspend (as much as possible) any existing assumptions and beliefs, and replace them with a genuine desire to understand the other person's story.

"You can't win an argument.
You can't because if you lose it, you lose it; and, if you win it, you lose it."

-Dale Carnegie
How to Win Friends and Influence People

Avoid Arguing

Officers can quickly lose objectivity when dealing with a difficult or emotional person. To take control of your emotional response, first recognize that each problem consists of two issues, one practical and the other emotional.

Practical issues represent the topic or subject of concern, for example, gaining the cooperation of a difficult motorist or taking a combative subject into custody.	Emotional issues represent an officer's affective response to the practical problem, such as anger, frustration, or even fear.

An officer's inability to separate practical problems from affective responses can lead to a host of difficulties. Strong emotions can cloud the real issues and become the sole focus of an officer's attention. This response makes the officer less safe and typically does little, if anything, to solve the actual problem.

Tips:

- Pay close attention to your word choice.
- Know your "buttons" and practice correct responses.
- Learn your early warning system signs (increased heart rate, blood pressure, muscle tension, nervous energy, etc.) and take steps to self-regulate (breathing techniques, walking away, etc.).

Diffusing Conflict

There are multiple approaches to dealing with conflict. You must keep in mind the outcome you are working toward. Often the best approaches are compromise or collaboration. Consider this, a person is angry at you for giving them a ticket, and they are expressing their feelings to you verbally. While you might feel like you want to respond, as long as the person is cooperating, the best thing maybe is to let them say what they want.

Often the best strategy is to try and decrease a person's emotional tension. One technique for decreasing emotional tension is to acknowledge the persons' concerns or feelings. This does not mean you agree with the person; it just means recognizing their concern as legitimate. Another technique to decrease emotional tension is to ask questions. This forces the person to stop and think, requiring deliberate mental focus. As a general rule, open, reflective questions—queries that require a narrative response—are more useful than simple, closed questions that can be answered with a one- or two-word reply. Questions like, "What happened next?" are generally more effective because they encourage people to think rather than to emote. A third strategy for decreasing emotional tension is the use of paraphrasing. Like acknowledging, repeating, or paraphrasing a message provides the person an opportunity to listen to their own words, correct any confusion, and help them feel heard.

Persuasion

Generating voluntary compliance often comes down to the art of persuasion. Persuasion is the act of convincing someone to change their beliefs or do something you suggest. More than 2,000 years ago, Aristotle outlined a formula for becoming a master of persuasion using five techniques that are still widely used today.

1. Egos (character)- Gain trust by establishing your credibility
2. Logos (reason)- Use data, evidence, and facts to support your pitch
3. Pathos (emotion)- People are moved to action by how a speaker makes them feel
4. Metaphor- Turn the abstract into something concrete
5. Brevity- Less is more

Source: Harvard Business Review (2019). The Art of Persuasion Hasn't Changed in 2,000 Years.

What happens when the subject does not comply? A popular conflict resolution model is the 5-step appeal. Verbal Judo offers a similar five-step model for subjects requiring additional persuasion.

	5-Step Appeal (Conflict Model)		5-Step Model (Verbal Judo)	
1	Simple Appeal	Ask the individual to comply with the officer's request.	Ask	*"Would you please step out of the vehicle?"*
2	Reasoned Appeal	Explain why the request has been made, what law, if any, has been broken, what conduct has caused the request. *"The State requires..."*	Set the Context	*"This is policy/procedure."*
3	Personal Appeal	Remind the individual what they may be jeopardizing that matters to them: jail time if arrested, Present options *Positive choices first* *"You have a couple of options here."*	Present Options	Put what you want them to do in terms of what they have to gain or lose.
4	Final Appeal	Tell the individual what is required and ask them for cooperation. *"You need to stand up and come with me. Is there anything that I can say to make you cooperate?"*	Vary Appeal	Empathy, humor, redirection, refocusing
5	Action	Decision: disengage or escalate	Act	Decision

Other Tactics

As with all communication there is not one single tactic or technique that will work under all circumstances. Studies on police interactions have found that officers who start out exhibiting the most authoritative entry tactics are the least likely to gain compliance.

An option to use in conjunction with the 5-step process, or as a standalone, is the concept of Pivot. Pivot takes the focus off of the non-compliance and places it on the goal we are trying to reach. For example, when confronted with a subject who refuses to give you a driver license, officers tend to see this as a challenge to their authority, which it probably is. Instead of focusing on the challenge to the authority, ask yourself "what goal am I trying to reach?" The answer should be you are trying to identify the driver.

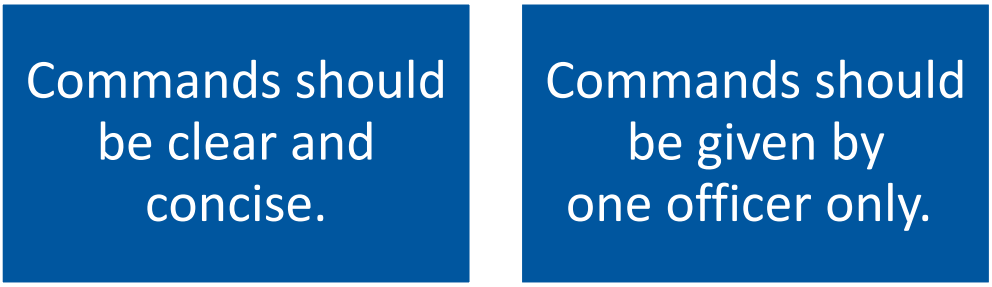
Are there other ways to identify the driver? This is the Pivot. Try asking for a name and date of birth. Ask if they are the registered owner of the vehicle. Ask the passengers who the driver is. These are all pivot options that may allow us to reach the same goal without the battle of wills.

Pivot – Are there other means to get what you need?

Part 4

Effective Commands

Under stress, humans can experience limitations to performance, including distortions to hearing. This applies to human officers AND human subjects. While taking time, assessing the situation, and responding calmly and appropriately are recommended, officers must also work to minimize subject misunderstandings of commands. To minimize misunderstandings:



Lexipol provides the following on commands:

- Commands should be short and easy to understand.
    - Too much information can cause misunderstanding or confusion.
    - If you want the suspect to get down, say so. If you want the suspect to stop moving completely, just say so.

- Don't give conflicting orders.
    - If you start yelling one thing and then something different, the subject may not be able to process and respond.

    - It may be difficult for a subject to focus in a high-stress situation—even a subject who intends to comply. Asking a subject to change focus from one officer to another can be confusing.

    - When more than one officer is giving commands, it usually sounds like just a bunch of noise anyway. If another officer is already giving commands, resist your urge to join in.

- Well in advance, think about the commands you will use in high-stress situations. Talk this through with the other officers you work with.

An officer's stress level typically rises during these situations, resulting in the officer yelling even louder. This poses several problems in situations when dealing with persons in crisis.

- Yelling does not allow for two-way communication. You may be missing cues to defuse the situation and gain compliance.
- Yelling may increase the stress of the subject, which may increase their aggression. This leads to increased stress in the officer, which can lead to increased aggression.

The Force Science Institute adds the following:

- Do not issue the same loud verbal commands more than three to four times. If the desired response has not taken place, you need to change what you are doing or saying.
    - If a subject hasn't changed their behavior after being ordered in the first three attempts, what is the likelihood they will change it in the next 30 tries?
    - If you find yourself in that situation, ask yourself, *how should I change what I am saying to get the desired results?*

The more an officer perceives that he or she has control of a situation, the more he or she can give relevant, meaningful commands.

The less control he or she perceives that he or she has over a situation and the more threatening the situation is, the less relevant and meaningful the officer's commands are.

The following is from a study titled Command Types Used in Police Encounters, from the Law Enforcement Executive Forum:

Police officers regularly encounter situations where escalating emotion can lead to hostility or violence between law enforcement and potential suspects. These situations can quickly become dangerous for both the individuals involved as well as bystanders. Increasing public safety and officer effectiveness means it is necessary to minimize the factors contributing to antagonistic encounters between police and potential suspects.

Studies have found:

- Certain communication styles and tactics are more effective than others in eliciting immediate compliance and decreasing violence.

- A failure to communicate clearly and concisely has been shown to exacerbate negative interactions.

- Factors such as respect, tone, and demeanor of an officer's verbal communication are essential factors in reducing violence and increasing compliance.

- Officers exhibiting the most authoritative entry tactics are the least likely to gain compliance.

- Community members who felt treated fairly were more likely to comply with the law (legitimacy).

- The clarity and feasibility of commands is essential in eliciting compliance to demands.

What Makes a Good Command?

A study by Force Science, categorized commands into subtypes to distinguish between specific, feasible commands (alpha), and vague, unfeasible commands (beta). The study showed clear and striking benefits to using concise and specific (alpha) commands.

- Alpha commands resulted in more compliance (82% alpha / 41% beta)
- Alpha commands resulted in more immediate compliance (94% alpha /85% beta)
- Alpha commands used 16% of time in violent encounters
- Alpha commands used 84% of time in non-violent encounters

https://forcescience.docsend.com/view/rus3yn6vjgay39hm

Other findings:

- The use of more specific and feasible requests by law enforcement may lead to fewer violent encounters.
- This study emphasizes the importance of command form and clarity in increasing suspect compliance and increasing the speed of suspect compliance.

Effective Commands (Alpha)	Ineffective Commands (Beta)
Specific • Clearly defined • Concise • Calls for a motor or verbal response	Vague • Uncertain, indefinite, or unclear meaning • Communicating in an unfocused or imprecise way • Compliance may be difficult
Feasible • Possible to do easily or conveniently	Unfeasible • Inconvenient or impractical

In-Class Activity: Clear and Concise Commands

Directions: This activity will be completed in class.

Command	Specific & Feasible	Vague and/or Unfeasible
Put your hands on your head		
Drop the gun		
Get back		
Take your hands out of your pocket		
Move		
Give it up		
Let me see them		
Give me your driver's license		
Get out of the car		
Chill out		
Get on the ground		
Do it now		
Do the right thing		
Stop fighting		
Stop		
Stop that		
Stop the car		
Don't leave your vehicle		
Don't move		
Don't even think about it		

Command	Specific & Feasible	Vague and/or Unfeasible
Don't touch that		
Quit		
Quit resisting		
All you have to do is comply with our commands.		
We want to talk to you.		
We don't want to do it.		
Would you step out of the vehicle?		
Could you put your hands behind your back?		
Could you calm down?		
Do you want to get tased again?		
Do you know how fast you were going?		
Have you been drinking?		
What is your problem?		
Why don't you stop yelling and calm down?		

Communicating with Persons in Crisis

You will complete a series of courses on behavioral health and communicating with persons in crisis. You will find many of the tactics covered in Parts 1-4 will show up again when you talk about de-escalation. These include clear and simple statements, initiating dialogue with open-ended questions, the importance of active listening, display empathy, watching your body language, and being aware of your buttons, among others.

Communication for Policing- Part 5 (Radio)

Instructional Goals:

This course is designed to introduce a new officer to the fundamentals of radio use and associated functions.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the fundamentals of radio operation.
2. Demonstrate effective use of a radio to communicate information to another person.

Content Outline:

- Common Types of Radio Communication
- General Procedures
- Phonetic Alphabet
- Radio Codes
- Plain Language

One method of verbal communication that officers utilize daily is radio. Just as in previous discussions regarding the importance of effective, clear, and concise communication, radio is no exception. Practicing proper procedures will make radio procedures automatic and reduce confusion.

Some common types of radio communication include:

- Warrant checks
- Vehicle registration checks
- Criminal history checks
- Information gathering requests
- Checking in and out of service and various locations
- Informational broadcasts
- Emergency radio broadcasts
- Traffic stops

General Procedures

As always, check with your agency to learn about agency-specific policies and practices. The following are some general procedures.

Listen

- Is there another unit already transmitting?
    - Are there any transmissions occurring that lead you to believe there is an emergent situation happening, or a situation of more importance than yours? Wait until their conversation is finished unless your situation is an emergency. If it is an emergency, inform the other parties that you have an urgent emergency message. A common practice is to say "break" before continuing with emergency communication.
    - If you are anticipating a transmission from someone else (e.g., a unit acknowledging a call, or a traffic stop return is pending), wait until that has happened unless your radio traffic is more urgent.

- When using a two-way radio, you cannot speak and listen at the same time, as you can with a phone.

- Do not respond if you aren't sure the call is for you. Wait until you hear your call sign to respond.

Be Professional

- Attempt to make your voice as calm and clear as possible, regardless of the situation.

- Remain impersonal. Do not use profane, obscene, indecent language, or derogatory statements.

Be Clear

- Get the dispatcher or another unit's attention before talking.

- Speak directly into the microphone to avoid distortion and loss of clarity.

- Speak at a steady and moderate pace so information can be understood and recorded without repetition.

- Acknowledge inquiries with either "affirmative/affirm" or "negative."

Be Concise

- Use short phrases. Complete sentences are not necessary, so eliminate words that do not affect the meaning of the broadcast.

- Use your agency approved language (phonetic alphabet/plain language) (see below).

- Avoid the use of department member names. Unit radio numbers should be used whenever possible.

Phonetic Alphabet

Many words and letters sound similar and can be easily misunderstood in radio communications. Therefore, words and letters which may be easily misunderstood may be spelled phonetically. Care should be taken to differentiate between the letter "o" and the number "0" (zero).

There are several versions of the Phonetic alphabet, and your agency may have a policy requiring a specific one. Confirm with your agency which version you are required to use.

Example 1		Example 2	
A - Adam	N - Nora	A- Alpha	N-November
B - Boy	O - Ocean	B- Bravo	O- Oscar
C - Charles	P - Paul	C- Charlie	P- Papa
D - David	Q - Queen	D-Delta	Q-Quebec
E - Edward	R - Robert	E- Echo	R-Romeo
F - Frank	S - Sam	F- Foxtrot	S –Sierra
G - George	T – Tom	G- Golf	T-Tango
H - Henry	U - Union	H-Hotel	U- Uniform
I – Ida	V - Victor	I-India	V- Victor
J - John	W - William	J -Juliet	W- Whisky
K - King	X - X-ray	K- Kilo	X- X-ray
L - Lincoln	Y - Yellow	L- Lima	Y- Yankee
M - Mary	Z – Zebra	M- Mike	Z- Zulu

Time

The concise 24-hour military time is used to mark the time in law enforcement as well. With military time, the clock begins at midnight, which is referred to as 0000 hours, with 1:00 am being 0100 hours, 2:00 am being 0200 hours, etc. to 11:00 pm being 2300 hours. Military time does not utilize a.m. /p.m. to identify the time of day. From midnight to 10:00 am, the military time might include the term "zero". For example, 3:00 am in civilian time might be called "zero three hundred" and shown as 0300 hours.

Plain Language and Radio Codes

Your agency may use a combination of radio codes and plain language. Codes identify a variety of circumstances, including routine traffic, returning to service, and emergencies. Plain language consists of common terms and definitions that can be understood by individuals from all responder disciplines. Practice them in scenarios to help prepare you to be a better communicator when you return to your agency.

Below are some examples of codes:

Code	Meaning	Notes
0	Officer needs immediate assistance	
1	Normal response (no lights or sirens)	Response Code- If you are responding Code 1 and you see a traffic violation, you may stop it.
2	Handle immediately but obey all traffic laws	Response Code- If you are responding Code 2 and you witness a traffic violation, you should only stop them if you think it is more severe than the situation you are heading to (i.e., reckless or DUII driver).
3	Respond with lights and sirens	Response Code- If you are responding Code 3 to assist another officer or respond to a call, you should not stop to engage in another situation unless in extreme circumstances.
4	Disregard or under control	
5	Confidential information to follow	Make sure nearby subjects cannot hear officers' or vehicle radio.

Following are some examples of plain language:

"AFFIRMATIVE"	Yes / positive
"ARRIVED"/" AT SCENE"	At call location
"AVAILABLE ON SCENE"	Clear for calls but still at the location of the last call
"BREAK"	The word "break," followed by a pause, means that more of the same message is to follow. "Break" may also be used to allow the transmitting unit time to collect thoughts and mentally organize the remainder of the transmission. "Break" is also used to allow units with emergency traffic to transmit in the middle of a long broadcast.
"CLEAR"	Units returning to service from a call will use their MCT to document their disposition. Units without MCT service will clear over the air. Example: • Unit: "100" • Dispatch: "100 or go-ahead" • Unit: "Clear my call with a CAD, show subjects were UTL/GOA" • Dispatch: "1737" (military time)
"COPY"	Acknowledges receipt of transmission
"DISREGARD"	Disregard my last transmission
"ENROUTE"	Acknowledge receipt of a call and proceed to the destination
"GO AHEAD"	Used to advise someone to proceed with their transmission
"IN AREA"	In the vicinity of the call, checking the area
"LAST UNIT"	A transmission was heard, but the unit identifier was not (repeat your unit identifier)
"NEGATIVE"	No / negative
"REPEAT"	Repeat your last transmission
"STANDBY"	Used to advise someone to wait for before transmitting further information
"UNREADABLE"	Transmission is unclear or unreadable

Note- Units typically will acknowledge voice dispatched calls for service by their radio number.

Examples of Communicating Specific Calls	
CRIMINAL HISTORY CHECK	• Units may request a check of a person's status as a felon as part of the course of their investigation. A person's felony status will be given back to confirm they are (positive) or are not (negative) a felon. • Computerized Criminal History specifics are not aired over the radio.
DRIVER STATUS RETURNS	Person returns are typically given in the order of: • Wanted status • LEDS/ NCIC/ In-House flags • Driving status • Driving flags Example: Oregon DL Number • Unit: "100, DL" • Dispatch: "100" • Unit: "3975620, last of Doe" • Dispatch: "Doe is clear, valid"
FIELD CONTACTS	Field contacts are called out using the unit identifier and words that illustrate the type of stop. Contacts are typically given by the location first and then the person description or name identifiers. Examples: Unknown Individual: • Unit: "100, out with a bike" • Dispatch: "100" • Unit: "1st and Main, white male adult" • Dispatch: "1534" (military time) Unknown Individuals: • Unit: "100, Out with one" • Dispatch: "100" • Unit: "Under the overpass, with Jane Doe (or Name/DOB)" • Dispatch: "1534" (military time) Known Individual: • Unit: "100, Out" • Dispatch: "100" • Unit: "Out with a suspicious male at Starbucks Fred Meyer" • Dispatch: "1534" (military time)

LEDS/NCIC SUPPLEMENTAL RECORD RETURNS	Common LEDS/NCIC supplemental returns can come in any order and may include: • Concealed Weapons permit • Potential Armed Career Criminal • Corrections Client • Psychiatric Security Review Board • Pre-Trial Release • Interpol • Secret Service Sex Offender: Sex offender returns include the person's last known address and date of contact to allow the officer to confirm they are in compliance with their registration. Protection Orders: Protection order returns include the names of both parties to allow the officer to determine if the two parties are at the location together.
LOCATION INFORMATION	Broadcasts include information about the incident: • Location of occurrence or last known location • Direction of travel • Time lapse
NAME/WANTS CHECKS	Names are given in the order of: • Last name • First name • Middle name • Date of birth Names should be spelled phonetically whenever possible. Example: • Unit: "100 wants by name/DOB" • Dispatch: "100 or go-ahead" • Unit: "phonetically David-Edward-Ocean, first is John, Edward, Nora, middle is Adam-Paul-Robert-Yellow-Lincoln, Date of Birth 01-20-1970" • Dispatch: "1455" (military time)

PERSON INFORMATION	When describing a person, the identifying information is given in the following order: • Name (format: Last name, First name, Middle name) • Age (date of birth if known) • Race • Sex • Height/Weight • Hair/Eyes • Complexion (including facial hair) • Miscellaneous physical (e.g., scars, marks, tattoos) • Clothing (top to bottom/outside to in)
TRAFFIC STOPS	Traffic stops are typically called out using the unit identifier and the word traffic. Traffic stops are given by the location first and then the license plate. Oregon is the default state for any license plate on a traffic stop. If a license plate is out of state, the unit will announce the state before the plate. Example: • Unit: "100, traffic" • Dispatch: "100" • Unit: "Traffic, 1st and Main with GAG500 (spelled phonetically)" • Dispatch: "1534" (military time)
VEHICLE CHECKS	• Vehicle wants, and registration checks are often called out using the unit number and type of request. • Vehicle checks that are not by Oregon license plate should include the type of check such as VIN or Out of State plate as the dispatcher must switch to a different screen to access out of state information. • If providing a VIN, keep a predictable cadence. It is recommended to provide characters in a series of 3's, with a short pause after each series. (E.g., John, Henry, Nora (pause) 1, 4, Tom (pause) 4, Adam, Nora (pause), and so on. • When the dispatcher acknowledges the transmission, proceed with the plate or VIN. Example: • Unit: "100, DMV" • Dispatch: "100" • Unit: "George-Adam-George 500" • Dispatch: "1455" (military time or immediate return)

VEHICLE INFORMATION	When describing a vehicle, try using the acronym CYMBALS as follows: • Color • Year • Make and Model • Body Style • Additional or Accessories (cracked windshield, spoiler, etc.) • License Plate Number • State

Note: For a crime that has just occurred, address of occurrence, the direction of travel, and time lapse are essential.

You will begin communicating via radio during scenario training. It is a good idea to get more information from your agency so you can practice in accordance with your agency policies. While at DPSST, we will use clear voice even if your agency uses coded communications (i.e., 10 or 12 code).

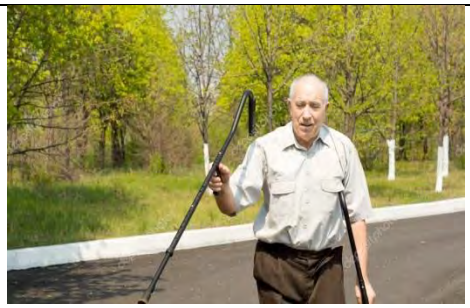
Databases

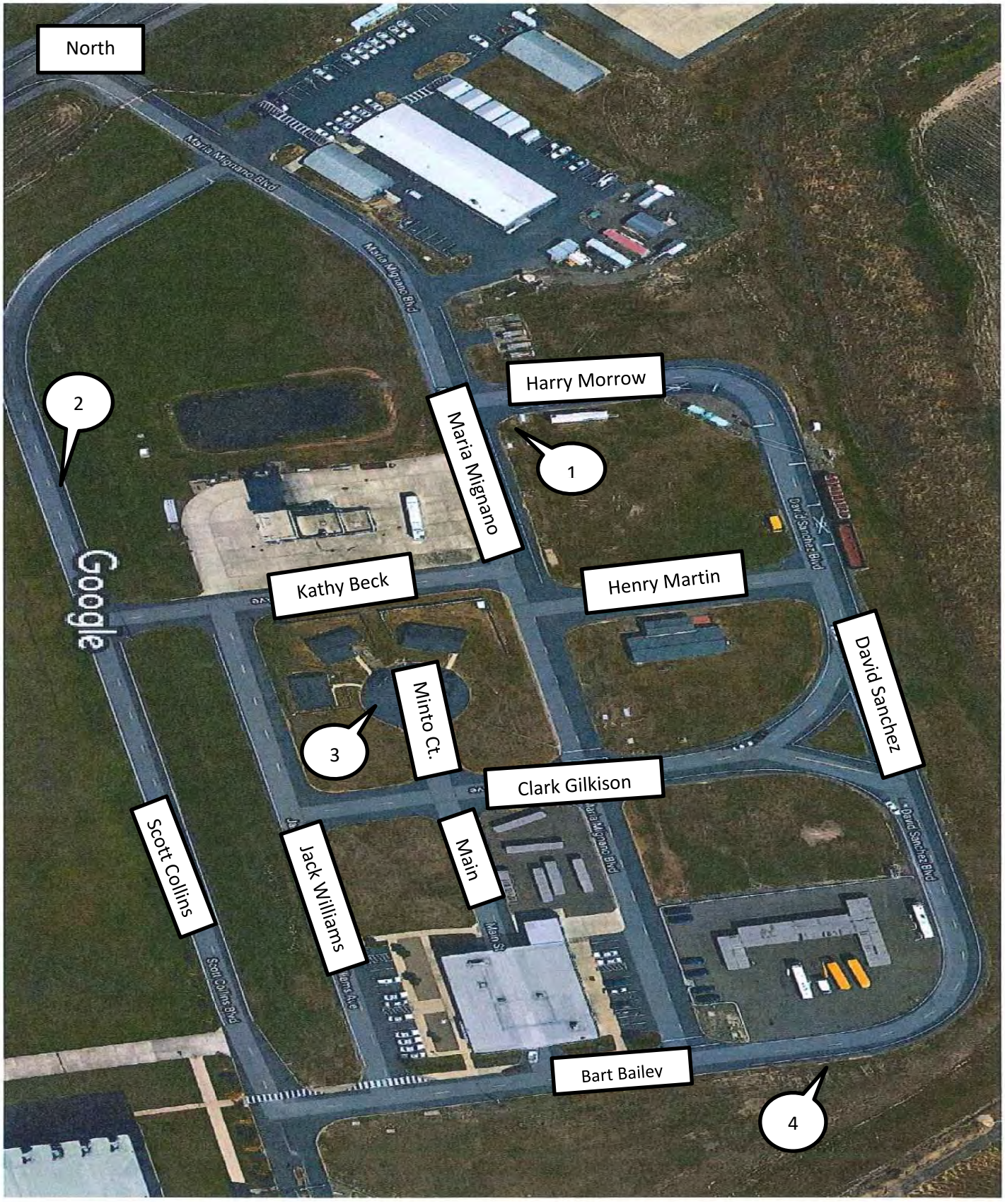
The National Crime Information Center (NCIC) has been called the lifeline of law enforcement. NCIC is an electronic clearinghouse of crime data that can be tapped into by virtually every criminal justice agency nationwide, 24 hours a day, and 365 days a year.

Criminal justice agencies enter records into NCIC that are accessible to law enforcement agencies nationwide. For example, a law enforcement officer can search NCIC during a traffic stop to determine if the vehicle in question is stolen or if the driver is wanted by law enforcement. The system responds instantly. However, a positive response from NCIC is not probable cause for an officer to take action. NCIC policy requires the inquiring agency to make contact with the entering agency to verify the information is accurate and up-to-date. Once the record is confirmed, the inquiring agency may take action to arrest a fugitive, return a missing person, charge a subject with violation of a protection order, or recover stolen property.

The Law Enforcement Data System (LEDS) is a program organized within the Intergovernmental Services Bureau of the Department of Oregon State Police. It provides a criminal justice telecommunications and information system for the State of Oregon. It is the control point for access to similar programs operated by other states and the Federal Government.

Using the map on the following page, find the locations associated with the following circumstances. Write out the radio communication for each.

Location on Map	Scenario	Photo	Radio Communication
1	Field contact with a known person: Larry Potter		
2	Field contact with an unknown person		
3	Location Information		
4	Traffic Stop		


North
Maria Mignano Blvd
Harry Morrow
2
1
Maria Mignano
Google
Kathy Beck
Henry Martin
David Sanchez
Minto Ct.
3
Clark Gilkison
Scott Collins
Jack Williams
Main
Bart Bailev
4

Basic Police Academy

Community Competency



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Community Competency

Instructional Goals:

This course is designed to:

1. Develop a new officer's understanding of the significance of working with diverse communities.
2. Develop a new officer's ability to interact with diverse communities effectively.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Describe community diversity.
2. Identify barriers to police-community relationships.
3. Identify examples of discrimination faced by diverse communities.
4. Demonstrate cultural humility in a given situation.
5. Demonstrate culturally appropriate language in a given situation.
6. Articulate strategies for engaging with diverse communities.

Content Outline:

Part 1- Barriers

- Diverse Communities
- Social Bias
- Tools of Discrimination
- Barriers to Effective Relationships

Part 2- Solutions

- Increasing Cultural Understanding
- Tools of Resistance
- Cultural Humility
- Choosing Language
- Engaging Diverse Communities

Part 1- Barriers

Introduction

In Roles and Responsibilities, you covered the primary functions of policing; service delivery, order maintenance, and law enforcement. You have and will continue to learn about the importance of fostering positive relationships with all community members. Despite their best efforts, some police agencies struggle to build trust and partnerships with diverse communities. As was covered in the History of Policing, in some communities, there is a historical mistrust between police and communities of color. In these situations, officers are met with resistance, distrust, dishonesty, and even hostility because the individuals they are interacting with immediately view them as the enemy rather than as allies.

As an officer, it is important to recognize that mistrust does not always stem from the actions of current law enforcement personnel. Rather, it can grow from the norms and beliefs developed by an individual or even communities over time. With every negative encounter the relationship between officer and community deteriorates (Legitimacy and Procedural Justice: the bank account). Mistrust makes it infinitely more difficult for law enforcement personnel to serve and protect communities effectively.

Police must be able to fairly and effectively engage with all communities in their jurisdiction. Ensuring public safety for all requires that officers cultivate trust and collaboration with communities that may have different cultures, languages, and beliefs. Law enforcement officers must be equipped to use any encounter with the community as an opportunity to build trust and cooperation.

To assist with this, the Vera Institute of Justice put forth a series of guidebooks titled: Police Perspectives Guidebook Series- Building Trust in a Diverse Nation:

- How to Increase Cultural Understanding
- How to Serve Diverse Communities
- How to Support Trust Building in Your Agency

This course will explore some of the diversity that exists in our communities, identify challenges, and provide suggestions for officers to develop and improve relationships with various communities.

Diverse Communities

Diversity
Differences in cultures, abilities, ideas, philosophies, backgrounds, and histories that exist among individuals.

Often people find talking about diversity uncomfortable. We are afraid of saying the wrong thing or not knowing something that we think we should have known. However, the purpose of talking about diversity is not to shame anyone or make anyone feel guilty or bad.

We learn about diversity as a means to understand how to relate to qualities that are different than our own and outside the groups to which we belong. These include but are not limited to age, ethnicity, class, gender, physical abilities/qualities, race, sexual orientation, as well as religious status, gender expression, educational background, geographical location, income, marital status, parental status, and work experiences. Diversity exists in your communities, in your workplaces, on this campus, and in this classroom.

Who are the members of our communities?

Often, when people think of diverse communities, it is race and ethnicity that comes to mind. According to the 2010 census (the most current available until the 2020 census is released), approximately 40 million foreign-born people live in the United States, making up roughly 13 percent of the total U.S. population. A significant proportion of the growth is not happening in cities but in suburbs, rural communities, and small towns.

Note: The following section includes a significant amount of data. None of which is important for your quizzes and exams. Understand the concept of diverse communities, do not focus on numbers and percentages.

According to the U.S. Census 2019 survey, Oregon demographics include:

- White- 86.8%
- Hispanic or Latino- 13.3%
- Asian- 4.8%
- Black or African American- 2.2%
- American Indian and Alaska Native- 1.8%
- Native Hawaiian and Other Pacific Islander- 0.5%

The term race refers to the concept of dividing people into populations or groups based on various sets of physical characteristics (which usually result from genetic ancestry).	An ethnic group or ethnicity is a population group whose members identify with each other based on shared nationality or shared cultural traditions. Everyone has an ethnic culture.

According to the State of Oregon Employment Department, Portland ranks 44th in diversity out of the 50 most populous metro areas in the U.S. Despite being one of the least diverse large cities in the U.S.; the Portland metro area is the most diverse region in the state. Nineteen percent of the metro's population are people of color. The Salem metro region has the highest proportion of Hispanic or Latino residents of any race, with 23 percent of residents identifying as Hispanic in 2015. The least diverse metro region of Oregon is the Bend-Redmond area, where less than 7 percent of residents are people of color.

What about other diversity dimensions? A 2018 Gallup Poll found that Oregon is one of the least religious states. According to the Pew Research Center, the most prevalent (61%) religion in Oregon are Christian based faiths and include Protestant, Christian, Catholic, Mormon, Jehovah's Witness. The next largest group (31%) is not affiliated with a religion of any kind. At 7%, non-Christian based faiths include Jewish, Muslim, Buddhist, Hindu, and other world religions.

The U.S. Census and Data USA identify the following dimensions:

- 288,540 persons in Oregon are veterans. Oregon has a large number of Vietnam veterans (over 100,000).
- 33% of Oregon's population (ages 25 and older) have a Bachelor's Degree or higher.
- 10% of Oregon's population (under age 65) has a disability.
- Oregon's poverty rate is 15%.
- The median household income is $63,426.
- 10% of Oregon's residents were born outside of the United States
- 16% of Oregon's population are non-English speakers. The most common foreign languages are (in order) Spanish, Chinese, and Vietnamese.
- The median age of Oregon residents is 39. The population is getting older.
- The most common birthplaces of foreign-born residents are (in order) Mexico, Vietnam, and China.
- 94% of Oregon's population are U.S. citizens.

There are numerous other dimensions of diversity in Oregon communities not represented by data.

What diversity exists in your community?

Social Bias

Source: The SAGE Handbook of Prejudice, Stereotyping, and Discrimination

Across the globe, diverse groups and individuals experience varying forms of bias. There are multiple ways bias can be demonstrated against groups or individuals.

Stereotype	Prejudice	Discrimination	Oppression
Associations and beliefs about the characteristics and attributes of a group and its members that shape how people think about and respond to the group	Prejudice is an individual-level attitude (positive or negative) toward groups and their members that creates or maintains hierarchical status relations between groups.	Behavior that creates, maintains, or reinforces advantage for some groups and their members over other groups and their members.	Prolonged cruel or unjust treatment or control.
Thoughts Beliefs	Attitudes Judgments	Behaviors Actions	Actions Control

Stereotypes represent a set of qualities perceived to reflect the essence of a group. Stereotypes systematically affect how people perceive, process information about, and respond to group members. They are transmitted through socialization, the media, and language. Stereotypes imply a substantial amount of information about people beyond their immediately apparent surface qualities and generate expectations about group members' anticipated behavior in new situations. Stereotyping can be helpful as it can serve as a means to simplify a complex environment. However, stereotyping can also be harmful. In general, stereotypes produce a readiness to perceive behaviors or characteristics that are consistent with the stereotype. Stereotypes can not only promote discrimination by systematically influencing perceptions, interpretations, and judgments, but they also arise from and are reinforced by discrimination, justifying disparities between groups. You will learn more about bias in Implicit Bias.

> Stereotype
>
> The typical picture that comes to mind when thinking about a particular social group.

What does discrimination look like? What images come to mind? Depending on your own life experiences, that picture may vary significantly, even among this class. The following section introduces tools of discrimination that have occurred here in Oregon. This content was provided by the Oregon Jewish Museum and Center for Holocaust Education in Portland as part of the exhibit: Discrimination and Resistance, An Oregon Primer.

Six Tools of Discrimination

Appropriate	Definition: To take (something) for one's own use, typically without the owner's permission. Example: The 19th-century doctrine of Manifest Destiny held that white Americans had the divine right (and obligation) to expand across the continent and assert their dominance. Federal laws and treaties enabled vast appropriation of Indian lands to accomplish this goal.
Dehumanize	Definition: Deprive of human qualities. Claiming that a group of people is less than human or that they are "not like us" is a harsh tool of discrimination. Such claims aim to alienate and isolate one group from another. Fear of "the other" has often been used to deny people their civil rights and even deprive them of enjoying intimacy, marriage, or parenthood.
Exclude	Definition: Deny (someone) access to or bar (someone) from a place, group, or privilege. Example: Oregon came into existence with exclusion at its core. First, as a territory, and then as a state, Oregon excluded people based on their race or identity. Women, as well as Black, Asian, and Indian men, were not granted the same rights and privileges. Non-white citizens were routinely barred from public places, many types of employment, housing, or owning land.

Intimidate	Intimidation is the act of intentionally coercing or frightening someone to cause them to do something against their will, or to prevent them from doing something they want to do.
Scapegoat	Definition: A person who is blamed for the wrongdoings, mistakes, or faults of others, especially for reasons of expediency. Example: In the 19th century and early 20th, many immigrants who came to Oregon eager to find work, faced barriers that included the denial of fundamental civil rights and being subjected to intimidation and violence. Further immigrants were often scapegoated- accused of taking white worker's jobs and blamed for economic failures.
Segregate	Definition: Set apart from the rest or each other; isolate or divide. Example: An elaborate system of racially segregated services, facilities, and public accommodations flourished across the United States following the abolition of slavery. Jim Crow was a system of state laws and customs that enforced the legal doctrine of "separate but equal" that denied individuals and groups their constitutional rights to equal treatment under the law.

What examples of discrimination have you experienced or witnessed?

Barriers to Effective Police-Community Relationships

Fostering positive relations has never been more critical to the success of community policing, yet law enforcement faces many challenges in reaching diverse communities. Some of these barriers include the following:

- Language barriers- Language barriers can prevent communities and the police from understanding one another and make it difficult for police to assess and respond to calls for assistance and other situations effectively.

- Fear- Some cultures, especially immigrants and refugees, fear police and are often reluctant to report crime because they come from places where law enforcement agencies are corrupt and abusive. Criminals also target these vulnerable populations because their reluctance to report crime is well known.

- Federal immigration enforcement's effect on local trust-building- Immigrants may not be able to distinguish among local, state, and federal law enforcement officers. They may attribute immigration raids or other federal immigration enforcement activities to local police and, therefore, mistrust community policing efforts.

- Lack of awareness of cultural differences- Members of diverse communities may misunderstand how to interact with police, while police may be unfamiliar with diverse cultural traditions and practices.

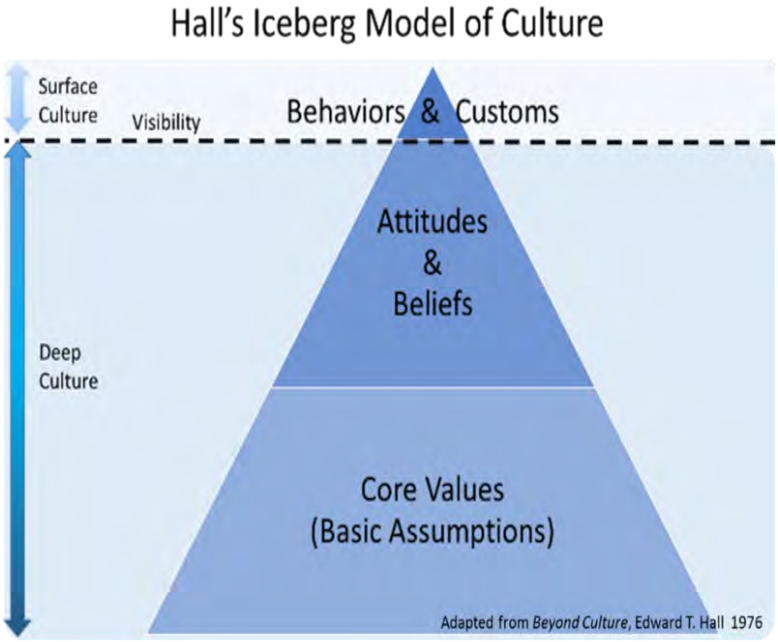
- Negative experiences with individual officers- When individual officers do not treat members of diverse communities respectfully, the entire department's relationship with that community may suffer.

Part 2- Solutions

Part 1 introduced types of bias and discrimination that impact diverse communities. Part 2 will introduce some solutions and strategies to help develop positive relationships.

Increasing Cultural Understanding

Cultural anthropologist Edward Hall developed the iceberg analogy of culture. If the culture of a society was an iceberg, there are some aspects visible above the water, but a more substantial portion is hidden beneath the surface.



The external part of a culture is what we can see (the small, tip of the iceberg). This includes food, music, language, arts, literature, celebrations, customs, dress, etc.

The internal part of a culture is the larger, less visible part below the surface. This consists of: values, religious beliefs, body language, norms, etiquette, rules, gender roles, expectations, attitudes toward social status, perceptions, attitudes toward age, notions of modesty, views on raising children, the concept of fairness, the importance of space, approaches to problem-solving, notions of cleanliness, the importance of time, etc.

When one is in an environment of a shared culture, where people are mostly acting from a similar set of ideas and beliefs about how the world works, communication and understanding are often easier. Misunderstandings, false assumptions, and a lack of communication can arise more easily when people are operating from differing core beliefs (Communication 101).

What makes up your culture?	
External Factors:	Internal Factors:

Oregon History Lesson

1942-1948

The city of Vanport was built during the Second World War to house wartime workers at the Kaiser Shipyards. It drew tens of thousands of black workers, becoming home to Oregon's first substantial black population. After the war, these workers, unable to find housing in Portland, remained segregated at Vanport.

On May 31, 1948, a catastrophic flood wiped Vanport out of existence, leaving the black population with no option but to move to Portland. The city's response was to isolate them to inner North and Northeast Portland, strictly enforcing the practice of redlining.

Understanding Resistance

In Oregon and across the country, there has been resistance to biased practices. Indian populations persevered despite systematic efforts to expel them from their lands, stripping them of their culture, and forcing them to assimilate into white society. Although exclusion laws were imposed, the people targeted for exclusion still chose to live in Oregon and build lasting communities. Blacks, Japanese, Latinos, and American Indians served in the Second World War and fought for freedoms that were often denied to them back home. Their resistance to the decades of inequity gained urgency after the war. More recently, a newly defiant LGBTQ community (lesbian, gay, bisexual, transgender, or queer) has demanded full civil rights, equal to those guaranteed to everyone. *See Attachment A for more details.*

Some groups employ legislative remedies to work for change, while others take to the streets in direct action. When traditional institutions fail to serve a community's needs, creative alternatives are born. Resistance exists wherever discrimination does.

The following section introduces tools of resistance that have occurred here in Oregon. This content was provided by the Oregon Jewish Museum and Center for Holocaust Education in Portland as part of the exhibit: Discrimination and Resistance, An Oregon Primer.

Six Tools of Resistance**:**

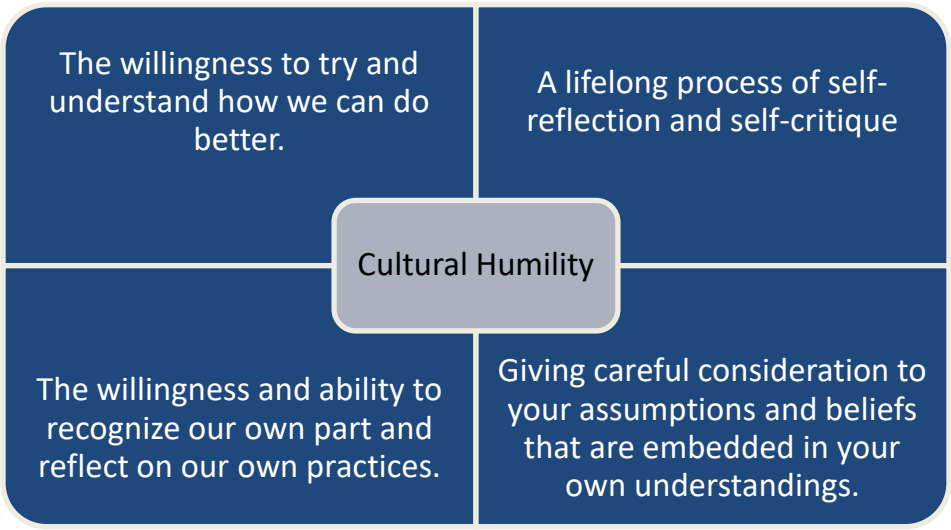
Celebrate	Music, food, traditions, gatherings, and ceremonies are ways that groups celebrate their culture and pass their traditions on to the next generation. Learning about another culture might dispel myths and misconceptions about a culture different from your own.
Create	When institutions fail to include non-traditional, non-white communities in their services, those marginalized groups often succeed in creating alternative options to feed their children, provide education, tell their stories, and provide medical care. Example: Chapters of the Black Panther Party were formed in Oregon in 1969. The party provided essential nutrition and health services that were scarce in Portland and Eugene's black communities and challenged oppressive laws, racist practices, and harsh law-enforcement tactics. The party ran several free breakfast programs in inner-city elementary schools.
Organize	Discrimination has often led to the organization of political groups as a tool in the struggle to overturn oppressive laws and policies and support the oppressed.
Persist	A quiet but powerful method to resist discrimination has been the simple act of persisting- of living in a hostile environment, refusing to retreat in the face of intimidation, and thereby opposing oppressive laws and practices.
Protest	Direct actions such as sit-ins, marches, protest rallies, and boycotts have been used effectively to highlight discriminatory laws and policies, confront public opinion, and challenge the status quo.
Reform	Ending legal discrimination requires the repeal of existing discriminatory laws or the creation of new laws to outlaws discriminatory practices. When a law is contested, our courts determine whether it complies with our constitutionally guaranteed rights.

Cultural Competence versus Cultural Humility

The long-held "ideal" of cultural competency focuses on attempting to "know" and become "competent" in understanding another's culture or cultures. Competence suggests that knowing broad descriptions of various group identities can translate into knowing the life experiences of an individual. Cultural competence assumes mastery can be achieved. The danger of this strategy is that it supposes culture is knowable and may create stereotypical composites of various group identities. Critics argue that cultural competency fails to take into account the constant evolution and fluidity of culture. This constant change and fluidity make it impossible to ever "achieve" competence.

It is impossible to understand all of the elements of a culture, the ongoing fluidity, and the endless ways cultural identities intersect within an individual. Instead, we introduce the lifelong practice of cultural humility.

	Cultural Competence	Cultural Humility
Perspectives on Culture	• Acknowledges the layers of cultural identity • Challenges stereotypes • Difference is seen in the context of systemic discrimination	• Acknowledges the layers of cultural identity • Recognizes that working with cultural differences is a lifelong and ongoing process • Emphasizes not only understanding the 'other' but understanding ourselves as well
Assumptions	• Assumes the problem is a lack of knowledge, awareness, and skills to work across lines of difference • Individuals and organizations develop the values, knowledge, and skills to work across lines of difference	• Assumes that in order to understand individuals, we must also understand our communities, colleagues, and ourselves • Requires humility and recognition of power imbalances that exist in relationships and society
Premise	• Mastery	• Accountability



Cultural humility is different from other culturally-based training ideals because it is not about achieving a state of knowledge or awareness. Rather than learning to identify and respond to sets of culturally specific traits, the culturally humble person develops and practices a process of self-awareness and reflection (Emotional Intelligence). The starting point for such an approach is not an examination of the other person's belief system, but rather YOU giving careful consideration to YOUR assumptions and beliefs that are embedded in YOUR own understandings and goals of the encounter with the other person.

Self-Reflection Questions for Cultural Humility
What are my cultural identities?
How do my cultural identities shape my worldview?
How does my own background help or hinder my connection to communities?
What are my initial reactions to individuals who are culturally different from me?
What do I learn about myself by listening to persons who are different than me?

A cultural difference is a relationship between two perspectives. Self-awareness of your perspective and an awareness and acceptance of the other person and any differences in the contrasting cultures can be useful in any encounter, not just with people who are perceived to be culturally "other."

Cultural humility encourages us to realize our own power, privilege, and prejudices. Each of us must work to understand the other person's worldview and any oppression or discrimination that they may have experienced.

Hall suggested that the only way to learn the internal culture of others is to participate in their culture. When one first enters a new culture, only the most overt behaviors are apparent (tip of the iceberg). As one spends more time in that new culture, the underlying beliefs, values, and thought patterns that dictate that behavior will be uncovered (under the water). What this model teaches us is that we cannot judge a new culture based only on what we see when we first enter it. We must take the time to get to know individuals from that culture and interact with them. Only by doing so can we uncover the values and beliefs that underlie the behavior of that society.

Oregon History Lesson

Chinese men who came to Oregon in the late 19th century as laborers were often referred to as "sojourners" since they were only allowed into the country to work, and could not be accompanied by wives or families.

In 1882, the nation's failing economy, coupled with long-standing anti-Chinese sentiment, resulted in the passage of the federal Chinese Exclusion Act, which banned Chinese labor immigration for 10- years.

Amid the hysteria, arsonists burned buildings in Portland's Chinatown, vigilantes expelled Chinese workers from Oregon City, and a small group of men and boys massacred 34 Chinese miners in Hells Canyon.

Bring it Together-

Applying Cultural Humility, Emotional Intelligence, Effective Communication Skills, and the Needs of Victims to Your Role

You will cover more about bias crimes in your criminal law series. For a quick introduction, a hate and bias incident is any hostile expression that may be motivated by another person's race, color, disability, religion, national origin, sexual orientation, or gender identity. Hate and bias acts can be verbal, physical, or visual. This language and behavior often contribute to or creates an unsafe or unwelcoming environment. Some examples include:

- Name-calling; using a racial, ethnic, or another slur to identify someone; or using degrading language.
- Creating racist or derogatory graffiti or images/drawings.
- Imitating someone with a disability, or imitating someone's cultural norm or practice.

Imagine you are responding to a hate and bias incident. The victim is a member of a cultural group of which you do not have a deep understanding. What might your response be? What might you say? How can you meet the needs of the victim?

Choosing Language

Just as culture evolves, the language used to describe and define groups evolves. Additionally, members of any group do not necessarily feel the same way about words describing their identity. There is no way for a person to know how to refer to every individual or group. Part of cultural humility is simply acknowledging that we don't know something and asking the person to guide us. Getting comfortable with asking questions and accepting and acknowledging that we will all make mistakes during interactions is essential. First, let go of any guilt or blame for "not knowing." Second, find out what individuals want to be called? Ask what pronouns a person uses or would like you to use (he/she/they). Third, try to use the most precise term, such as the specific ethnic name. Be careful not to assume ethnicity or place of birth, just ask "what ethnic group are you part of?" The use of language applies to groups and individuals outside of race and ethnicity. Gender, glass, sexual orientation, age, religion, and ability are all areas to be aware of.

Person First Language-

The words or phrases people speak and write plus the order in which they are sequenced greatly affects the images that are formed about individuals and the negative or positive impressions that result.

A general rule is to use person-first language, which demonstrates respect for individuals. This simply means putting the person ahead of their characteristics. For example, the man who is blind versus the blind man.

Source: The Power of Language: Speak and Write Using "Person First"

Additionally, some words and phrases are laden with judgment and assumptions and likely to invoke a negative response. Avoid using phrases like "those people" and "you people" about a person's identity group. Terms such as "handicapped" originate from "cap in hand," referring to someone who needs to beg. Similarly, avoid phrases that suggest victimhood, such as "suffers from" or "confined to a wheelchair." Referring to sexual "preference" rather than sexual orientation implies one's sexuality is chosen.

If concern over terminology is frustrating or feels overly sensitive, consider the following:

- We choose to use words that convey sensitivity and understanding not because we want to be "correct" but because how we use words affects people—their concept of themselves and members of their group and the ability to create and maintain authentic relationships across differences.
- Words we use affect how we think and perpetuate attitudes about groups.

Source: The Evolving Language of Diversity

Engaging Diverse Communities

Developing collaborations with diverse communities is essential to effective public safety. Community groups and community leaders have their fingers on the pulse of a community. They can often serve as ambassadors to law enforcement agencies working to connect with the communities they serve. Two examples of collaborations include working with faith-based organizations and social service providers.

Faith-Based Organizations (FBO)	Social Service Providers
Partnering with FBOs can help law enforcement agencies prevent crime and de-escalate tense situations by providing officers with valuable insight into community needs and issues, helping them understand the community's unique cultural and religious characteristics, building relationships with local leaders, and working jointly with organizations and people dedicated to protecting the community and its most valuable members. By partnering with FBOs, the police may be able to: • Gain insight into the needs of a particular community; • Have a community-based ally with whom the police can work to prevent crime or de-escalate tense situations within the community; • Gain access to and build trust with vulnerable groups in the community; • Better understand the culture and inner workings of the community they serve.	Today's police officers are increasingly tasked with responding to a variety of social problems—including homelessness, mental illness, and drug use. Law enforcement agencies and social service providers often have a shared mission: to serve vulnerable populations and make communities safer. Partnering with social service providers helps clarify what the role of the police officer should be and allows these complex social problems to be addressed by trained individuals and organizations. By partnering with social service providers, the police may be able to: • Better understand the intricacies of the communities in which they work; • Identify critical community resources for individuals in need; • Build legitimacy with vulnerable populations, which may be unwilling or unable to approach police for assistance; • Develop a referral network consisting of community safety stakeholders.

Proactive trust-building can help tremendously when contentious incidents occur (remember the procedural justice bank account?). Agencies that are proactive in connecting with the communities they serve, rather than reactive when emotionally charged situations occur, rely on strong community partnerships to help them ensure public safety through community-oriented problem-solving. Furthermore, when contentious incidents occur, those partnerships are already in place, allowing police and community members to work collaboratively to solve problems or address negative feelings that may arise as a result of the incident.

Trauma-Informed Policing means that police services are delivered in a way that will not cause re-traumatization to vulnerable individuals. This requires officers to be familiar with the signs of trauma and some reactions that traumatized individuals may exhibit. Officers need to know the following:

- Those affected by trauma can exhibit symptoms, including nausea, flashbacks, trembling, memory gaps, fear, and anger. These same symptoms can trigger behaviors that police may interpret as not cooperating, appearing adversarial, or behaving aggressively.

- Traumatic experiences can cause someone to disengage or "tune out" and avoid interacting with the outside world. Traumatized individuals may feel numb and show no outward signs of distress, which can easily mislead police officers to believe that the trauma is not significant because the signs of stress are minimal.

- Traumatic experiences can also cause someone to be hypervigilant and come off as hostile.

Lastly, law enforcement agencies must use *community-informed strategies* to increase their agencies' ability to build trust with diverse communities. Strategies such as asset mapping, mediation, and police/community dialogue have been successful in communities.

Sources and Resources

Vera Institute of Justice: Police Perspectives Guidebook Series- Building Trust in a Diverse Nation:

- How to Increase Cultural Understanding
- How to Serve Diverse Communities
- How to Support Trust Building in Your Agency

Attachment A- Definitions
Provided by The Human Rights Campaign

Many Americans refrain from talking about sexual orientation and gender expression identity because it feels taboo, or because they're afraid of saying the wrong thing. This glossary was written to help give people the words and meanings to help make conversations easier and more comfortable.

Ally- A person who is not LGBTQ but shows support for LGBTQ people and promotes equality in a variety of ways.

Androgynous- Identifying and/or presenting as neither distinguishably masculine nor feminine.

Asexual- The lack of a sexual attraction or desire for other people.

Bisexual- A person emotionally, romantically, or sexually attracted to more than one sex, gender, or gender identity though not necessarily simultaneously, in the same way, or to the same degree.

Cisgender- A term used to describe a person whose gender identity aligns with those typically associated with the sex assigned to them at birth.

Closeted- Describes an LGBTQ person who has not disclosed their sexual orientation or gender identity.

Coming out- The process in which a person first acknowledges, accepts, and appreciates their sexual orientation or gender identity and begins to share that with others.

Gay- A person who is emotionally, romantically, or sexually attracted to members of the same gender.

Gender dysphoria- Clinically significant distress caused when a person's assigned birth gender is not the same as the one with which they identify. According to the American Psychiatric Association's

Diagnostic and Statistical Manual of Mental Disorders (DSM), the term - which replaces Gender Identity Disorder - "is intended to characterize better the experiences of affected children, adolescents, and adults."

Gender expression- External appearance of one's gender identity, usually expressed through behavior, clothing, haircut, or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

Gender-fluid- According to the Oxford English Dictionary, a person who does not identify with a single fixed gender; of or relating to a person having or expressing a fluid or unfixed gender identity.

Gender identity- One's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.

Gender transition- The process by which some people strive to more closely align their internal knowledge of gender with their outward appearance. Some people socially transition, whereby they might begin dressing, using names and pronouns, and be socially recognized as another gender. Others undergo physical transitions in which they modify their bodies through medical interventions.

Homophobia- The fear and hatred of or discomfort with people who are attracted to members of the same sex.

Intersex- An umbrella term used to describe a wide range of natural bodily variations. In some cases, these traits are visible at birth, and in others, they are not apparent until puberty. Some chromosomal variations of this type may not be physically apparent at all.

Lesbian- A woman who is emotionally, romantically, or sexually attracted to other women.

LGBTQ- An acronym for "lesbian, gay, bisexual, transgender and queer."

Living openly- A state in which LGBTQ people are comfortably out about their sexual orientation or gender identity – where and when it feels appropriate to them.

Non-binary- An adjective describing a person who does not identify exclusively as a man or a woman. Non-binary people may identify as being both a man and a woman, somewhere in between, or as falling completely outside these categories. While many also identify as transgender, not all non-binary people do.

Outing- Exposing someone's lesbian, gay, bisexual, or transgender identity to others without their permission. Outing someone can have severe repercussions on employment, economic stability, personal safety, or religious or family situations.

Pansexual- Describes someone who has the potential for emotional, romantic, or sexual attraction to people of any gender though not necessarily simultaneously, in the same way, or to the same degree.

Queer- A term people often use to express fluid identities and orientations. Often used interchangeably with "LGBTQ."

Questioning- A term used to describe people who are in the process of exploring their sexual orientation or gender identity.

Sex assigned at birth- The sex (male or female) given to a child at birth, most often based on the child's external anatomy. This is also referred to as "assigned sex at birth."

Sexual orientation- An inherent or immutable enduring emotional, romantic, or sexual attraction to other people.

Transgender- An umbrella term for people whose gender identity or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply

any specific sexual orientation. Therefore, transgender people may identify as straight, gay, lesbian, bisexual, etc.

Transphobia- The fear and hatred of, or discomfort with, transgender people.

Basic Police Academy

Community Crime Prevention



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Community Crime Prevention

Instructional Goal:

This course is designed to introduce a new police officer to crime prevention strategies.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Explain the role of police in crime prevention.
2. Identify effective crime prevention strategies.
3. Recognize the risks of unintentional consequences of crime prevention strategies.

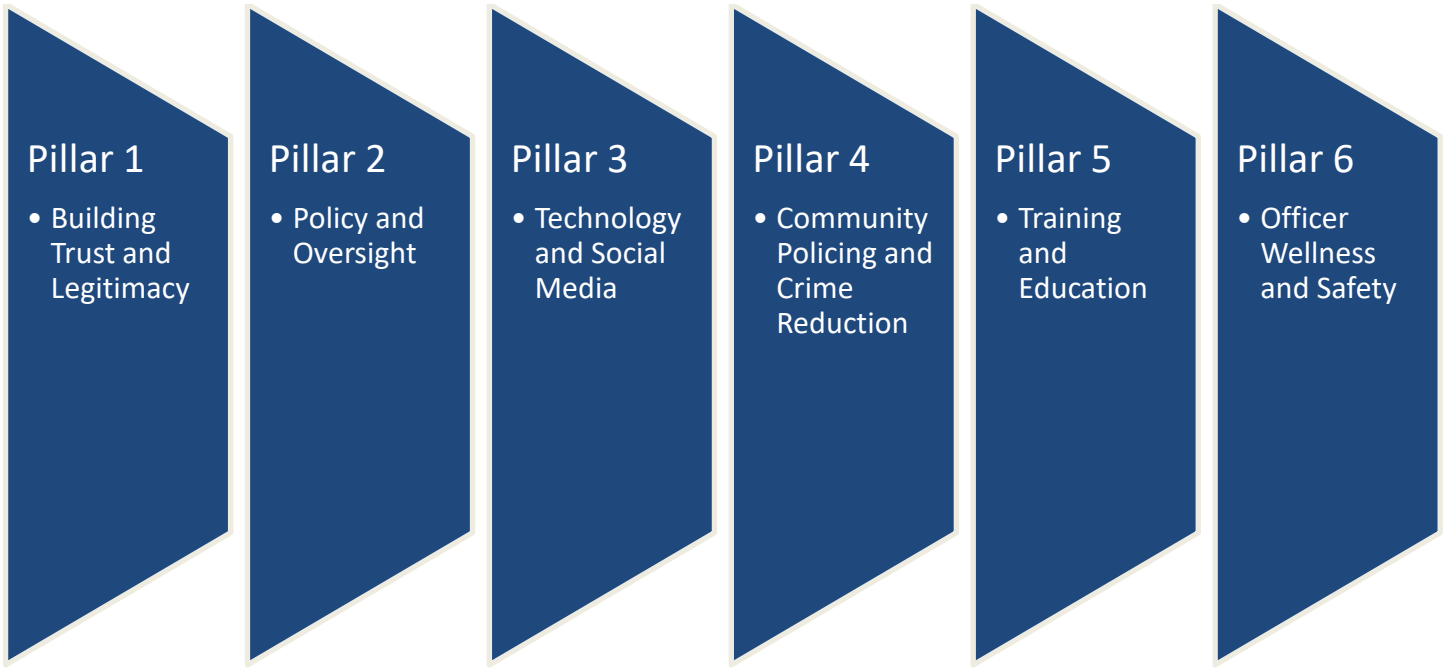
Content Outline:

- 21st Century Policing- Pillar 4
- Theories of Crime
- Effectiveness of Policing Strategies on Crime Prevention
- Crime Prevention through Environmental Design (CPTED)
- Situational Crime Prevention
- Hot Spots

Establishing public safety is among the local government's fundamental obligations to its citizens. The safety of one's person and security of one's property is widely viewed as basic human rights and are essential to the community's overall quality of life. When the citizenry is not (or does not feel safe), other critical local government functions such as economic development, government finance, public education, stable housing, and basic local government services become that much more challenging to provide. In short, a community's reputation for public safety heavily influences its appeal as a place to raise a family or open a business.

SOURCE: Effective Policing and Crime Prevention, Joel B. Plant and Michael S. Scott, Center for Problem-Oriented Policing, 2009

21st Century Policing



The Final Report of the President's Task Force on 21st Century Policing, and the subsequent Evidence Assessment, address the importance of the police role in crime prevention under both Pillar 1 and 4.

Pillar 1: Building Trust and Legitimacy	Pillar 4: Community Policing and Crime Reduction
• Police should focus on several trust-building activities, including emphasizing non-enforcement activities in communities and schools and increasing transparency through information sharing. o The Evidence Assessment points out Portland's Smart Policing Program as an example of a non-arrest focused hot spots approach. • They should also consider the potential consequences of crime-fighting strategies for resident trust. o The Evidence Assessment points out intensive policing practices could harm legitimacy when efforts are focused on a particular community and the individuals therein.	Focuses on building positive partnerships with community members to both increase police legitimacy and enhance public safety and resilience to crime. • Police should collaborate with multiple individuals and organizations to "co-produce" public safety. o Collaboration is a core tenet of Community Policing. o Community policing provides the framework for hot spots policing or problem-oriented policing. o Problem-Oriented Policing strategies can become more productive by using crime prevention strategies.
The most common type of strategies used are community-oriented police training, the creation of special community-oriented task forces, foot patrol officers, grants for community policing activities, or a combination of these.	Programs involving problem-solving through situational prevention and community collaboration were more successful than those focusing more on increasing low-level arrests to reduce disorder.

Theories of Crime

To implement crime-fighting strategies, one should first know something about the causes of crime. Consider the following:

> Suppose we abandoned all situational controls:
>
> no locks on cars, houses, bicycles
> no alarms on businesses
> no security cameras on ATM's
> no baggage screening at airports
> no ticket checks at train stations
> no traffic lights
>
> Would there be a change in the volume of crime and disorder?
>
> *Source: Police Methods | Section 4.1 | Professor McKee's Things https://www.docmckee.com/WP/oer/policing-2/police-methods-section-4-1/*

For environmental criminologists, "opportunity makes the thief" is the cornerstone of their approach. They believe that if opportunity increases, then so will crime. If you answered "yes" to the box above, that crime and disorder would increase, then you, too, think opportunity is a cause of crime.

However, many criminologists do not agree. They believe that opportunity can only determine when and where crime occurs, not whether it happens. In their view, whether crime occurs is wholly dependent on offenders' propensities, and these propensities determine the volume of crime in society.

Many theories try to explain why crime occurs in some places and not others. Here are just a few:

- **Routine Activity Theory** suggests that crime occurs when a motivated offender, a suitable target, and the lack of capable guardians converge in the same place at the same time. Criminals find their targets within the context of their routines, such as traveling to and from work or shopping. They tend not to go too far out of their way to commit crimes.

- **Situational Crime Prevention Theory** suggests that crime and public disorder can be prevented by reducing opportunities for crime. For example, if crime occurs regularly in a dimly lit alley, public works could improve lighting and increase police presence in the area.

- **Broken Windows Theory** explains how lesser crimes, untended areas, blight, graffiti, and signs of disorder decrease neighborhood residents' willingness to enforce social order, which in turn leads to more serious crime. If police target minor transgressions, they may prevent serious crime from developing in those places.

Source: Why Crimes Occur in Hot Spots | National Institute of Justice.
https://nij.ojp.gov/topics/articles/why-crimes-occur-hot-spots

Crime is not evenly distributed across a community. Crime and disorder are heavily concentrated:

- Among relatively few offenders
- Happening to relatively few victims
- Occurring in relatively few places
- Involving relatively few target types

This phenomenon is commonly called the 80-20 rule, wherein 20 percent of some things are responsible for 80 percent of the outcomes. In practice, it is seldom precisely 80-20, but it is always a small percentage of something or some group involved in a large portion of some results.

This phenomenon suggests that focusing resources where crime is most concentrated will yield the most significant preventive benefits.

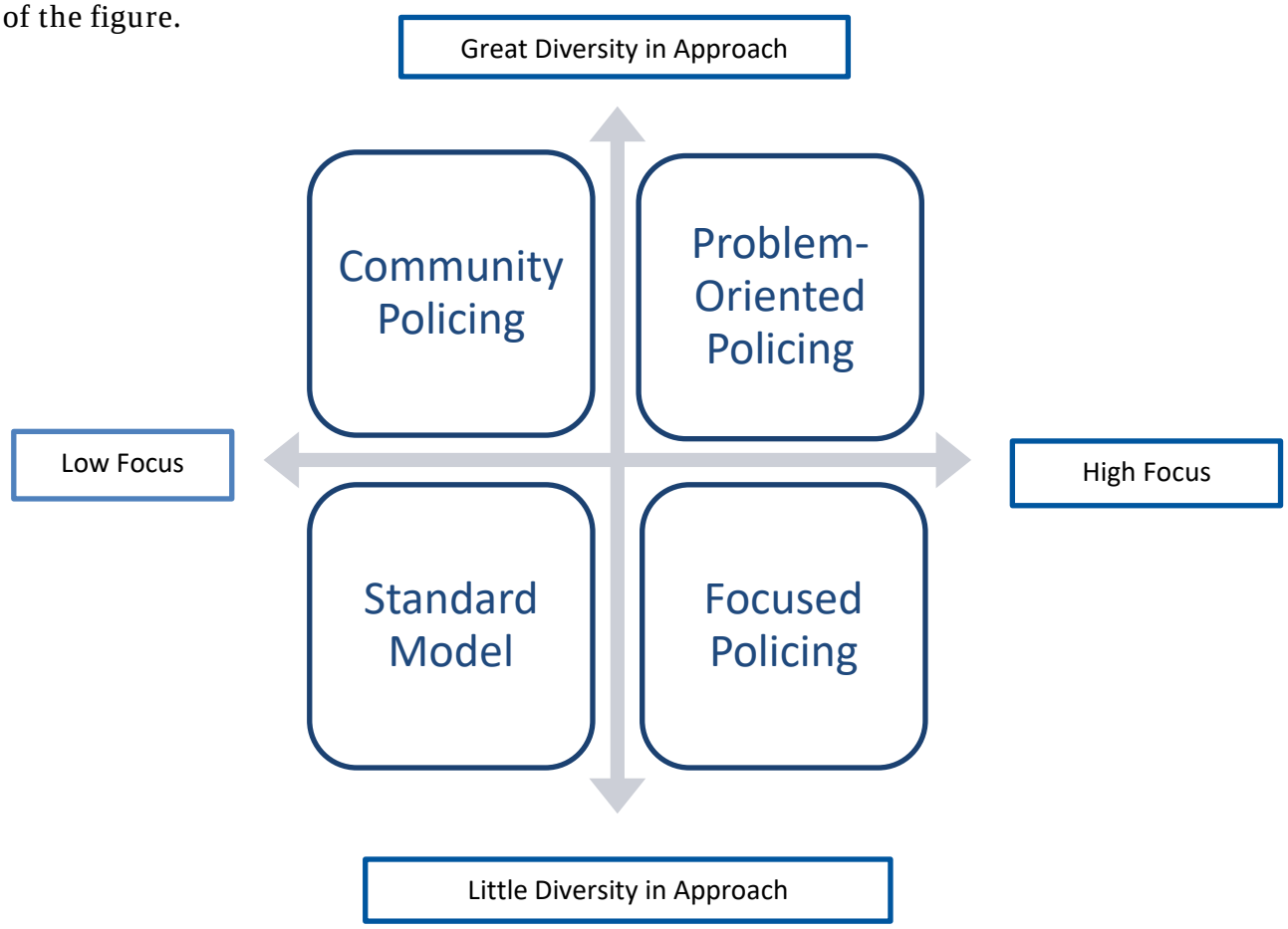
Source: Step 18: Learn if the 80-20 rule applies | ASU Center for ....
https://popcenter.asu.edu/content/step-18-learn-if-80-20-rule-applies

Effectiveness of Policing Strategies on Crime Prevention

Source: Step 3: Know what is effective (and not) in policing | ASU ....
https://popcenter.asu.edu/content/step-3-know-what-effective-and-not-policing

Research has consistently failed to find that the standard model of policing has any noticeable effect on crime, disorder, or fear of crime. Random patrol, rapid response, follow-up investigations, and arrest policies may be very beneficial for other purposes. Still, we should not expect any of these practices to have an impact on crime or disorder. Nor is there substantial evidence that adding police to carry out these practices will affect crime.

To effect crime, police strategies must include two elements. These strategies are represented on the axes of the figure.



Diversity in Approaches	Focus
Policing must address crime and disorder using a greater range of tools than merely enforcing the law. There is evidence that working with the public, and going beyond law enforcement, can have modest crime and disorder reduction effects, and the more personal the police-citizen contacts, the more likely it is that they will affect crime.	There is generally substantial evidence that geographically concentrated enforcement at crime or disorder hot spots can be useful, at least in the short run. That is, focused patrolling of very small high-crime places has a modest effect on crime and a significant impact on disorder. Such a result can be accomplished with or without intensive arrest actions. CompStat and other related innovations seek to take advantage of these findings.

Strategy: Crime Prevention through Environmental Design (CPTED)

Source: Using Crime Prevention Through Environmental Design in ....
https://popcenter.asu.edu/sites/default/files/using_cpted_in_problem_solving.pdf

Crime prevention through environmental design is an approach to problem-solving that considers environmental conditions and the opportunities they offer for crime or other unintended and undesirable behaviors. The use of design for safety and security is not new. Caves and cliff dwellings, and castles and moats are good historical examples. Requirements for street lighting grew out of a need to distinguish legitimate travelers from outlaws and thieves.

Contemporary approaches, including CPTED, emerged out of research on the relationship between crime and place, theories known variously as environmental criminology, situational prevention, rational choice theory, or routine activities theory, among others. Each theoretical approach focuses on the crime event and how a criminal offender understands and uses the environment to commit a crime. This research asks, why here?

The research reveals:

- Crime is specific and situational
- The distribution of crimes is related to land use and transportation networks
- Offenders are opportunistic and commit crimes in places they know well
- The opportunity arises out of daily routines and activities
- Places with crime are often also places without observers or guardians.

CPTED attempts to reduce or eliminate those opportunities by using elements of the environment to:



Control Access	Examples
• Create both real and perceptual barriers to entry and movement to control access. • The environment must offer cues about who belongs in a place when they are supposed to be there, where they are allowed to be while they are there, what they should be doing, and how long they should stay. • Users/guardians can also serve as access control if they pay attention to people and activities and report unwanted behaviors to the appropriate authorities.	• Fences, tree lines, hedges, or berms define the boundaries of a site • Drives, sidewalks, paths, and gardens guide movement through a site • Signs direct movement, provide information, define appropriate activities and schedules, and identify intended users (e.g., "Employees Only") • Consistent use of colors or materials – in buildings, pavers, light fixtures, and landscaping – create an identity • Gates and doors limit points of entry to a site or building • Support design features with locks, and enhanced with alarm systems or guards, depending on the situation

See and Be Seen	Examples
• See from adjacent properties or the site perimeter onto the site • See parking areas and buildings • See from one part of the site to another • See parking, walkways, and other areas of the site from various locations inside the building	• Lighting improves the ability to observe activity and identify individuals • Windows afford views from inside to outside and outside to inside • Building location and orientation can create or remove views • Proper selection of trees, shrubs, and other plant species, combined with regular maintenance, can minimize the conflict between lighting and landscaping • Furniture arrangements, window treatments, and other interior design elements can support observation and encourage guardianship • Design features may be supported by physical security, CCTV, or guards when circumstances require them
Define Ownership	**Examples**
• Use design to define ownership and encourage the maintenance of territories. • The design should provide cues about who belongs in a place and what they are allowed to do.	• Fences, hedges, tree lines, or planter boxes separate spaces • Changes in elevation or variations in paving or flooring materials define transitions from public to private spaces • Gardens, artwork, and furniture individualize spaces and show that someone cares and is paying attention • Signs establish ownership and any limits on the use • Buildings, yards, gardens, sidewalks, and other features are well maintained, clean and in working order, which is a sign of guardianship

	• Support design features by locks, alarm systems, CCTV, guards, or other security measures in some situations

CPTED may be distinctly different from traditional policing, yet it is very consistent with problem-oriented policing, in four ways:

- It considers a broad array of problems, not just crime.
- It requires a systematic analysis of crime events and the conditions and factors that contribute to opportunities for crime.
- It results in proactive and tailored strategies for the problem and the location.
- It engages an array of citizens, government agencies, and local institutions, each of which has a role to play in defining the problem and deciding upon an appropriate solution, as well as some accountability for long-term Improvements.

In-Class Activity- CPTED Scenarios

Scenario #1	Scenario #2	Scenario #3
Custodial workers routinely find evidence of smoking and vandalism in a high school bathroom.	The back wall of a building in an office center is repeatedly tagged with graffiti.	ATM patrons at a bank are being robbed after dark.
Why Here? The bathroom is in an isolated area of the building, adjacent to a concession stand that is only active during athletic events. The school's open lunch policy allows students to eat anywhere on campus, while monitors are assigned only to the cafeteria.	**Why here?** The taggers have selected an area that is out of the view of passers-by: a rear corner location where two buildings come together at the end of a poorly lit service lane. Hedges further reduce visibility at the site's perimeter. Businesses in the office center are open from 9 AM to 5 PM during the week; however, the tagged building is next to a roller-skating rink where activity peaks at night and on weekends.	**Why here?** The bank is situated along a commercial strip in a neighborhood with vacant properties and abandoned businesses. The ATM is in the front corner of the bank building, and the drive-through teller windows are at the side of the building, around the corner from the ATM. Robbers hide in the darkened drive-through teller area and attack unsuspecting ATM users after they complete a transaction.
Solution(s)	**Solution(s)**	**Solution(s)**

Strategy: Situational Crime Prevention

Situational crime prevention originated not as a policing approach, but more broadly as a scientific approach to crime prevention. Unlike CPTED, this approach is not concerned principally with design and the built environment. Instead, it is a general approach to reducing the opportunities for any kind of crime occurring in any type of setting. Situational Crime Prevention focuses on reducing crime by designing safer environments and more-secure consumer products.



Routine Activity Theory, states that predatory crime occurs when a likely offender and suitable target come together in time and place, without a capable guardian present. At its heart is the idea that in the absence of adequate controls, offenders will prey upon attractive targets.

- To have a crime, a motivated offender must come to the same place as an attractive target.

- If an attractive target is never in the same place as a motivated offender, the target will not be taken, damaged, or assaulted.

By directing attention to the three major components of any problem, the crime triangle helps to ensure that your analysis covers all three.

Also, problems occur when offenders are at the same places as targets, without any effective controller and these controllers who can prevent crime are represented in version 2 of the crime triangle. If the controllers are absent or present but powerlessness, crime is possible.

The latest formulation of the problem analysis triangle adds an outer triangle of "controllers" for each of the three original elements:



- Target/Victim- This is the capable guardian of the original formulation of routine activity theory. Usually, people are protecting themselves, their belongings, or those of family members, friends, and co-workers. Guardians also include public police and private security.

- Offender- This is the handler. The handler is someone who knows the offender well and is in a position to exert some control over their actions. Handlers include parents, siblings, teachers, friends, and spouses. Probation and parole authorities often augment or substitute for normal handlers.

- Place- the controller is the manager, the owner or designee who has some responsibility for controlling behavior in the specific location such as a bus driver or teacher in a school, bar owners in drinking establishments, landlords in rental housing, or flight attendants on commercial airliners.

When crime is occurring, all inner elements of the triangle must be present, and all outer elements weak or absent. If potential offenders are constantly present, for example, but crimes occur only when guardians are absent, then rescheduling guardians might be a useful solution.

Having an understanding of how opportunities create problems will help you think about solutions. For example, how to prevent offenders from reoffending by making better use of handlers, help victims reduce their probabilities of being targets, and to change places where problems occur, be these schools, taverns, or parking lots.

Source: Situational Crime Prevention | ASU Center for Problem ....
https://popcenter.asu.edu/content/situational-crime-prevention-0

While the Crime Triangle helps to analyze problems, situational crime prevention provides a framework for intervention. By assessing the opportunities that specific situations offer for crime, situational crime prevention has identified five main ways in which situations can be modified. These are:

1) Increasing the effort the offender must make to carry out the crime.
2) Increasing the risks the offender must face in completing the crime.
3) Reducing the rewards or benefits the offender expects to obtain from the crime.
4) Removing excuses that offenders may use to "rationalize" or justify their actions.
5) Reducing or avoiding provocations that may tempt or incite offenders into criminal acts.

These five approaches to reducing opportunity can be expanded to list 25 techniques of situational crime prevention (*see attachment*). Following are some examples from the 25 techniques:

#1 Harden targets use physical barriers such as locks, screens, or reinforced materials. Study- bullet-resistant passenger screens have cost-effectively reduced assaults and robberies committed against cab drivers.

#6 Utilize Place Managers use store clerks, hotel doorkeepers, parking lot attendants, and train conductors. Study- Having two clerks on duty, especially at night, has been found useful in preventing robbery of convenience stores.

#15 Deny Benefits use ink tags in clothing stores to prevent shoplifting, speed bumps to deny the benefits of speeding, and the immediate removal of graffiti to prevent offenders from the gratification of seeing their work on display.

#17 Avoid Disputes by separating rival sports fans at events, fixed taxi fares to prevent cheating and disputes over fares.

#22 Post Instructions such as No Parking signs, Park Closes at 10 PM signs.

These ways of reducing opportunities for crime often meet the same objection: all they do is move crime around, not prevent it. This theory of displacement sees crime as being shifted around in five main ways:

- Crime is moved from one place to another (geographical)
- Crime is moved from one time to another (temporal)
- Crime is directed away from one target to another (target)
- One method of committing crime replaces another (tactical)
- One kind of crime is substituted for another (crime type)

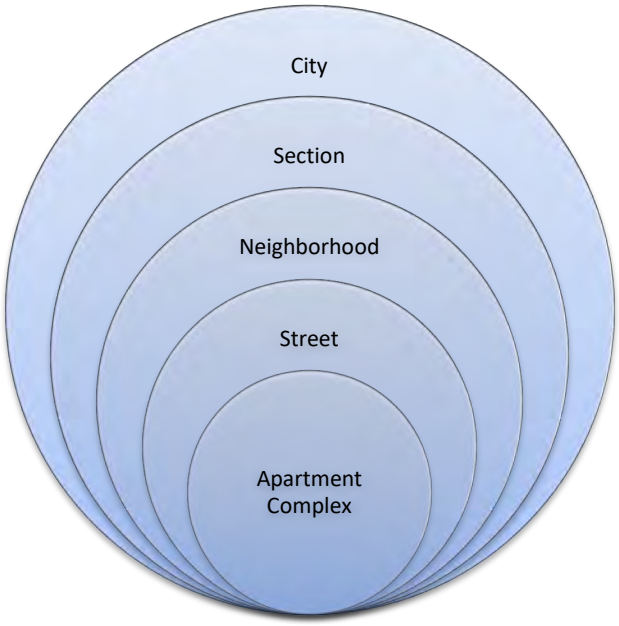
Displacement is usually limited because offenders have difficulty adapting quickly. If they do make changes, they are most likely to change to places, times, targets, methods, and crime types that are similar to those the prevention program blocks because these are the simplest changes for them to make. We can predict displacement by anticipating the easiest changes for offenders to make. If there are apparent easy changes, then you should consider how to incorporate these in your prevention plan. If you cannot include them, then you should consider monitoring them to detect possible displacement.

Hot Spots Policing

Although there is not a standard definition for "hot spots," they are generally thought of as "small places in which the occurrence of crime is so frequent that it is highly predictable, at least over one year." Remember where we started today? Crime is highly concentrated on particular people, places, and things. Through place-based strategies, such as hot spots policing, agencies can focus limited resources in areas where crime is most likely to occur. The appeal of focusing limited resources on a small number of high-activity crime areas is based on the belief that if crime can be prevented at these hot spots, then total crime across the city might also be reduced.

Source: Practice: Hot Spots Policing - CrimeSolutions.gov.
https://www.crimesolutions.gov/PracticeDetails.aspx?ID=8

Hot spot areas can include very small units of analysis such as buildings or addresses, block faces, or street segments, or bigger units such as clusters of addresses, block faces, or street segments.



There are two general approaches to hot spots:

- The first approach, problem-oriented policing (more on this tomorrow), represents police-led efforts to change the underlying conditions at hot spots that lead to recurring crime problems. It requires police to look past traditional strategies and include other possible methods for addressing crime problems.

- The second approach relies primarily on traditional policing activities, such as vehicle patrols, foot patrols, or crackdowns concentrated at specific hot spots to prevent crime through general deterrence and increased risk of apprehension.

Studies on the effectiveness of hot spots p0licing strategies have been positive, and displacement does not appear to be a common occurrence. However, while policing strategy and practices may have a positive effect from the perspective of crime reduction, concerns have been raised about their potential to generate negative collateral consequences, particularly for communities of color.

Source: Understanding the Impacts of Policing Strategies and ....
https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/NIJ-2017-11565.pdf

Think about:

- Are practices and strategies perceived as fair by those policed?
- How are those practices and strategies implemented (in their encounters with police, are individuals treated politely and with respect)?
- Do data and crime analysis tools encourage "over-policing" of communities of color?

It is essential to consider displacement and collateral consequences as possible unintended consequences in crime prevention.

Policing Resources

National Institute of Justice https://crimesolutions.gov/

- The National Institute of Justice's CrimeSolutions.gov is comprised of two components — a web-based clearinghouse of programs and practices and a process for identifying and rating those programs and practices.

- The clearinghouse, accessible via the CrimeSolutions.gov website, presents programs and practices that have undergone rigorous evaluations and meta-analyses. The site assesses the strength of the evidence about whether these programs achieve criminal justice, juvenile justice, and crime victim services outcomes to inform practitioners and policymakers about what works, what doesn't, and what's promising.

The Oregon Knowledge Bank http://okb.oregon.gov/

- The Oregon Knowledge Bank (OKB) is your statewide resource for Oregon-based public safety programs and research. The OKB highlights innovative programs operating in the state and research about Oregon-based solutions. Find solutions, offer answers, share research, and contact law enforcement experts.

The Center for Problem-Oriented Policing http://www.popcenter.org/

- The mission of the Center for Problem-Oriented Policing is to advance the concept and practice of problem-oriented policing in open and democratic societies. It does so by making readily accessible information about ways in which police can more effectively address specific crime and disorder problems.

- The Center for Problem-Oriented Policing is a non-profit organization comprising affiliated police practitioners, researchers, and universities dedicated to the advancement of problem-oriented policing.

US DOJ Community Oriented Policing Services https://www.cops.usdoj.gov/resources

- The COPS Office is an essential resource for members of law enforcement looking for the smartest approaches to preventing and reducing crime. The COPS Office works with leading researchers, practitioners, and trailblazers to get useful strategies out to the field.

- The COPS Office provides numerous training and support materials in a variety of formats, including curricula, guidebooks; webinars; publications; conference presentations; podcasts, and videos. COPS Office training can be found on the COPS Training Portal, a comprehensive public, online training portal with valuable resources for law enforcement and related stakeholders.

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TWENTY FIVE TECHNIQUES OF SITUATIONAL PREVENTION

Increase the Effort	Increase the Risks	Reduce the Rewards	Reduce Provocations	Remove Excuses
Harden Targets Steering column locks and immobilisers Anti-robbery screens Tamper-proof packaging	**Extend guardianship** • Take routine precautions: go out in group at night, leave signs of occupancy, carry phone • "Cocoon" neighborhood watch	**Conceal targets** • Off-street parking • Gender-neutral phone directories • Unmarked bullion trucks	**Reduce frustrations and stress** • Efficient queues and polite service • Expanded seating • Soothing music/muted lights	**Set rules** • Rental agreements • Harassment codes • Hotel registration
Control access to facilities Entry phones Electronic card access Baggage screening	**Assist natural surveillance** • Improved street lighting • Defensible space design • Support whistleblowers	**Remove targets** • Removable car radio • Women's refuges • Pre-paid cards for pay phones	**Avoid disputes** • Separate enclosures for rival soccer fans • Reduce crowding in pubs • Fixed cab fares	**Post instructions** • "No Parking" • "Private Property" • "Extinguish camp fires
Screen exits Ticket needed for exit Export documents Electronic merchandise tags	**Reduce anonymity** • Taxi driver IDs • "How's my driving?" decals • School uniforms	**Identify property** • Property marking • Vehicle licensing and parts marking • Cattle branding	**Reduce emotional arousal** • Controls on violent pornography • Enforce good behavior on soccer field • Prohibit racial slurs	**Alert conscience** • Roadside speed display boards • Signatures for custom declarations • "Shoplifting is stealing
Deflect offenders Street closures Separate bathrooms for women Disperse pubs	**Utilize place managers** • CCTV for double-deck buses • Two clerks for convenience stores • Reward vigilance	**Disrupt markets** • Monitor pawn shops • Controls on classified ads. • License street vendors	**Neutralize peer pressure** • "Idiots drink and drive" • "It's OK to say No" • Disperse troublemakers at school	**Assist compliance** • Easy library checkout • Public lavatories • Litter bins
Control tools/ weapons "Smart" guns Disabling stolen cell phones Restrict spray paint sales to juveniles	**Strengthen formal surveillance** • Red light cameras • Burglar alarms • Security guards	**Deny benefits** • Ink merchandise tags • Graffiti cleaning • Speed humps	**Discourage imitation** • Rapid repair of vandalism • V-chips in TVs • Censor details of modus operandi	**Control drugs and alcohol** • Breathalyzers in pubs • Server intervention • Alcohol-free events

Basic Police Academy
Contact and Cover



Contact and Cover

Instructional Goal

This course is designed to:

1. Develop a new officer's understanding of the concepts of contact and cover.
2. Enhance a new officer's knowledge in all types of police interactions and become familiar with two officer, one suspect contacts.

Learning Outcome(s)

Upon completion of instruction, student will be able to:

1. Recognize officer contact and cover responsibilities.
2. Identify fatal tendencies and characteristics that lead to officer injury and death.
3. Articulate why contact and cover is essential.

Content Outline

- Officer Safety
- Contact and Cover Functions
- Switching Roles
- One and Two Officer Units
- Initial Briefings
- Positioning
- Searches and Handcuffing
- Multiple Contact and Cover Officers
- Release of Cover Officer

Officer Safety

In 2017, The U.S. Department of Justice and National Law Enforcement Officers Memorial Fund released a publication called *Making It Safer*. In this document, the authors examined law enforcement fatalities and provided a series of recommendations to make contacts safer. Many of the recommendations include having an additional officer on scene to provide cover and assistance.

The Tactical Concept of Contact and Cover

Contact and cover is a decades old tactical concept for use anytime two or more officers deal with one or more subjects. The concept applies whether the contact is a field interview, traffic stop, arrest, criminal investigation, and more.

Source: Contact and Cover: Two-Officer Suspect Control, Albrecht & Morrison (1992)

The basic concept is that one officer assumes each role and each role carries specific functions.

Contact Officer	Cover Officer
The contact officer is the officer initiating an action who becomes responsible for conducting the business of the contact.	The cover officer is the officer responsible for surveillance and control of a suspect in order to free the contact officer to conduct the business of the contact.

It is important that each officer understand the functions of both roles.

- Contact officer functions include talking to subjects, patting them down, writing anything, and directing the subject's movements. It includes searching the subject's car or belongings, and talking on the radio. It includes handcuffing, searching, and moving the subject.

- Cover officer functions include providing cover by positioning themselves in a way to see and hear what is happening with the encounter, but not be seen as interfering or intimidating the subject. The cover officer does not step into the conversation, search other companion subjects who are with the first subject, talk on the radio, fill out citation forms, or search the subject's car. The cover officer can provide information the Contact Officer may have missed.

Contact Officer Responsibilities	Cover Officer Responsibilities
• Initiate action • Conduct the essential business required, such as, but not limited to: o Alert cover officer that a weapon or contraband is located on the subject o Conduct thorough systematic searches o Maintain control of the subject o Recover evidence o Record necessary subject or incident information o Handle radio communication o Write traffic or misdemeanor citations • Communicate with the cover officer, as appropriate, regarding force option selection	• Protect the contact officer from possible interference (e.g. onlookers or associates of the subject(s)) • Alert the contact officer that a weapon or contraband is located on the subject • Maintain constant observation of the overall situation; being aware of possible dangers and potential interferences • Provide a command presence to discourage hostile acts, assaults, or escapes by the subject • Secure any weapons or contraband; this allows the contact officer to continue the search • Prevent the destruction of evidence • Intervene with appropriate force to protect the contact officer if a suspect reacts violently • Communicate with the contact officer, as appropriate, regarding force option selection

Officer safety is a primary responsibility of all officers at all times. The contact officer should never rely solely on the cover officer for protection.

Officer Observations

Research on reducing risks to officers finds that although a suspect's facial expressions may allow for the interpretation of emotions and respectful eye contact may help to de-escalate in some situations, merely focusing on the face cannot predict an upcoming attack.

The research finds *tactical gaze control*, or focusing on the more "dangerous" areas of a suspect rather than "harmless" regions as more effective. These "dangerous" regions include the hands and areas of potential weapon concealments such as the hip area.

Switching Roles

In some instances, once the initial contact has been made, officers may decide to exchange contact and cover officer duties. The switch should be verbally communicated and understood by both officers.

Such a switch may take place when:

- It is tactically advantageous to do so (e.g., when the suspect's position changes)
- One officer has specialized training or expertise in a given area, better rapport with a suspect, more knowledge regarding the area, is bilingual, or possesses a specific skill).

In such exchanges, the officer assuming the role of cover officer must be in position and fully prepared to respond to any sudden action by the suspect before the original cover officer relinquishes that duty to take on the role as contact officer.

One and Two Officer Units

Depending on the jurisdiction, officers may be assigned to patrol alone or with another officer in the patrol unit. The following table identifies how the roles of contact officer and cover officer pertain under each condition.

One-Officer Unit	The first officer to arrive and initiate any activity assumes the role of contact officer determines if there is a need to call for a cover officer (i.e., backup). Additional personnel, whether responding to a call for cover or simply stopping at the scene to offer assistance, should automatically assume the role of cover officer(s).
Two-Officer Unit	The officers should agree upon who will act as the contact officer and cover officer in advance of each contact.

Initial Briefings

It is essential that contact officers requesting cover and responding officers clearly communicate with one another. Responding officers should be briefed on the details of the contact as thoroughly as possible. The following table identifies elements of such contact officer/cover officer communications.

Upon arrival, the contact officer should advise the cover officer of:	After receiving the information, the cover officer should brief the contact officer on:
• Observations made or evidence obtained • Whether or not a search for weapons has already been conducted • The reason for the contact and suspected criminal activity • The contact officer's immediate plans • Any previous knowledge of the suspect(s) and/or An appraisal of their potential for violence • Any other suspicious persons or activity in the area	• Previous knowledge of the suspect(s) • Observations made while approaching the scene • Any significant radio communications the contact officer may have missed

Both officers should verbally confirm what has been told to them by the other officer to ensure that communication was correct.

Positioning

The exact positioning of the contact and cover officers will vary according to the situation and circumstances. The following table provides general guidelines for establishing positions of advantage.

Contact officers should position themselves to:	Cover officers should position themselves to:
• Avoid moving between the cover officer and suspect(s) • Not be in a position of vulnerability	• Have a clear and unobstructed view of the suspect(s), and the contact officer • Have the best peripheral view of the surrounding areas • Avoid crossfire situations between officers control the likeliest route of escape

The Advantage of Time

Research finds that increasing the speed of officer response increases error. Officer positioning tactics include creating time and space using distance and barriers. Additionally, a defensive position provides opportunity for officers to detect behaviors and react appropriately.

Weapon Searches/Handcuffing

The most hazardous moments of the majority of contacts with suspects occurs during a cursory search for weapons or when the suspect is being handcuffed. Because of the inherent danger, the role of each officer must be clear. For example contact officer conducts the search or cuffing while the cover officer acts as security

Multiple Contact and Cover Officers

Some major crime scenes or disturbances involving several subjects may require multiple contact and cover officers (e.g., when two or more subjects must be separated and other witnesses individually questioned, when a potentially hostile crowd may interfere, etc.).

In such cases assignments should be absolutely clear and as specific as the situation permits. Assignments should be made by the:

- Primary officer (i.e., the first contact officer on the scene), or
- Supervisor

Release of Cover Officer

Circumstances such as hostile bystanders or the continued presence of suspect(s) companions may dictate that the cover officer maintain position until all of the business of the contact is completed. It is the responsibility of the contact officer to determine when the cover officer can be released. This decision is very gray and situationally dependent. Communication amongst officers is the key to this working successfully.

- Example: You're in contact with an individual and they are confirmed to have a warrant for their arrest. You have requested backup due to another individual in the area on foot interfering with your contact and due to the imminent custody of the subject with the warrant. Once backup arrives, you elect to take the subject into custody and the bystander gets agitated. Once the initial subject is in handcuffs, you elect to release the cover officer to speak with the agitated subject who is interfering with your contact.

Common Failure Points

Contact and cover is a system that often works to increase safety for officers and members of the public. When the system fails, it is often linked to one or more of the following five common failure points.

1. Shortcutting rule and procedures: Officers involved in fatal or near fatal encounters tended to not follow the department rules or procedures. Instead they took shortcuts either for convenience to themselves or courtesy to the offender.

   What are some examples of shorting rules or procedures?

   _____
   _____
   _____

2. Acting without waiting for backup: Often backup was available but the officers tended to go ahead on their own in situations that were later recognized as likely needing an additional officer.

   How might we more easily identify the need to backup earlier?

   _____
   _____
   _____

3. Relying too heavily on reading people: The officers generally took great pride in their ability to "read" people and situations. They depended on their gut rather than the observable, articulable facts and often dropped their guard when "good" was perceived.

   What are some observable, articulable circumstances we can use to make effective decisions rather than simply "reading" people?

   _____
   _____
   _____

4. Not taking decisive action when necessary: Not having a full understanding of the situation and when they have exhausted all verbal options and need to move to other means to resolve the situation is often seen as a contributing factor to officer death and injury.

   What are some examples of these options and how might we develop our decision making to know when it's time to move to something else:

   _____
   _____
   _____

5. Failure to forecast future behavior: One of the things we can do to maintain our safety as law enforcement professionals is forecasting the behavior of those we are in contact with.

   What are some ways we may be able to forecast the behavior of those in contact with and how much of it can we control?

   _____
   _____
   _____

Basic Police Academy
Crash Investigations



Crash Response and Investigation Basics

Instructional Goal:

This course is designed to develop a new officer's understanding of their role in traffic crash prevention, response, and investigations.

Learning Outcome:

Upon completion of instruction, student will be able to:

1. Describe key elements of a crash response.
2. Describe key elements in a crash investigation.
3. Identify relevant evidence in a crash investigation.
4. Complete a DMV Crash Report Form.

Content Outline:

- Crash Defined
- Law Enforcement Role
- Oregon Crash Data
- Part 1- Crash Prevention
- Part 2- Crash Response
- Part 3- Crash Investigation

Crash Defined

The term ACCIDENT implies "no fault" when CRASHES are actually caused because someone used poor driving strategy & tactics. The interchangeability of these two words may seem like semantics, but if words really do mean things then we should choose the correct word. This can influence how we handle the investigation, our beliefs about determining who is at fault and our actions based on those conclusions. If it is an accident or just bad luck will this impact the effort and thoroughness you put into your investigation? What other affects could it have?

Crash:

An occurrence in a sequence of events involving at least one moving motor vehicle (or its load in motion) which usually produces unintended injury, death, or property damage.

Law Enforcement Role

In this course, you will learn the basics of the various roles the officer fills in regard to crashes:

Crash Prevention

Crash Response

Crash Investigation

2020 Oregon Motor Vehicle Traffic Crashes Quick Facts

Based on data available as of 03/21/2022

CRASHES (All Roads)

		% change from prior year
• Fatal Crashes:	460	0.88 %
• Non-fatal Injury Crashes:	19,343	-28.44 %
• Property Damage Only Crashes:	18,338*	-19.00 %
Total Crashes:	**38,141**	**-23.91 %**

Top 10 Driver Errors:

1. Failed to avoid stopped or parked vehicle ahead
2. Failure to yield right-of-way
3. Ran off Road
4. Driving too fast for conditions (not exceeding posted speed)
5. Inattention
6. Failed to maintain lane
7. Left turn in front of oncoming traffic
8. Disregarded traffic signal
9. Following too closely
10. Failed to Negotiate a Curve

Top Pedestrian Errors:

1. Crossing between intersections
2. Failure to yield right-of-way
3. Inattention

Top Bicyclist / Pedalcyclist Errors:

1. Failure to yield right-of-way
2. Disregarded traffic signal
3. Inattention

Part 1- Crash Prevention

What is the role of the officer in preventing crashes?

- Enforcement- Doing visible patrols, working radar, targeted enforcement related to top 10 driving errors (make the roads safer)
- Engineering- Reporting road hazards to the road authority
- Education of the Public – Citations/warnings, community presentations, traffic safety classes, social media

Part 2- Crash Response



Preparation

There are multiple ways you can be called to a crash. Calls can come in over the radio/MDT, you could be flagged down by a citizen, you could receive a telephone call, or a crash can even occur in your presence. Be prepared, have the right equipment for when you need it.

Pre-Shift Vehicle Inventory Basic Equipment:

- Measuring device
- Camera/cell phone
- Spray chalk/lumber crayon
- Evidence bags
- Traffic cones/flares
- Nitrile gloves
- DMV crash report/department forms
- First aid kit
- Fire extinguisher
- Traffic vest

Arrive Safely

Urgency does not mean high speed when responding to a crash. You must arrive safely or someone will be responding to your crash as well as the crash you were heading to. An urgent run can increase stress, which can create an impaired driving condition in both judgement and vision (tunnel vision). Other dangers include not wearing a seatbelt, speeding (particularly through intersections), and being distracted while using the MDT or other device. Additionally, a high speed response can result in unfavorable public perceptions and can jeopardize the safety of everyone. Check with other responding units (fire, EMS, other police units) to see if a code run is proper.

We are bound by ORS 820.300 to drive with due regard for the safety of all. You can personally be held criminally liable for unsafe actions.

ORS 820.320 – Illegal operation of an emergency vehicle. Lights and sirens (exemptions)

Arrival

Once you arrive at the scene, position your patrol car in a visible, safe spot. Consider that you may need to park in a specific place to help secure the scene and this may be off or on the roadway. Think about visibility and alert traffic by using your overhead emergency lights. Use all of your lights, not just the rear ones. Your lights are on, are they visible? Radio your arrival and any EMS equipment needed for the injured (ambulance, jaws, fire).

In addition to vehicle visibility, think about your own visibility. Visibility will differ depending on the time of day and weather. Use your traffic safety vest, this is required per OSHA and you can receive a fine for not wearing it.

Oregon OSHA

Emergency responders and law enforcement officers must also wear high-visibility apparel after an emergency has passed and they're doing traffic control, cleanup, investigations, or similar tasks. Max fine $12,600.00 to individual, not agency.

Assess the Situation

Although you may be in a hurry, do not just jump in. Take a minute to look around and watch for hazards such as power lines, transformers, leaking fuel, hazardous materials, chemicals (fluid and airborne), and biohazards such as blood or other body fluids. The emergency response guide book or a mobile application with that information will give guidelines on how to respond to hazardous material incidents. Be aware of hazmat placards.

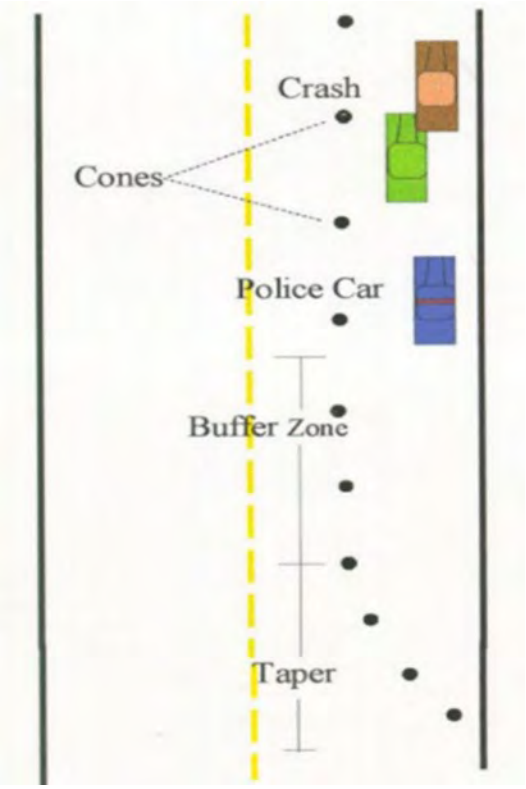
Determine what is most important for your crash scene. Determine if there are injuries and be prepared to render aid. You may arrive on scene before the medics, so be prepared to administer proper first aid procedures if necessary. If there is a question about a potential injury, call for a medic unit. Let the medics make the determination if transport to the hospital is necessary. The medics will also have the injured sign a release if the person refuses treatment or transport.

What else is needed? Do you still need additional police units to respond? What response code? Do you need to block traffic? Secure the scene? Are there other resources you should call (Power Company, traffic control, ambulance, fire, etc.)? Do you need to start identifying those involved? Is there evidence that needs to be marked or photographed? Are there tasks that you can delegate to other officers? It is time to start making decisions.

Securing the Scene

Traffic control serves to protect responders, victims and other personnel on site, provide reasonably safe traffic flow, prevent secondary traffic crashes, and manage the impact to the surrounding road system. According to OHSA, responders may use any available devices or equipment to guide traffic through an incident area until proper equipment is available, as long as the devices themselves do not create additional hazards. As soon as practical, Federal Highway Administration *Manual on Uniform Traffic Control Devices* (MUTCD) compliant devices and equipment should be used. No one set of temporary traffic control devices (signs, signals, markings, and other devices used to regulate, warn, or guide road users) can satisfy all conditions for a given project or incident. At the same time, defining details that would be adequate to cover all applications is not practical.

One type of temporary traffic control device is the traffic cone. For everyone's safety and OHSA compliance, the cone pattern must be set up properly. Proper cone set up includes:



- Tapering- placing cones at an angle to the traffic flow to slowly guide traffic out of its normal path.

- Creating a buffer zone- a section of clear road space between the taper and the work space, providing an extra margin of safety for both traffic and the workers.

- Extending the pattern beyond your scene.

- Advanced warning indicators – if the contour of the roadway limits visibility consider placing advance warning indicators to indicate that there is a hazard ahead. An example of this would be to set a few flares or cones prior to a corner or top of a hill.

Warning lights, such as flares, can be used to supplement cones and add visibility especially in low-light conditions. Be cautious with flares and flare placement.

What other considerations need to be made depending on the circumstances? Do drivers need a visible pre-notice of a roadway closure? Should a traffic advisory be issued to the media? Are their pre-planned detours you can utilize? Does the road authority (State Highway = ODOT, County Road = Road Master, City Street = Public Works) need contacted? Who else can be utilized to assist (Reserves, Explorers, and Cadets)?

If you use citizens to direct traffic, you are accepting liability for that citizen's actions and safety. If a citizen is on-scene directing traffic upon your arrival, replace then as soon as practical.

ODOT Authority

ODOT has the ultimate responsibility and authority over all state roads, therefore you must notify ODOT whenever a State Highway has to be closed. During this communication, do not tell the ODOT personnel you are closing their roadway, but rather advise them that you would like to close the roadway and allow them to order the closure.

The exception to this is when the crash has been determined a crime scene. After designating the situation a crime scene, notify the road authority of this and work closely with them to develop alternative route plans and work to keep as many lanes open as possible. Once all of the evidence has been collected, advise the authority that it is no longer a crime scene and the authority then goes back to them.

Agencies similar to ODOT

- County Road = Road Department/Road Master
- City Street = Public Works

Part 3- Crash Investigation

Once the scene is secure and everyone is getting the medical help they need, you can move on to conducting the investigation. There are three levels of crash investigations:

Crash investigations have every aspect of any other case investigation. There are suspects (violators), victims, witnesses, and physical evidence. What may be unique, is that it may all happen to be in the same place at the same time.

Depending on the level of investigation needed and your training, you may use a few or all of the following crash investigation tasks:

- Gather Information
- Evidence- Identify, Photograph, Document, Collect, Mark, Protect it/Preserve, Measure
- Photograph the Scene
- Sketch the Scene

Gather Information

You will need to tailor your questions to your specific crash scene, but some basic questions may include:

- Who was involved in the crash?
- What happened?
- When did the crash occur?
- Where did the crash happen?
- Why did the crash occur?
- How did the crash occur?
- As with all investigations be sure that you can articulate how you know what you know. This may be as simple as Mr. Smith told me... or as complex as based on statements obtained from Mr. Smith I obtained video footage from ODOT who had a camera that was installed at this location. I reviewed the footage captured by the video camera and saw the following.....

When getting statements and vehicle information, you can use the DMV Crash Form as your guide to ensure you collect all of the information you need for the form.

If necessary, interview any witnesses first. Interview drivers separately, and consider that this may need to wait if they are being treated for injuries.

Think back to your previous Communication and Interview courses. When interviewing, ask open ended questions, be objective, be positive, be specific, be diplomatic, and be certain to allow each person to fully give their statement and do not argue. Remember to “Miranda” if you have a driver that is a suspect of a crime.

Who else might you interview? Consider who else is around, witnesses and passengers may be the key people in the crowd telling others what happened. Write down license plate numbers of vehicles parked in the area in case you need to contact them later to see if they saw anything.

When conducting initial interviews, display empathy and concern. Use a personal touch; introduce yourself, provide information and forms, and offer to make phone calls for tows or other assistance. Allow witnesses to tell their side of the story before questioning them. Be objective and professional, keeping your feelings and pre-conceived ideas out of it. Ask questions in a positive manner without leading or suggesting answers. Verify the person's statement by having them repeat it and by comparing it with other statements and physical evidence.

Evidence

What to do with it and when?

Most Crashes	Serious Crashes
Look for evidence- what does it tell you? Photograph it Include it in your notebook sketch Collect it (Hit & Run, DUII)	Mark it Protect It / Preserve It Measure It
Critical Thinking: What might distinguish a basic crash from a serious crash?	
Critical Thinking: Why might you need to take different actions in different crashes?	

Think about all of the components that could be evidence at a crash scene. In all crashes, evidence exists. It is the officer's job to find it and utilize it. Inspect the scene for physical, roadway, vehicle, and scene evidence. For example:

Physical	Roadway	Vehicle	Scene	Person
Fingerprints on Exchanged Papers or Vehicles Paint Chips or Transfers	Area of Impact Tire Marks Roadway Marks Debris Pattern Fluid Trails Final Rest Positions of Vehicle/Bodies	Contact Damage Non-Contact Damage: Bends and Folds in Metal, Cracking Paint Parts: Speedometer, Safety Belts, Deployed Airbags, Tires and Wheels, etc.	Weather Conditions: Rain and Wet Pavement, Snow and Ice, Dry, Sunny and Bright Road Factors: Ruts, Gravel, Grade, Elevation Other Factors: Construction, Traffic, Signs	Identification of Occupants and Witnesses Statements Age Bodyweight Proper Use of Restraints Role- Driver, Passenger, Witness Injuries

On the following pages, we are going to focus on roadway evidence. Note, this is only an introduction to crash investigations. Additional training beyond the academy is necessary.

Roadway Evidence- Skid Marks

A skid mark is a tire friction mark caused by a tire that is locked and sliding. Skid marks appear differently on different surfaces:

- Dry Asphalt- The mark brings the oils and tars to the surface by heat between the two surfaces.
- Wet Asphalt- The mark gives an erasure appearance.
- Concrete- The marks will appear white or like a "cleaning" mark. There may be some darkening to the skid mark from the tire.
- Gravel/Dirt- The marks will appear in the form of a furrow, plowing away the material.
- Wet Grass- The marks will generally not dig into the grass, but slide across the top of the grass, matting it down.
- Ice- The mark will appear shiny and wet and will be very short lived.

Skid marks will be visible for different amounts of time, depending on the surface type, lighting and weather conditions. Skid marks on dry, warm asphalt may last for weeks, while skid marks with anti-lock brakes on wet surfaces may only last minutes.

Skid marks are generally straight, however factors such as the grade or slope of the roadway, unequal road surfaces, a rotating vehicle, or defective brakes could result in the skid mark not traveling in a straight line.

Skid marks start light and end dark. To measure a skid mark, measure from the beginning of the shadow to the end of the mark. Measure each mark separately. If the marks are overlapping, note where the overlap starts in comparison to the start of the shadowing. Shadowing is caused by a tire that is rolling at a slower speed than the vehicle is traveling. This could be caused by a tire just before the tire starts to skid (also known as ABS braking).

Roadway Evidence- Scuff Marks

Pedestrian and bike scuff marks- shoe and bike tire scuff marks can be located near the area of impact. These marks may be difficult to see.

Roadway Evidence- Gouges

Gouges are deeper at first and get shallow at the end (tear drop). They are made by a strong component from a vehicle (frame, transmission, suspension, wheel, brake part, etc.) and can be traced back to the component part that caused it. Gouges can indicate the area of impact and post-crash direction of travel for each unit.

Indentations usually occurs from a vehicle that flips, vaults or rolls over.

Scratches are not as deep as gouges, and are usually just a superficial mark on the surface of the roadway.

Roadway Evidence- Debris

Debris is sometimes a good indication of the area of impact. Debris can show the post-impact travel of a unit, the point of rest of a unit if the unit has been moved.

Roadway Evidence- Fluid Trails

Fluid trails are good sources of evidence to determine the path that a vehicle travels from the crash toward its final resting place.

Roadway Evidence-Area of Impact

All of the above items can help identify the area of impact (AOI) which is where the crash physically happened. The end of skid marks may be an indicator, gouges in the roadway may indicate a sudden displacement of energy, scuff marks show a change in direction which could be caused by the initial impact. Debris and fluid trails or spills can also help narrow down the AOI. Statements from witnesses and person involved in the crash can be helpful when compared to available roadway evidence.

Roadway Evidence- Final Rest Positions

- Uncontrolled- Vehicle comes to rest on its own and is not moved from final rest by anything or anyone. Note, it is very important to mark the resting position of the tires and hubs.
- Controlled- Vehicle comes to rest in a pre-determined location by the operator (driven or pushed).

Officer Safety Issue-

At all crash sites there are foreign substances on the surfaces where you walk (blood, other bodily fluids, vehicle fluids, etc.). Take precautions, what you walk in at a scene, you take home.

Photographs

Photographs of a traffic crash are an important part of the crash investigation, they provide an indispensable means of recording the scene and evidence. Photographs also help to depict other supplemental and useful information not thought of at the time of the investigation. Photographs help build your credibility, or breakdown the credibility of a proposed witness or operator. Photographs help to refresh your memory if the case waits years to go to court. They allow you to help explain what you and others saw during the investigation. Photographs are not a substitute for your personal observations or for measurements. Photographs should not reveal "action shots".

How do you know if photos are needed? Consider the following circumstances: an injury crash with possible charges, transitory evidence, or need to recall of the scene before it is altered. Photographs are not always necessary. If the officer believes photographs are necessary to document the scene properly, get cursory photos of the scene as soon as possible upon arrival: document the scene before things are moved/altered, document evidence, document by-standers/possible witnesses.

Due to exigent circumstances, photographs should be a high priority after the scene is secured and witnesses and drivers have been identified to show how the scene looks before anything is altered or moved for evidentiary processes. Follow up photographs should be taken of any alterations or movement if you still need to investigate further once the items are altered or moved.

What to Photograph:

- Final rest position of vehicles/bodies
- Interior of the vehicle (gauges, switches, restraint systems, other items that may have contributed to the crash)
- Roadway evidence (gouges, chips, debris, fluids, etc.) or anything that will assist in identifying the Area of Impact
- Long range photos to show landmarks
- Mid-range photos to focus on specific items
- Detailed photos of specific items
- Conditions and position of tires, wheels, and tread
- Overall view of the scene from the center line

- Overall view of the area while standing at the crash site
- The view each driver (from the lane and the approximate height) and witness (from the position where they witnessed the crash and the approximate height) had prior to and after the crash
- Other:
    - Damage to fixed objects
    - Injuries of deceased
    - Detailed photographs of the contact damage areas: paint transfers, blood, hair, fiber
    - Any view obstruction which may be a concern in your case
    - Evidence of a crime
    - Anything else that may be helpful for you

Photography "Do's"

- Photographs of large objects (40 feet or more) may need to have overlapping photos taken.
- Small items should have two photographs take, a close up to capture the details, and a wider shot to show the item in relation to the crash site.
- When photographing small items, think about using a photo scale.
- Have enough lighting for your photos

Photography "Don'ts"

- Do not rearrange the objects at a scene to get the effect you want. Photograph the scene as is.
- Try not to tilt the camera, as it may give a false impression of a grade in the roadway
- Do not delete photograph, submit all you take

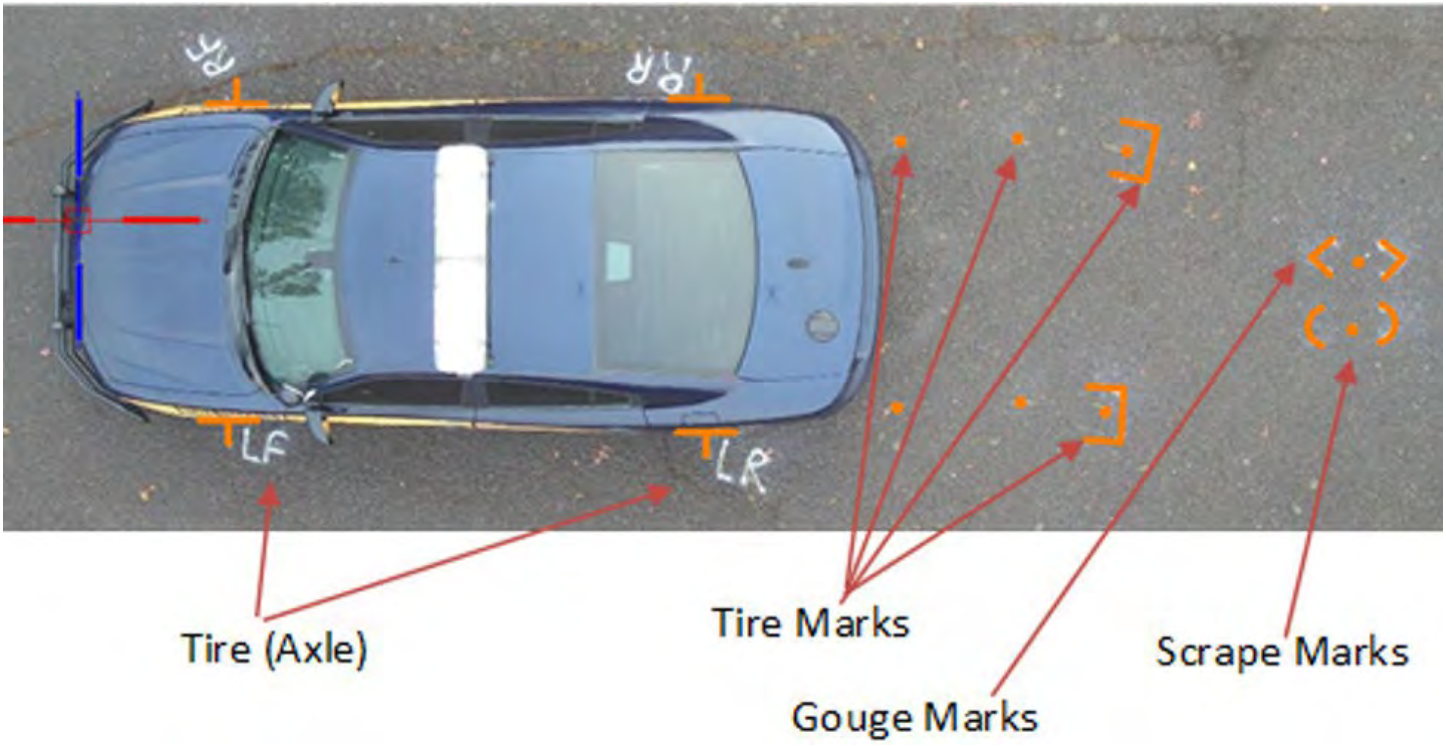
Marking the Scene

You may need to mark a crash scene in order to clear traffic and measure later or to preserve locations for the Crash Investigator. The following may need to be marked:

- Skids
- Vehicle locations
- Bike or ped debris
- Other evidence

Here are the standard markings used by crash teams throughout the state.

Vehicle locations (tires)	RR	(Cross is at axle, add tire location)
Skids	[	(Place at start and end, dot if long)
Gouges	< >	(Place at start and end, dot if long)
Scrapes	( )	(Place at start and end, dot if long)
Ped, Bike, Debris		(Outline object or mark 2 sides)
Other evidence		(Outline object or mark 2 sides)



Measuring the Scene

There are some basic measurements you will need to complete the crash form. For some crashes, more in-depth measurements are needed and may require a Crash Reconstructionist.

Basic Measurements for Crash Form	In-Depth Measurements
Distance from nearest intersection	Road/lane/shoulder widths
Distance from nearest city	Roadway evidence
Length of skid marks prior to impact	Vehicle locations
Distance vehicles traveled after impact	Poles, signs, obstructions
	Height and size of damaged areas (Hit and Run)

Measurements and diagramming are key elements in documenting the results of a crash. They provide the foundation needed to establish:

- Vehicle-to-Vehicle and Vehicle-to-Roadway Relationships
- Speed Estimates
- Technical Court Testimony
- Accurate Visualization of Crash Results (Judges, Juries, Attorneys)

How to Conduct Baseline Measurements- Measuring requires two officers, and three is even better. Choose a reference point (RP) at one end of the crash scene. The reference point should be easy to access and a tangible, semi-permanent object that can be located later. For example: milepost marker, the end of a guardrail, end of the fog line, a fire hydrant, etc. Establish a baseline by stretching and anchoring a tape measure parallel to the crash scene. First measure an item by how far down the baseline it is from zero. Second measure how far out the item is from the baseline. Always measure at a right angle.

Measurements will be added to a scale diagram. Often agencies have a crash reconstructionist that will take these measurements and create a scale diagram for your case. You will need to check with your agency regarding crash diagram specifics.

Report Requirements and Forms

There are two different DMV crash reporting forms; one is for the involved drivers to fill out and the other is for law enforcement. ORS requires a report to DMV under the following conditions:

- ORS 811.720- A citizen who is involved in a crash MUST make a report to DMV within 72 hours when:
  - There is a death from the crash
  - There is injury to any person as a result of the crash
  - The amount of damage to the property of any person is in excess of $2500
  - When any vehicle involved in the crash is damaged to extent that it must be towed from the scene

- ORS 810.460- A police officer SHALL complete a DMV Crash Report within 10 days when any of the following are true:
  - Investigates a crash in which ORS 811.725 or 822.600(requirements for garage to report vehicle struck by a bullet or involved in serious crash) requires a crash report.
  - Prepares a report of an accident investigated at the time and place of the accident or by field interviews with the participants or witnesses.

Just as you have covered in your report writing course, numerous people may read your report. For example:

Your supervisor	Insurance Companies	Traffic Engineers
Your FTO	ODOT/NHTSA/DMV	Research Teams
Attorneys	Media	General Public
Judges	Reconstructionist	
Involved Persons	Other Officers	

Police Crash Form

Fill out all appropriate boxes front and back. If a box or section does not apply to your specific crash consider placing and "NA" in the area or put a line through the section. This will indicate to the reviewer that you considered the information and it did not apply versus the box or section was overlooked.

Narrative

Give a concise, complete description of what happened. Refer to vehicles or pedestrians by the same "unit number" used on the face of the report and the sketch. Generally, you do not need to repeat facts or data contained elsewhere on the form. Start the description with what the units were doing before the start of events that produced the crash. Describe the maneuvers that led to the crash, and describe the collision, rollover, or non- collision event. Include statements the people involved in the crash or witnesses said that is pertinent to the crash.

Scene Diagram

The diagram should, at a minimum, allow another person to look at the diagram and get a basic idea of what happened in the crash. A scene diagram should be included;

- Direction of North
- Street Names or Highway Numbers
- Vehicles, Bodies, and Other Physical Evidence
- Skid/Tire Marks
- Traffic Control Devices (Signs, Barrels, Barricades, Flaggers)

Crash Narrative

This is a critical aid to crash coders who must assign crash site, vehicle and participant details. Place the narrative description of the crash in the same area as the sketch or attach a separate page(s). As in the case of the sketch, the level of detail in this description will vary depending on the severity of the crash. Give a concise, complete description of what happened. Refer to vehicles or pedestrians by the same "unit number" used on the face of the report and the sketch.

Generally, you do not need to repeat facts or data contained elsewhere on the form; proper use of the code sets can greatly diminish the amount of narrative description required. Start the description with what the units were doing before the start of events that produced the crash. Describe the maneuvers that led to the crash, and describe the collision, rollover, or non- collision event. Include statements the people involved in the crash or witnesses said that is pertinent to the crash.

Include in the narrative the following, although not necessarily in this order:

- Actions of vehicles/pedestrians prior to the key event, giving directions of travel and names, and number of highways.
- Evasive maneuvers (or lack thereof) to avoid crash, including skid marks.
- Description of impact, rollover or non-collision event. Be factual, using a careful choice of words. Example: Do not state the vehicle was impaled on the guardrail if it did not end that way. Say, instead, that the car "struck the end of the guardrail which penetrated the engine compartment, and the car stopped ten feet south of the guardrail."
- Any unusual circumstances.
- Unusual or temporary highway conditions. Limit this statement to factual information.
- Highway and environmental defects, if not already covered by coded information. Again, limit this to factual information only.
- Anything unusual about the condition of driver/pedestrian/passenger prior to the crash.

Taking Enforcement Action

At the conclusion of your investigation, take any enforcement action needed, including writing citation(s). When you are investigating crashes that may result in criminal charges, consult with your District Attorney. Note the Statute of Limitations for a violation is six months.

If a violation has occurred, the offending driver should be cited for that violation. Do not let sympathy become involved. You can empathize with the offending driver, but let the court sympathize when a fine is administered.

ORS 810.410

When a police officer at the scene of a crash has reasonable grounds, based upon his personal investigation, to believe a person involved in the crash has omitted a traffic offense in connection with the crash, the officer may issue a citation for the offense.

Crash Wrap-up

As you prepare to clear the scene, consider what else needs to be done. Does a tow truck need to be called? What needs to be cleared from the roadway? Are there human factors that need to be considered? How can you be of service?

Conclusion

This has been a brief overview of crash investigations. Several key takeaways are:

- Arrive safely
- Make the scene safe
- Conduct a thorough investigation
- Provide good customer service

You will be given the opportunity to practice these skills in the coming weeks.

Crash Form Exercise Information Sheet:

Case #: RCC 20-21057 Call time: 1530 Arrival time: 1540 EMS: Not called

Location:
Pacific Av (35 MPH Zone) @ Avenue C (25 MPH Zone) Medford, OR. (Road conditions are as shown in photo)

Vehicle 1:
Green 1989 Buick Regal 4-door, Oregon license plate #ABC 123

Driver 1: Wilson, Tim J. WMA, 040182, ODL #A234567**,** 1200 E Pine St, Medford, 541-772-7428. Insurance company is Farmers, policy #987654. He said he was wearing his lap and shoulder seatbelt. His airbag deployed.

Statement: "I was on Avenue C (Westbound) and stopped at the intersection of Pacific Avenue. I signaled for a right turn, and I did not see anyone coming so I pulled out. Just as I started to turn right, I heard tires screeching and then I was hit by the red car. I was going about 5 mph when I was hit, I did not get a chance to put on my brakes. I was not injured."

- Damage exceeds $2500
- Towed by/to: Star Towing Co

Vehicle 2:
Red 2015 Honda Fit 2-door, Oregon license plate #DEF 456

Driver 2: Arbor, Ann, WFA, 031265, 123 W Main St, Medford, 541-944-3157, Driver license # is 123456. Insurance expired 6 months ago. She said she was not wearing her seatbelt. Her airbag did not deploy.

Statement: "I was driving towards the college on Pacific Avenue (Northbound) and just before I got to the intersection, a green car pulled out in front of me. I slammed on my brakes but I could not stop before I hit the other car. I was going 35 mph when I saw the other car pull out. I was not injured."

- Damage exceeds $2500
- Not towed

Impairment:
None noticed by officer during contact with both drivers.

Passenger:

Veh-2: Deere, John, 121173, 123 W Main St. Sitting R/F, was wearing his seat belt (lap and shoulder belt). Airbag was not deployed.

Statement: "I was sitting right front seat. We were traveling towards the college on Pacific Avenue (Northbound) and just before we got to the intersection, a green car pulled out in front of us. Ann slammed on her brakes but we could not stop before we hit the other car. We were going around 40 mph. I was not injured."

Witness:

Richardson, Gabe, 110595, BMA, 505 A St, Medford, 541-987-6543.

Statement: "I was standing at the driveway entrance, north of the intersection. I heard screeching tires and looked over and saw green car hit by red car.

Surface Evidence:

Veh-2 left 25' of skid marks prior to impact, none after the impact. Veh-1, no skid marks.

STUDENT QUESTIONS:

Would you issue traffic citations? If so, to who and for what violation(s)?

Crash Diagram



Crash report exercise common questions:

- DMV file number – DMV will fill this in
- DMV Code – DMV will fill this in
- Nearest intersecting road - Within intersection (no distance needed), versus nearest intersection (distance needed)
- Property/Public property damage box with value – Property damage other than vehicle or public property damage
- Ped/Bic/PRK/PRP boxes under Unit # - Circle if a pedestrian, bike, parked car or property
- Action/Arrest/Cites – Indicate citations issued or indicate which driver at fault if no citations issued
- First Harmful Event – What was first thing that happened
- Surface Type – Concrete or asphalt, most will be asphalt
- Traffic Control Device – Lane markers are also considered a traffic control device
- Road Character, number of lanes – Lanes legally available to each specific unit. Total lanes are total number of lanes available to all units
- Impairment – Should be a mark in all three categories
- Truck configuration – Does not refer to a pickup

Basic Police Academy

Criminal Law: Person Offenses



Criminal Law 3: Person Offenses

Instructional Goal:

This course is designed to develop a new officer's understanding of person offenses defined by the Oregon Criminal Code.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the type of offense using the Oregon Criminal Code Book
2. Distinguish level of offense using the Oregon Criminal Code Book
3. Articulate the elements of a given crime
4. Analyze a situation and determine if there is an applicable ORS offense represented

Content Outline:

- Criminal Code Definitions
- Assault Offenses
- Criminal Homicide Defined
- Criminal Homicide Offenses
- Other Person Offenses

Criminal Code Definitions

Many of the most frequently used criminal code definitions are found in ORS 161.015 titled "General definitions." Several examples of these are found below, starting with Physical Injury – ORS 161.015 (7).

Additionally, each "statutory scheme" defining related crimes usually begins with a statute providing all necessary definitions (see, e.g., "Burglary and Criminal Trespass"). The first statute, ORS 164.205, is titled, "Definitions for ORS 164.205 to 164.270." This structure is commonly found throughout the criminal code.

Physical Injury – ORS 161.015 (7) - An injury that impairs a person's physical condition **or** causes substantial pain.

IMPAIRMENT OF PHYSICAL CONDITION	SUBSTANTIAL PAIN
"Impairment of physical condition Harm to the body that results in a reduction in one's ability to use the body or a bodily organ for less than a protracted period of time." State v. Higgins, 165 Or App 442 (2000).	"The term 'substantial pain' refers to the degree and duration of pain suffered by the victim. To be substantial, pain must be 'ample'...or considerable,'...that requirement excludes pain that is fleeting or inconsequential." State v. Poole, 175 Or App 258 (2001).
A one inch gash that was bleeding was enough to qualify as impairment of a physical condition to fulfill the element of physical injury. State v. Hart, Oregon Court of Appeals (2008).	Pain of a 7/10 lasting 90 seconds, to a child, was enough for a reasonable jury to find there was substantial pain. This decision was the first to say that pain that is short in duration, may still qualify as substantial pain if it is intense. The prior rule that 'fleeting pain cannot be substantial pain' is no longer valid. The court will instead view the combination of the duration and intensity. State v. Colpo, Oregon Court of Appeals (2020).

"Bruising alone, without evidence of physical impairment, is not sufficient to establish impairment of physical condition." State v. Wright, 253 Or App 401 (2012).	Sufficient evidence of substantial pain where: the victim, who was defendant's 86 yo mother, was unavailable as she had died before trial; defendant admitted he had slapped or hit victim in the face; photos showed victim had a large bruise; and that bruise lasted for two weeks. State v. Sanchez, 315 Or App 765 (2021)

Serious Physical Injury – ORS 161.015 (8)

A physical injury which:

1. Creates a substantial risk of death; or
2. Causes serious and protracted disfigurement; or
3. Causes protracted impairment of health; or
4. Causes protracted loss or impairment of the function of a bodily organ.

Evidence of physical injury may include by is not limited to: testimony by the person injured, evidence of physical trauma (including but not limited to fractures, cuts, punctures, bruises, burns or other observable effects), testimony from witnesses indicating the injured person experienced substantial pain or impairment of physical condition, or expert testimony addressing the effect of the type and amount of force used by the defendant. (Effective January 1, 2024)

Dangerous Weapon – ORS 161.015 (1)

Any weapon, device, instrument material or substance which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.

"That an instrument constitutes a dangerous weapon is not established by what injury did result, but what injury could have resulted under the circumstances." State v. Wier, 22 Or App 549 (1975)	As a matter of law, a bare human hand cannot be a dangerous weapon. State v. Wier.	As a matter of law, a defendant's own teeth are not a dangerous weapon. State v. Kuperus II, 241 Or App 605 (2011).

Deadly Weapon – ORS 161.015 (2)

Any instrument, article, or substance specifically designed for and presently capable of causing death or serious physical injury.

Physical Force – ORS 161.015 (6)

Includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.

Deadly Physical Force – ORS 161.015 (3)

Means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

The threat of deadly force does not constitute the use of deadly force. State v. Taylor, 182 OR App 243 (2002).

Peace Officer – ORS 161.015 (4)

Means a member of the Oregon State Police; a sheriff, constable, marshal, or municipal police officer; a reserve officer as defined in ORS 133.005 (4); a police officer commissioned by a university under ORS 352.121 or 353.125; an investigator of the Criminal Justice Division of the DOJ or a DA's office; an authorized tribal police officer as defined in ORS 181A.680; a regulatory specialist exercising authority described in ORS 471.775 (2); a humane special agent as defined in ORS 181A.345, and such other persons as may be designated by law.

Check Your Understanding

Describe the differences between physical injury and serious physical injury.

Describe the differences between dangerous weapon and deadly weapon.

Assault

Assault IV – ORS 163.160

- Occurs when someone
  - Intentionally, knowingly or recklessly causes physical injury to another; or
  - With criminal negligence causes physical injury to another by means of a deadly weapon.
  - With criminal negligence causes serious physical injury to another who is a vulnerable user of a public way, as defined in ORS 801.608, by means of a motor vehicle

    "Vulnerable user" is defined in ORS 801.608 as: A pedestrian, a highway worker, a person riding an animal or operating, or riding on any of the following on a public way, crosswalk or shoulder of the highway: A farm tractor or implement of husbandry, a skateboard, roller skates, in-line skates, a scooter, a bicycle, a moped, or a motorcycle

- Assault IV is a Class C felony when a person commits Assault in the Fourth Degree and
  - The person has been previously convicted of assault, strangulation or menacing, or under equivalent laws of another jurisdiction, against the same victim; or
  - The person has previously been convicted at least three times of assault, strangulation or menacing, or under equivalent laws of another jurisdiction, against any victim; or
  - Assault is committed in the immediate presence of, **or** is witnessed by the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim; or

Definition of "immediate presence": The state must prove the assault occurred "in the same, physically unseparated space where the child was located." State v. Cox, 212 Or App 637 (2007)

Definition of "witnessed by": An assault is "witnessed" if the assault is seen or directly perceived in any manner by the child. "The state must prove that the child personally saw or through some other firsthand sense or sensation was conscious of and recognized the assaultive conduct as it occurred." State v. Bivins, 191 Or App 460 (2004).

A child "directly perceives" an assault "if the child contemporaneously is aware through any of the child's senses that an assault is occurring, i.e., that one person is causing injury to another." State v. Rader, 348 Or 81 (2010).

- The person knew the victim was pregnant.

Assault III – ORS 163.165 – Class C Felony

Is the charge when the person:

- Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon. If the assault resulted from the operation of a motor vehicle, and the defendant was DUII, this is a Class B felony.

- Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life. If the assault resulted from the operation of a motor vehicle, and the defendant was DUII, this is a Class B felony.

- Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;

- Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a "public transit vehicle," while the operator is in control of or operating the vehicle;

- While being aided by another person actually present, intentionally or knowingly causes physical injury to another;
- While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member while the other person is acting in the course of official duty;
- Intentionally, knowingly or recklessly causes physical injury to a paramedic or EMT while paramedic or EMT performing official duties;
- A person at least 18 years old intentionally or knowingly causes physical injury to a child 10-years old or younger; or
- Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi; or
- Intentionally, knowingly or recklessly causes physical injury to a flagger or a highway worker while the flagger or highway worker is performing official duties.

Definitions:

"Public Transit Vehicle"	"Staff Member"
A vehicle used for public transportation or operated by or under contract to any public body in order to provide public transportation. (ORS 166.116)	A corrections officer (ORS 181A.355), a youth correction officer, a youth correction facility staff member, a DOC or OYA staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, inmates, youth or youth offenders; and a volunteer authorized by the department or youth authority or other entity in charge of a correctional facility to work with, or in the vicinity of, inmates, youth or youth offenders.

"Aided by another person actually present" In State v. Hesedahl, 247 Or App 285 (2011) the Court of Appeals ruled that a defendant is "aided" by a person if the person was "at hand, or within reach, sight or call during" the assault and "presented an added threat to the victim's safety." Hesedahl had argued that "verbal encouragement" to the person committing the assault does not constitute "aiding" within the meaning of that term as previously defined by case law to include: "to support, help, assist or strengthen...act in cooperation with, supplement the efforts of others." The court disagreed, ruling that the legislature's use of the word "aided," when accompanied by the other person's (defendant's companion) proximity, encompasses verbal encouragement.	"Extreme indifference to the value of human life" Oregon courts have held this additional language does not create an additional culpable mental state. Instead, "it imputes a heightened degree of blameworthiness to the defendant's conduct by reference to the attendant circumstances." State v. Cook, 163 Or App 578 (1999). It refers to a "state of mind where an individual cares little about the risk of death of a human being." State v. Forrester, 203 Or App 151 (2005). Several Oregon court opinions have addressed the "extreme indifference" element in the context of driving while intoxicated and support the proposition that a jury may find extreme indifference based on a defendant's intoxication *combined with* other evidence of his or her conduct.

Assault II – ORS 163.175 – Class B Felony

Is the charge when the person:

- Intentionally or knowingly causes serious physical injury; or
- Intentionally or knowingly causes physical injury with a deadly/dangerous weapon; or
- Recklessly causes serious physical injury with a deadly or dangerous weapon under circumstances manifesting an extreme indifference to the value of human life.

Assault I – ORS 163.185 – Class A Felony

Is the charge when the person:

- Intentionally causes serious physical injury to another with a deadly or dangerous weapon; or
- Intentionally or knowingly causes serious physical injury to a child under six years of age, or;
- Violates ORS 163.175 (Assault II) knowing that the victim is pregnant: or

- Intentionally, knowingly, or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants and the person has either:
    - At least three previous convictions for driving while under the influence of intoxicants in the 10 years prior to the date of the current offense; or
    - A prior conviction of manslaughter in the first or second degree, criminally negligent homicide, or assault in the first, second, or third degree, in which the death or serious physical injury was caused by the person driving a motor vehicle.

Assaulting a Public Safety Officer – ORS 163.208 – Class C Felony

Requires a person to intentionally or knowingly cause physical injury to a PSO, knowing the victim to be a PSO, and while the PSO (defined as a peace officer, corrections officer, youth corrections officer, parole and probation officer, animal control officer, firefighter or staff member) is acting in the course of his or her official duty.

CRIME	MENTAL STATE	INJURY	WEAPON	SPECIAL CIRCUMSTANCE
Assault IV	Intentionally, Knowingly, or Recklessly	Physical Injury		Elevated to Felony if: 1. A prior conviction for assaulting the same victim 2. Three prior similar convictions 3. In the immediate presence of OR witnessed (perceived by any of the senses) by a child (victim's, suspect's or child residing in home) 4. The suspect knows the victim is pregnant
	Criminal Negligence	Physical Injury	Deadly	
	Criminal Negligence	Serious Physical Injury		To a vulnerable user of a public way (defined in ORS 801.608), by means of a motor vehicle

Assault III	Recklessly	Serious Injury	Deadly or Dangerous	
	Reckless + Extreme Indifference	Serious Injury		
	Reckless + Extreme Indifference	Physical Injury	Deadly or Dangerous	
	Intentionally, Knowingly, or Recklessly	Physical Injury		By means other than motor vehicle To the operator of public transit or taxi while the operator is in control of the vehicle
	Intentionally or Knowingly	Physical Injury		While aided by another person actually present
	Intentionally or Knowingly	Physical Injury		By person committed to a juvenile facility To Person known to be staff member while performing official duties
	Intentionally, Knowingly, or Recklessly	Physical Injury		To paramedic or EMT while performing official duties
	Intentionally or Knowingly	Physical Injury		Suspect at least 18 to child ten or <
Assault II	Intentionally or Knowingly	Serious Injury		
	Intentionally or Knowingly	Physical Injury	Deadly/ Dangerous	
	Reckless + Extreme Indifference	Serious Injury	Deadly/ Dangerous	

Assault I	Intentionally	Serious Injury	Deadly/ Dangerous	
	Intentionally or Knowingly	Serious Injury		To child under 6 years of age
	Commits Assault II			Knowing the victim is pregnant
	Intentionally/ Knowingly/ Recklessly	Serious Injury		While operating vehicle as DUII and has three prior DUII's in last ten years, or prior Man I/II, Criminal Negligent, Assault I/II/III by means of driving

Check Your Understanding

Describe the differences between Assault IV and Assault III.

Provide some examples of each of the following offenses that you might encounter in the field:

Assault IV	
Assault III	
Assault II	
Assault I	
Assaulting a Public Safety Officer	

Criminal Homicide Defined – ORS 163.005

Occurs if without justification or excuse the person intentionally, knowingly, recklessly, or with criminal negligence causes the death of another human being.

Definitions:

Criminal homicide	Human being
Murder, manslaughter, criminally negligent homicide, or aggravated vehicular homicide.	A person who has been born and was alive at the time of the criminal act (does not apply to fetuses).

Criminal Homicide Offenses

Murder in the Second Degree – ORS 163.115

- Is an intentional homicide.

- Felony Murder/ An alternative theory of Murder 2 – ORS 163.115 (1)(b)
    - Is the charge when a death occurs while the person is committing, attempting to commit, or during immediate flight from the commission of a designated felony crime. The death must be of a non-participant. The qualifying felonies are Arson I, Criminal Mischief I by means of an explosive, Burglary I, Escape I, Kidnapping I or II, Robbery I, First Degree felony sex crimes, or compelling prostitution. Assault I, as defined in ORS 163.185, and the victim is under 14 years of age, or Assault II, as defined in ORS 163.175 (1)(a) or (b) and the victim is under 14 years of age.

    - An affirmative defense to felony murder may apply if all of the following are met:
        - There is more than one participant; and
        - The person did not commit homicidal act or in any way solicit, request, command, importune, cause or aid in the commission of homicidal act; and
        - Was not armed with a dangerous or deadly weapon; and
        - Had no reasonable ground to believe that any other participant was armed with a dangerous or deadly weapon; and
        - Had no reasonable ground to believe that any other person intended to engage in conduct likely to result in death.

- Murder by Abuse/ An alternative theory of Murder 2 – ORS 163.115 (1) (c)
  - Occurs when the person recklessly, under circumstances indicating an extreme indifference to the value of human life, causes the death of a child under 14 or a dependent person; and
  - The person must have previously engaged in a pattern or practice of assault or torture the victim or another child under 14 years of age or dependent person; or
  - The death was caused by neglect or maltreatment.

Definitions:

<table>
<tr><td>Dependent person (ORS 163.205)

A person who because of either age or a physical or mental disability is dependent upon another to provide for the person's physical needs</td><td>Assault (ORS 163.115 (6)(a))

To intentionally, knowingly or recklessly cause physical injury to another person.</td><td rowspan="2">Neglect or maltreatment (ORS 163.115 (6)(b))

Failing to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child under 14 years of age or dependent person; or a violation of ORS 163.535 (Abandonment of child under 15), ORS 163.545 (Leaving a child under 10 unattended), or ORS 163.547 (Allowing child under 16 in area of controlled substance delivery or manufacture).</td></tr>
<tr><td>Pattern or practice (ORS 163.115 (1)(c))

One or more previous episodes.</td><td>Torture (ORS 163.115 (6)(d))

To intentionally inflict intense physical pain upon an unwilling victim as a separate objective apart from any other purpose.</td></tr>
</table>

Murder in the First Degree – ORS 163.107

Occurs when one of the following "special circumstances" are present. The maximum penalty possible for Murder in the First Degree is life without the possibility of release or parole. Another possibility is life with the possibility of parole after a minimum of 30 years.

Special circumstances:

- Murder for hire
- Solicited murder
- Prior homicide conviction (Agg. Murder, Murder I, Murder II, or Manslaughter I)
- More than one victim in the same criminal episode
- During the course of intentional maiming or torture
- The victim of the intentional homicide was a person under the age of 14 years old.
- The victim was one of the following, and the murder was related to the performance of the victim's official duties in the justice system:
    - A police officer;
    - A correctional, parole or probation officer or other person charged with the duty of custody, control or supervision of convicted persons;
    - A member of the Oregon State Police;
    - A judicial officer as defined in ORS 1.210;
    - A juror or witness in a criminal proceeding;
    - An employee or officer of a court justice;
    - A member of the State Board of Parole and Post-Prison Supervision; or
    - A regulatory specialist.
- The defendant was confined in a state, county, or municipal penal or correctional facility or was otherwise in custody when the murder occurred.
- Caused by explosives
- Felony murder committed intentionally and personally by the defendant
- Effort to conceal crime or identity of the perpetrator

- After an escape from a state, county or municipal penal or correctional facility and before defendant had been returned to the custody of the facility

Alternative proof of certain victims of Murder in the First Degree or Aggravated Murder - ORS 163.109

"Notwithstanding ORS 163.095, when an element of a crime charged is that the victim of the crime is a police officer as defined in ORS 181A.355 and the crime was related to the officer's performance of official duties, the state may alternatively prove that the victim of the crime is a certified reserve officer or a reserve officer, as those terms are defined in ORS 181A.355, and the crime was related to the officer's performance of official duties."

Aggravated Murder – ORS 163.095 – Unclassified Felony

Occurs when one of the following "special circumstances" are present. The maximum penalty possible for in the death penalty. Other possibilities are life in prison without the possibility of release or parole or life with the possibility of parole after a minimum of 30 years:

- Criminal homicide of two or more persons that is premeditated and committed intentionally and with the intent to:
  - Intimidate, injure or coerce a civilian population,
  - Influence the policy of a government by intimidation or coercion, or
  - Affect the conduct of a government through destruction of property, murder, kidnapping or aircraft piracy;
    or
- Murder in the Second Degree
  - Committed while the defendant was confined in a correctional facility or was otherwise in custody, and after the defendant had been previously convicted of Murder in the First Degree (what used to be Aggravated Murder);
    or
  - That is premeditated and committed intentionally against a
    - Person under 14 years of age,
    - Law enforcement officer and is related to the performance of the victim's performance of his/her official duties,
      or

- Correctional or P&P officer or other person with the duty of custody, control, or supervision of convicted persons related to the victim's performance of his/her official duties.

Manslaughter I – ORS 163.118 – Class A Felony

Criminal homicide committed:

- Recklessly under circumstances manifesting an extreme indifference to the value of human life; or
- Intentionally by a defendant under the influence of an extreme emotional disturbance, as provided in ORS 163.135, which constitutes a mitigating circumstance reducing the homicide that would otherwise be murder to manslaughter in the first degree and need not be proved in any prosecution; or
- Which constitutes a "Murder by Abuse" recklessly caused, but not under circumstances manifesting extreme indifference to the value of human life; or
- Recklessly or with criminal negligence while driving a motor vehicle under the influence of intoxicants and the person has either:
    - At least three prior convictions for DUII within 10 years of the current offense, or
    - A prior conviction of Assault I, II, or III in which serious physical injury was caused by the person driving a motor vehicle.

Manslaughter II – ORS 163.125 – Class B Felony

Criminal homicide committed:

- Recklessly; or
- When a person intentionally causes or aids another in committing suicide, except as authorized by the Assisted Suicide Law; or
- "Murder by Abuse" when caused with criminal negligence.

Criminally Negligent Homicide – ORS 163.145 – Class B Felony

Is the charge when someone causes the death of another with criminal negligence.

Check Your Understanding

Explain how you would distinguish between manslaughter offenses and murder offenses.

What examples of Criminally Negligent Homicide can you think of that you've heard about, known about, seen on the news, or that you might encounter in the field?

Other Person Offenses

Strangulation – ORS 163.187 – Class A Misdemeanor

Is the charge when a person:

- Knowingly impedes the normal breathing or circulation of the blood of another person by:
  - Applying pressure on the throat, neck or chest of the other person; or
  - Blocking the nose or mouth of the other person.

* Note: This does not apply to legitimate medical or dental procedures or good faith practices of a religious belief.

- Strangulation is a Class C felony when a person commits strangulation and
  - Strangulation is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or the victim;
  - The victim is under 10 years of age;
  - The victim is a family or household member (see ORS 135.230);
  - During the commission of the crime, the person used attempted to use or threatened to use a dangerous or deadly weapon unlawfully against another person;
  - The person has been previously convicted of strangulation, assault, or menacing, or under equivalent laws of another jurisdiction, against the same victim;
  - The person has at least three prior convictions for strangulation, assault, or menacing, or under equivalent laws of another jurisdiction, against any victim; or
  - The person commits the strangulation knowing that the victim is pregnant.

Menacing – ORS 163.190 – Class A Misdemeanor

Occurs when a person, by word or conduct, intentionally attempts to place another in fear of imminent serious physical injury.

The victim need not actually be afraid as long as it can be proved that the suspect intended to make the victim afraid. Imminent is defined as "near at hand, impending, on the point of happening." The serious physical injury threatened does not have to actually be occurring, but cannot be a threat to cause injury sometime in the future.

Recklessly Endangering Another – ORS 163.195 – Class A Misdemeanor

Occurs when a person recklessly engages in conduct, which creates a substantial risk of serious physical injury to another person.

Criminal Mistreatment II – ORS 163.200 – Class A Misdemeanor

A person commits the crime of criminal mistreatment in the second degree if, with criminal negligence and:

- In violation of a legal duty to provide care for another person, the person withholds necessary and adequate food, physical care or medical attention from that person; or

- Having assumed the permanent or temporary care, custody, or responsibility for the supervision of another person, the person withholds necessary and adequate food, physical care, or medical attention from that person.

- "Legal duty" includes, but is not limited to, a duty created by familial relationship, court order, contractual agreement, or statutory or case law.

Criminal Mistreatment I – ORS 163.205 – Class C Felony

A person commits the crime of criminal mistreatment in the first degree if:

- The person, in violation of a legal duty to provide care for another person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of another person, intentionally or knowingly withholds necessary and adequate food, physical care or medical attention from that other person; or

- The person, in violation of a legal duty to provide care for a dependent person or elderly person, or having assumed the permanent or temporary care, custody or responsibility for the supervision of a dependent person or elderly person, intentionally or knowingly:
    - Causes physical injury or injuries to the dependent person or elderly person.
    - Deserts the dependent person or elderly person in a place with the intent to abandon that person;
    - Leaves the dependent person or elderly person unattended at a place for such a period of time as may be likely to endanger the health or welfare of that person;
    - Hides the dependent person's or elderly person's money or property or takes the money or property for, or appropriates the money or property to, any use or purpose not in the due and lawful execution of the person's responsibility;
    - Takes charge of a dependent or elderly person for the purpose of fraud; or
    - Leaves the dependent person or elderly person, or causes the dependent person or elderly person to enter or remain, in or upon premises where a cannabinoid extract is being processed and that have not been licensed under ORS 475B.090; or
    - Leaves the dependent person or elderly person, or causes the dependent person or elderly person to enter or remain, in or upon premises where a chemical reaction involving one or more precursor substances:
        - Is occurring as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance; or
        - Has occurred as part of unlawfully manufacturing a controlled substance or grinding, soaking or otherwise breaking down a precursor substance for the unlawful manufacture of a controlled substance and the premises have not been certified as fit for use under ORS 453.885.

Criminal Mistreatment Definitions:

"Dependent person" A person who because of either age or physical or mental disability is dependent upon another to provide the person's physical needs.	"Elderly person" A person 65 years of age or older.
"Legal duty" Includes, but is not limited to, a duty created by familial relationship, court order, contractual agreement, or statutory or case law.	"Withhold necessary and adequate physical care" A person withholds necessary and adequate physical from a dependent person when the person keeps back from the dependent person those physical services and attention that are necessary to provide for the dependent person's bodily needs. State v. Baker-Krofft, et al., 348 Or 655 (2010).



Provide some examples of each of the following offenses that you might encounter in the field:

Menacing	
Recklessly Endangering Another Person	
Criminal Mistreatment I	
Criminal Mistreatment II	

Subjecting Another to Involuntary Servitude I-II and Trafficking in Persons

Subjecting another person to Involuntary Servitude II – ORS 163.263 – Class C Felony

A person commits the crime of subjecting another person to involuntary servitude in the second degree when the person: (Note: red is effective January 1, 2024)

- Knowingly and without lawful authority forces or attempts to force the other person to engage in or continue to engage in services by:
  - Abusing or threatening to abuse the law or legal process;
  - Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;
  - Threatening to report a person to a government agency for the purpose of arrest or deportation;
  - ~~Threatening to collect an unlawful debt;~~ Subjecting the person to debt bondage;
  - Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food, medical care, and clothing.
  - Controlling or threatening to control the other person's access to a controlled substance; or
  - Fraud or misrepresentation

Subjecting another person to Involuntary Servitude I – ORS 163.264 – Class B Felony

A person commits the crime of subjecting another person to involuntary servitude in the first degree if the person:

- Knowingly and without lawful authority forces or attempts to force the other person to engage in or continue to engage in services by:
  - Causing or threatening to cause the death of or serious physical injury to a person; or
  - Physically restraining or threatening to physically restrain a person.

Definition:

"Services" Activities performed by one person under the supervision or for the benefit of another person.

Trafficking in Persons – ORS 163.266

A person commits the crime of trafficking in persons when the person:

- Knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and one of the following:
  - The person knows or recklessly disregards the fact that the other person will be subjected to involuntary servitude (Class B Felony); or
  - The person knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act (Class A Felony); or
  - The person knows or recklessly disregards the fact that the other person is under 18 years of age and will be used in a commercial sex act (Class A Felony).

  Or
- Knowingly benefits financially or receives something of value from participation in a venture that involves an act of trafficking or subjecting another person to involuntary servitude. (Class B Felony)

Definition:

"Commercial sex act" Sexual conduct or sexual contact, as those terms are defined in ORS 167.002, performed in return for a fee or anything of value.

Criminal Law 4: Person Offenses

Instructional Goal:

This course is designed to develop a new officer's understanding of person offenses defined by the Oregon Criminal Code.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the type of offense using the Oregon Criminal Code Book
2. Distinguish level of offense using the Oregon Criminal Code Book
3. Articulate the elements of a given crime
4. Analyze a situation and determine if there is an applicable ORS offense represented

Content Outline:

- Kidnapping
- Custodial Interference
- Coercion
- Sexual Offenses
    - Rape
    - Sodomy
    - Unlawful Sexual Penetration
    - Sexual Abuse
    - Indecency
- Offenses Against Family
    - Abandonment
    - Child Neglect
    - Endangering the Welfare of a Minor

Kidnapping and Related Offenses

Kidnapping

A suspect commits kidnapping by:	
1) Taking the victim from one place to another, or secretly confining the victim in a place where the victim is not likely to be found; and	2) Doing so with the intent to substantially interfere with the victim's personal liberty.

A suspect does not commit kidnapping when the suspect has consent from the victim, or the suspect has legal authority to move or confine the person.

Looking at the first element, the phrase "secretly confining the victim" has the common meaning. When determining if the suspect took the victim from one place to another, the suspect must have changed the position of the victim such that the victim's ending place is qualitatively different from the victim's starting place. Given this, if a suspect is assaulting a victim and moving her from one room to another as the suspect assaults her, this does not satisfy the asportation (i.e., movement) element, because nothing about the different rooms increased the control over or further isolated the victim. State v. Kinslow, 257 Or App 295 (2013). Conversely, moving a victim 15 feet from an open driveway into the trunk of a car satisfies asportation, because the ending location – more mobile and isolated – is qualitatively different than the beginning location. State v. Walch, 346 Or 463 (2009).

Turning to the second element, the suspect must have the intent (i.e., conscious objective) to either move the victim a substantial distance or confine the victim for a substantial period of time. Said, in another way, there is no minimum required distance or amount of time, rather the focus is on the suspect's intent when he or she commits the act. State v. Wolleat, 338 Or 469 (2005).

Degrees

- ORS 163.225, Kidnapping in the Second Degree requires proof of both of the above elements.

- ORS 163.235, Kidnapping in the First Degree requires proof of both of the above elements, as well as proof that the suspect acted with any of the following purposes:
  - To compel any person to pay or deliver money or property as ransom;
  - To hold the victim as a shield or hostage;
  - To cause physical injury to the victim;
  - To terrorize the victim or another person; or
  - To further the commission or attempted commission of any of the following crimes against the victim: Rape I, Sodomy I, Unlawful Sexual Penetration I.

Examples:

- A suspect points a gun at two people and orders them to go inside the bar so he can rob the bar – Kidnapping II

- Once inside the bar, the suspect points his gun at everyone and tells them to put their hands on the bar. The suspect then orders the bartender to move to the other end of the bar and open the cash register – not kidnapping as the ending location of the victims is not qualitatively different than the beginning

- A suspect lures a 10-year-old victim into his van with a ruse about a lost dog so that he can forcibly commit sexual intercourse on her – Kidnapping I

- While running away from the police, a suspect scoops up a small child and holds the child up to prevent the police from shooting him as the suspect continues to move away from the police – Kidnapping I

Custodial Interference

A suspect commits custodial interference by:	
1) the suspect knows he or she has no legal right to do so while the suspect takes, entices, or keeps another person from that person's lawful custodian, and	2) the suspect has the intent to hold the victim permanently or for a protracted period of time.

The first element is satisfied when the suspect knows she or he has no legal right to custody of the victim. Additionally, even if the person has equal custody rights with another person, the suspect may not keep the child from the other person with joint custody. This is equally true if there is a valid joint custody order.

In the second element, the term "keep" means "to maintain something or somebody in a particular place, situation, or condition." State v. Adicho, 197 Or App 394 (2005). Given this, if the suspect allows a runaway to stay overnight at the suspect's house, the suspect has committed custodial interference even if the suspect did not prevent the runaway from leaving.

Degrees

- ORS 163.245, Custodial Interference in the Second Degree – requires proof of both of the above elements.

- ORS 163.257, Custodial Interference in the First Degree – requires proof of both of the above elements and the suspect:
    - Causes the victim to be removed from the state; or
    - Exposes the victim to a substantial risk of illness or physical injury.

Examples:

- Suspect, who is the 15-year-old's grandfather, picks up the minor from school without the parent's permission with the intent to go camping for a week – Custodial Interference II

- Suspect, who is the child's father, picks up the child from daycare with the intent to take the child on a 3-day vacation to the coast without the child's mother's permission - Custodial Interference II

- Suspect, who is the child's mother, picks up the child from the foster parent with the intent to flee to Canada, because the court placed the child in the temporary legal custody of the Department of Human Services (DHS). The mother is caught with the child in Washington State - Custodial Interference I

Coercion

(1) A person commits the crime of coercion when the person compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other person has a legal right to engage, by means of instilling in the other person a fear that, if the other person refrains from the conduct compelled or induced or engages in conduct contrary to the compulsion or inducement, the actor or another will:

(a) Unlawfully cause physical injury to some person;

(b) Unlawfully cause physical injury to some animal;

(c) Unlawfully cause damage to property;

(d) Engage in conduct constituting a crime;

(e) Falsely accuse some person of a crime or cause criminal charges to be instituted against the person;

(f) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such a threat is not deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act;

(g) Testify falsely or provide false information or withhold testimony or information with respect to another's legal claim or defense; or

(h) Unlawfully use or abuse the person's position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

Coercion requires a person to use fear of a particular consequence as a means to "influence or persuade a victim to alter his or her course of conduct—to do something that the victim otherwise would not have done or to not do something which the victim otherwise would have done." State v. Powe, 314 Or App 726 (2021)

The suspect must intend to cause the victim to alter their behavior by instilling fear of a particular consequence, and victim must actually alter their behavior because of that fear.

Examples:

- Suspect assaults the victim in her home and then orders her to sit on the couch. The victim remains on the couch until the suspect falls asleep out of fear he will assault her again if she gets up.
- Suspect tells the victim if she does not give him her cell phone, that he will call the police and report that she has been abusing her children. The victim gives him her cellphone out of fear the suspect will falsely accuse her of a crime
- Suspect tells the victim if she calls 911 then he will shoot her dog. The victim does not call 911 out of fear the suspect will cause injury to an animal

Sexual Offenses

Rape

A suspect commits rape when the suspect has sexual intercourse with another person without the consent of that person.

Sexual intercourse "has its ordinary meaning and occurs upon penetration, however slight; emission is not required." ORS 163.305(7). Additionally, beyond the ordinary meaning of without consent, a person is legally incapable of consenting to a sexual act if the person is: under 18 years of age (yoa), mentally incapacitated, physically helpless, or incapable of appraising the nature of the victim's conduct. ORS 163.315.

When charging specific acts of sexual offenses, if the basis of the lack of consent is not found in the statute, Sexual Abuse in the Second Degree (see below) provides a general charging statute for all other behavior. For example, if a suspect has sexual intercourse with a victim who is 13 yoa, the suspect would be charged with Rape II. Still, if a suspect has sexual intercourse without the consent of a victim who is 24 yoa, the suspect would be charged with Sex Abuse II so long as the victim was not mentally incapacitated, physically helpless, or incapable of appraising the nature of the victim's conduct.

Degrees

- ORS 163.355, Rape in the Third Degree – sexual intercourse with a victim under 16 yoa.

- ORS 163.365, Rape in the Second Degree – sexual intercourse with a victim under 14 yoa.

- ORS 163.375, Rape in the First Degree – sexual intercourse with a victim who is:
  - Subjected to forcible compulsion;
  - Under 12 yoa;
  - Under 16 yoa and is the suspect's sibling, of the whole or half-blood, or the suspect's child or the suspect's spouse's child; or
  - Incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct.

ORS 163.305 (1) - Forcible Compulsion Means:

- To compel by physical force or a threat (express or implied)
- Places the victim in fear of (immediate or future) death or physical injury
- Regarding the victim or another person
- Or in fear that the victim, or another person, will (immediately or in the future) be kidnapped

A suspect must knowingly subject the victim to forcible compulsion. State v. Wier, 260 Or App 341 (2013). Furthermore, forcible compulsion must be greater in degree or different in kind than the force inherent in subjecting a victim to sexual contact, and, while it must compel the victim to engage in the contact, it need not rise to the level of violence; considerations include the victim's age, the differences in the parties' age, size and strength, and their relationship. State v. Marshall, 350 Or 208 (2011).

ORS 163.305 (2) - Mentally incapacitated means the victim is rendered incapable of appraising or controlling their conduct

ORS 163.305 (4) – Physically helpless means the victim is unconscious or for any other reason is physically unable to communicate unwillingness to an act

ORS 163.315 (1)(3)– A victim is incapable of appraising the nature of their conduct if any of the following:

- The victim is unable to understand the nature of the conduct
- The victim is unable to understand the right to choose whether and how to engage in conduct, including the right to revoke a prior decision to engage in conduct
- The victim is unable to communicate a decision to engage in conduct

Examples:

- Suspect has sex with a girl who is 15 yoa – Rape III
- Suspect has sex with his sister who is 15 yoa – Rape I
- Suspect tells the victim that he will shoot her in the head if she does not let him have sex with her – Rape I

Sodomy

A suspect commits sodomy when the suspect has oral or anal sexual intercourse with another person without the consent of that person.

Oral and anal sexual intercourse means sexual conduct between persons consisting of contact between the sex organs or anus (red text effective Jan 1, 2024). of one person and the mouth or anus of another. ORS 163.305(4). The same definition of consent applies to all sexual offenses, as discussed in rape above.

Degrees

- ORS 163.385, Sodomy in the Third Degree – oral or anal sexual intercourse with a victim under 16 yoa, or causing the victim to engage in oral or anal intercourse.

- ORS 163.395, Sodomy in the Second Degree – oral or anal sexual intercourse with a victim under 14 yoa, or causing the victim to engage in oral or anal intercourse.

- ORS 163.405, Sodomy in the First Degree – oral or anal sexual intercourse with a victim who is:
  - Subjected to forcible compulsion;
  - Under 12 yoa;
  - Under 16 yoa and is the suspect's sibling, of the whole or half-blood, or the suspect's child or the suspect's spouse's child; or
  - Incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct.

Examples:

- Suspect performs oral sex on a girl who is 13 yoa – Sodomy II
- Suspect has a girl who is 11 yoa perform oral sex on him – Sodomy I
- Suspect performs anal intercourse on a female who is passed out due to intoxication – Sodomy I

Unlawful Sexual Penetration

A suspect commits unlawful sexual penetration when the suspect penetrates the vagina, anus or penis of another with any object ~~other than the penis or mouth of the suspect~~ without consent of that person. See the section on rape for the topic of consent.

"Object" includes any body part of the actor

Degrees

- ORS 163.408, Unlawful Sexual Penetration (USP) in the Second Degree – penetration as described above with a victim under 14 yoa.

- ORS 163.411, USP in the First Degree – penetration as described above and the victim is:
  - Subjected to forcible compulsion;
  - Under 12 yoa;
  - Incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct.

Examples:

- Suspect puts a sex toy in the anus of a boy who is 13 yoa – USP II
- Suspect asks the victim if he can put a sex toy in her vagina and when she says no, he smacks her in the face before forcing her legs apart and inserting the object in her vagina – USP I

Sexual Abuse

In its most common form, a suspect commits sexual abuse when the suspect subjects the victim to sexual contact, and the victim does not consent.

Sexual contact means any touching of the sexual or intimate parts of a person or causing the victim to touch the same parts of the suspect for a sexual purpose. A sexual purpose means to arouse or gratify the sexual desire of any person. As previously mentioned, see the rape section for a discussion on consent.

Sexual abuse also includes sexual activity with victims over 18 yoa who do not consent to the activity. This sexual activity is outlined below but includes the acts discussed in rape, sodomy, and USP, as well as propelling a dangerous substance (i.e., semen, blood, urine, feces) at a victim for a sexualpurpose.

Degrees

- ORS 163.415, Sexual Abuse in the Third Degree – the suspect subjects the victim to sexual contact and:
    - The victim does not consent;
    - The victim is under 18 yoa; or
    - The suspect propels a dangerous substance at the victim without consent for a sexual purpose.

- ORS 163.425, Sexual Abuse in the Second Degree – the suspect subjects the victim to sexual, oral or anal sexual intercourse, USP without consent, or the suspect, who is 21 yoa or older, commits Sex Abuse III and at any time before the act, the suspect was the victim's coach or teacher.

- ORS 163.427, Sexual Abuse in the First Degree – the suspect subjects the victim to sexual contact and:
  - The victim is less than 14 yoa;
  - The victim is subject to forcible compulsion;
  - The victim is incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct; or
  - The suspect intentionally causes the victim, who is under 18 yoa, to touch or contact the mouth, anus, or sex organs of an animal for a sexual purpose.

Examples:

- Suspect caresses the victim, who is 46 yoa, on the buttocks without consent – Sex Abuse III
- Suspect has sex without the consent of the victim, who is 34 yoa – Sex Abuse II
- Suspect has the victim, who is 12 yoa, stroke his penis – Sex Abuse I
- Suspect tells the victim, who is 17 yoa, to masturbate a dog because it sexually excites him and the victim performs the act – Sex Abuse I

Sexual Delinquency and Misconduct

A suspect commits Contributing to the Sexual Delinquency of a Minor when the suspect is 18 yoa or older, and the suspect has sexual, oral, or anal intercourse with a person who is under 18 yoa. ORS 163.435	A suspect commits Sexual Misconduct when the suspect has sexual, oral, or anal intercourse with an unmarried person who is under 18 yoa. ORS 163.445.

Note the difference between contributing and misconduct is the age of the suspect. Contributing requires the suspect to be 18 or older, and misconduct is for a suspect who is under 18 yoa.

Defenses	
Ignorance or mistake as a defense **ORS 163.325**	**Ignorance or mistake - Age:** If the statutory element requires the victim to be under 16 yoa, it is not a defense if the suspect did not know the age of the victim, or reasonably believed the victim was over 16. (ORS 163.325 (1)) However, if the crime is requires the victim to be under a certain age other than 16 yoa, then it is a defense that the suspect reasonably believed the victim was older than the specified age. (ORS 163.325(2)) **Ignorance or Mistake - Consent:** Where the victim's lack of consent is based solely on the victim's inability to consent due to mental incapacitation, physical helplessness, or incapability of appraising the nature of their conduct, it is a defense that the defendant did not know of the facts/conditions responsible for the victim's incapacity to consent. (ORS 163.325(3)) In Sex Abuse III or Sex Abuse II where the victim's lack of consent is not based on the victim's age, it is a defense that the defendant reasonably believed the victim consented to the sexual contact or sexual/oral/anal intercourse. (ORS 163.325(4))
Age as a defense **ORS 163.345**	When the lack of consent is based solely on the age of the victim, it may be a defense if the suspect is less than three years older than the victim at the time of the offense. This defense may be used when the suspect commits: Rape III, Rape II, Sodomy III, Sodomy II, Sex Abuse III, Sex Abuse II, Sex Abuse I, and Contributing to Sexual Delinquency. (ORS 163.345(1)) **Unlawful Sexual Penetration II**: This defense may only be used for USP II if the object used to penetrate the victim was the hand (ORS 163.345(2)) **Sexual Misconduct:** This defense may only be used for Sexual Misconduct if the suspect was less than 3 years older than the victim and the victim was at least 15 years old at the time. (ORS 136.345(3))

Examples:

- 20 yoa suspect has sexual intercourse with 15 yoa girl, whom the suspect reasonably believed was 17 yoa and within three years of the suspect's age. Not a defense given the victim is under 16 yoa.

- 30 yoa suspect has oral sexual intercourse with a 17 yoa victim. The victim told the suspect that she was 18 yoa, and the suspect reasonably believed her. While this conduct is Sex Abuse II, Contributing to Sexual Delinquency, or Sexual Misconduct, the suspect, may assert a defense based on the reasonable belief that the victim was over 18.

- 18 yoa suspect has sexual intercourse with victim 16 yoa victim who, except for the legal incapacity, is otherwise consenting. While this conduct is Sex Abuse II, Contributing to Sexual Delinquency, or Sexual Misconduct, the suspect, may assert a defense based on the three-year age difference.

- 18 yoa suspect has anal sodomy with 16 yoa victim, who does not give consent. Sex Abuse II – the three-year age defense only applies when the lack of consent is based solely on the age of the victim.

Indecency

ORS 163.465: A suspect commits public indecency when in, or in view of a public place, the suspect engages in sexual, oral, or anal intercourse, masturbation, or an act exposing the genitals of the suspect with the intent of arousing the sexual desire of the suspect or another person.

So, if a couple had sex on a park bench, they have committed public indecency. It is also public indecency is someone masturbates on a park bench. However, if a person was riding a bicycle naked down the street, it is not public indecency if the person did not intend to arouse the sexual desire of anyone.

ORS 163.467 A suspect commits private indecency when:			
1) the suspect exposes her or his genitals with the intent to arouse the sexual desire of the suspect or another person;	2) the suspect is in a place where another person has a reasonable expectation of privacy;	3) the suspect is in view of the other person;	4) the exposure reasonably would be expected to alarm or annoy the other person , and the suspect knows that the other person did not consent to the exposure.

“A place where another person has a reasonable expectation of privacy” includes, but is not limited to, residences, yards of residences, working areas, and offices.

So if a person is masturbating in an office breakroom and another person walks in, the suspect has committed private indecency if the suspect knows the person did not consent to the exposure.

Offenses against Family

Abandonment

A suspect commits abandonment of a child if:		
1) the suspect is the child's parent, guardian, or other person charged with the care or custody of a child;	2) the child is under 15 yoa; and	3) the suspect deserts the child in any place with the intent to abandon the child.

The courts have been very particular about proof of the intent to abandon. In one Oregon case, the mother of a 3-year old agreed to sell her daughter for $1,500. The mother never liked the child, and a neighbor suggested that she give the girl up for adoption. The mother said she wouldn't give her up without getting some money. The neighbor told the police. An officer then posed as a person interested in "buying" a child. The mother visited with the officer and his "wife" for 45 minutes to get a feel for her daughter's new home. After 45 minutes, she agreed to sell her child. She took the cash and left her daughter. She was arrested outside the house and prosecuted for child abandonment. The appellate court reversed the decision of the trial court because it found that the mother did not "intend to abandon" the child. She spent 45 minutes assuring herself that the new home was right for her daughter. The court reasoned that the mother, in her own way, was trying to place her daughter in a good home and did not desert her with the intent to abandon her. (Note: this case could have been investigated as selling a person under 18 yoa – ORS 163.537).

Given this court interpretation, to prove the intent to abandon, it often requires admission by the suspect or obvious proof like when the suspect leaves a child playing with toys in a store and then moves out of state with her boyfriend.

Additionally, it is an affirmative defense that the suspect left the child at an authorized facility. ORS 418.017. This applies to a parent who leaves an infant, who is ~~30~~ 60 days old or younger and without evidence of abuse, with an employee at a hospital, birthing center, physician's officer, sheriff's office, police station, or fire station.

(Note: red text goes into effect Jan 1, 2024)

Child Neglect

ORS 163.545 A suspect commits Child Neglect in the Second Degree when the suspect:	
1) has custody and control of a child under 10 yoa, and	2) leaves the child unattended in or at any place for a period of time that is likely to endanger the health or welfare of a child.
Examples: • A sleeping infant left in a closed car on a 90-degree day to run into the house to make a phone call. The parent is gone for 10 minutes. The temperature inside the car reaches over 125 degrees upon the parent's return. • Hearing-impaired 4-year old child left alone at home for 30 minutes while babysitter runs to market. • Parent currently using drugs passes out, and the child wanders outside and is found by police.	
ORS 163.547 A suspect commits Child Neglect in the First Degree when the suspect:	
1) has custody and control of a child under 16 yoa, and	2) the suspect knowingly leaves the child, or allows the child to stay: a) in a vehicle where controlled substances or marijuana extracts are being criminally delivered or manufactures; b) in or upon premises, or in the immediate proximity of premises, where a marijuana extract is being processed at an unlicensed facility; c) in or upon premises and in the immediate proximity of DCS/MCS for consideration.

The court interpreted section (a) on DCS/MCS in a vehicle to mean an actual delivery. Therefore, if you only have evidence of an intent to deliver without proof of an actual deal that was occurring or arranged to occur in a vehicle with a child under 16 yoa present, this is not Child Neglect I.

The court interpreted section (c) on DCS/MCS in or upon premises and in the immediate proximity slightly more broadly. When determining the "immediate proximity," it is sufficient if the DCS occurs in the garage, and the children are in the house itself. The court has not made a ruling specifically on constructive deliveries. However, given the difference in the wording of the sections, it is still arguably Child Neglect I for a constructive delivery in the presence of a child under 16 yoa in a residence.

Endangering

ORS 163.575: A suspect commits Endangering the Welfare of a Minor if the person knowingly:			
1) induces, causes or permits an unmarried person under 18 yoa to witness an act of sexual conduct or sadomasochistic abuse;	2) permits a person under 18 yoa to enter or remain in a place where unlawful activity involving controlled substances or cannabis is maintained or conducted;	3) induces, causes or permits a person under 18 yoa to participate in gambling; or	4) sells to a person under 18 yoa controlled substance or cannabis paraphernalia.

The Supreme Court has interpreted section (2) very narrowly. Specifically, "a place where unlawful activity involving controlled substances is maintained or conducted" means that the principal or substantial use of the place is to facilitate unlawful drug activity. In most cases, it is challenging to show that the primary purpose of a residence is for an unlawful activity involving controlled substances, rather than eating, sleeping, etc. Therefore, since this court decision, many District Attorney's Offices have been unable to file charges under this section even when a young child is exposed to controlled substances. Until the legislature amends this section, try to determine if the risk to the child is of such a degree that it would be sufficient to charge as a Recklessly Endangering Another Person.

SEXUAL OFFENSES CHART			
CRIME/ORS	**ACT**	**AGE OF VICTIM**	**SPECIAL CIRCUMSTANCES**
Rape III (163.355)	Sexual Intercourse	Under 16	
Rape II (163.365)	Sexual Intercourse	Under 14	
Rape I (163.375)	Sexual Intercourse	Under 12 ***OR***	• Forcible Compulsion • Victim under 16 and is person's sibling, child, or stepchild • Victim incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct
Sodomy III (163.385)	Oral or anal sex	Under 16	
Sodomy II (163.395)	Oral or anal sex	Under 14	
Sodomy I (163.405)	Oral or anal sex	Under 12 ***OR***	• Forcible Compulsion • Victim under 16 and is person's sibling, child, or stepchild • Victim incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct
Sex Penetration II (163.408)	Penetrate vagina, anus, or penis with object other than penis or mouth	Under 14	
Sex Penetration I (163.411)	Penetrate vagina, anus, or penis with object other than penis or mouth	Under 12 ***OR***	• Forcible Compulsion • Victim incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct
Sex Abuse III (163.415)	• Sexual contact • For sexual purpose, intentionally propels any dangerous substance at a victim with consent	Under 18 ***OR***	Without consent
Sex Abuse II (163.425)	• Sexual intercourse • Anal or oral sex • Penetration		Without consent
	• Commits Sex Abuse III ***AND***	Suspect is 21 or older	***AND*** at any time before crime, was victim's coach or teacher
Sex Abuse I (163.427)	Sexual contact	Under 14 ***OR***	• Forcible Compulsion • Victim incapable of consent by reason of mental incapacitation, physical helplessness or incapability of appraising the nature of the victim's conduct • Intentionally cause person under 18 to touch or contact mouth, anus, or sex organs of an animal for sexual desire
Contributing to Sexual Delinquency (163.435)	Sexual intercourse or anal or oral sex	Under 18 ***AND***	Actor has to be 18 years or older
Sexual Misconduct (163.445)	Sexual intercourse or anal or oral sex	Under 18 ***AND***	Victim has to be unmarried

Basic Police Academy

Criminal Law: Property Offenses



Criminal Law 1: Property Offenses

Instructional Goal:

This course is designed to develop a new officer's understanding of property offenses defined by the Oregon Criminal Code.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the type of offense using the Oregon Criminal Code Book
2. Distinguish level of offense using the Oregon Criminal Code Book
3. Articulate the elements of a given crime
4. Analyze a situation and determine if there is an applicable ORS offense represented

Content Outline:

- Theft and Related Offenses
- Fraud or Deception
- Other Offenses
- Identity Theft

Theft and Related Offenses

Theft – ORS 164.015

A person commits theft when, with intent to deprive another of property or to appropriate property to the person or a third person, the person:

(1) Takes, appropriates, obtains or withholds such property from an owner thereof;

(2) Commits theft of property lost, mislaid or delivered by mistake as provided in ORS 164.065;

(3) Commits extortion as provided in ORS 164.075 by compelling or inducing another person to deliver property;

(4) Commits theft by deception as provided in ORS 164.085; or

(5) Commits theft by receiving as provided in ORS 164.095.

Definitions

Appropriate – ORS 164.005 (1)	Deprive another of property or deprive – ORS 164.005 (2)

Theories/means of committing theft – ORS 164.015

- "Taking" ORS 164.015 (1)
- Theft of Property Lost, Mislaid or Delivered by Mistake – ORS 164.065
- Extortion – ORS 164.075
- Theft by Deception – ORS 164.085
- Theft by Receiving – ORS 164.095

Value as an element of theft:

Theft is an intentional crime and the suspect must have the intent to deprive another person of property or to appropriate property to themselves or a third person. However, the degree of theft a person commits is sometimes dependent on the value of the property taken.

If the degree of the theft charge is dependent on the value of the property (for example a theft II requires that the suspect intentionally commit theft and that the value of the property is over $100), then the state must also prove that the suspect acted at least with criminal negligence regarding the value of the property taken.

Criminal negligence means the suspect, "failed to be aware of a substantial and unjustifiable risk," that the property was of a certain value, and their failure to be aware of the value, "constituted a gross deviation from the standard of care that a reasonable person would observe in the situation."

This means in order to prove a theft over a certain value, the person must intentionally commit the theft AND there must be a substantial and unjustifiable risk that the suspect should have been aware of that the property was over the required value amount.

Remember to document evidence about the value of the property:

- What types of items were stolen?
- How many items did the suspect take?
- Did the suspect know or have any idea how much the items were worth?
- Were their price tags or price signs on or near the items, etc.

Example:

Brad steals potted plants and potting soil from Fred Meyer. Brad is located in his car that has the stolen property inside, and a Fred Meyer LPO confirms the potted plants and soil bags are their property. The total value of the stolen property is $365 and Brad is arrested for theft II. In order to prove Brad should have been aware that the property was worth over $100, officers should document if there are any price signs where the property was taken from in the store, any price tags on the actual items, and how many potted plants and bags of soil Brad took. If Brad is willing to speak with officers, they should ask questions that establish if he is familiar with those types of items or their general value.

Theft III – ORS 164.043

A person commits the crime of theft in the third degree if:

i. By means other than extortion, the person commits theft as defined in ORS 164.015; and
ii. The total value of the property in a single or an aggregate transaction is less than $100.

Example:

William stops at a convenience store on his way home to buy a soda. While there, he slips two candy bars valued at $1.29 each for a total value of $2.58 into his pocket and leaves the store after paying for the soda but not the candy bars.

Theft II – ORS 164.045

A person commits the crime of theft in the second degree if:

i. By means other than extortion, the person commits theft as defined in ORS 164.015; and
ii. The total value of the property in a single or aggregate transaction is $100 or more and less than $1,000.

Example:

Peter enters a music store, takes ten CDs, and leaves the store without intending to pay. The total value of the CDs is $150.

Theft I – ORS 164.055

A person commits the crime of theft in the first degree if, by means other than extortion, the person commits theft as defined in ORS 164.015 and:

i. The total value of the property in a single or aggregate transaction is $1,000 or more;
ii. The theft is committed during a riot, fire, explosion, catastrophe or other emergency in an area affected by the riot, fire, explosion, catastrophe or other emergency;
iii. The theft is theft by receiving committed by buying, selling, borrowing or lending on the security of the property;
iv. The subject of the theft is a firearm or explosive;
v. The subject of the theft is a livestock animal, a companion animal or a wild animal removed from habitat or born of a wild animal removed from habitat, pursuant to ORS 497.308 (2)(c); or

vi. The subject of the theft is a precursor substance;

vii. During the commission of the theft, the person recklessly engages in conduct that creates a substantial risk of serious physical injury to another person. (Note: red text effective Jan. 1, 2024).

Examples:

Susan takes $1,200 from the petty cash drawer at work to help pay for her gambling debts. Initially, when she decided to take the money, she intended to pay it back. However, after she gets home, Susan decides to fix the books and hide the fact that she took the money.

While visiting his cousin Joe, Bob finds a gun worth $125 in Joe's bedroom. Bob takes the gun without Joe's permission.

Aggravated Theft I – ORS 164.057

A person commits the crime of aggravated theft in the first degree, if:

i. The person violates ORS 164.055 with respect to property, other than a motor vehicle used primarily for personal rather than commercial transportation; and

ii. The value of the property in a single or aggregate transaction is $10,000 or more.

Examples:

A wall safe at a local grocery store is left unsecured, and Stewart happens upon it. He decides to help himself to the cash, which totals $13,750.00. The value is more than $10,000.00, so he has committed aggravated theft I.

Dorothy places her wedding ring worth $9,000 in the ashtray of her car before she goes jogging. While jogging, Steve breaks into Dorothy's car, takes her ring, and the $1,000 car stereo. The aggregate value of the two stolen items is at least $10,000.00. The crime is aggravated theft I.

Aggregation / Value of Property – ORS 164.115

The value of single theft transactions may be added together if the thefts were committed:

~~i. Against multiple victims by similar means within a 30-day period; or~~

~~ii. Against the same victim, or two or more persons who are joint owners, within a 180-day period.~~

i. Against the same or multiple victims within a one-year period

Theft of Services – ORS 164.125

A person commits the crime of theft of services if:

i. With intent to avoid payment therefor, the person obtains services that are available only for compensation, by force, threat, deception or other means to avoid payment for the services; or

ii. Having control over the disposition of labor or of business, commercial or industrial equipment or facilities of another, the person uses or diverts to the use of the person or a third person such labor, equipment or facilities with the intent to derive for the person or the third person a commercial benefit to which the person or the third person is not entitled.

Example:

Eric goes to a restaurant for dinner. After dinner, Eric leaves the restaurant without paying for his meal.

Unauthorized Use of a Vehicle – ORS 164.135

A person commits the crime of unauthorized use of a vehicle when:

i. The person **knowingly** *takes, operates, exercises control over or uses* another's vehicle, boat or aircraft; and

The person is **aware of and consciously disregards a substantial and unjustifiable risk* that the owner does not consent** to the taking, operation, other use of or exercise control over the vehicle, boat or aircraft; and

The owner did not consent; or

ii. The person **knowingly** *rides in* another's vehicle, boat or aircraft; and

The person **knows** that **the owner does not consent** to the person riding in the owner's vehicle, boat or aircraft; and

The owner did not consent; or

iii. Having custody of a vehicle, boat or aircraft pursuant to an agreement between the person or another and the owner thereof whereby the person or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of such vehicle, boat or

aircraft, the person intentionally uses or operates it, without consent of the owner, for the person's own purpose in a manner constituting a gross deviation from the agreed purpose; or

iv. Having custody of a vehicle, boat or aircraft pursuant to an agreement with the owner thereof whereby such vehicle, boat or aircraft is to be returned to the owner at a specified time, the person knowingly retains or withholds possession thereof without consent of the owner for so lengthy a period beyond the specified time as to render such retention or possession a gross deviation from the agreement.

NOTE: In 2019, the legislature amended the UUV statute as to state of mind. The person who takes, operates, etc. the vehicle does not have to actually know that the owner of the vehicle had not given consent. The language in "i." above shows that while the person has to take, operate, etc. the vehicle knowingly, the State only has to prove that the person had a reckless state of mind about the owner not consenting to the taking. Compare that to "ii." above where someone who simply "rides in" the vehicle must know the owner did not consent to the taking.

<table>
<tr><td>Public Transit Vehicle - ORS 166.116 (c)

A vehicle that is used for public transportation or operated by or under contract to any public body in order to provide public transportation.</td><td rowspan="2">Vehicle

The Oregon Supreme Court has ruled, in State v. Eastep, 361 Or 746 (2017), that the ordinary meaning of the word "vehicle" is broad enough to include cars and trucks that may not currently be in operating condition, even if in need of extensive repairs. The Court so ruled after observing, "The statute does not define the term 'vehicle'" and then proceeded to "assume that the legislature intended [the term vehicle] to have [its] plain, ordinary meaning."</td></tr>
<tr><td>Public Transportation - ORS 166.116 (d)

Means transportation provided by a city, county, special district, or any other political subdivision or municipal or public corporation.</td></tr>
</table>

<u>Mail Theft or Receipt of Stolen Mail – ORS 164.162</u>

A person commits the crime of mail theft or receipt of stolen mail if the person intentionally:

i. Takes or, by fraud or deception, obtains mail from a post office, postal station, mail receptacle, authorized depository or mail carrier;
ii. Takes from mail any article contained therein;
iii. Secrets, embezzles or destroys mail or any article contained therein;
iv. Takes or, by fraud or deception, obtains mail that has been delivered to or left for collection on or adjacent to a mail receptacle or authorized depository; or
v. Buys, receives, conceals, or possesses mail or any article contained therein knowing that the mail or article has been unlawfully taken or obtained.

Example:

Suzanne drives around a neighborhood and stops at each mailbox. At each mailbox, she opens it and takes the mail that has been delivered by the post office.

Unauthorized Entry Into a Motor Vehicle - ORS 164.272

A person commits the crime of unlawful entry into a motor vehicle if the person enters a motor vehicle, or any part of a motor vehicle, with the intent to commit a crime.

Example:

Neil sees a purse in plain view inside an unlocked vehicle. He opens the car door, reaches in, and steals the purse. Neil opened and entered the car with the intent to commit the crime of at least Theft III.

Fraud or Deception

Definitions

Written instrument – ORS 165.002 (1)	Falsely make – ORS 165.002 (4)	Falsely complete – ORS 165.002 (5)
Falsely alter – ORS 165.002 (6)	Utter – ORS 165.002 (7)	Forged instrument – ORS 165.002 (8)

Forgery II – ORS 165.007

A person commits the crime of forgery in the second degree if, with intent to injure or defraud the person:

i. Falsely makes, completes or alters a written instrument; or
ii. Utters a written instrument that the person knows to be forged.

Example:

Without Nancy's permission, Jason takes one of Nancy's checks and makes it out to himself for $10.

Forgery I – ORS 165.013

A person commits the crime of forgery in the first degree if the person violates ORS 165.007:

i. And the written instrument is or purports to be any of the following:
   a. Part of an issue of money, securities, postage or revenue stamps, or other valuable instruments issued by a government or governmental agency;
   b. Part of an issue of stock, bonds or other instruments representing interests in or claims against any property or person;
   c. A deed, will, codicil, contract or assignment;
   d. A check for $1,000 or more, a credit card purchase slip for $1,000 or more, or a combination of checks and credit card purchase slips that, in the aggregate, total $1,000 or more, or any other commercial instrument or other document that does or may evidence, create, transfer, alter, terminate or otherwise affect a legal right, interest, obligation or status; or
   e. A public record; or

ii. By falsely making, completing, or altering, or by uttering, at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels, or EAN-13 labels or a combination of at least 15 retail sales receipts, Universal Product Code labels, EAN-8 labels or EAN-13 labels.

Examples:

Without Nancy's permission, Jason takes three of Nancy's checks and makes them out to himself for $500 each. (Aggregate transaction)

Without Nancy's permission, Jason takes three of Nancy's checks, and makes them out to his brother Bill, for $500 each. Bill, knowing that his brother filled in the information on each check without Nancy's permission, deposits the checks into his bank account.

Mark has a warrant for his arrest. He takes his roommate's driver's license without permission. Mark cuts out his roommate's picture and replaces it with his own.

Fraudulent Use of a Credit Card – ORS 165.055

A person commits the crime of fraudulent use of a credit card if, with intent to injure or defraud, the person uses a credit card for the purpose of obtaining property or services with the knowledge that:

i. The card is stolen or forged;
ii. The card has been revoked or canceled; or
iii. For any other reason, the use of the card is unauthorized by either the issuer or the person to whom the credit card is issued.

Example:

Lucy buys a stolen credit card from Mike. In the next two hours, Lucy makes $2,000 worth of purchases on the stolen credit card.

Negotiating a Bad Check – ORS 165.065

A person commits the crime of negotiating a bad check if the person makes, draws, or utters a check or similar sight order for the payment of money, knowing that the drawee will not honor it.

For purposes of this section, unless the check or order is postdated, it is prima facie evidence of knowledge that the check or order would not be honored if:

i. The drawer has no account with the drawee at the time the check or order is drawn or uttered; or
ii. Payment is refused by the drawee for lack of funds, upon presentation within 30 days after the date of utterance, and the drawer fails to make good within ten days after receiving notice of refusal.

Example:

Doug writes a check at a local department store for $1,850, on an account he knows he closed two years ago.

Other Offenses

Improper use of an Emergency Communications System – ORS 165.570

A person commits the crime of improper use of the emergency communications system if the person knowingly:

i. Makes an emergency call or calls the tip line for a purpose other than to report a situation that the person reasonably believes requires prompt service in order to preserve human life or property; or

ii. Allows another person to use communications equipment owned, rented or leased by or under the control of the person to make an emergency call or call the tip line for a purpose other than to report a situation that the other person reasonably believes requires prompt service in order to preserve human life or property.

"Emergency call" – defined in ORS 403.105	Emergency communication system" – defined in ORS 403.105	"Tip line" means the statewide tip line established under ORS 339.329

Interference with Making a Report – ORS 165.572

A person commits the crime of interference with making a report if the person, by removing, damaging or interfering with a telephone line, telephone or similar communication equipment, intentionally prevents or hinders another person from making a report to a law enforcement agency, a law enforcement official or an agency charged with the duty of taking public safety reports or from making an emergency call as defined in ORS 403.105.

Example:

Lonnie is having a physical dispute with his live-in girlfriend. She attempts to call the police to report a possible crime, and Lonnie takes the phone away then breaks the phone, so it cannot be used.

Identity Theft and Related Crimes

Identity Theft – ORS 165.800

A person commits the crime of identity theft if the person, with the intent to deceive or to defraud, obtains, possesses, transfers, creates, utters or converts to the person's own use the personal identification of another person.

Example:

Seth has obtained the name, date of birth, and address of a classmate from college. Using this information, he creates a false identification then applies for and receives a credit card in that name.

Aggravated Identity Theft - ORS 165.803

A person commits the crime of aggravated identity theft if:

i. The person violates ORS 165.800 in 10 or more separate incidents within a 180-day period;
ii. The person violates ORS 165.800, and the person has a previous conviction for aggravated identity theft;
iii. The person violates ORS 165.800, and the losses incurred in a single or aggregate transaction are $10,000 or more within a 180-day period; or
iv. The person violates ORS 165.800 and has in the person's custody, possession, or control ten or more pieces of personal identification from 10 or more different persons.

Example:

Using the same example from above, Seth incurs charges on the above credit card in excess of $10,000.00.

Misrepresentation of Age by a Minor – ORS 165.805

A person commits the crime of misrepresentation of age by a minor if:

i. Being less than a certain, specified age, the person knowingly purports to be of any age other than the true age of the person with the intent of securing a right, benefit or privilege which by law is denied to persons under that certain, specified age; or

ii. Being unmarried, the person knowingly represents that the person is married with the intent of securing a right, benefit, or privilege, which by law is denied to unmarried persons.

Example:

Keri is 19 years old, and she borrowed her older sister's Oregon Driver License to use for identification to gain access to a night club and consume alcohol.
Note- This use is an affirmative defense to identity theft.

Preliminary Investigation for Identity Theft

Victim's Report	Try to Discover Motive
Gather information: • DOB • Driver's license • Social Security Number • Telephone numbers • Email addresses • Original documents (if possible) • Account numbers • Details on when and how • Names of everyone involved • Financial institutions involved • Chronological log of the theft	• Drugs • Money • Revenge

Continued Investigation

- Examine all financial and credit bureau documents
- Use developed informants or other intelligence
- Gain access to privileged information
    - Federal cooperation and funds
    - State and federal RICO statute investigations
    - Forfeiture statutes
    - Follow the money
- Contact other involved law enforcement agencies
    - Prevent duplication
    - Collaboration
- Obtaining financial information
    - Search warrant
    - Subpoena
    - Consent – simplest and most cost-effective
- Identifying additional victims
    - To identify a larger, organized ring
- Contact other agencies
    - Combine resources
    - Combine personnel

Case Preparation

- DAs are very selective, and the key is the organization of case
- Have the victim play a key role
    - Keep notes / diary
    - Request / collect financial information
    - Interest/partnership in case
- Use binders and tabs to organize logically
    - Search warrants
    - All financial account numbers
    - Names and address of all financial institutions
    - Documentation of subpoena
    - Outline of expected testimony from victims and witnesses
    - The report

Patrol prevention

- “Dumpster diving”
- Cooperative efforts between:
    - Law enforcement
    - Consumer protection agencies
    - Financial institutions

CRIME	MEANS / INTENT	VALUE / SPECIAL CIRCUMSTANCE
Theft III	Means other than extortion • Taking • Lost / mislaid • Deception • Receiving	Under $100
Theft II	Means other than extortion • Taking • Lost / mislaid • Deception • Receiving	$100 or more but under $1000
Theft I	Means other than extortion • Taking • Lost / mislaid • Deception • Receiving	$1000 or more During a riot, fire, explosion, etc. By buying, selling, borrowing or lending on the security of property Theft of firearm or explosive Theft of livestock animal, companion animal Theft of precursor substance
Agg Theft I	Commits Theft I	Value $10,000 or more **and** Other than private vehicle
Theft of Services	Intent to avoid payment	Value of service under $100 (C misdemeanor) Value of service over $100, less than $1000 (A misdemeanor) Value of service $1000 or more (C felony) Value of service $10,000 or more (B felony)
Mail Theft		Class C felony
Forgery II	Make, complete, alter or utter	Any amount
Forgery I	Make, complete, alter or utter	$1000 or more Written instrument is money, securities, postage, government-issued Stocks/bonds Deed, will, contract Public record At least 15 retail sales receipts, UPC labels, etc.
Fraudulent Use of Credit Card	Intent to injure/defraud	Under $1000 (misdemeanor) $1000 or more (felony)

Criminal Law 2: Property Offenses

Instructional Goal:

This course is designed to develop a new officer's understanding of property offenses defined by the Oregon Criminal Code.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the type of offense using the Oregon Criminal Code Book
2. Distinguish level of offense using the Oregon Criminal Code Book
3. Articulate the elements of a given crime
4. Analyze a situation and determine if there is an applicable ORS offense

Content Outline:

- Arson and Related Offenses
- Criminal Mischief
- Criminal Trespass and Burglary
- Robbery

Arson and Related Offenses

Definitions

"Protected property" means any structure, place, or thing customarily occupied by people, including "public buildings" as defined by ORS 479.168 and "forestland," as defined by ORS 477.001.	"Property of another" means property in which anyone other than the actor has a legal or equitable interest that the actor has no right to defeat or impair, even though the actor may also have such an interest in the property.

When we see references to "property" below, whether protected property or property of another, consider this definition:

ORS 164.005 (5) "Property" means any article, substance or thing of value, including, but not limited to, money, tangible and intangible personal property, real property, ...[etc.]

Now consider this case law, which we can safely assume would apply to all the fire crimes, not just Arson I:

> The state must prove property had "value" as defined by ORS 164.005, and neither "symbolic value" or "value in use" is sufficient; therefore, burning a rag could not support a conviction of first-degree arson.
>
> State v. Whitley, 295 Or 455, 666 P2d 1340 (1983).

Arson II – ORS 164.315 – Class C Felony

1. By starting a fire or causing an explosion, the person intentionally damages:
    a. Any building of another that is not protected property; or
    b. Any property of another and the damages to the property exceed $750; or

2. By knowingly engaging in the manufacture of methamphetamine, the person causes fire or causes an explosion that damages property described in 1 above.

    For this theory of Arson II, you don't need intentional damage, but you do need to prove the knowing manufacture of methamphetamine.

Arson I – ORS 164.325 – Class A Felony

1. By starting a fire or causing an explosion, the person intentionally damages:
    a. Protected property of another;
    b. Any property, whether the property of the person or another, and such act recklessly places another person in danger of physical injury or protected property of another in danger of damage;
    c. Any property, whether the property of the person or another, and recklessly causes serious physical injury to a firefighter or peace officer acting in the line of duty relating to the fire; or

2. By knowingly engaging in the manufacture of methamphetamine, the person causes fire or causes an explosion that damages property described in 1 above.

    For this theory of Arson I, you don't need intentional damage, but you do need to prove the knowing manufacture of methamphetamine.

Consider these Arson crimes not found in Chapter 164, but instead in ORS 475C – Cannabis Regulation.

Arson incident to manufacture of cannabinoid extract in first degree ORS 475C.357 – Class A felony

The person, by knowingly engaging in the manufacture of a cannabinoid extract, causes a fire or causes an explosion that intentionally damages:

a. Protected property of another;
b. Any property, whether the property of the person or another, and such act recklessly places another person in danger of physical injury or the protected property of another person in danger of damage; or
c. Any property, whether the property of the person or another, if the fire or explosion recklessly causes serious physical injury to a firefighter or peace officer acting in the line of duty relating to the fire or explosion.

Arson incident to manufacture of cannabinoid extract in second degree – ORS 475C.357– Class C felony

The person, by knowingly engaging in the manufacture of a cannabinoid extract, causes a fire or causes an explosion that damages:

a. Any building of another that is not protected property; or
b. The property of another, if the damages to the property exceed $750.

Reckless Burning – ORS 164.335 - Class A Misdemeanor

Recklessly damages property of another by fire or explosion.

Remember, the "property of another" in question will need to have "some value demonstrably."

Keep in mind the definition of "recklessly," found in ORS 161.085.

"Aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists."

Criminal Mischief

Criminal Mischief III – ORS 164.345 – Class C Misdemeanor

With intent to cause substantial inconvenience to the owner or another person and having no right to do so nor reasonable ground to believe that the person has such right, the person tampers or interferes with the property of another.

Criminal Mischief II – ORS 164.354 – Class A Misdemeanor

1. Violates ORS 164.345, damage exceeds $500, or
2. Having no right to do so, nor reasonable ground to believe that the person has such right:
    a. The person intentionally damages property of another; or
    b. The person recklessly damages the property of another in an amount exceeding $500.

The Criminal Mischief II statute can be tough to interpret. A common mistake is to think you need more than $500 damage, even if it's intentional damage. Not true! If you can prove intentional damage of $3.75, it is still Criminal Mischief II. But, if you can only prove reckless damage, you need at least $500 damage. If it is reckless damage, and less than $500, and you can't prove the unique elements of Criminal Mischief III, you might not have a crime at all! If a fire was used, look at Reckless Burning. Otherwise, you might not be able to prove a crime was committed.

Intentional damage to property of another in any amount is criminal mischief in second degree. State v. Washburn, 54 Or App 64 (1981)

Criminal Mischief I – ORS 164.365 – Class C Felony

With intent to damage property and having no right to do so, nor reasonable ground to believe that the person has such right:

1. Damages or destroys the property of another:
    a. In amount exceeding $1000
    b. By means of an explosive
    c. By starting a fire in an institution while committed to and confined in an institution
    d. Livestock ("Livestock" is defined in ORS 164.055, and it's the same definition used in Theft I.)
    e. Property of public utility, telecommunications utility, railroad, public transportation facility or medical facility used in direct service to the public
    f. By intentionally interfering with, obstructing, or adulterating in any manner the service of a public utility, etc.
2. Intentionally uses, manipulates, arranges, or rearranges the property of a public utility, etc. so as to interfere with its efficiency.

Aggregation / Value of Damage – ORS 164.367

The value of damage done during single incidents of criminal mischief may be added together if the incidents of criminal mischief were committed:

i. Against multiple victims in the same course of conduct; or
ii. Against the same victim, or two or more persons who are joint owners, within a 30-day period.

Mental state for value of damage:

Similar to the theft statutes, for criminal mischief charges the state must prove that the defendant engaged in the criminal conduct with the mental state required in the statute AND that they were criminally negligent regarding the value of the property damage. This means that there was substantial and unjustifiable risk that the defendant's conduct would cause damage over the required amount ($500 for a reckless CM II, $1000 for CM I) and that the suspect should have been aware of that risk. Be sure to document details about the type of property damaged and the extent of the damage the defendant caused, including photographs of the damage/scene.

Examples:

Sarah intentionally damages her ex-boyfriend's vehicle and the damage amount is $1800. In order to prove Sarah should have been aware of the risk that her conduct would cause damage over $1000, officers should take detailed photos of the damage and include information like the year/make/model/value of the vehicle, where on the vehicle was damaged, how extensive the damage was, how the suspect caused the damage, and if the suspect has any belief about the cost of vehicle repairs.

Eric is driving under the influence, speeding, and swerving in and out of traffic before losing control and crashing into a parked car. To prove Eric should have been aware of the risk that his reckless driving would cause over $500 worth of damage officers should document details about Eric's impairment, details about his driving behavior, as well as details about the area the crash occurred – was is a residential or urban area, were there other cars on the roadway, were there houses or businesses along the roadway, were there cars parked on the side of the road/in driveways, etc.

Criminal Trespass and Burglary

164.205 Definitions for ORS 164.205 to 164.270

(1) "Building," in addition to its ordinary meaning, includes any booth, vehicle, boat, aircraft, or other structure adapted for overnight accommodation of persons or for carrying on business therein. Where a building consists of separate units, including, but not limited to, separate apartments, offices or rented rooms, each unit is, in addition to being a part of such building, a separate building.	(2) "Dwelling" means a building which regularly or intermittently is occupied by a person lodging therein at night, whether or not a person is actually present.	(3) "Enter or remain unlawfully" means: (a) To enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public and when the entrant is not otherwise licensed or privileged to do so; (b) To fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge; (c) To enter premises that are open to the public after being

		lawfully directed not to enter the premises; or (d) To enter or remain in a motor vehicle when the entrant is not authorized to do so.
(4) "Open to the public" means premises which, by their physical nature, function, custom, usage, notice or lack thereof or other circumstances at the time, would cause a reasonable person to believe that no permission to enter or remain is required.	(5) "Person in charge" means a person, a representative, or employee of the person who has lawful control of premises by ownership, tenancy, official position, or other legal relationship. "Person in charge" includes, but is not limited to the person, or holder of a position, designated as the person or position-holder in charge by the Governor, board, commission, or governing body of any political subdivision of this state.	(6) "Premises" includes any building and any real property, whether privately or publicly owned.

Criminal Trespass II – ORS 164.245 – Class C Misdemeanor

Person enters or remains unlawfully in a motor vehicle or in or upon premises.

Criminal Trespass I – ORS 164.255

1. Enters or remains unlawfully in a dwelling;
2. Having been denied future entry to a building pursuant to merchant's notice of trespass re-enters building during hours when the building is open to the public with the intent to commit theft therein;
3. Enters or remains unlawfully upon railroad yards, tracks, bridges or rights-of-way; or
4. Enters or remains unlawfully in or upon premises determined to be "not fit for use." (ORS 453.855 to 453.912) (Toxic contamination from a drug lab.) Does not apply to the owner of record of premises if:

a. Notifies law enforcement agency having jurisdiction over premises that the owner intends to enter;
b. On premises for purposes of inspecting or decontaminating, or lawfully removing items; or
c. Has not been arrested for, charged with, or convicted of a criminal offense contributing to "not fit for use" determination.

Be sure to read the theory of Criminal Trespass I under #2 above carefully! It seems like it should be burglary, but the Oregon Legislature said it's not. So, what if you were trespassed, but you go back in when the building is closed? Different story!

Consider what it means to enter or remain in a dwelling. Here is some helpful case law:

> Vacant apartment entered by the defendant was "dwelling" for purposes of this section where it had previously been occupied, and the owner expected to rent it once remodeling was complete. State v. Ramey, 89 Or App 535 (1988)

Criminal Trespass with a Firearm – ORS 164.265 – Class A Misdemeanor

Person who, while in possession of a firearm, enters or remains unlawfully in or upon premises.

Burglary II – ORS 164.215 – Class C Felony

Person enters or remains unlawfully in a building with the intent to commit a crime therein.

A common mistake is to think that all burglaries involve a completed theft. Not true! The crime intended to be committed therein can be ANY crime, and it need not be complete. Here are some case law examples of Burglary II:

> Evidence that the defendant and others entered farm shed of another, and that keys were removed from trucks parked therein during the occupation of the shed, was sufficient to prove that defendant entered shed with intent to commit criminal mischief.

State v. Essig, 31 Or App 639 (1977).

A person trespasses by unlawfully entering and remaining on private premises, or by entering lawfully and then remaining unlawfully. The additional element required for Burglary, the intent to commit a crime therein, must exist at some point during the unlawful presence; but that intent need not be present at the start of the trespass. State v. Henderson, 366 Or 1 (2019).

Where the defendant stole property from a house in which the defendant had permission to be, the defendant's commission of crime did not convert lawful entry into unlawful remaining. State v. Werner, 281 Or App 154 (2016).

"Entry" for purposes of burglary means even the slightest intrusion into a building by any part of a person's body, or by an instrument if the instrument is used by the person to commit the crime within the building. State v. Williams, 127 Or App 574 (1994)

Burglary I – ORS 164.225 – Class A Felony

Violates ORS 164.215 and building is a dwelling; OR

If in effecting entry or while in a building or in immediate flight from the person:

1. Is armed with a "burglary tool or theft device" or deadly weapon; or

"Burglary tool or theft device" means an acetylene torch, electric arc, burning bar, thermal lance, oxygen lance or other similar device capable of burning through steel, concrete or other solid material, or nitroglycerine, dynamite, gunpowder or any other	"Adapted" means that an object actually has been altered or modified in some way for the purpose of facilitating a forcible entry or theft. State v. Warner, 298 Or. 640, (1985). Neither its actual use nor its capability for use to	"Deadly weapon" is any instrument, article or substance specifically designed for and presently capable of causing death	"Armed with" doesn't mean anyone has to see it during the commission of the crime. Displaying it might suggest another crime in addition to the burglary.

explosive, tool, instrument or other article adapted or designed for committing or facilitating a forcible entry into premises or theft by a physical taking.	commit or facilitate a forcible entry or theft is relevant to the issue of adaptation.	or serious physical injury	

2. Causes or attempts to cause physical injury to any person; or

3. Uses or threatens to use a dangerous weapon.

   "Dangerous weapon" means any weapon, device, instrument, material or substance which under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury

   Here, unlike the "armed with" discussion above, you will need proof of a "dangerous weapon" used, displayed, etc.

Here are some case law examples of Burglary I. Like Criminal Trespass I, a good deal of burglary case law concerns what is considered a "dwelling":

For Burg I, a dwelling is "a roofed structure that is more or less completely enclosed by walls and is regularly or intermittently occupied by a person who resides in the structure at night." A breezeway was part of the dwelling where: the house, breezeway, and garage were physically attached by shared walls and the victim used the breezeway to store food and other items; even though the breezeway had an open archway and lacked direct access to the house. State v. Taylor, 271 Or App 292 (2015)

The defendant committed burglary in the first degree when he unlawfully entered a boat, which was a dwelling, with intent to steal the entire boat. State v. Spenser, 24 Or App 385 (1976).

A mobile home parked in the driveway and used intermittently by guests for sleeping was a "dwelling" within the meaning of ORS 164.205 (Definitions for ORS 164.205 to 164.270). State v. McDonald, 77 Or App 267 (1986).

To convict under this section does not require proof that the defendant had the intent to use the burglar tool, but only proof that the defendant possessed a tool described as a burglary tool in ORS 164.235. State v. Johnson, 55 Or App 98 (1981).

The homeowner allowed the defendant to enter the home to perform repairs in certain rooms of the house. When the defendant went into an area he did not have permission to be in, and he took property, the defendant committed burglary. State v. Angelo, 282 Or App 403 (2016).

Possession of Burglary Tool or Theft Device – ORS 164.235 - Class A misdemeanor

1. A person commits the crime of possession of a burglary tool or theft device if the person possesses a burglary tool or theft device and the person:
    a. Intends to use the tool or device to commit or facilitate a forcible entry into premises or a theft by a physical taking; or
    b. Knows that another person intends to use the tool or device to commit or facilitate a forcible entry into premises or a theft by a physical taking.

For purposes of this section, "burglary tool or theft device" means an acetylene torch, electric arc, burning bar, thermal lance, oxygen lance or other similar device capable of burning through steel, concrete or other solid material, or nitroglycerine, dynamite, gunpowder or any other explosive, tool, instrument or other article adapted or designed for committing or facilitating a forcible entry into premises or theft by a physical taking.

Remember the definition of "adapted" above under Burglary I. The key to understanding "what is a burglary tool or theft device" is accepting that "adapted or designed for" means what it says. Therefore, these case law examples are what does NOT meet the definition:

A beer bottle used to break a jewelry store window was not a burglar's tool, as defined in this section. State v. Reid, 36 Or App 417 (1978)

A rock or a brick is not a burglary tool. State v. O'Keefe, 40 Or App 685 (1979).

We hold that the trial court erred in convicting the defendant of burglary in the first degree on the basis of his use of a screwdriver to gain entry to the gun shop. State v. Bennett, 79 Or App 267 (1986).

Robbery

Robbery III – ORS 164.395 – Class C Felony

In the course of committing or attempting to commit theft or unauthorized use of a vehicle, the person uses or threatens the immediate use of physical force upon another person with the intent to:

1. Prevent or overcome resistance to the taking of property or retention of property immediately after the taking; or
2. Compel the owner or another to deliver property or engage in other conduct, which might aid in the commission of theft, or unauthorized use of a vehicle.

A common problem with proving robbery involves the use of force and its connection to the defendant's objective. The use or threatened use of force must be for the purpose of taking or retaining the property. Force for the purpose of fleeing after an abandoned attempted theft is not sufficient. For example:

The physical force employed by the defendant was sufficiently close in space and time to theft to be characterized as an attempt to prevent or overcome resistance to his retention of the stolen property immediately after taking. State v. Rios, 24 Or App 393 (1976)

But compare the above to the following cases:

Where the defendant abandoned his attempt to commit theft *prior* to the use of force against the owner of the property, acts did not come within the definition of robbery. State v. Jackson, 40 Or App 759 (1979).

Examples:

- A suspect puts items from a store into their backpack and leaves without paying. A loss prevention officer tells the suspect to stop. The suspect drops the backpack with the stolen items on the ground and tries to walk away. The LPO grabs the suspect to detain them, and the suspect punches the LPO in the face. The suspect has committed theft and harassment/assault, but has **NOT** committed robbery since the force was *for the purpose of getting away*.

- A suspect puts items from a store into their backpack and leaves without paying. A loss prevention officer tells them to stop. The suspect tries to walk away while keeping possession of the backpack. The LPO grabs the suspect to detain them and the suspect punches the LPO in the face. The suspect has committed robbery since the use of force is *for the purpose of retaining the stolen property*.

Robbery II – ORS 164.405 – Class B Felony

Violates ORS 164.395, plus:

1. Represents by word or conduct that the person is armed with what purports to be a dangerous or deadly weapon; or
2. Is aided by another person actually present.

When the facts include "represents by word or conduct..." the focus is on the defendant's conduct, not the effect on the victim: Person may represent that person is armed with what purports to be dangerous or deadly weapon regardless of whether victim believes representation. State v. Oliver, 221 Or App 233 (2008).	"Aided by another person actually present" means more than proving another person is present during the robbery: Only the person who actually engages in active conduct constituting third degree robbery may be directly culpable for violation of this section. State v. Rennells, 213 Or App 423 (2007). However, a person who does not actively engage in conduct constituting third degree robbery may still be culpable under an aiding and abetting theory. State v. Smith, 229 Or App 243 (2009). Where defendant stole clothing from a store, physically resisted security's attempt to stop her, and left in a vehicle driven by another person (driver); and the driver was aware the defendant had been trying on clothes and witnessed the struggle with security before defendant got into

	his car; the jury could find that the driver aided the defendant with intent to facilitate robbery, and therefore the defendant was "aided by another person actually present." State v. Morgan, 361 Or 47 (2017). Bottom line: We need more proof than simply establishing another person stood there and watched someone else commit a Robbery III. The second person needs to be involved.

Robbery I – ORS 164.415 – Class A Felony

Violates ORS 164.395, plus:

1. Armed with a deadly weapon; or
2. Uses or attempts to use a dangerous weapon; or
3. Causes or attempts to cause serious physical injury to any person.

Reference our discussion above under Burglary I, regarding the difference between "armed with" and "uses or attempts to use."

The use of or attempted use of a dangerous weapon includes the use of a dangerous weapon to threaten the victim. State v. Osborne, 242 Or App 85 (2011).

Basic Police Academy

Criminal Law: Public Order and Weapons Offenses



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Criminal Law: Public Order and Weapons Offenses

Instructional Goal:

This course is designed to develop a new officer's understanding of behavioral offenses defined by the Oregon Criminal Code.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the type of offense using the Oregon Criminal Code Book
2. Distinguish level of offense using the Oregon Criminal Code Book
3. Articulate the elements of a given crime
4. Analyze a situation and determine if there is an applicable ORS offense represented

Content Outline:

- Public Order Offenses
  - Disorderly Conduct II
  - Disorderly Conduct I
  - Harassment
  - Aggravated Harassment
  - Telephonic Harassment
  - Interfering with Public Transportation
- Weapons
  - Unlawful Use of a Weapon
  - Carrying a Concealed Weapon
  - Unlawful Possession of a Firearm
  - Possession of Firearm or Ammunition by Certain Persons Prohibited
  - Felon in Possession of a Firearm or Restricted Weapon
  - Possession of a Firearm or Dangerous Weapon in Public Building or Court Facility
  - Felon in Possession of Body Armor
  - Unlawful Possession of Body Armor

Public Order Offenses

Disorderly Conduct II – ORS 166.025

A person commits the crime of disorderly conduct in the second degree if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

(a) Engages in fighting or violent, tumultuous or threatening behavior;

This subsection is directed "violent, tumultuous or threatening behavior describe only physical acts of aggression, not speech," and have "their commonly understood referents to physical force." State ex rel Juv. Dept. V. Krieger, 177 Or App 156 (2001). Additionally, the courts have found that actions taken in legal self-defense do not qualify.

Note that there are two possible ways to prove the mens rea for Disorderly Conduct, and that the inconvenience must be to the public. This does not require that anyone actually be present or inconvenienced, or that the act take place in public. The defendant must intend to do so or recklessly create the risk.

(b) Makes unreasonable noise;

(c) Disturbs any lawful assembly of persons without lawful authority;

The two subsections above may only be applied to speech if the speech presents a clear and present danger of violence or the speech being punished is content-neutral. The first prong allows for content consideration, while the second does not. The second focuses on the volume, duration, place, manner, and circumstances involved as opposed to what was said.

(d) Obstructs vehicular or pedestrian traffic on a public way;

(e) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or

(f) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

Class B misdemeanor, unless the crime is committed within 200 feet of the real property on which the person knows a funeral service is being conducted.

Disorderly Conduct I – ORS 166.023

A person commits the crime of disorderly conduct in the first degree if, with intent to cause public inconvenience, annoyance or alarm, or knowingly creating a risk thereof, the person initiates or circulates a report, knowing it to be false:

(a) Concerning an alleged hazardous substance or an alleged or impending fire, explosion, catastrophe or other emergency; and

(b) Stating that the hazardous substance, fire, explosion, catastrophe, or other emergency is located in or upon a court facility or a public building, as those terms are defined in ORS 166.360.

Disorderly conduct in the first degree is a Class A misdemeanor.

"Court facility" means a courthouse or that portion of any other building occupied by a circuit court, the Court of Appeals, the Supreme Court or the Oregon Tax Court or occupied by personnel related to the operations of those courts, or in which activities related to the operations of those courts take place.

"Public building" means a hospital, a capitol building, a public or private school, as defined in ORS 339.315, a college or university, a city hall, or the residence of any state official elected by the state at large, and the grounds adjacent to each such building. The term also includes that portion of any other building occupied by an agency of the state or a municipal corporation, as defined in ORS 297.405, other than a court facility.

Examples:

Disorderly Conduct I	Disorderly Conduct II

Riot – ORS 166.015

A person commits the crime of riot if while participating with five or more other persons the person engaged in tumultuous and violent conduct and thereby intentionally or recklessly creates a grave risk of causing public alarm

Similar to Disorderly Conduct II – but requires the person be participating in tumultuous and violent conduct with 5 or more other persons. "Creates a grave risk of public alarm," means public alarm is reasonably likely to occur.

Harassment – ORS 166.065

1. A person commits the crime of harassment if the person intentionally:

a. Harasses or annoys another person by:
Suspect must intend to harass or annoy and must succeed. However, attempted harassment may have been committed in the case where the defendant intends to harass or annoy but fails.

A. Subjecting such other person to offensive physical contact; or
Whether physical contact is offensive or not is an objective standard, not based on what the victim's subjective response was. Additionally, no "flesh on flesh" contact is required.

B. Publicly insulting such other person by abusive words or gestures in a manner intended and likely to provoke a violent response;
This subsection (1)(a)(B) relating to publicly insulting another person has been found unconstitutional by Oregon courts. DO NOT ENFORCE

b. Subjects another to alarm by conveying a false report, known by the conveyor to be false, concerning death or serious physical injury to a person, which report reasonably would be expected to cause alarm; or

c. Subjects another to alarm by conveying a telephonic, electronic or written threat to inflict serious physical injury on that person or to commit a felony involving the person or property of

that person or any member of that person's family, which threat reasonably would be expected to cause alarm.

Note that both of the (b) and (c) subsections require the victim to be alarmed, but also that the alarm be a reasonable reaction. This does NOT require that the suspect intended to or actually be able to carry out the threat.

2. (a) A person is criminally liable for harassment if the person knowingly permits any telephone or electronic device under the person's control to be used in violation of subsection (1) of this section.

(b) Harassment that is committed under the circumstances described in subsection (1)(c) of this section is committed in either the county in which the communication originated or the county in which the communication was received.

As used in this section, "electronic threat" means a threat conveyed by electronic mail, the Internet, a telephone text message, or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system, or other similar means.

Class B misdemeanor except for harassment is a Class A misdemeanor if a person violates:

(a) Subsection (1)(a)(A) of this section by subjecting another person to offensive physical contact and:

(A) The offensive physical contact consists of touching the sexual or other intimate parts of the other person; or

(B) (i) The victim of the offense is a family or household member of the person; and
(ii) The offense is committed in the immediate presence of, or is witnessed by, the person's or the victim's minor child or stepchild or a minor child residing within the household of the person or victim; or

(b) Subsection (1)(c) of this section and:

(A) The person has a previous conviction under subsection (1)(c) of this section, and the victim of the current offense was the victim or a member of the family of the victim of the previous offense;

(B) At the time the offense was committed, the victim was protected by a stalking protective order, a restraining order as defined in ORS 24.190 or any other court order prohibiting the person from contacting the victim;

(C) At the time the offense was committed, the person reasonably believed the victim to be under 18 years of age and more than three years younger than the person; or

(D) (i) The person conveyed a threat to kill the other person or any member of the family of the other person;

(ii) The person expressed the intent to carry out the threat; and

(iii) A reasonable person would believe that the threat was likely to be followed by action.

Examples:

a) Fred spits in Mark's face.
b) Ken grabs Michelle by the buttocks and squeezes.
c) Joan slaps Al in the face, without causing physical injury.
d) Sam is very angry with Ted, his supervisor. Sam calls Ted, and after disguising his voice, Sam purports to be an emergency room physician at a hospital near Ted's home. Sam then tells Ted that Ted's toddler daughter has been seriously injured in an accident and is not expected to live more than an hour. Sam knows that Ted works 1.5 hours from his home and the hospital where he believes his daughter is being treated. Ted experiences extreme anguish and alarm.

e) Ken intends to cause Julie to experience alarm and calls Stacey. Ken's friend James knows what Ken plans to do and allows Ken to use his telephone to make the call.

Aggravated Harassment – ORS 166.070

Occurs when the person knowing the other person is a:

Staff member	Public safety officer	Public safety officer
Knowingly propels saliva, blood, urine, semen, feces, or other dangerous substance at the person while the person is acting in the course of official duty.	**Knowingly** propels a dangerous substance as above, with the exception of saliva.	**Intentionally** propels saliva at the person, **and** the saliva comes into physical contact with the person.

How is "staff member defined in ORS 163.165?	Who is included under "Public safety officer" as defined in ORS 682.025

Telephonic Harassment – ORS 166.090

(1) A telephone caller commits the crime of telephonic harassment if the caller intentionally harasses or annoys another person:

(a) By causing the telephone of the other person to ring, such caller, having no communicative purpose;

(b) By causing such other person's telephone to ring, knowing that the caller has been forbidden from so doing by a person exercising lawful authority over the receiving telephone; or

(c) By sending to, or leaving at, the other person's telephone a text message, voice mail, or any other message, knowing that the caller has been forbidden from so doing by a person exercising lawful authority over the receiving telephone.

Examples:

a) The subject repeatedly calls the victim every ten minutes during the night. Every time the victim answers the phone, the subject hangs up. Upon contact by police, the subject admits calling the victim and hanging up.

b) The subject used to date the victim's daughter. After the two broke up, the victim told the subject he was not to come to the house or call on the phone. The victim is the person with lawful authority over the phone. The subject continues to call, and the victim answers the phone.

Interfering with Public Transportation – ORS 166.116

(1) A person commits the crime of interfering with public transportation if the person:

(a) Intentionally or knowingly enters or remains unlawfully in or on a public transit vehicle or public transit station;

(b) Intentionally or knowingly interferes with the provision or use of public transportation services by, among other things, interfering with the movement of, or access to, public transit vehicles;

(c) While in or on a public transit vehicle or public transit station, engages in disorderly conduct in the second degree as defined in ORS 166.025 (Disorderly conduct in the second degree); or

(d) Subjects a public transportation passenger, employee, agent, or security officer or transit police officer to offensive physical contact.

As used in this section:

(a) "Enter or remain unlawfully" has the meaning given that term in ORS 164.205 (Definitions for ORS 164.205 to 164.270).

(b) "Public transit station" includes all facilities, structures, lands and rights of way that are owned, leased, held or used for the purposes of providing public transportation services.

(c) "Public transit vehicle" means a vehicle that is used for public transportation or operated by or under contract to any public body in order to provide public transportation.

(d) "Public transportation" means transportation provided by a city, county, special district, or any other political subdivision or municipal or public corporation.

Interfering with public transportation as provided in subsection (1)(a) of this section is a Class C misdemeanor, except when a Class A misdemeanor if the person has three or more prior convictions for interfering with public transportation as provided in subsection (1)(a) of this section.

Weapons

Unlawful Use of Weapon – ORS 166.220

(1) A person commits the crime of unlawful use of a weapon if the person:

(a) Attempts to use unlawfully against another, or carries or possesses with intent to use unlawfully against another, any dangerous or deadly weapon...; or

(b) Intentionally discharges a firearm, blowgun, bow and arrow, crossbow or explosive device within the city limits of any city or within residential areas within urban growth boundaries at or in the direction of any person, building, structure or vehicle within the range of the weapon without having legal authority for such discharge.

Unlawful use of a weapon is a Class C felony.

"... carries concealed upon the person," means to transport or convey such that if the suspect moves, the weapons also moves, in such a manner as the weapon is not exposed from a normal, external view of the person, or not discernable by normal observation.

Carrying a Concealed Weapon – ORS 166.240

1) Except as provided in subsection (2) of this section, any person who carries concealed upon the person any knife having a blade that projects or swings into position by force of a spring or by centrifugal force, any dirk, dagger, ice pick, slungshot, metal knuckles, or any similar instrument by the use of which injury could be inflicted upon the person or property of any other person, commits a Class B misdemeanor.

2) Nothing in subsection (1) of this section applies to any peace officer as defined in ORS 133.005, whose duty it is to serve process or make arrests. Justice courts have concurrent jurisdiction to try any person charged with violating any of the provisions of subsection (1) of this section.

This statute is not enforceable inside a person's residence.

Dirks and daggers do not include all fixed blade knives. These are defined as "slender, straight and coming to a point," and intended for stabbing.	"...or any similar instrument" has been defined as an object that is 1) similar to one of the enumerated items, AND 2) designed and intended to be a weapon.

Unlawful Possession of a Firearm – ORS 166.250

Note: See Student Resource for Mental Health: Legal Considerations for statutory language governing commitment hearings, assisted outpatient treatment, etc.

Note: Openly carried in a belt holster is not concealed.

Except as otherwise provided in this section or ORS 166.260 (Persons not affected by ORS 166.250), 166.270 (Possession of weapons by certain felons), 166.273 (Relief from firearm prohibitions related to mental health), 166.274 (Relief from prohibition against possessing or receiving firearm), 166.291 (Issuance of concealed handgun license), 166.292 (Procedure for issuing) or 166.410 (Manufacture, importation or sale of firearms) to 166.470 (Limitations and conditions for sales of firearms), a person commits the crime of unlawful possession of a firearm if the person knowingly:

(a) Carries any firearm concealed upon the person;

(b) Possesses a handgun that is concealed and readily accessible to the person within any vehicle; or

What does "concealed" mean?	What does "readily accessible" mean?

(c) Possesses a firearm and:

(A) Is under 18 years of age;

(B) (i) While a minor was found to be within the jurisdiction of the juvenile court for having committed an act which, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470 (Limitations and conditions for sales of firearms); and

(ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being charged under this section;

(C) Has been convicted of a felony;

(D) Was committed to the Oregon Health Authority under ORS 426.130 (Court determination of mental illness);

(E) Was found to be a person with mental illness and subject to an order under ORS 426.130 (Court determination of mental illness) that the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

(F) Is presently subject to an order under ORS 426.133 (Assisted outpatient treatment) prohibiting the person from purchasing or possessing a firearm;

(G) Has been found guilty except for insanity under ORS 161.295 (Effect of mental disease or defect) of a felony; or

(H) The possession of the firearm by the person is prohibited under ORS 166.255

Possession of Firearm or Ammunition by Certain Persons Prohibited – ORS 166.255

It is unlawful for a person to knowingly possess a firearm or ammunition if:

The person is the subject of a court order that:		
(A) Was issued or continued after a hearing for which the person had actual notice and during the course of which the person had an opportunity to be heard;	(B) Restrains the person from stalking, intimidating, molesting or menacing [an intimate partner] **a family or household member of the person**, a child of [an intimate partner] **a family or household member of the person** or a child of the person; and	(C) Includes a finding that the person represents a credible threat to the physical safety of [an intimate partner] **a family or household member of the person**, a child of [an intimate partner] **a family or household member of the person** or a child of the person;

Or

The person has been convicted of a qualifying misdemeanor and, at the time of the offense, the person was:		
(A) A family **or household** member of the victim of the offense.; or	(B) **A parent or guardian of the victim of the offense; or**	(c) **The person has been convicted of stalking under ORS 163.732.**

"Family or household members" means any of the following:

- Persons cohabiting with each other
- Spouses or former spouses
- Adult persons related by blood or marriage
- Persons who have cohabited with each other or who have been involved in a sexually intimate relationship
- Unmarried parents of a minor child

"Qualifying misdemeanor" means a misdemeanor that has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon.

Felon in Possession of a Firearm or Restricted Weapon – ORS 166.270

1) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody or control any firearm commits the crime of felon in possession of a firearm.

2) Any person who has been convicted of a felony under the law of this state or any other state, or who has been convicted of a felony under the laws of the Government of the United States, who owns or has in the person's possession or under the person's custody or control any instrument or weapon having a blade that projects or swings into position by force of a spring or by centrifugal force or any blackjack, slingshot, sandclub, sandbag, sap glove, metal knuckles or an Electro-Muscular Disruption Technology device as defined in ORS 165.540, or who carries a dirk, dagger or stiletto, commits the crime of felon in possession of a restricted weapon.

Felon in possession of a firearm is a Class C felony. Felon in possession of a restricted weapon is a Class A misdemeanor

What is the ORS definition of body armor (ORS 166.641 (1))?	What is the ORS definition of a deadly weapon (ORS 161.015)?

Possession of firearm or dangerous weapon in public building or court facility – ORS 166.370

(1) Any person who intentionally possesses a loaded or unloaded firearm or any other instrument used as a dangerous weapon, while in or on a public building, shall upon conviction be guilty of a Class C felony.

(2)(a) Except as otherwise provided in paragraph (b) of this subsection, a person who intentionally possesses:

(A) A firearm in a court facility is guilty, upon conviction, of a Class C felony. A person who intentionally possesses a firearm in a court facility shall surrender the firearm to a law enforcement officer.

(B) A weapon, other than a firearm, in a court facility may be required to surrender the weapon to a law enforcement officer or to immediately remove it from the court facility. A person who fails to comply with this subparagraph is guilty, upon conviction, of a Class C felony.

(C) A firearm in a local court facility is guilty, upon conviction, of a Class C felony if, prior to the offense, the presiding judge of the local court facility entered an order prohibiting firearms in the area in which the court conducts business and during the hours in which the court operates.

(b) The presiding judge of a judicial district or a municipal court may enter an order permitting the possession of specified weapons in a court facility.

(c) Within a shared court facility, the presiding judge of a municipal court or justice of the peace district may not enter an order concerning the possession of weapons in the court facility that is in conflict with an order entered by the presiding judge of the circuit court.

(3) Subsection (1) of this section does not apply to:

(a) A sheriff, police officer, other duly appointed peace officers, or a corrections officer while acting within the scope of employment.

(b) A person summoned by a peace officer to assist in making an arrest or preserving the peace while the summoned person is engaged in assisting the officer.

(c) An active or reserve member of the military forces of this state or the United States, when engaged in the performance of duty.

(d) A person who is licensed under ORS 166.291 (Issuance of concealed handgun license) and 166.292 (Procedure for issuing) to carry a concealed handgun.

(e) A person who is authorized by the officer or agency that controls the public building to possess a firearm or dangerous weapon in that public building.

(f) An employee of the United States Department of Agriculture, acting within the scope of employment, who possesses a firearm in the course of the lawful taking of wildlife.

(g) Possession of a firearm on school property if the firearm:

(A) Is possessed by a person who is not otherwise prohibited from possessing the firearm; and

(B) Is unloaded and locked in a motor vehicle.

(5)(a) Any person who knowingly, or with reckless disregard for the safety of another, discharges or attempts to discharge a firearm at a place that the person knows is a school shall upon conviction be guilty of a Class C felony.

(b) Paragraph (a) of this subsection does not apply to the discharge of a firearm:

(A) As part of a program approved by a school in the school by an individual who is participating in the program;

(B) By a law enforcement officer acting in the officer's official capacity; or

(C) By an employee of the United States Department of Agriculture, acting within the scope of employment, in the course of the lawful taking of wildlife.

NOTE: The exceptions listed only exempt from subsection (1) public buildings, but are not exceptions for courthouses. It may be a class C felony for you as a police officer to carry a weapon in a courthouse off-duty absent orders of the presiding judge allowing it.

Felon in Possession of Body Armor – ORS 166.642

A person commits the crime of felon in possession of body armor if the person:

(a) Has been convicted of a felony or misdemeanor involving violence under the law of any state or the United States; and

(b) Knowingly is in possession or control of body armor.

Felon in possession of body armor is a Class C felony.

Unlawful Possession of Body Armor – ORS 166.643

A person commits the crime of unlawful possession of body armor if the person while committing or attempting to commit a felony or misdemeanor involving violence, knowingly:

(a) Wears body armor; and

(b) Possesses a deadly weapon.

Unlawful possession of body armor is a Class B felony.

Unlawful possession of machine guns, short-barreled firearms and firearms silencers – ORS 166.272

(1) A person commits the crime of unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer if the person knowingly possesses any machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer.

Short-Barreled Rifle	**Short-Barreled Shotgun**
"Short-barreled rifle" means a rifle having one or more barrels less than 16 inches in length and any weapon made from a rifle if the weapon has an overall length of less than 26 inches.	"Short-barreled shotgun" means a shotgun having one or more barrels less than 18 inches in length and any weapon made from a shotgun if the weapon has an overall length of less than 26 inches

NOTE: An officer may not arrest or charge someone if the person has in their immediate possession documentation showing that the firearm or silencer is registered as required under federal law.

Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or firearms silencer is a Class B felony.

How is Federal Weapons Law Different from State Law?

Federal Law:

- Provides more categories of prohibited persons
- Makes illegal possession of ammunition by those persons
- Does not require an operable firearm
- Requires that the firearm have a nexus with interstate commerce
- Generally, it involves larger penalties

18 USC 922(g)- Unlawful Possession of a Firearm by a Prohibited Person

Three required elements:

1. Defendant knowingly possessed a firearm (or ammo)
2. The defendant was a "prohibited person" at the time of possession, and

3. The firearm/ammo had previously moved in interstate commerce (the Federal nexus requirement)

Prohibited Persons – The possession of firearms or ammunition by:

- A felon
- A fugitive
- A drug user or addict
- A person who has been committed to a mental institution
- An illegal alien
- A person who has been dishonorably discharged from the Armed Forces
- A person who has renounced U.S. citizenship
- A person subject to a restraining or stalking order, involving an intimate partner or child, where there was a hearing and actual notice
- A person who has been convicted of a misdemeanor crime of domestic violence (Assault IV in Oregon)

18 USC 924(c)
Using or carrying a firearm while committing the federal crimes of selling controlled substances or a violent offense (5 to 30-year mandatory minimums).

Armed Career Criminal- 18 USC 922(g) + 924e
Requires: Felon in Possession of a Firearm (922g) and the felon has three or more prior convictions for violent felonies (Robbery I or II, Assault I or II and some III, Arson) or drug trafficking crimes (DCS/MCS, Conspiracy to commit DCS/MCS). Carries a 15-year mandatory minimum prison sentence.

Federal Prosecution Initiation
Most cases are referred by county District Attorneys and are initially state cases. Some direct referrals from ATF and police agencies.

Basic Police Academy

Criminal Law: State and Public Justice



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Criminal Law 6: State, Public Health and Animal Offenses

Instructional Goal:

This course is designed to develop a new officer's understanding of behavioral offenses defined by the Oregon Criminal Code.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the type of offense using the Oregon Criminal Code Book
2. Distinguish level of offense using the Oregon Criminal Code Book
3. Articulate the elements of a given crime
4. Analyze a situation and determine if there is an applicable ORS offense represented

Content Outline:

- State and Public Justice Offenses
  - Escape
  - Failure to Appear
  - Obstructing Governmental or Judicial Administration
  - Interfering with a Peace Officer or Parole and Probation Officer
  - Interfering with a Firefighter or Emergency Medical Technician
  - Resisting Arrest
  - Hindering Prosecution
  - Initiating a False Report
  - Giving False Information to a Police Officer in Connection with a Citation or Warrant
  - Official Misconduct
- Prostitution Offenses
- Obscenity and Related Offenses
- Animal Offenses

State and Public Justice Offenses

Escape III – ORS 162.145 – Class A misdemeanor

A person commits the crime of escape in the third degree if the person escapes from custody. It is a defense to a prosecution that the person escaping or attempting to escape was in custody pursuant to an illegal arrest.

"Custody" means the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order, but does not include detention in a correctional facility, youth correction facility or a state hospital.	"Constructive restraint" means when an officer lawfully asserts authority to control a person's actions or freedom of movement, even if the officer does not have physical control of the person. State v. Davis, 360 Or 201 (2016).	"Pursuant to arrest" means the offense occurs when a person escapes custody during the course of an arrest or when police attempt to restrain that person pursuant to their authority to make such an arrest. If an officer were to say, "Stop, police! You are under arrest," the statute would apply if a defendant were to keep running from the officer.

Escape II – ORS 162.155 – Class C felony

A person commits the crime of escape in the second degree if:

- The person uses or threatens to use physical force escaping from custody; or
- Having been convicted or found guilty of a felony, the person escapes from custody imposed as a result thereof; or
- The person escapes from a correctional facility; or
- While under the jurisdiction of the Psychiatric Security Review Board under ORS 161.315 to 161.351, the person departs, is absent from, or fails to return to this state without authorization of the board.

State v. Metcalfe, 172 Or App 501 (2001) – The Oregon Court of Appeals ruled a person "escapes from custody" when a person subject to actual or constructive restraint or control by a peace officer sets out on a course of action and that setting out results, even momentarily, in the person no longer being within the peace officer's restraint or control.

State v. Lonergan, 344 Or 15 (2008) - The Oregon Supreme Court considered whether, when an escapee uses physical force in response to the officer's attempt to re-establish custody, he has "used physical force escaping from custody." The defendant had been arrested and placed against a patrol car. When he stood up and ran away, the court found he had "unlawfully departed from custody." However, the court found "in escaping," the defendant did not use or threaten to use physical force. "It was only later after the officer had tackled him, that the defendant used physical force, kicking the officer...The defendant was not escaping; the defendant had already escaped."

Escape I – ORS 162.165 – Class B felony

A person commits the crime of escape in the first degree if:

a) Aided by another person actually present, the person uses or threatens to use physical force in escaping from custody or a correctional facility; or
b) The person uses or threatens to use a dangerous or deadly weapon escaping from custody or a correctional facility.

Failure to Appear II – ORS 162.195 – Class A misdemeanor

A person commits the crime of failure to appear in the second degree if the person knowingly fails to appear as required after:

a) Having by court order been released from custody or a correctional facility under a release agreement or security release upon the condition that the person will subsequently appear personally in connection with a charge against the person of having committed a misdemeanor; or
b) Having been released from a correctional facility subject to a forced release agreement under ORS 169.046 in connection with a charge against the person of having committed a misdemeanor.

Failure to Appear I – ORS 162.205 – Class C felony

A person commits the crime of failure to appear in the first degree if the person knowingly fails to appear as required after:

a) Having by court order been released from custody or a correctional facility under a release agreement or security release upon the condition that the person will subsequently appear personally in connection with a charge against the person of having committed a felony; or
b) Having been released from a correctional facility subject to a forced release agreement under ORS 169.046 in connection with a charge against the person of having committed a felony.

"Forced release" definition for failure to appear crimes- ORS 169.005 (2) means temporary freedom of an inmate from lawful custody before a judgment of conviction due to a county jail population emergency.

Question-
What is the main difference between failure to appear in the first and second degree?

Obstructing Governmental or Judicial Administration – ORS 162.235 – Class A misdemeanor

A person commits the crime of obstructing governmental or judicial administration if the person:

a) Intentionally obstructs, impairs or hinders the administration of law or other governmental or judicial function by means of intimidation, force, physical or economic interference or obstacle;
b) With intent to defraud, engages in the business of or acts in the capacity of a notary public as defined in ORS 194.215 without having received a commission as a notary public from the Secretary of State; or
c) With intent to defraud, engages in the business of or acts in the capacity of an immigration consultant, as defined in ORS 9.280, in violation of ORS 9.160.

This section shall not apply to the obstruction of unlawful governmental or judicial action or interference with the making of an arrest.

Interfering with a Peace Officer or Parole and Probation Officer – ORS 162.247 – Class A misdemeanor

The person, knowing that another person is a peace officer or parole and probation officer as defined in ORS 181A.355:

- Intentionally or knowingly acts in a manner that prevents, or attempts to prevent, the peace officer or parole and probation officer from performing the lawful duties of the officer with regards to another person or a criminal investigation; or

Does not apply in situations in which the person is engaging in:

- Passive resistance

A person may not be arrested or charged under this section if the person is arrested or charged for another offense based on the same conduct.

State v. Lam, 176, Or App 149 (2001) - Subsection (a) does not prohibit speech alone. In Lam, the court ruled the defendant, who instructed a companion "to not tell" a police officer the location of suspected probation violator, could not be convicted of interfering.

State v. McNally, 361 Or 314 (2017) - The term, "passive resistance" refers to noncooperation with a peace officer that does not involve violence or other active measures, whatever the motivation for the noncooperation and regardless of whether the noncooperation takes the form of acts, techniques, or methods commonly associated with civil rights or other organized protest.

This is a significant departure from previous case law, which held that the passive resistance exception was only available to those who "were performing specific acts or techniques commonly associated with governmental protest or civil disobedience."

Interfering with a Firefighter or Emergency Medical Technician – ORS 162.257 – Class A misdemeanor

The person, knowing that another person is a firefighter or emergency medical services provider, intentionally acts in a manner that prevents or attempts to prevent, a firefighter, or emergency medical services provider from performing the lawful duties of the firefighter or emergency medical services provider.

Speech alone does not constitute acting in a manner that prevents or attempts to prevent firefighter or emergency medical services provider from performing a duty. DeNucci v. Henningsen, 248 Or App 59 (2012).

Resisting Arrest – ORS 162.315 – Class A misdemeanor

A person commits the crime of resisting arrest if the person intentionally resists a person known by the person to be a peace officer or parole and probation officer in making an arrest.

"For a conviction under ORS 162.315, the ...trier of fact...had to find that the defendant knew that he was under arrest." State v. Olive, 259 Or App 104 2013).	Resisting – Using or threatened use of violence or force that creates a substantial risk of injury to any person. To constitute resisting arrest, the behavior must be intended to resist custodial status. State v. Powell, 209 Or App 255 (2006).	"Arrest" includes being taken into custody for violating parole. State v. McClure, 256 Or App 200 (2013), Or 704 (2014).

Hindering Prosecution – ORS 162.325 – Class C felony

A person commits the crime of hindering prosecution if, with intent to hinder the apprehension, prosecution, conviction or punishment of a person who has committed a crime punishable as a felony, or with the intent to assist a person who has committed a crime punishable as a felony in profiting or benefiting from the commission of the crime, the person:

- Harbors or conceals such person; or
- Warns such person of impending discovery or apprehension; or
- Provides or aids in providing such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or
- Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person; or

- Suppresses by any act of concealment, alteration or destruction physical evidence which might aid in the discovery or apprehension of such person; or
- Aids such person in securing or protecting the proceeds of the crime.

Be sure to take note of the requirement that the crime being hindered is a felony. No hindering charge if the underlying crime is a misdemeanor.

To prove that the defendant hindered prosecution by concealing a person, the state must present evidence from which the jury could reasonably conclude that the defendant concealed that person's physical presence, and something more than attempting to obscure that person's identity through deception. Therefore, where the defendant and another person both spoke to law enforcement officers from inside a building, and the defendant subsequently failed to provide officers with information about the identity of the other person or to open the door, the state did not present sufficient evidence that the defendant concealed a person who was a fugitive. State v. Hutchins, 281 Or App 495 (2016).

Initiating a False Report – ORS 162.375 – Class A misdemeanor

A person commits the crime of initiating a false report if the person knowingly initiates a false alarm or report that is transmitted to a fire department, law enforcement agency, or other organization that deals with emergencies involving danger to life or property.

Initiating false report requires supplying false information at time incident is initially reported. State v. McCrorey, 216 Or App 301 (2007).

Giving False Information to a Police Officer in Connection with a Citation or Warrant – ORS 162.385 – Class A misdemeanor

A person commits the crime of giving false information to a peace officer in connection with a citation or warrant if the person knowingly uses or gives a false or fictitious name, address or date of birth to any peace officer when:

- The peace officer is issuing or serving the person a citation under the authority of ORS 133.055 to 133.076 or ORS chapter 153; or
- There is an outstanding warrant for the person's arrest.

Not all lies are punishable under this offense; in fact, very few are. You might find that your city/county has an ordinance that is more expansive than this state statute. You also should note that there is no crime if the suspect lies pursuant to a probable cause arrest.

Official Misconduct in the second degree – ORS 162.405 – Class C misdemeanor

A public servant commits the crime of official misconduct in the second degree if the person knowingly violates any statute relating to the office of the person.

Official Misconduct in the first degree – ORS 162.415 – Class A misdemeanor

A public servant commits the crime of official misconduct in the first degree if:

- With intent to obtain a benefit or to harm another:
  - The public servant knowingly fails to perform a duty imposed upon the public servant by law or one clearly inherent in the nature of office; or
  - The public servant knowingly performs an act constituting an unauthorized exercise in official duties; or

- The public servant, while acting as a supervisory employee, violates ORS 162.405 and is aware of and consciously disregards the fact that the violation creates a risk of:
  - Physical injury to a vulnerable person;
  - The commission of a sex crime as defined in ORS 163A.005 against a vulnerable person; or
  - The withholding from a vulnerable person of necessary and adequate food, physical care, or medical attention.

"Unauthorized exercise in official duties" requires that public servant is acting in an official capacity and must knowingly perform an act that is an abuse of powers, responsibilities, or opportunities of office while in that capacity. State v. Florea, 296 Or 500 (1984); State v. Davis, 189 Or App 436 (2003).	"Benefit" can be for the actor's or a third party's benefit and includes personal sexual gratification. State v. Rodda 56 Or App 580 (1982); State v. Moffitt, 104 Or App 340 (1990).

Prostitution Offenses

Definitions:

Prostitute – ORS 167.002 (2) means a male or female person who engages in sexual conduct or sexual contact for a fee.	Sexual conduct – ORS 167.002 (4) means sexual intercourse or oral or anal sexual intercourse.	Sexual contact – ORS 167.002 (5) means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party

Prostitution – ORS 167.007 - Class A misdemeanor

A person commits the crime of prostitution if the person engages in or offers or agrees to engage in sexual conduct or sexual contact in return for a fee.

*Affirmative defense available if at time of the crime the person was a victim of trafficking in persons.

Commercial Sexual Solicitation – ORS 167.008 – Class A misdemeanor

A person commits the crime of commercial sexual solicitation if the person pays, or offers or agrees to pay, a fee to engage in sexual conduct or sexual contact.

Promoting Prostitution – ORS 167.012 – Class C felony

A person commits the crime of promoting prostitution if, with intent to promote prostitution, the person knowingly:

- Owns, controls manages, supervises or otherwise maintains a place of prostitution or a prostitution enterprise;
- Induces or causes a person to engage in prostitution or to remain in a place of prostitution;
- Receives or agrees to receive money, goods, property, services or something else of value, other than as a prostitute being compensated for personally rendered prostitution services, pursuant to an agreement or understanding that the money, goods, property, services or something else of value is derived from a prostitution activity; or
- Engages in any conduct that institutes, aids, or facilitates an act or enterprise of prostitution.

Compelling Prostitution – ORS 167.017 – Class B felony

A person commits the crime of compelling prostitution if the person knowingly:

- Uses force or intimidation to compel another to engage in prostitution or attempted prostitution;
- Induces or causes a person under 18 years of age to engage in prostitution;
- Aids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age; or
- Induces or causes the spouse, child, or stepchild of the person to engage in prostitution.

Obscenity and Related Offenses

Luring a Minor – ORS 167.057 – Class C Felony

- Person furnishes to or uses with, a minor, a police officer posing as a minor or an agent of a police officer posing as a minor, a visual representation or explicit verbal description or narrative account of sexual conduct for the purpose of inducing the minor or purported minor to engage in sexual conduct; Or engages in sexual conduct in the immediate presence of a minor for the purpose of inducing the minor to engage in sexual conduct. (effective January 1, 2024).
- Does not include conduct where a person furnishes or uses a representation, description or account of sexual conduct that forms merely an incidental part of an otherwise non-offending whole and serves some purpose other than titillation

Definitions:

"Furnishes" means: • To sell, give, rent, loan, or otherwise provide.	"Minor" means: • A person under 18 years of age.	"Sexual conduct" means: • Human masturbation or sexual intercourse; • Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals;

		• Penetration of the vagina or rectum by any object other than as part of a medical diagnosis or as part of a personal hygiene practice; or • Touching of the genitals, pubic areas or buttocks of the human male or female or the breasts of the human female.

The crime of Luring a Minor is still relatively new, and there are not many case law examples to provide. Here is one:

> The defendant sent the victim text message stating the defendant wished to "bang" victim. The defendant's text was an explicit verbal description of sexual conduct for purposes of this section because the text included explicit identification of sexual conduct that intended to bring a graphic sexual image to the mind of the recipient. State v. King, 278 Or App 65 (2016).

Animal Offenses

Duty to Arrest – ORS 133.379 - It shall be the duty of any peace officer to arrest and prosecute any violator of ORS 167.315 to 167.333, 167.340, 167.355, 167.365, or 167.428 for any violation which comes to the knowledge or notice of the officer.

Animal Abuse II – ORS 167.315 – Class B misdemeanor

A person commits the crime of animal abuse in the second degree if, except as otherwise authorized by law, the person intentionally, knowingly or recklessly causes physical injury to an animal.

"Physical injury" ORS 167.310 (10) means physical trauma, impairment of physical condition, or substantial pain. *Note that this definition is different than the definition that would apply to crimes against persons.*	"Physical trauma" ORS 167.310 (11) means fractures, cuts, punctures, bruises, burns, or other wounds.

Animal Abuse I – ORS 167.320 – Class A misdemeanor or Class C felony

A person intentionally, knowingly, or recklessly:

- Causes serious physical injury to an animal; or
- Cruelly causes the death of an animal.

"Serious physical injury" ORS 167.310 (13) means physical injury that creates a substantial risk of death or that causes protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of a limb or bodily organ. Notice that this definition is different than the definition that would apply to crimes against persons.

Be sure to note the circumstances present that could elevate this Class A misdemeanor offense to a Class C felony.

Aggravated Animal Abuse I – ORS 167.322 – Class C felony

A person

- Maliciously kills an animal; or
- Intentionally or knowingly tortures an animal.

Maliciously - means intentionally acting with depravity of mind and reckless and wanton disregard of life.	Torture - means an action taken for the primary purpose of inflicting pain.

Animal Neglect II – ORS 167.325 – Class B misdemeanor or Class C felony

The person intentionally, knowingly, recklessly, or with criminal negligence:

- Fails to provide minimum care (ORS 167.310 (9)) for an animal in such person's custody or control; or
- Tethers (ORS 167.310 (14) (a)(b)) a domestic animal in the person's custody or control, and the tethering results in physical injury to the domestic animal.

Animal Neglect II is elevated to a C felony if any of the following circumstances are present:

- The person has been previously convicted two or more times of Animal Neglect I or II, or under equivalent laws of another jurisdiction; or
- The offense was part of a criminal episode involving 11 or more animals; or
- The person knowingly commits the offense in the immediate presence of a minor child and the person has one or more previous convictions for an offense involving domestic violence as defined in ORS 135.230

"Control" of an animal can include people other than the primary owner - Evidence that the defendant lived in the home, fed dogs, took dogs to veterinary visits, and was part of decision-making about whether to keep dogs and exercised power over dogs by breaking up dog fights, was sufficient for a reasonable juror to find the defendant had "control" over dogs for the purpose of this statute. State v. Crosswhite, 273 Or App 605 (2015).

Be sure to note the circumstances present that could elevate this Class B misdemeanor offense to a Class C felony.

> *Evidence that the defendant lived in the home, fed dogs, took dogs to veterinary visits, and was part of decision-making about whether to keep dogs and exercised power over dogs by breaking up dog fights, was sufficient for a reasonable juror to find the defendant had "control" over dogs for the purpose of this statute. State v. Crosswhite, 273 Or App 605 (2015).*

Animal Neglect I – ORS 167.330 – Class A misdemeanor or Class C felony

The person intentionally, knowingly, recklessly, or with criminal negligence:

- Fails to provide minimum care for an animal in the person's custody or control and the failure to provide care results in serious physical injury or death to the animal; or
- Tethers a domestic animal in the person's custody or control, and the tethering results in serious physical injury or death to the domestic animal.

Sexual Assault of an Animal – ORS 167.333 – Class C felony

The person:

- Touches or contacts, or causes an object or another person to touch or contact, the mouth, anus or sex organs of an animal or animal carcass for the purpose of arousing or gratifying the sexual desire of a person; or
- Causes an animal or animal carcass to touch or contact the mouth, anus or sex organs of a person for the purpose of arousing or gratifying the sexual desire of a person.

Interfering with a Law Enforcement Animal – ORS 167.337 – Class A misdemeanor

A person commits the crime of interfering with a law enforcement animal if the person intentionally or knowingly injures or attempts to injure an animal the person knows or reasonably should know is a law enforcement animal while the law enforcement animal is being used in the lawful discharge of its duty.

Assaulting a Law Enforcement Animal – ORS 167.339 – Class C felony

A person commits the crime of assaulting a law enforcement animal if:

- The person knowingly causes serious physical injury to or the death of a law enforcement animal, knowing that the animal is a law enforcement animal; and
- The injury or death occurs while the law enforcement animal is being used in the lawful discharge of the animal's duties.

Causing the death of a police K-9 will only be a Class C felony. There is no provision under Oregon law to treat the animal like a human officer. If the death involved malice or torture, there may also be grounds to charge Aggravated Animal Abuse I.

Animal Abandonment – ORS 167.340 – Class B misdemeanor

A person commits the crime of animal abandonment if the person intentionally, knowingly, recklessly, or with criminal negligence leaves a domestic animal or an equine at a location without providing minimum care.

Basic Police Academy

Criminal Law: Controlled Substances



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Criminal Law 7: Controlled Substances, Cannabis, and Alcohol Offenses

Instructional Goal:

This course is designed to develop a new officer's understanding of behavioral offenses defined by the Oregon Criminal Code.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the type of offense using the Oregon Criminal Code Book
2. Distinguish level of offense using the Oregon Criminal Code Book
3. Articulate the elements of a given crime
4. Analyze a situation and determine if there is an applicable ORS offense represented

Content Outline:

- Controlled Substances
- Cannabis
- Alcohol

Controlled Substances

This section will provide the basic framework for an introductory course in the investigations of controlled substance (CS) offenses. To guide the discussion, we first define common terms like controlled substance, Possession (PCS), Delivery (DCS), and Manufacture (MCS). Next, we will discuss the basic charging statutes, including the enhanced charge of a CS offense Within 1,000 feet of a School. We then identify factors for enhanced penalties on CS offenses like Substantial Quantities and Commercial Drug Offenses (CDO). Lastly, we discuss exemptions from prosecution for PCS offenses.

Definitions

Controlled Substance – ORS 475.005(6)

A controlled substance is a drug or its immediate precursor classified in Schedules I – V of the federal Controlled Substances Act, 21 USC. 811 to 812, as modified by ORS 475.035. This definition does not include marijuana, which is regulated in ORS 475B. Further discussion of the schedules will occur later in the section on charging offenses.

Possession – ORS 161.015(9)

PCS includes actual, constructive, and joint possession. Actual possession, as it sounds, means you have the item on your person. Constructive possession means you have the ability or right to control the item. Joint possession means you, and at least one other person has the ability or right to control the item.

Examples:

- I have a pair of socks on my feet. I am in actual possession of these socks.
- I have another pair of socks at home in my dresser. Even though I am not wearing the socks, I could go home and put on the other pair of socks. I am in constructive possession of the second pair of socks.
- I have a spouse. My spouse could take that second pair of socks and throw them in the garbage. Both my spouse and I are in joint possession of the second pair of socks.

Delivery – ORS 475.005(8)

DCS includes actual, constructive, or attempted transfers of controlled substances. Much like possession, an actual delivery occurs when a person physically transfers a controlled substance to another person. A constructive transfer occurs when the transfer is inferred or presumed based on the circumstances, such as where a person directs the transfer of ownership of a controlled substance without personally participating in the actual transfer. An attempted transfer occurs when a person arranges an actual or constructive transfer of a controlled substance, but that specific transaction is incomplete or unsuccessful. An important distinction is that the person who delivers a controlled substance is charged with DCS, and the person who receives the controlled substance would only be charged with PCS despite that receiver's facilitation of the delivery of controlled substances.

Examples:

- You see Person A hand a bindle of methamphetamine to Person B. B then hands A $10. A committed DCS methamphetamine based on an actual delivery of meth. When B received the drugs, B committed PCS meth by being in actual possession of the meth.

- You see person A hand a bindle of methamphetamine to Person B. B then hands A $10. After arresting A for DCS, they tell you they were delivering the drugs for person C and that C arranged the delivery. They show you text messages from C that confirms their story. C committed constructive delivery of meth (person A still committed DCS for actual delivery).

- You arrest a person on a warrant. While conducting an inventory search on the person's backpack, you find four 2-gram (g) baggies of heroin, three empty baggies, and a scale. When interviewed the person admits they were on their way to meet a friend to sell them the baggies of heroin. The person committed DCS by attempted delivery of heroin.

Note: A completed DCS charge based on an "attempted transfer" is <u>different</u> than the charge of "Attempted DCS." An "Attempted DCS" is when someone has taken a substantial step towards the crime of DCS but hasn't <u>actually attempted or arranged</u> to transfer the drugs (for example: a person has a large quantity of meth that also includes individually packaged bindles with user amounts, a scale, and $1,000 cash, but no evidence they have arranged for or tried to transfer the meth). This is different than the third example above where the person was actually attempting the transfer of the controlled substance – that could be charged as a completed DCS.

Manufacture – ORS 475.005(15)

MCS is a broad category, including the production, preparation, propagation, compounding, conversion, or processing of a controlled substance. This is commonly seen in a process that converts multiple compounds into the finished controlled substance. Additionally, by the plain language of the definition, MCS also includes separating one large batch of product into smaller packages for sale. However, this repackaging of products for delivery may instead be charged as an *attempted* DCS.

Examples:

- On a consent search of a home, you find a baking sheet in the dishwasher with a crystalline substance drying on it. You also find a 5-gallon water-cooler style jug with a liquid substance. Both items test positive for methamphetamine. The person who has control of this meth-finishing lab committed MCS methamphetamine by processing the controlled substance.

- Person B lawfully has a prescription for Xanax. However, Person B likes to make a little money on the side by separating the Xanax into baggies of 2-3 pills for individual sales. Person B committed MCS of a Schedule IV controlled substance by packaging the substance.

Charging Controlled Substance Offenses

When determining which statute to use to charge an offense, you should consider the type of substance (e.g., heroin or Xanax) and the type of offense (e.g., PCS or DCS). When the substance you are charging has a specific charging statute, you should use that section; if not, use the general statute for that drug schedule. Considerations on the type of offense are mainly controlled by the definitions discussed above.

General Charging by Drug Schedule

Controlled substances are divided into five schedules. The Drug Enforcement Agency (DEA) maintains a list of the schedules. Substances are placed in a schedule based on whether they have a currently accepted medical use in the US, their abuse potential, and the likelihood of causing dependence when abused. This chart provides a breakdown of the federal drug schedule with modifications by Oregon law in parentheses:

Schedule	Substances
I	Drugs in this schedule do not have an accepted medical use, are unsafe even when used under medical supervision, and have a high potential for abuse. This schedule includes heroin, LSD, peyote, MDMA, and marijuana (Oregon added certain synthetic opioids, fentanyl analogues, and methamphetamine; and subtracted marijuana from this schedule).
II	Drugs in this schedule have a high potential for abuse which may lead to severe psychological or physical dependence. This schedule includes cocaine, morphine, oxycodone, hydrocodone, methadone, and methamphetamine (As noted, Oregon moved methamphetamine to Schedule I).
III	Drugs in this schedule have a potential for abuse, and abuse may lead to moderate or low physical dependence or high psychological dependence. This schedule includes painkillers with 90 mg or less of codeine (Tylenol with codeine), buprenorphine (Suboxone), ketamine, and anabolic steroids.
IV	Drugs in this schedule have a low potential for abuse relative to Schedule III drugs. This schedule includes alprazolam (Xanax), carisoprodol (Soma), diazepam (Valium), clonazepam (Klonopin), and lorazepam (Ativan).
V	Drugs in this schedule have a low potential for abuse relative to Schedule IV drugs and are primarily preparations containing limited quantities of certain narcotics. This schedule includes cough medications with 200 mg or less per 100 ml or 100 g (Robitussin AC, Phenergan with codeine).

Charging by Specific Drug

The most common controlled substance offenses that you investigate have been moved into their own statute. This was done by the legislature to help track individual substances beyond the general schedule of drugs. Within the statutes, you will find specific charging sections for PCS, DCS, MCS (and within 1,000 ft. variants) of the following drugs: hydrocodone, methadone, oxycodone, heroin, MDMA, cocaine, and methamphetamine.

PCS Offenses

In 2020, Ballot Measure 110 reduced most general PCS offenses to a class E violation. These offenses are punishable with a $100 fine, which can be waived if the offender participates in a health assessment. However, when the possession involves certain quantities, or is accompanied by three or more CDO factors, the PCS offense may be charged criminally. The following charts illustrate when PCS is a violation, misdemeanor, or felony:

PCS Violation Offenses		
Substance	**Statute**	**Class**
Sch I	ORS 475.752(3)(a)	E viol.
Sch II	ORS 475.752(3)(b)	E viol.
Sch III	ORS 475.752(3)(c)	E viol.
Sch IV	ORS 475.752(3)(d)	E viol.
Sch V	ORS 475.752(3)(e)	Viol.
Hydrocodone	ORS 475.814(2)(a)	E Viol.
Methadone	ORS 475.824(2)(b)	E viol.
Oxycodone	ORS 475.834(2)(b)	E viol.
Heroin	ORS 475.854(2)(b)	E viol.
MDMA	ORS 475.874(2)(b)	E viol.
Cocaine	ORS 475.884(2)(b)	E viol.
Meth	ORS 475.894(2)(b)	E viol.

PCS Misdemeanor Offenses			
Substance	**Amount**	**Statute**	**Class**
LSD	40 or more user units	ORS 475.752(7)(b)(A)	A misd.
Psilocybin	12 gram(g) or more	ORS 475.752(7)(b)(B)	A misd.
Hydrocodone	40 or more user units; CDO	ORS 475.814(2)(b)	A misd.
Methadone	40 or more user units	ORS 475.824(2)(b)	A misd.
Oxycodone	40 or more pills	ORS 475.834(2)(b)	A misd.
Heroin	1 g or more	ORS 475.854(2)(b)	A misd.
MDMA	1 g or more; 5 or more pills	ORS 475.874(2)(b)	A misd.
Cocaine	2 g or more	ORS 475.884(2)(b)	A misd.
Meth	2 g or more	ORS 475.894(2)(b)	A misd.
Fentanyl	1g or more; 5 or more user units	ORS 475.752(8)(a)	A misd.

PCS Felony Offenses			
Substance	**Amount**	**Statute**	**Class**
Schedule I	Any & 3+ CDO factors; or SQ	ORS 475.752(7)(a)	B fel.
Schedule II	Any & 3+ CDO factors; or SQ	ORS 475.752(8)	C fel.
Methadone	Any & 3+ CDO factors	ORS 475.824(2)(c)	C fel.
Oxycodone	Any & 3+ CDO factors	ORS 475.834(2)(c)	C fel.
Heroin	Any & 3+ CDO factors; or SQ	ORS 475.854(2)(c)	B fel.
MDMA	Any & 3+ CDO factors; or SQ	ORS 475.874(2)(c)	B fel.
Cocaine	Any & 3+ CDO factors; or SQ	ORS 475.884(2)(c)	C fel.
Meth	Any & 3+ CDO factors; or SQ	ORS 475.894(2)(c)	C fel.

DCS offenses

The following chart provides a reference to DCS offenses without additional factors (discussed below):

Substance	Statute	Class
Sch I	ORS 475.752(1)(a)	A fel.
Sch II	ORS 475.752(1)(b)	B fel.
Sch III	ORS 475.752(1)(c)	C fel.
Sch IV	ORS 475.752(1)(d)	B misd.
Sch V	ORS 475.752(1)(e)	C misd.
Hydrocodone	ORS 475.806	C fel.
Methadone	ORS 475.820	B fel.
Oxycodone	ORS 475.830	B fel.
Heroin	ORS 475.850	A fel.
MDMA	ORS 475.870	A fel.
Cocaine	ORS 475.880	B fel.
Meth	ORS 475.890	B fel.

Within 1,000 Feet of a School – ORS 475.005(23)

A DCS or MCS offense within 1,000 feet (ft.) of a school primarily attended by minors is charged by the specific statute and elevates the crime seriousness scale (CSS) to a level 8. The distance between the offense and the school is measured in a straight line (i.e., as the crow flies) from offense location to the nearest property line of the school. Unlike other facts, the state is not required to prove the suspect was aware she or he was within 1,000 ft. of a school. For example, if you conduct a traffic stop on a person who is not from your town, who is driving out of visual range, but within 1,000 ft. of the property line of a middle school, that person would be charged with a level 8 DCS if she or he was found in possession of items constituting a constructive delivery of controlled substances.

Enhanced Penalty Factors

The previous section discussed how to locate the right statute and identify the class of the offense (e.g., felony or misdemeanor). This section identifies specific facts you can document to enhance the penalty of the offense. Looking back at the introduction to justice material, you learned that felony offenses are sentenced per a guidelines grid. The sentence is found at the intersection of the offense's CSS and the offender's criminal history scale (CHS). In general, a DCS/MCS offense is a level 4 on the CSS. However, if the investigating officer discovers aggravating factors, the offense can move up as high as a level 10.

Given the ability to have a wide range of sentencing, it is important to be aware of these enhancement factors as they can be the difference between probation and a presumptive 130 months in prison. Additionally, it is important to document these facts not only in your police report but in the probable cause (PC) statement that lodges the suspect in jail. This allows the charging district attorney to file the correct charge and seek the appropriate bail.

Consideration – ORS 475.900(2)(a)

When a DCS is for consideration, it may elevate the offense to a level 6 CSS. To prove consideration, the state must prove that the suspect intended to deliver the drugs possessed for something of value (e.g., money, stolen property, sexual favors, etc.) in a specific transaction already agreed upon and completed or attempted. This factor is only applicable to DCS of the following: heroin, cocaine, fentanyl, methamphetamine, or MDMA.

Examples:

- With the assistance of an informant, you arrange the purchase of ¼ ounce of heroin for a set price from the suspect. You arrest the suspect when he arrives at the meet location with the drugs. This suspect committed a level 6 DCS Heroin – for consideration.
- You arrest a person on a warrant. While conducting an inventory search on the person's backpack, you find four 2 g baggies of methamphetamine, three empty baggies, and a scale. The person admits they had been sharing their drugs at a party with friends, but gave them away and did not sell them. Because you cannot show a specific arrangement for payment, this suspect committed a level 4 DCS Heroin without consideration.

Substantial Quantities

While a PCS felony is generally a level 1 CSS, if the suspect has certain amounts of the substance, the offense is elevated to a level 6 per ORS 475.900(2)(b). These amounts are the same as discussed below in the DCS substantial quantity section. This could be charged if you were unable to prove an actual or constructive delivery of the substance possessed. This also may be charged by the district attorney as a compromise to a DCS.

- DCS and MCS offenses involving amounts equal to or greater than those listed below are elevated to a level 8 per ORS 475.900(1)(a):
  - Heroin – 5 g
  - Fentanyl – 5g or 25 or more user units
  - Cocaine, methamphetamine – 10 g
  - MDMA – 5 g or 25 pills
  - LSD – 200 user units
  - Psilocybin – 60 g

- DCS and MCS offenses involving amounts equal to or greater than those listed below are elevated to a level 9 per ORS 475.925(2):
  - Heroin – 50 g
  - Fentanyl – 50 g
  - Cocaine, methamphetamine – 100 g
  - MDMA – 50 g or 250 pills

- DCS and MCS offenses involving amounts equal to or greater than those listed below are elevated to a level 10 per ORS 475.925(2):
  - Heroin – 100 g
  - Fentanyl – 100 g
  - Cocaine, methamphetamine – 500 g
  - MDMA – 100 g or 500 pills

Commercial Drug Offenses – ORS 475.900(1) (b)

PCS, DCS, and MCS offenses are considered a commercial drug offense (CDO) when you can prove at least three of the listed factors. Proof of a CDO elevates the offense to a level 8 CSS. As a reminder, the facts supporting the CDO factor must be listed in the report, as well as the PC statement.

CDO Factors:

- DCS heroin, fentanyl, cocaine, methamphetamine, LSD, psilocybin for consideration (see discussion above for requirement of a specific transaction)
- Possession of $300 or more
- Weapons violations (considered one factor even if multiple subcategories):
    - Possession of a firearm by a prohibited possessor
    - Possession of a firearm for purposes of using it in connection with the offense (e.g., for protection)
    - Use, attempted use, or threatened use of a deadly or dangerous weapon
- Packaging material (e.g., scales, additional wrapping or foil)
- Drug transaction records or customer lists
    - These notes must be kept for a record
    - A notebook listing purchases and amounts owed by individuals would likely be sufficient
    - Text messages arranging transactions would likely NOT be sufficient unless the suspect admitted he kept them to remember who owed him
- Possession of the stolen property
- Modification of structures to facilitate the offense
- Possession of manufacturing paraphernalia
- Use of public lands for MCS
- Construction of fortifications or security measures with the potential to injure
- Possession of amounts equal to or greater than:
    - Heroin– 3 g
    - Fentanyl – 3 g or 15+ user units
    - Cocaine, methamphetamine – 8 g
    - MDMA – 4 g or 20 pills
    - LSD – 20 user units

- Psilocybin – 10 g

Exemptions to Prosecution of PCS Offenses

ORS 475.898 creates a limited immunity from arrest and prosecution for drug offenses, similar to that previously created for MIP offenses (see below). In general, this exempts the person calling and the person in need of medical attention from arrest and prosecution for PCS offenses and violations of terms of release or supervision if evidence of the offense was obtained because emergency medical services or the law enforcement agency was contacted to obtain necessary medical assistance for a drug-related overdose.

This section also provides that the person calling and the person overdosing may not be arrested on outstanding warrants for PCS offenses or probation/parole violations for PCS offenses if the person's location was learned because of the call for medical assistance due to a drug-related overdose. This only applies to warrants issued in Oregon. Therefore, warrants from other states or the federal government are still serviceable on these calls.

Officers should note that this section does not mean the evidence related to the PCS offense is not subject to seizure. This section only provides a person cannot be prosecuted for the offense. Check with your agency policies and local district attorney to determine the status of any evidence of a PCS offense that is subject to this exemption. Lastly, officers should also be aware that this only applies to PCS offenses, and is inapplicable to DCS and MCS offenses.

Len Bias Law (21 USC § 841(a)(1))

Under federal law a person who delivers a controlled substance that results in serious bodily injury or death of another is subject to a 20 year minimum prison sentence. This law is commonly referred to as the "Len Bias Law." Len Bias cases are typically investigated by experienced officers and detectives, but officers should be aware of the potential for a criminal investigation regarding this federal statute when responding to a possible overdose death. Making sure to properly secure and thoroughly document the scene can aid in future federal prosecution of the person who delivered the drugs.

Officers should always follow their agency's policies and procedures related to death investigations and the event of a possible overdose death contact a supervisor.

Cannabis

A comprehensive discussion of marijuana and medical marijuana law is beyond the scope of this class. Additionally, enforcement of marijuana laws varies considerably based on the county in which you work. For basic familiarization, we provide a quick reference chart (page 13-14) of the most common offenses and definitions. You should speak with your agency and the local district attorney for further guidance on the enforcement of marijuana and medical marijuana laws in your jurisdiction. Additionally, note that similar to the exemptions provided for PCS offenses, ORS 475B.393 provides the same protections for persons calling and persons overdosing on cannabis.

MARION COUNTY DISTRICT ATTORNEY

Marijuana Laws Quick Reference - 2018 v1 ©

Over 21 Years of Age

Possession

475B.	Useable MJ in Public Place	Class
337(3)(a)	MJ > 1 to ≤ 2 oz	B-V
337(3)(b)	MJ > 2 to ≤ 4 oz	B-M
337(2)	MJ > 4 to ≤ 128 oz	A-M
337(3)(c)(B)	MJ > 128 oz (8 lbs)	C-F

475B.	Useable MJ Non-Public Place	Class
337(3)(a)	MJ > 8 to ≤ 16 oz	B-V
337(3)(b)	MJ > 16 to ≤ 32 oz	B-M
337(2)	MJ > 32 to ≤ 128 oz	A-M
337(3)(c)(A)	MJ > 128 oz (8 lbs)	C-F

475B.	Products/Concentrates	Class
337(3)(a)	Solid/Conc. > 16 to ≤ 32 oz	B-V
337(3)(b)	Solid/Conc. > 32 to ≤ 64 oz	B-M
337(2)	Solid/Conc. > 64 to ≤ 256 oz	A-M
337(3)(c)(A)	Solid/Conc. > 256 oz (16 lbs)	C-F
337(3)(a)	Liquid > 72 to ≤ 144 oz	B-V
337(3)(b)	Liquid > 144 to ≤ 288 oz	B-M
337(2)	Liquid > 288 to ≤ 1152 oz	A-M
337(3)(c)(A)	Liquid > 1152 oz (9 gal)	C-F

475B.	Lawfully Purchased Extracts	Class
337(3)(a)	Extract > 1 to ≤ 2 oz	B-V
337(3)(b)	Extract > 2 to ≤ 4 oz	B-M
337(2)	Extract > 4 oz to ≤ 16 oz	A-M
337(3)(c)(A)	Extract > 16 oz	C-F

475B.	Unlawful Extracts	Class
337(2)	Extract ≤ ¼ oz	A-M
337(3)(c)(C)	Extract > ¼ oz	C-F

475B.	Delivery	Class
346(3)(a)	≥ 21 yo to ≥ 21, ≤ 2 oz MJ no consid	B-M
346(3)(b)(A)	> 64 plants or amounts = Poss. Fel.	C-F
346(3)(b)(B)	Del. to < 21 yo *exception below	C-F
346(2)	All other, including if Del. by < 24 to ≥ 16 yo + ≤ 1 oz MJ + no consid	A-M

475B.	Manufacture	Class
349(3)(a)	> 4 to ≤ 8 plants	B-M
349(3)(b)(A)	> 12 plants	C-F
349(3)(b)(B)	Solid/Conc. > 32 oz, Liq > 144 oz	C-F
349(3)(c)	Unlawful extract	B-F
349(2)	All other	A-M

Felony Crime Seriousness	
1	Possession
4	Delivery/Manufacture
8	Commercial Marijuana Offense (3 factors similar to comm. drug off.)

Under 21 Years of Age

475B.	Possession	Class
341(2)	Amounts > PA	A-M
341(3)(b)	> 8 lbs MJ in public place	C-F
341(3)(a)	> 16 times PA (except public place)	C-F
316(3)(a)	Amounts < PA for ≥ 21 yo (MIP)	B-V
316(3)(b)	MIP while operating vehicle	A-V

475B.	Other MJ-Related Offenses	Class
359	Arson incident Man. Extract I	A-F
363	Arson incident Man. Extract II	C-F
367	Causing another ingest marijuana	A/B-F
371	Administer marijuana to < 18 yo	A-F
376	Sell paraphernalia to < 21 yo	B-V
306	P/D/Man. marijuana in public view	B-V
381	Use marijuana in public place	B-V
329(1)	Provide marijuana to intox person	A-M
329(2)	Allow < 21 yo consume marijuana	A-M
227	Import/Export marij. (same as amts=V,M, F)	

475B.	Delivery	Class
346(3)(b)(A)	Amounts = Del. Fel. for ≥ 21 yo	C-F
346(2)	All other	A-M

475B.	Manufacture	Class
349(3)(b)	Amounts=Man. Fel. ≥ 21yo	C-F
349(2)	All other	A-M

Permitted Acts (PA) - 475B.245

Per household: 4 plants, 8 oz MJ, 16 oz solids, 16 oz concentrates, 72 oz liquids, 1 oz lawful extracts

Individual (21 or over): possess 1 oz MJ in public place, deliver for no consideration 1 oz MJ, and up to the household limits of solids, concentrates, and liquids

ORS	Other Offenses Cont.	
167.262(2)(b)	Use minor Del. ≤ 1oz MJ no consid	A-M
167.262(2)(a)	Use minor all other DCS/MCS	A-F
811.482	Consume marij. in motor veh	B-V

Oregon Medical Marijuana Allowances

Exemptions from Poss./Del./Man.

Cardholder & Caregiver joint possession of:
475B.831(1) 6 mature plants
475B.834(1) 24 oz MJ

Designated grower:
475B.831(2)6 mature plants per up to 4 cardholders
475B.834(3)(a) 12 lbs MJ per outdoor plant
475B.834(3)(b) 6 lbs MJ per indoor plant

Definitions

Cannabinoid concentrate: a substance obtained by separating cannabinoids from marijuana by a mechanical extraction process,or a chemical extraction process using a nonhydrocarbon-based solvent (e.g. water, vegetable oils, isopropyl alcohol or ethanol); or using the hydrocarbon-based solvent carbon dioxide without high heat or pressure. 475B.015(2)

Cannabinoid extract: a substance obtained by separating cannabinoids from marijuana by a chemical extraction process using a hydrocarbon-based solvent (e.g. butane, hexane or propane); or carbon dioxide with high heat or pressure. 475B.015(4)

Cannabinoid product (liquid/solid): an edible and any other product intended for human consumption or use, including a product intended to be applied to the skin or hair, that contains cannabinoids or dried marijuana leaves or flowers. 475B.015(5)

Delivery: the actual, constructive or attempted transfer from one person to another. 475B.015(7)

Financial Consideration: value that is given or received either directly or indirectly through sales, barter, trade, fees, charges, dues, contributions, or donations; does not include marijuana, products, or concentrates within PA. 475B.015(9)(a)

Manufacture: producing, propagating, preparing, compounding, converting, processing, packaging, or labeling a marijuana item. 475B.015(16)(b)

Marijuana: seeds and any part of the plant Cannabis family Cannabaceae. 475B.015(17)(a)

Process: processing, compounding, or conversion of marijuana into cannabinoid products, concentrates, or extracts. 475B.015(31)(a)

Produces: planting, cultivation, growing, or harvesting of marijuana; but not drying if not otherwise producing. 475B.015(32)(a)

Public place: a place to which the general public has access (note: this does not include a private vehicle) 475B.015(34)

Usable marijuana (MJ): the dried leaves and flowers of marijuana; but not the seeds, stalks, roots, or waste from processing marijuana. 475B.015(36)(a)

MATH SIGNS			
> - greater than	< - less than	≥- greater than or equal to	≤ - less than or equal to

Examples: *PCS MJ > 1 to ≤ 2 oz* means possession of more than one ounce but equal to or less than two ounces of MJ
≥ 21 yo to ≥ 21, ≤ 2 oz MJ no consid means a person who is 21 yo or over delivers to a person who is 21 yo or over for no consideration an amount of MJ that is less than or equal to 2 ounces

NOTICES:

*This reference applies to acts committed on or after 4/21/17 per 2017 SB 302A.

*This is only intended as a reference of the most commonly used MJ laws. This is not an exhaustive resource, nor legal advice.

*Unless otherwise specified, the offenses listed assume that the person is not a medical marijuana card holder or otherwise licensed by the OLCC.

Alcohol

Alcohol offenses generally include the minor (i.e., a person under 21 years old) who possesses or consumes the substance, as well as the other person (adult or minor) who provides (i.e., furnishes) the alcohol to the minor. Possession offenses have similar exemptions from prosecution as the drug-related overdose exemptions discussed above. Also, parents or guardians of minors have certain exemptions from furnishing offenses.

Minor in Possession (MIP) – ORS 471.430

A minor who attempts to purchase, purchases, or acquires alcohol commits a class B violation. This possession includes the consumption of alcoholic beverages. However, this does not include the consumption of alcohol in relation to a religious service. Additionally, the offense is elevated to a Class A violation if the person is in possession of alcohol while the person is operating a motor vehicle.

When investigating MIP offenses, officers should always remember to document the facts that support the possession of each minor charged with the offense. While violation offenses on those over 18 years old are proven by a preponderance of evidence in adult court, any level offense charged by petition in juvenile court must be proven beyond a reasonable doubt. Therefore, if you only document that in general, all minors at a party smelled like alcohol, it may not be sufficient to prove each minor charged was in possession of alcohol by consumption beyond a reasonable doubt.

Furnishing Alcohol to a Minor – ORS 471.410(2)

A person commits a class A misdemeanor by selling, giving, or otherwise making available alcohol to a minor. This includes a store clerk who sells beer to a person under 21, as well as a person at a party who hands a minor a glass of wine. There are increasing penalties for repeated violations of this section.

This section does not apply to the minor's parent or legal guardian when the minor is in a private residence and is accompanied by the parent or legal guardian. This means if a parent is at another person's house with her or his child, the parent may allow the parent's child to consume alcohol. However, a parent may not give another person permission for the parent's child to consume alcohol at the other person's house. If this occurs, the other person would still be committing furnishing alcohol to a minor.

Exemptions to Prosecution for MIP

Similar to the exemptions discussed for PCS offenses above, per ORS 475.430(10), a person who calls for, and a person who is overdosing from alcohol, are immune from prosecution for MIP if medical services or law enforcement are called for an alcohol-related overdose. In addition, per ORS 475.434, a person who calls for, and a person who is a victim of a sexual assault, are immune from prosecution of MIP if medical services or law enforcement is called for a sexual assault. Lastly, minors who are acting in the course of a law enforcement sting on an establishment are, obviously, immune from prosecution for MIP per ORS 475.430(8) – (9).

Basic Police Academy

Death Notifications and Investigations



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Death Notifications and Investigations

Instructional Goal:

This course is designed to introduce a new officer to basic factors related to death response and investigations.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Describe police officer duties in the response and investigation of an unattended death call.
2. Identify resources related to death investigations.

Content Outline:

- Death Notifications
- Death Investigations
    - State Medical Examiner
    - Death Scene Investigation Tactics and the Officer's Role
    - Time of Death
    - Cause and Manner of Death
    - Strangulation
    - Hanging
    - Suicide
    - Accidental Deaths
    - Homicide
    - Identification

This course brings together concepts you have learned going back to week one and provides an introduction to an advanced and challenging topic, dealing with death. While it is unlikely you will have to navigate such difficult circumstances on your own until you have gained more experience, you have learned some foundational concepts that will serve you well.

Beginning with how you interact with others, consider how to apply concepts from Emotional Intelligence (empathy) and Communication for Policing in a death notification or investigation. How does what you learned in Report Writing apply to these investigations? Think about your Criminal Investigations series. What do you need to consider regarding crime scenes' safety and security, evidence collection, and photography? What considerations exist for interviewing witnesses or other parties?

Death Notifications

Communication during "Not So Common" Encounters"

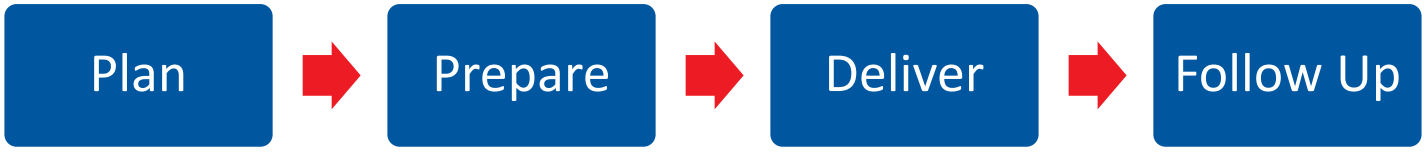
Throughout this academy, you have learned and practiced numerous types of encounters ranging in complexity and frequency. One of the most stressful and unexpected parts of your job may be communicating with a family that their loved one has died.

Considering what you have learned so far about emotional intelligence and communication, what kind of communication do you think might be most appropriate under these difficult circumstances? How do you provide a sensitive death notification with professionalism, dignity, and compassion? While you are not expected to develop the skills necessary for such a difficult interaction at this time, an introduction early in your training helps emphasize the importance of developing these EI and communication skills.

Death Notifications- Four Step Process

The FBI provides a four-step process for delivering a death notification. As you read through each step, think about how the principles of emotional intelligence and effective communication are essential.

Source: The complete "We Regret to Inform You..." online training is available at www.deathnotification.psu.edu



The FBI identifies the following characteristics as important for officers delivering a death notification: efficiency, a good listener, and empathy.

Step 1- Plan

- Identify the decedent
- Collect accurate information. Common questions asked include:
  - How do you know it is my loved one?
  - What happened?
  - Where did the death occur?
  - When did this happen?
  - Where is my loved one now?

Step 2- Prepare

- Be aware of your policies and procedures
- Prepare for the next of kin response: Loved ones may display many reactions to receiving a death notification. They are having a normal reaction to an abnormal event.
  - Shock, disbelief, denial
  - Fear, anger, confusion
  - Immobilization
  - Fight or flight

Step 3- Deliver

- Deliver (as soon as possible)
- Knock on the door; confirm the identity of the person answering the door
    - "Are you Judy and Steve Reinhardt?"
- Ask to enter the home
- Encourage all parties to sit down
- The primary notifier should briefly review what happened before revealing the news
    - "There has been a domestic violence incident in a study group on campus involving Jess, and she has been killed"
    - "We found John in Oak Park with a fatal gunshot wound. It appears self-inflicted."
- Use the decedent's name and not language such as "the body" or "remains."
- Be prepared to repeat information and say the word "dead" or "died" several times.
- Answer questions honestly
    - Where is my loved one now?
    - May I see him/her?
    - What is an autopsy, and why is it necessary?
    - Don't be afraid to say, "I don't know."
- Ask if there is anyone they can contact
- Do not leave them alone
- Provide community resources and contact information
- Request to follow up within 24 hours

Step 4- Follow Up

Some Communication Tips for Death Notifications

Do Say Preparing yourself with helpful statements can be beneficial.	Do Not Say There are many statements that the Next of Kin may not find helpful. Do not share personal stories of loss. Your loss is not the same.
"I am so sorry." "This is harder than most people think." "Most people who have gone through this react similarly to you." "People can experience many different feelings at the same time." "This may be one of the most difficult times in your life."	"I know how you feel." (You don't.) "Time heals all wounds." (It doesn't.) "You need to be strong." (They don't.) "You'll get over this someday." (They may not.) "He was just in the wrong place at the wrong time." "You must go on with your life." "You will find closure."
	Sometimes notifiers want to say anything to the Next of Kin to relieve some pain. However, some statements can be damaging.
	"He didn't know what hit him." "It's best to remember him the way he was." "You don't need to know that." "You don't want to see him." Religious phrases "Think of all of your happy memories."

Death Investigations

A death investigation is a unique blend of medical knowledge, legal knowledge, common sense, and human compassion. There is no greater challenge than maintaining a balance of these disciplines in every case. There are few situations when a police officer will have more of an effect and impression upon the individual citizens he or she serves.

State Medical Examiner Program

ORS 146.090 states the Medical Examiner shall investigate and certify the cause and manner of all human deaths. The Oregon Medical Examiner Division of the Oregon State Police manages all aspects of the state medical examiner program with responsibility for technical supervision of county offices in each of Oregon's 36 counties. They certify the cause and manner of a death requiring investigation within the authority of ORS Chapter 146.

State Medical Examiner
13309 SE 84th Avenue
Suite 100
Clackamas, OR 97015
Phone: 971-673-8200
Medical.Examiner@osp.oregon.gov

Find current personnel list on their website

https://www.oregon.gov/osp/programs/pages/med.aspx

Additionally, each county has a medical examiner program as mandated by ORS 146.065. These District Medical Examiners (DME) share duties with the District Attorney's Office to investigate unattended, unusual, or traumatic deaths occurring within the county. During an investigation, a deputy medical examiner may respond to the scene, interview witnesses, take photographs, obtain evidence and property and assist with notifying next of kin.

The county District Attorney is responsible for all deaths in the county requiring investigation. DA's control and direct all death investigations in the county. This may include ordering an autopsy, blood and urine samples to be taken.

The Investigation

What Requires Investigation

Under ORS 146.090, the following types of deaths must be investigated:

- Apparently homicidal, suicidal, or occurring under suspicious or unknown circumstances;
- Resulting from the unlawful use of controlled substances or the use or abuse of chemicals or toxic agents;
- Occurring while incarcerated in any jail, correction facility, or in police custody;
- Apparently accidental or following an injury;
- By disease, injury, or toxic agent during or arising from employment;
- While not under the care of a physician during the period immediately previous to death;
- Related to disease which might constitute a threat to the public health; or
- In which a human body apparently has been disposed of in an offensive manner.
    - "Offensive manner" means a manner offensive to the generally accepted standards of the community.

Death investigations shall be under the direction of the district medical examiner and the district attorney for the county where the death occurs. If the county where death occurs is unknown, the death shall be deemed to have occurred in the county where the body is found.

In a death requiring an investigation, no person shall move a human body or body suspected of being human or remove any of the effects of the deceased or instruments or weapons related to the death without the permission of a medical examiner, medical-legal death investigator, or the district attorney.

A medical examiner, district attorney, or medical-legal death investigator shall take custody of or exercise control over the body, the effects of the deceased, and any weapons, instruments, vehicles, buildings, or premises which the medical examiner, district attorney, or medical-legal death investigator has reason to believe were involved in the death, in order to preserve evidence relating to the cause and manner of death.

Death Scene Investigation Tactics and the Officer's Role

Duties and limitations placed upon a police officer at the death scene:

- Responsible for identifying deceased
- Must immediately notify a medical examiner or medical-legal death investigator (ORS 146.100)
- May not move or permit the body, effects, or any instruments or weapons-related to the death to be moved without approval from the medical examiner, medical-legal death investigator, or district attorney (ORS 146.103)

Preliminary Examination

When conducting a preliminary examination of the decedent, use a systematic approach, and take a head to toe look at the entire body. If the death scene is determined to be natural, do not forget to turn the body to view both sides. Make notes about what you see and what you do not see. Remember, the ME is the only person who should handle personal effects or evidence relating to the death. Do not pull the wallet or move evidence without permission from the ME.

Investigation of the natural death scene involves a combination of observation of the scene and interviewing the family, caregiver, or witnesses. Including:

- Location of the decedent
- Condition of the body
- How is he/she dressed?
- What do you see that may be evidence?
- Presence of medications or other evidence of illness
- Use all your senses

Ask yourself, "Does what I see and what I hear make sense?"
Ask yourself, "Is this natural or something else?"

Unexpected or Violent Death Investigations

Look For	Listen For
• Weapons • Notes • Drugs • Hazard sources • Forced entry • Signs of a struggle • Observe body posture for guarding	• Inconsistencies in the story • Gaps in the timeline • Answers that avoid your question • Defensive or aggressive behavior

Do

- Contact the ME and other necessary investigators (detectives, crime lab) promptly
- Advise dispatch to relay basic information and indicate that the ME is needed at the scene
- Prepare a concise report to the ME (who, what, when, where, why, and how)

- Treat as a crime scene and remove unauthorized people
- Establish a perimeter and place scene boundary tape to secure the scene
- Maintain security throughout the investigation
- Initiate a scene log
- Attempt to identify circumstantially who the decedent is

- Identify informants, family, and persons who may have information
- Determine what roles these people play in the case
- Interviews – the story should match the scene
    - Who is the witness?
    - How do they know the decedent?
    - What happened today?
    - What has occurred recently?
    - What is the distant history?
    - What is the decedent's medical history?
    - Who is the physician, and what medications do they take?

Think ahead and aloud about resources that will be needed at the scene (reconstructionist, photographer, etc.)

Natural Deaths

Treat all deaths the same.

Every scene, every time.

Don't take short cuts - you might miss the evidence you need to prove your case either way.

Treat the family and friends with respect.

Treat the dead with dignity.

Law enforcement should introduce themselves and explain their role at the death scene:

- To learn who has died
- To learn what has happened leading to the death
- To work with the medical examiner and the family for disposition of the decedent

Determine that the death scene looks natural:

- Look at the death scene and location of the body
- Examine the environment where the decedent is found
- Make a note of the surroundings and appearance of the scene
- Look at things around the body and how the person is dressed
- Examine the body for evidence of injuries or indications that something other than a natural death occurred

Interview family or care provider:

- Effective "open-ended" interviewing of the caregiver is essential. Ask the care provider to tell you about the decedent
- Listen to the family about recent medical problems
- Listen to the family about medical background
- Make careful notes of the interview
- Ask yourself, "Does what I have been told make sense? Do I have additional questions?

Body exam (head, face, eyes, mouth, neck, chest, abdomen, extremities)

Look for past medical history: ask friends, family, doctor, etc.

Medications

Prescribed	Over-the-Counter
Obtain: • Date prescription prescribed • Number of pills prescribed and number remaining • Doctor prescribing pills • Description of pills • Location found	Obtain • Description of item • Dosage • Amount new and amount remaining • If possible, the date purchased

Evidence that could rule out natural causes:

- Unnatural body positioning
- Injuries that do not fit the scene
- Medications with no prescription or bottle
- No known medical or physical problems
- Items of evidence that do not fit
    - Blood
    - Signs of struggle
    - Missing items
    - Signs of forced entry
    - Etc.

Time of Death

The time of death can be based on many variables, so this is only an estimate.

Methods used to determine the time of death of a deceased person:

- Witnesses and circumstances
- Body temperatures
- Livor mortis
- Rigor mortis
- Decomposition
- Stomach contents evaluated at autopsy

Witnesses and circumstances surrounding the death are best indicators for the time of death:

- When was the deceased last seen?
- What food is out in the kitchen?
- Are lights on? Are curtains drawn?
- How is the deceased dressed? Night clothes? Outdoor wear?
- How much mail is in the mailbox?
- How many papers on the porch?
- Are calendar days crossed off?

Body temperatures:

- Use special thermometers 35 degrees to 120 degrees
- Place in rectum – read while still inserted – can make a small slit in clothing to insert
- Does not interfere with swabs for semen later on
- Many variables:

Clothing	Inside vs. outside
Weight	Ambient temperature
The surface the body is lying on	Presence of wind

Livor Mortis (Lividity)

Livor mortis, or postmortem lividity, is a settling of the blood in the lower portion of the body, causing a purplish red discoloration of the skin. When the heart is no longer agitating the blood, heavy red blood cells sink through by gravity. This discoloration does not occur in the body areas that are in contact with the ground or another object, as the capillaries are compressed. Lividity typically appears within 30-minutes to a couple of hours and reaches its maximum 8-12 hours after death. During the first 6 hours after death, the discoloration can be shifted by rolling the body to a different position. After 6-8 hours, the lividity becomes fixed because the blood vessels begin breaking down, and the blood settles in the surrounding tissues. Lividity is not suitable for the time of death after 12-hours but may indicate the body has been moved.

Rigor Mortis (Rigor)

Rigor mortis is the rigidity of the body that occurs after death. The onset may vary from about 10 minutes to several hours or more after death, depending on the body's condition at death and factors in the atmosphere, particularly temperature (may last for many days or weeks in the cold; may come and go rapidly in the heat). Rigor mortis affects the facial musculature first and then spreads to other parts of the body, reaching maximum stiffness around 12 hours. The state of rigor usually lasts about 24 hours or until muscle decomposition takes place by acid formation. Rigor mortis may not be readily apparent in poorly muscled individuals such as the elderly or infants.

Decomposition

- Once reached – almost impossible to estimate the time of death
- Do not put faith in Entomology / Botany – you will be disappointed
- Depends on heat/humidity
- Putrefaction v. mummification

Stomach Contents (Evaluated at Autopsy)

- Stomach empties in 2-4 hours
- Must know the time and content of the last meal
- Depends on the fat content of the meal, how well food chewed, etc. – many variables

Causes and Manner of Death

Cause vs. Manner of Death

Any reasonable person can decide that a death has occurred; however, only a physician can certify the cause and manner of death on a death certificate. The differences between the cause of death and the manner of death:

Cause of death	Manner of death
The simple statement of the primary or basic disease process or injury ending life (e.g., arteriosclerosis heart disease, crushing chest injuries, a gunshot wound to head) The disease or injury may not kill immediately but sets in motion a chain of events leading to death	The medical examiner's opinion on whether the death was caused naturally or as a result of an intentional or accidental act (e.g., natural, accident, suicide, homicide, undetermined, pending legal intervention) Homicide is used as a medical term and not a legal term
Examples:	
Cause of death is a gunshot wound to the head	Potential manner: homicide, suicide, or accidental
Cause of death is a heroin overdose	Potential manner: accidental, suicide, or possibly homicide
Cause of death is blunt force trauma to the chest	Potential manner: accident or suicide
Cause of death is asphyxia due to ligature strangulation	Potential manner: homicide, suicide, or accidental

Investigating Strangulation vs. Hanging

A Suicide can cause more investigative problems than a homicide. Strangulation can be subtle and often overlooked. Consider the physical evidence:

Strangulation	Hanging
Markings around the circumference of the neck	Markings are at a steep angle
Look for marks that cross	Markings opposite knot are darker and fade up
Markings usually are level around the neck, not at a steep angle as in hangings	Look for the "V" mark where the knot was





Suicide

- Suicide is a planned event.
- Suicide is (most often) conducted privately, so consider the location.
- Victims of suicide want to be discovered (most often). Consider the location and who would likely discover the victim.
- Suicide is apparent (most often).
    - Consider the type of injury or mechanism for death.
    - Consider the site of injury.
    - Consider the social/personal history of the decedent.
    - Consider prior attempts/threats/recent life events.

Accidental Deaths

Accidental death is unplanned.

Methods used to categorize accidental deaths and the officer's role in their investigation.

Traffic Fatalities • Events of the crash and occupant position in the vehicle. • Pedestrian • Pattern injury assessment • Working with the crash reconstructionist.	Drowning • Witnessed as opposed to unwitnessed • Events prior to submersion • The removal of the body must be done very carefully to avoid further damage to the body. • Water and Air temperature
Falls • Witnessed as opposed to unwitnessed • Height and location where the victim fell from • Events prior to fall. • Victim history (Family, Friends, Co-Workers)	Industrial Accidents • Work with OSHA • Explanation of work activities before the accident • Witnessed as opposed to unwitnessed
Drug Overdose • Accident as opposed to suicide • Finding the drugs and paraphernalia • Witness statements	

Homicide

Homicide, as a medical term, is used any time it is determined that death has occurred due to another person's action.	Homicide, as a legal term, indicates the intent to cause death and is used to assign an appropriate charge to the crime.

- Injuries seen in homicides are usually random.
- Pattern injuries do not often fit selected locations differentiating them from suicide.
- The scene is often chaotic, and there is evidence of a sudden, hasty violent act.
- The victim is often found in an uncommon location for death.
    - The location of the victim is where the death incident occurred, not where they went to die.
    - Bodies that have been dumped or moved usually provide evidence of the movement.
- The scene must be thoroughly processed using team effort involving police, Medical Examiner, and the District Attorney.
    - Pre-planning for homicide investigations.
    - The Medical Examiner is a resource for police.

Mechanism of Injury / Death

- Make sure the injury supports the weapon used.
- Is it possible for the victim to self-inflict noted injury?
- Physically match weapon to injury sight.

Medical-Legal Death Investigator Contact:

Prepare a telephone report for the MLDI that will summarize your investigation and permit him/her to determine if further investigation is warranted

- Decedent's name, address, DOB
- Time of death or found time
- Next-of-kin and informant
- History of the terminal event
- History of medical conditions
- Physician's name and phone number
- When the decedent last saw the physician
- Funeral home preference

Call and report findings to the Medical-Legal Death Investigator

Identification

Methods used to identify a deceased person:

- Fingerprints
- Footprints (infants)
- Dental records
- Antemortem and postmortem radiographs
- Forensic anthropology identification
- DNA
- Tattoos
- Birthmarks/scars
- Personal identification
- Combinations of the above items

Dental Identification:

- Need to have some idea who a person is to obtain dental records.
- Usually, can cultivate friendship with a local dentist to help you.
- Try to enlist the aid of a dentist who actually did the work.
- Relatively easy to remove jaws from decomposed or burned body for easy transport.
- Excellent staff at Dental School interested in forensics

Bones:

- May have distinctive surgery.
- May be able to compare ante and postmortem x-rays.
- Obtain services of a forensic anthropologist, Dr. John Lundy

Review

The following information is a review from previous classes on Report Writing and Criminal Investigations.

Response

- Secure and protect the scene
- Promptly and cautiously approach
- Remain observant
- Control dangerous situations or persons

Evidence

- Evidence relating to the death is, by law, the responsibility of the ME.
    - In some areas, police collect evidence for the ME.
    - In homicides, the ME usually releases the evidence to the police at the scene.
- Regardless of who collects the evidence, it must be properly handled.
- Protect the evidence (prevent loss, destruction, and contamination)
- Document chain of custody
- Document location (notes, diagrams, photographs)
    - Photographs: Overall – Midrange –Close-Up
    - Get a photo of the decedent's face
    - Diagram: Include position of the body
- Mark evidence/packaging properly
- Store evidence properly

Reports

- Clear, concise, complete, accurate
- Answer who, what, where, when, why, and how.
- Avoid using unfamiliar terms (medical terminology)
- List medications and treating physicians.

Death Investigation Checklist/Report Template

This checklist is meant to be a BASIC guide/report template for an unattended death investigation in CHRONOLOGICAL order of the investigation. If suspicious circumstances arise during the investigation, contact supervisor to respond to the scene, County Death Investigator, Medical Examiner, and detectives. Persons who have died of ILLNESS at home while on verified HOSPICE do not meet investigative protocol. Notify family requested funeral home in that case.

A. Equipment needed for immediate use inside residence or at location (bring inside upon arrival) –

1. MDB – Set up workstation inside. Use online PIR and Person Report. Use Records, Forscom, CAD, etc. as needed at the scene to obtain information.
2. Camera.
3. Large quantities of gloves.
4. Red finger print card (cut in strips).
5. Finger print ink blotter pad (bio hazard after use).
6. Additional officer is good for obtaining person information at the workstation and assisting with questioning, scene, body examination, etc.
7. Paper or plastic bags for medication collection.
8. Large note pad.
9. Agency report forms (property, person, etc.).

Basic initial Information upon arrival (SECURE THE SCENE FIRST)

CASE #_____

Time of call: _____

Time of medic unit arrival: _____ Medic Unit #_____

Did medics move the move the body? _____

Perform CPR or other actions? _____

Deceased's full name/DOB/SSN#(funeral home will require SSN)

_____

_____

Approximate time of death or when found:

_____

_____

Who found deceased, when, and how?

_____

_____

_____

_____

B. **<u>Report - CAD dispatch narrative</u>** – Who called, what did they report, did it come in 911 (paraphrase or quote what your initial CAD screen states from dispatch). This should be the opening of your report.

*Notes and t**ime of call**:*

_____
_____
_____
_____
_____

C. **<u>Arrival outside of the scene (Take photos)-</u>** Describe the residence or location, i.e., one story house three bedrooms, apartment complex, field, etc.

*Notes and **time of arrival**:*

_____
_____
_____
_____
_____

D. **<u>Arrival inside the location SECURE SCENE/BODY use another officer if needed (Take photos) –</u>**

Notes: location of the body i.e. back bedroom, living room, etc.:

_____
_____
_____
_____
_____

Description of condition of inside of house/apartment/location (*i.e. filthy, rotten food, cluttered, neat and tidy).*_____
_____
_____

Approximate room temperature: _____

E. **<u>Who was present during time of death?</u>** Medic unit # and names, residents, roommates, relatives, friends (fill out agency forms)**.**

Notes:

_____
_____
_____
_____
_____
_____

Interview each person at the scene using the following pages.

F. INTERVIEWS:

PERSON WHO FOUND DECEASED:

1. **NAME:** _____
   Relationship to deceased, how long known:
   _____
   _____

2. What time and where did you find her/him?
   _____
   _____

3. Did you move the body?
   _____
   _____

4. Did you touch the deceased, check for pulse, etc?
   _____
   _____

5. Was the body cold or stiff to the touch?
   _____
   _____

6. Did you call 911?
   _____
   _____

   Did you perform CPR?
   _____
   _____

7. Was the deceased complaining of anything within the recent past?
   _____
   _____

8. Did he/she have diabetes?
   _____
   _____

9. Did he/she take insulin injections and how often?
   _____
   _____

10. Did he/she check blood sugar on a regular basis?

11. Where were insulin injections given/taken?

12. Did he/she have hypertension (high blood pressure)?

13. Did he/she smoke marijuana, or use any illegal drugs (meth, heroin) in the past? If so, when was the last time and how often?

14. Did he/she smoke? How much, how long, and how often?

15. Did he/she drink alcohol? What kind, how often, and how much, and how long?

16. Did he/she ever attempt suicide or have ideations? If so, how and when? Hospitalized for attempt? (if suicide, attempt to find note and history).

17. Was he/she sedentary or active? Describe what deceased did on a daily basis.

18. Was he/she employed? Where and for how long?

19. What did he/she eat on a daily basis?

20. Was he/she sick or injured recently? Explain details:

21. Had he/she been vomiting or had diarrhea? Was either bloody?

22. Was there fluid coming from his/her mouth or nose when found?

    _____

    _____

23. Did he/she follow doctor's orders following a consultation or visit? (i.e. taking prescribed medications, diet, no alcohol, etc)?

    _____

    _____

24. Was he/she recently hospitalized? For what and where?

    _____

    _____

25. Any past or recent surgeries? For what and where?

    _____

    _____

26. Did he/she have heart problems?

    _____

    _____

27. Did he/she have family history of illnesses?

    _____

    _____

After interviews are completed, briefly explain to the next-of-kin as a matter of routine you will have to take photos of the scene and briefly examine the body. Then explain when you are finished you will call the medical examiner who will release the body and you will contact the funeral home of their choice. If next of kin not available, you must contact the on-call funeral home for body removal after contacting the on-call County Death Investigator or Medical Examiner.

Questions are repeated for each person

PERSON(s) PRESENT AT RESIDENCE DURING OR AFTER DEATH:

1. **NAME:** _____
   Relationship to deceased, how long known:
   _____
   _____

2. What time and where did you find her/him?
   _____
   _____

3. Did you move the body?
   _____
   _____

4. Did you touch the deceased, check for pulse, etc?
   _____
   _____

5. Was the body cold or stiff to the touch?
   _____
   _____

6. Did you call 911?
   _____
   _____

   Did you perform CPR?
   _____
   _____

7. Was the deceased complaining of anything within the recent past?
   _____
   _____

8. Did he/she have diabetes?
   _____
   _____

9. Did he/she take insulin injections and how often?
   _____
   _____

10. Did he/she check blood sugar on a regular basis?
    _____
    _____

11. Where were insulin injections given/taken?

12. Did he/she have hypertension (high blood pressure)?

13. Did he/she smoke marijuana, or use any illegal drugs (meth, heroin) in the past? If so, when was the last time and how often?

14. Did he/she smoke? How much, how long, and how often?

15. Did he/she drink alcohol? What kind, how often, and how much, and how long?

16. Did he/she ever attempt suicide or have ideations? If so, how and when? Hospitalized for attempt? (if suicide, attempt to find note and history).

17. Was he/she sedentary or active? Describe what deceased did on a daily basis.

18. Was he/she employed? Where and for how long?

19. What did he/she eat on a daily basis?

20. Was he/she sick or injured recently? Explain details:

21. Had he/she been vomiting or had diarrhea? Was either bloody?

22. Was there fluid coming from his/her mouth or nose when found?

    _____

    _____

23. Did he/she follow doctor's orders following a consultation or visit? (i.e. taking prescribed medications, diet, no alcohol, etc)?

    _____

    _____

24. Was he/she recently hospitalized? For what and where?

    _____

    _____

25. Any past or recent surgeries? For what and where?

    _____

    _____

26. Did he/she have heart problems?

    _____

    _____

27. Did he/she have family history of illnesses?

    _____

    _____

After interviews are completed, briefly explain to the next-of-kin as a matter of routine you will have to take photos of the scene and briefly examine the body. Then explain when you are finished you will call the medical examiner who will release the body and you will contact the funeral home of their choice. If next of kin not available, you must contact the on-call funeral home for body removal after contacting the on-call County Death Investigator or Medical Examiner.

G. BODY EXAMINATION: (Take photos)

General terms, explanations, and procedures:

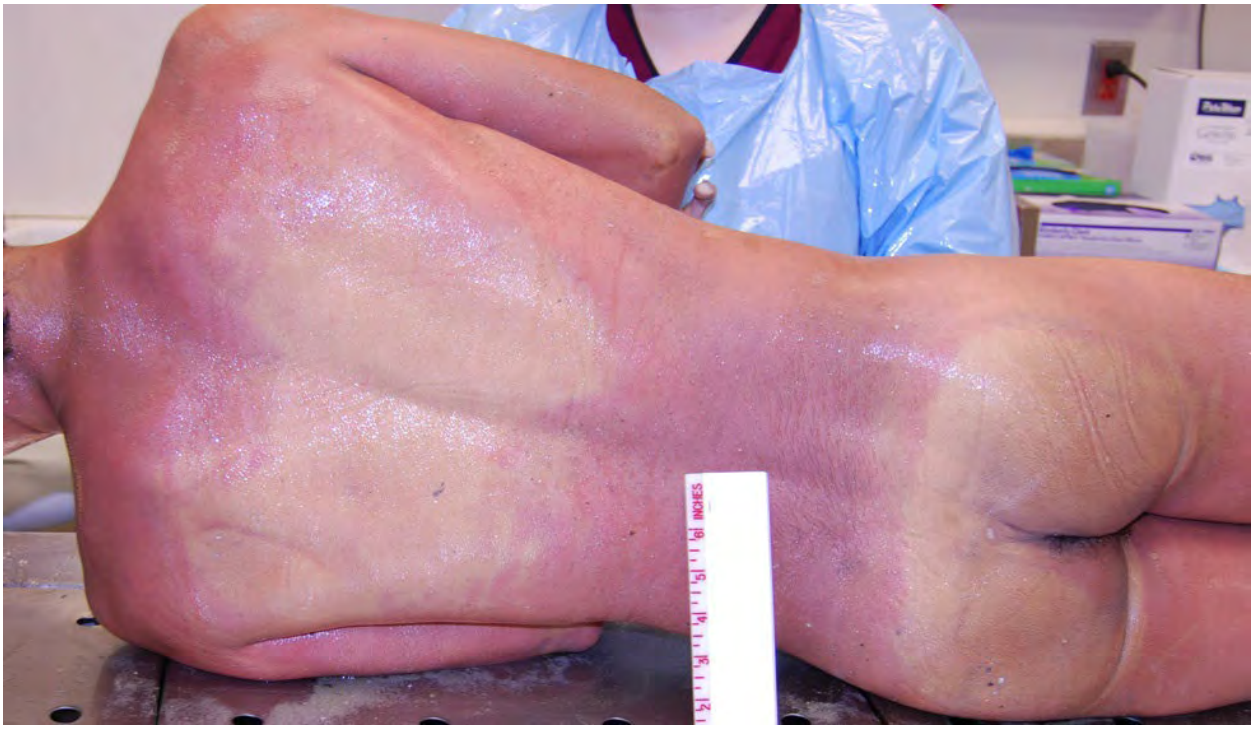
1. **Petechial Hemorrhaging** – Small red spot(s) caused by bleeding into the skin (burst blood vessels pin-prick sized at times)
    - It can be caused by heavy vomiting, coughing, straining, strangulation, or suffocation.
    - Look for it around the face, eyes, under lower eyelids, and on eyeballs.
    - If it is present under eyes or above neck, look for neck injuries (strangulation), and ask about vomiting or heaving coughing, or heart conditions.



Petechial hemorrhaging under eyelid

2. **Livor mortis (lividity)** -Blood and fluid pooling at lowest point)
    - A purplish coloration of areas on the body at the lowest point of gravity.
    - It **appears within 20 minutes to 2 hours** after death.
    - Example: a person was discovered on his or her back lying on a patterned couch, you would see lividity on the lowest point, except in areas where a certain pattern would be impressed on the back from the couch. Maximum lividity becomes "fixed" or congealed after approximately 6-12 hours. To test, press on the skin where lividity is present (lowest point on torso or limb). If it turns white but turns reddish again, it has not "fixed." If it stays reddish after pressing with finger, it is fixed.

****NOTE: If there is lividity present on the front of the body for example, and you discover deceased on back, it is possible the deceased was moved. Lividity will generally follow gravity and be at lowest point before it is fixed.*



Livor mortis from deceased found on is back. Note where there was compression there is no lividity.



Testing for fixed/congealed lividity

Rigor mortis (stiffness in limbs, joints) - Rigor mortis begins within two to six hours of death, starting with the eyelids, neck, and jaw.

- Over the next four to six hours, rigor mortis spreads to the other muscles.
- The onset of rigor mortis is more rapid if the environment is cold. Its onset also varies with the individual's age, sex, physical condition, and muscular build.

After being in this rigid condition for twenty-four to eighty-four hours, the muscles relax and secondary laxity (flaccidity) develops. The length of time rigor mortis lasts depends on multiple factors, particularly the ambient temperature. The degree of rigor mortis can be determined by checking both the fingers and large joints.

Approximate times for rigor mortis in temperate regions		
Body temperature	**Body stiffness**	**Time since death**
warm	not stiff	dead not more than three hours
warm	stiff	dead 3 to 8 hours
cold	stiff	dead 8 to 36 hours
cold	not stiff	dead more than 36 hours

H. MEDICATIONS:(Take photos in place before seizing)

Seize all medications taken by deceased and place in bag.

- List them below for reference when calling on-call Death Investigator or Medical Examiner
- List date prescribed, how many (must be counted), quantity remaining, and to whom
- Additional sheets may be required
- Place them in evidence at station as safekeeping.

*1.*_____

*2.*_____

*3.*_____

*4.*_____

*5.*_____

*6.*_____

*7.*_____

*8.*_____

*9.*_____

*10.*_____

*11.*_____

*12.*_____

*13.*_____

*14.*_____

*15.*_____

*16.*_____

*17.*_____

*18.*_____

*19.*_____

*20.*_____

I. Primary Care Physician: _____
Phone #_____

***If it is during business hours, attempt to contact the decedent's primary care physician and ask him/her if they will sign a death certificate. Pass this information to the Death Investigator/Medical Examiner.*

J. Funeral Home:_____
Phone #_____Contact: _____

On-call Death Investigator or Medical Examiner (*Contact upon completion of this checklist. The on-call will ask you the information contained on this sheet, then authorize release of the body at which time you can contact the funeral home the family chose):*

Name: _____

Phone: _____

Time body released: _____

Contact dispatch and determine if deceased has a CCH. If yes, finger print at scene or funeral home. Follow agency protocol.

Basic Police Academy
Defensive Tactics



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Defensive Tactics

Instructional Goals:

This course is designed to:

1. To introduce a new officer to physical skills and techniques used to affect an arrest or defend against an attack.
2. Develop a new officer's ability to make decisions in stressful or violent environments.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Demonstrate the ability to recognize, define, and act against pre-assault indicators.
2. Demonstrate the ability to defend against a physical attack from standing and ground positions.
3. Demonstrate the ability to effectively control a resisting threat.
4. Demonstrate the ability to effectively utilize available equipment and tools.
5. Demonstrate the ability to effectively utilize tactics/concepts to minimize risk to self, fellow officers, threats, and the public.

Expectations:

Students can expect from staff:

1. Respectful treatment from all D building staff at all times.
2. A safe and encouraging learning environment. Coursework will be, at times, strenuous and stressful, but we are dedicated to giving students the most practical and safe training possible.
3. It is not our job to weed out or fail you. It is our mandate and honor to train and develop you.

Our expectations of our students:

1. Respectful treatment of fellow students and staff at all times.
2. Positive attitudes and maximum effort, regardless of skill level.
3. There is a difference between being uncomfortable or feeling pain and being injured. All injuries must be reported to staff immediately.

Content Outline

I. Defensive concepts while standing (Rubric 1)
   1. Escort positions
   2. Clinch work
   3. Standing side control
   4. Take Downs
   5. "Default" punch defense
   6. In-fight weapon access in clinched entanglements

II. Defensive concepts while on the ground (Rubric 2)
   1. Getting back to standing
   2. Escaping full mount
   3. Escaping side control
   4. In-fight weapon access in grounded entanglements

III. Handcuffing (Rubric 3)
   1. Cooperative handcuffing
   2. Searches
   3. Kneeling and prone cuffing
   4. High-risk cuffing

IV. Decision making under stress (Rubric 4)
   1. Force on Force evolutions
   2. Multitasking under life-threatening circumstances (modified Tueller drill)

V. Law Enforcement Skills Assessment Score (LESAS)
   1. One skill from each category will be evaluated using the provided rubrics:
      i. Default
      ii. Ground Defense
      iii. Handcuffing
      iv. Modified Tueller Drill

Rubric 1: Default					
	Exceeding (5)	**Excellent (4)**	**Acceptable (3)**	**Learning (2)**	**Unacceptable (1)**
Drop Weight	After default student immediately inserts head under the role players chin and gets dominate head position	Changes level, widens base, stomps into position and covers head simultaneously	Changes level, separates feet to widen base and stomps into position	Changes level but does not widen stance or stomp	Does not change level
Cover Head	After default student immediately finds role players limbs and controls biceps	Tucks chin, arms come up tight to the head (lead arm assumes vertical elbow, rear arm in horizontal elbow) and shoulders come up high	Tucks chin, arms come up tight to the head and shoulders come up high	Tucks chin, arms come up but are not tight to the head	Does not attempt to cover head or tuck chin
Take Space	Moves forward quickly and after initial contact with role player attempts to move off angle and to the midline	Takes stomping steps forward and role player is taken out of posture	Moves forward and gives forward pressure	Takes a step forward but give no forward pressure	Does not move their feet or if they do they move backwards
Bicep Ties	After default student runs an arm drag and gains body lock/seat belt	After default hands come away from head and gain control of biceps, at least one hand sides down and gains a wrist tie	After default hands come away from head and gain control of biceps	After contact hands come away from head but they do not attempt to control biceps	Does not attempt to control biceps

Rubric 2: Ground Defense					
	Exceeding (5)	**Excellent (4)**	**Acceptable (3)**	**Learning (2)**	**Unacceptable (1)**
Posture	Head off mat, hands to face, elbows in, heels to butt, shoulders off the mat, core engaged, one hip off mat	Head off mat, hands to face, elbows in, heels to butt, shoulders off the mat, core engaged	Head off mat, hands to face, elbows in, heels to butt	Student lifts head off mat and brings their hands to the face but nothing else	Student lays flat on their back waiting for role player to gain full mount
Bridge	Non trapping arm goes to hip and pushes with bump. Adds knee kick start to bump	Sets posture prior to bumping. Bumps big, bumps big second time with look and reach	Lifts hips to full extension and bumps again for the second time to gain the escape	Attempts to lift hips off the mat but does not get full extension and/or does not bump the second time Bumps once, but does not bump the second time	Does not attempt to lift hips off the mat
Trap Arm	In addition to three and four student transitions to bicep ties immediately after the mount escape, postures, controls knees and exits	Student sets posture prior to role player sitting on them. Traps and pulls arm to chest with two hands and uses an elbow across role players chest to add leverage	Grabs arm and pulls it to the chest.	Grabs at arm but does not pull it to chest.	Does not attempt to trap arm
Trap Leg	Student hooks and traps the leg with a stomp while simultaneously trapping same side arm	Student hooks and traps the leg with a stomp	Student hooks and traps the leg	Tries to find role players leg with their foot but fails to trap the leg	Does not attempt to trap the role players leg
Control Limbs	Controls biceps then postures up and controls knees, shucks knees and exits out or knee rides	After reversal student buries head and controls biceps then postures up and controls knees	After reversal student buries head and controls biceps then postures up	Student keeps head buried and postures up but does not control limbs	After reversal student does not posture or attempt to control limbs

Rubric 3: Handcuffing					
	Exceeding (5)	**Excellent (4)**	**Acceptable (3)**	**Learning (2)**	**Unacceptable (1)**
Verbal Commands	Officer attempts to address the role player by name. Displays empathy but uses commands that leave no doubt officer is in charge	Simple, clear and easily understood. No hesitating pauses or verbal slips. Volume is appropriate to the situation.	Simple and easily understood. Minimal hesitation, verbal slips or "pause" words. Volume is appropriate for the encounter.	Commands are mostly understandable. There may be a noticeable number of verbal slips or long hesitations. Volume is appropriate for parts of the encounter.	Commands are confusing. There are a large number of hesitations and verbal slips. Volume is not appropriate for the situational context.
Hand Control	The hands are positioned together correctly and pulled away from the body. The officer tells the role player what he/she is doing as he/she is doing it. Officer pushes up person sleeves.	Hands are controlled before the officer accesses their handcuffs. The hands are positioned together correctly and pulled away from the body. The officer has firm but not painful control of the fingers.	Hands are controlled before the officer accesses their handcuffs. The hands are together and pulled away from the body.	Hands are controlled while the officer accesses their handcuffs. The hands are together but may not be in the correct position. Finger control is too loose or too forceful for the situational context.	Hands are not controlled before the officer accesses handcuffs. The hands are put into an awkward position.
Body Positions	Officer stands to the rear in an athletic stance. The subject is in a comfortable position facing away. This attribute is done with timing and finesse.	Officer stands to the rear in an athletic stance. The subject is in a comfortable position facing away.	The officer stands in a defensive posture. The subject is comfortably positioned facing away.	The officer stands in a defensive posture but sacrifices an athletic stance. The subject is put into a position not appropriate for the situation.	The officer approaches from the front, places the subject into an awkward position and uses too much force for the situation.
Handcuff Application	Handcuff is set against the wrist notch and push through, causing it to close smoothly with finesse.	Handcuff is set against the wrist notch and push through, causing it to close quickly and smoothly.	Handcuff is set against the wrist and pushed through. The handcuff is applied above the ulnar notch.	Handcuff is struck onto the wrist and pushed through, causing pain.	The handcuff is manually opened prior to placement on the wrist.
Handcuff Tightness	This attribute is done with speed, timing and finesse.	Equal and symmetrical space between the handcuff and the ulnar notch on both wrists. About 1/8th of an inch of space. Both handcuffs are double-locked.	Spacing is not equal on both wrists. Between 1/8th and 1/6th of an inch of space between skin and handcuffs. Both handcuffs are double-locked.	Spacing is not equal. The handcuffs are more that ¼ of an inch of space on one or more wrist. Both handcuffs are double-locked.	Handcuffs are too tight with no space between handcuffs and skin. Handcuffs are not double-locked.

Rubric 4: Decision Making Under Stress (*Modified Tueller*)					
	Exceeding (5)	**Excellent (4)**	**Acceptable (3)**	**Learning (2)**	**Unacceptable (1)**
Verbal Commands	Officer attempts to address the role player by name	Simple, clear and easily understood. No hesitating pauses or verbal slips. Volume is appropriate to the situation	Simple and easily understood. Minimal hesitation, verbal slips or "pause" words. Volume is appropriate for most of the encounter	Commands are mostly understandable. There may be a noticeable number of verbal slips or long hesitations	Does not use verbal commands
Gun Handling	Student fully loads gun high and in front of their face and attempts to reload by ripping the mag out of the gun when they run empty	Student fully loads gun high and in front of their face	Student pick up gun and fully loads gun	Student picks up the gun but does not fully load the gun	Student does not pick the gun up
Movement	Turns hips and moves toward second cover (never back peddles)	Turns their hips toward the cover and moves laterally toward cover while loading the gun	Moves laterally in the direction of the cover	Moves offline at an angle	Does not move their feet or they move backward
Cover	Moves to the second piece of cover and begins to aggress the role player	Uses Cover as an obstacle keeping the cover between them and the role player	Gets behind cover fully	Goes in the direction of cove but never gets fully behind it or kneels down behind cover	Does not use cover

Basic Police Academy

Domestic Violence



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Domestic Violence: Response and Investigations (Parts 1 and 2)

Instructional Goal:

This course is designed to introduce a new officer to basic factors related to domestic violence response and investigations.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Define the responsibilities of law enforcement in a report of domestic violence.
2. Identify dynamics of domestic violence that could impact the investigation.
3. Identify resources for law enforcement and victims in domestic violence investigations.
4. Articulate a plan for investigation of a given situation.

Content Outline:

- Definitions
- Dynamics of Domestic Violence
    - Power and Control
    - Cycle of Violence
- Statutory Requirements
- Arrests
- Protective Orders
- Lethality Indicators
- Advocates
- Community Competency and Gender Bias

Part 1

Introduction to Domestic Violence

The International Association of Chiefs of Police (IACP) defines domestic violence as abusive behavior in any relationship, as outlined by law, that is used to gain or maintain power and control over a current or former intimate partner or family or household member.

Domestic violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Additional forms of violence that may co-occur with domestic violence include, but are not limited to, verbal threats, acts of intimidation, property damage, animal cruelty, elder and child abuse, and stalking. Acts of domestic violence or abuse may include acts that inflict or threaten harm, as well as verbal threats, acts of intimidation, sexual abuse, strangulation, property damage, animal cruelty, and stalking.

The National Coalition Against Domestic Violence (NCADV) states there is no typical victim of domestic violence. Victims of domestic violence comes from all walks of life, varying age groups, all backgrounds, all communities, all education levels, all economic levels, all cultures, all ethnicities, all religions, all abilities, and all lifestyles.

Definitions under ORS 107.705

Domestic Violence	Abuse
Abuse between family or household members. "Family or household members" means any of the following: • Spouses • Former spouses • Adult persons related by blood, marriage, or adoption • Persons cohabiting with each other • Persons who have cohabited with each other or who have been involved in a sexually intimate relationship • Unmarried parents of a minor child Cohabiting defined by case law: The Oregon Court of Appeals, interpreting identical language in ORS 135.230 (4), has ruled "persons cohabiting with each other" means "persons living in the same residence in a relationship akin to that of spouses." "And are sexually intimate." State ex rel Juvenile Dept. of Washington County, v. CMC (June 1, 2011). Thus, the Court further ruled, it does not mean "simple roommates or dorm mates." Nor does it mean, "minor children and parents who live in the same residence."	Attempting to cause or intentionally, knowingly or recklessly causing physical injury; Intentionally, knowingly or recklessly placing another in fear of imminent serious physical injury; or Causing another to engage in involuntary sexual relations by force or threat of force.

Dynamics of Domestic Violence

Every relationship differs, but what is most common within all abusive relationships is the varying tactics used by abusers to gain and maintain power and control over the victim. Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that make others aware of the problem. However, regular use of other abusive behaviors by the abuser, when reinforced by one or more acts of physical violence, make up a larger scope of abuse. Although physical assaults may occur only occasionally, they instill fear of future violent attacks and allow the abuser to control the victim's life and circumstances.

Source: The National Coalition Against Domestic Violence

Power and Control Model

Batterers seek to gain and maintain power and control over their intimate partners by the use of actual and assumed power. Power takes the form of strategic, abusive tactics to reinforce this control.

The power and control wheel and the post-separation power and control wheel are particularly helpful tools in understanding the overall pattern of abusive and violence behaviors used by abusers to establish and maintain control over their partners both within and following a relationship. Very often, one or more violence incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.

Power and Control Wheel



Post-Separation Power and Control Wheel



Power and Control Wheel

Although many acts of psychological and emotional abuse are not specifically associated with violations of statutes, these serve as means for batterers to establish control. The Power and Control Wheel describes common tactics offenders use to control their victims, law enforcement, and others. The wheel illustrates the tools, pressures, and rationale utilized in justifying coercive and dominant behavior. It provides "snapshots" of coercive techniques: physical and sexual violence, emotional abuse, intimidation, threats, economic abuse, use of male privilege, attempts to isolate victims and manipulation and victimization of children.



Using Coercion and Threats	Using Intimidation	Using Emotional Abuse	Using Isolation
Making and/or carrying out threats to do something to hurt the victim Threatening to leave victim, to commit suicide, to report the victim to welfare Making victim drop charges Making victim do illegal things	Making victim afraid by using looks, actions, gestures Smashing things Destroying victim's property Abusing or killing pets Displaying weapons	Putting victim down Making the victim feel bad about self Calling victim names Making victim think the victim is crazy Playing mind games Humiliating victim Making the victim feel guilty	Controlling what victim does Controlling who the victim sees and talks to Controlling what victim reads Controlling where the victim goes Limiting victim's outside involvement Using jealousy to justify actions
Minimizing, Denying, and Blaming	**Using Children**	**Using Male Privilege (sense of entitlement)**	**Using Economic Abuse**
Making light of the abuse and not taking victim's concerns about it seriously Saying abuse does not happen Shifting responsibility for abusive behavior Saying victim caused it	Making the victim feel guilty about the children Using children to relay messages Using visitation to harass the victim Threatening to take children away	Treating victim like a servant Making all the big decisions Acting like "master of the castle" Being the one to define men's and women's roles Threatening to harm or kill children	Preventing the victim from getting or keeping a job Making victim ask for money Giving victim an allowance Taking victim's money away Not letting the victim know about or have access to family income

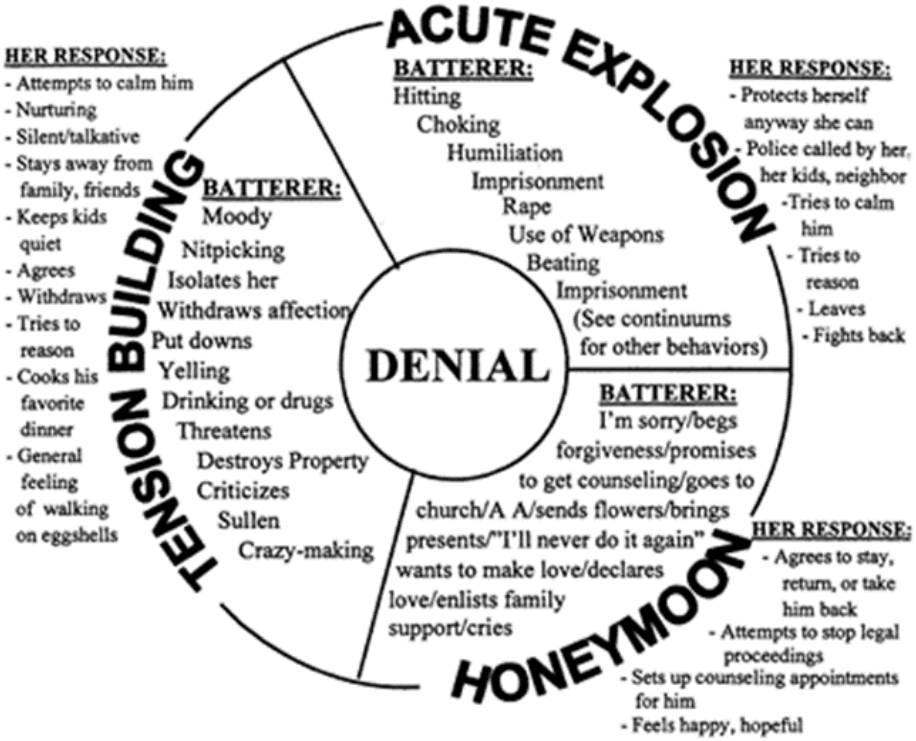
Cycle of Violence

Another model to help understand the dynamics of domestic violence is the cycle of violence developed in 1979 by Lenore Walker. The cycle of violence is a model developed to explain the complexity and co-existence of abuse with loving behaviors. It helps those who have never experienced domestic violence understand that breaking the cycle of violence is much more complicated than just "getting out" or leaving.

There are three phases in the cycle of violence:

1. Tension-Building Phase,
2. Acute or Crisis Phase, and
3. Calm or Honeymoon Phase.

Without intervention, the frequency and severity of the abuse tends to increase over time.



Some advocates however, find this model to be victim blaming and instead recommend a six-stage model as described below in Cycle B. While it is not critical for you as an officer to become experts on either model, it is important to develop a general understanding of the dynamics of domestic violence.

Cycle A: The Relationship	Cycle B: The Perpetrator
1. Tension Builds – The abuser's need for power and control underlie anger and blaming for any tension in the relationship. As tension escalates, the victim feels as if "walking on eggshells." 2. The Explosion – The batterer displays power and takes control of the situation, the outcome of the situation, and his/her partner through methods of abuse. The abuser consciously chooses to use abuse. 3. Loving and Contrite – The batterer romances, apologizes, and promises to change, adding to the confusion and fear that was caused by the abuse.	1. The Abuse – Batterer displays power and control through abusive methods. 2. Guilt and Fear of Reprisal – Batterer fears being "caught" or that the victim will seek revenge. 3. Rationalization – Abuser convinces the victim that the victim caused the abuse, ignoring any personal responsibility 4. Normal Behavior – The abuser behaves as if nothing has happened. Typically the victim is forced to participate in the cover-up through manipulation and guilt. 5. Planning and Fantasizing – Fantasies about past and future abuse feed the abuser's anger, leading to active planning for another episode. 6. Setting Up – The abuser will create and control situations in which the victim has no choice but to react in a way that will "justify" the abuse.

The Batterer

Domestic violence is about power and control. Examining or critiquing the victim's behavior takes the focus off the batterer's responsibility and supports the abuser's violent behavior.

Key Elements:

- Batterers will blame the victim
- Victims have no control over the batterer's violence
- Many batterers repeat the same pattern in all their intimate relationships

The following should not be considered excuses for domestic violence:

- Illness
  - An illness-based behavior causes only a small percentage (less than 5%) of violence against adult intimates.

- Genetics
  - Domestic violence is behavior learned through observation and reinforcement. It is not caused by genetics.

- Alcohol and Drugs
  - While it may be present in many domestic violence situations, alcohol does not cause someone to be violent. Alcohol can make a violent person more violent. Batterers often use alcohol as an excuse for their violence.

- "Out-of-control" behavior
  - The violence is controlled and usually directed only towards family members. Batterers make choices about whom they will abuse, what they will or will not do to the victim, and where and when they will strike. Such decision-making indicates abusers are very much in control of their abusive behavior.

- Anger
  - Some battering episodes occur when the batterer is not emotionally charged or angry, and some occur when the batterer is very emotionally charged.
  - Batterers choose violence or other control tactics, such as displays of anger to get what they want or that to which they feel entitled. The source of violence is not anger but rather an abuser's need to control.

- Stress
  - Everyone suffers from stress (e.g., job, relationship conflicts, illness, money, etc.), but stress does not "cause" people to be violent. Violence is a choice the perpetrator makes.

Why Batterers Batter

- Society said it is okay
  - Our society has condoned abuse in families for too long and failed to hold batterers accountable for violence.

- It works
  - Terrorized by abuse, the victim will say or do anything to survive.

- It's a choice
  - The batterer chooses to use violence to maintain power and control over the victim. If it were an anger issue, the violence would be evident in all parts of the batterer's life, work, home, social, etc. Like the batterer, everyone has problems, gets angry, and has stress, but not everyone chooses to use violence.

- It is About Control
  - An abuser wants total control of the victim and family and may use a combination of violence and abusive tactics to achieve and maintain control.

- It is a Learned behavior
  - Observation
  - Reinforcement
  - Family/childhood
  - Sports
  - Schools
  - Experience
  - Culture
  - Media
  - Communities
  - Peer groups

Batterer's Reality

I'm not doing anything wrong. If I am, I won't get caught. If I get caught, I'll talk my way out of it. If there are consequences, they'll be light.

The Victim

According to the IACP, due to the complex nature of these crimes and their devastating effects, a victim-centered and trauma-informed response to a domestic violence call is essential. Victims of domestic violence can display a variety of behaviors and officers should receive training on and be prepared for a range of possible responses. People react differently to trauma. Lack of or the presence of emotion is not an indicator of the legitimacy of the incident that occurred. Some victim behavior, such as minimizing or denying violence, may be a mechanism used to allow the victim and the victim's family to feel safer once law enforcement has left the scene and/or the perpetrator is released from custody.

Victims may also display the following characteristics:

- Passivity—victims may be quiet and reserved or appear reluctant to answer questions about the current incident or those that occurred in the past.
- Denial—victims may refuse to acknowledge that the abusive incident occurred, minimize the level of abuse, recant the account, deny allegations, reject further investigation, or defend the suspect.
- Anger—victims may appear upset with the suspect and/or officers; become irritated if officers have repeatedly been to the residence for prior reports of abuse, but no arrests have been made; believe that law enforcement is not providing sufficient protection from the suspect, even if an arrest is made; or verbally or physically attack officers.
- Laughing—victims may laugh or joke.
- Lack of emotion—victims may have a flat affect and not show any emotion. This is a normal response to trauma and should not be taken as an indication that the victim did not experience trauma.
- Fear—victims may be afraid of retaliation for law enforcement being called; scared that officers will not take action to stop the violence; fear that officers will believe the suspect's account; fear that authorities will take children away; or fear that threats the suspect has made will become reality.

In addition, some individuals may fear law enforcement itself due to past experiences or cultural norms.

In addition to potentially unpredictable emotional responses by victims, another discouraging aspect of handling domestic violence incidents for law enforcement officers is the frequency with which victims stay with or return to their abusive partner. An understanding of the dynamics of domestic violence, trauma response, and why it is common for victims to be reluctant to leave can be helpful in ensuring a quality, professional response for each call for service and the best possible outcome for victims, as well as improving officer morale and job satisfaction.

Victims of domestic violence use complex strategies to try to reduce risks and must consider a myriad of consequences when trying to pursue options for safety. For example, if the victim decides to call law enforcement, resources and supportive services may be acquired, a protective order may be obtained, and the victim may decide to leave the perpetrator, thereby ending the current attack. But by doing so, retribution may result—the violence may escalate; the perpetrator may threaten to take away or harm children, other family or friends, or pets; or the perpetrator may threaten to kill the victim or themselves.

However, under no circumstances should officers compromise their response to any incident or any victim based on personal judgments or frustrations. Throughout the entire response and investigation, officers should never make any statement that would discourage a victim from reporting an act of domestic violence; threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage future requests for intervention by law enforcement personnel; or avoid taking action because the victim stated that prosecution was not desired.

Because of the dynamics and trauma involved, victims have many reasons why they are reluctant to leave or seek to return to abusive relationships, to include, but not limited to, the following:

- Love or emotional attachment to the perpetrator;
- Promises that the abuse will end or never happen again;
- Financial dependence on the perpetrator;
- Issues involving children, including fears for their safety, of loss of custody, or of kidnapping—or any combination thereof;
- Guilt;
- Feelings that they did something to cause the abuse;

- Fear that leaving will not help to escape from the perpetrator's control;
- Fear of increased stalking behaviors;
- Fear of increased physical harm to self, children, family, friends, and pets if attempts to leave are made; Suicidal and homicidal threats made by the perpetrator;
- Previous negative experience with the criminal justice system;
- Lack of support and/or lack of knowledge of available resources;
- Fear of being alone;
- Fear of losing family and friends;
- Fear of not being believed or of being judged;
- Belief that they can "change" the perpetrator's behavior; and Religious or cultural beliefs.

Due to these reasons, it is fairly common for victims of domestic violence to later recant or deny their initial outcry of abuse.

Part 2

Arrests

ORS 131.005 defines probable cause as a substantial objective basis for believing that, more likely than not, an offense has been committed and a person to be arrested has committed it.

Most Commonly Arrested DV Crimes:

- Assault II
- Assault IV – misdemeanor
- Menacing
- Assault IV – felony
- Harassment *(not mandatory arrest)*
- Strangulation

Most Overlooked DV Crimes:

- Coercion
- Tampering with a Witness (Jail calls)
- Endangering a Protected Person by a FAPA Order

Other Related Crimes:

- Murder
- Burglary
- Stalking
- Kidnapping
- Recklessly Endangering
- Criminal Mistreatment
- Rape
- Sodomy
- Unlawful Sexual Penetration
- Sexual Abuse
- Child Neglect
- Endangering the Welfare of a Minor
- Robbery
- Manslaughter
- Animal Abuse
- Concealed Weapon
- Arson
- Trespass

Elements Defined

Physical Injury ORS 161.015 (6)	Serious Physical Injury ORS 161.015 (8)	Dangerous Weapon ORS 161.015 (1) (and the manner in which it's used)	Deadly Weapon ORS 161.015 (2)
Impairment of physical condition or substantial pain.	Physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of any bodily organ.	Any weapon, device, instrument, material, or substance which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or serious physical injury.	Any instrument, article, or substance specifically designed for and presently capable of causing death or serious physical injury.

ORS 163.187 Strangulation

A person commits the crime of strangulation if the person knowingly impedes the normal breathing or circulation of the blood of another person by:

(a) Applying pressure on the throat, neck or chest of the other person; or

(b) Blocking the nose or mouth of the other person.

Strangulation is a Class A misdemeanor. However, Oregon law provides for strangulation to be a Class C Felony if:

a) The crime is committed in the immediate presence of, or is witnessed by, the persons or the victim's minor child or stepchild or a minor child residing within the household of the person or the victim;
b) The victim is under 10 years of age;
c) The victim is a family or household member of the person;
d) During the commission of the crime, the person used, attempted to use or threatened to use a dangerous or deadly weapon
e) The person has been previously convicted of violating this section
f) The person has at least three previous convictions for violating this section
g) The person commits the strangulation knowing that the victim is pregnant.

May be done with:

- Hands
- With an object (ligature, i.e., rope, electrical cord, hoodie string, etc.)
- Forearm

Do NOT use the word "choked"

Choke:	Strangle:
an object blocks the windpipe	obstructs the normal breathing of a person

Visible signs:

- Redness / abrasions / bruising
- Look for patterns
- Look at the chin
- Scratch marks/scrapes
- Blood red eyes
- Capillary rupture (petechiae)
    - Most common in the eyes
    - May be found anywhere above the location of the strangulation, including in the scalp, behind the ears, etc.
- Rope burns, patterns
- Fingernail marks
    - Impression
    - Scratch
    - Claw marked

Batterer visible signs:

- May have injuries from the victim clawing at their hands/forearms
- Bite marks on hands/forearms/biceps

Victim's symptoms:

- Pain to throat
- Swallowing difficulty
- Hoarseness
- Loss of voice
- Nausea
- Difficulty breathing
- Mental: lack of oxygen
- Miscarriage
- Loss of consciousness
- Hyperventilation
- Defecation / urination
- Uncontrollable shaking
- Loss of memory

Always send medics to the scene. There could be possible brain damage from lack of oxygen or swelling that could cause death within 24 hours.

Questions to Ask

- Ask the victim to describe and/or demonstrate how it happened?
- Ask with one or two hands, from the front or rear, forearms, objects?
- If an object was used, where is it now?
- If an object was used, how did it get there?
- Was the victim shaken simultaneously while being strangled?
- Did the victim have difficulty breathing?
- Did the victim faint or lose consciousness?
- Any complaints of pain or discomfort?
- Any medical treatment?
- What made the suspect stop?
- What was the suspect saying as it occurred?
- Did the victim attempt to protect themself? If yes, describe.
- Ask the victim to sign a medical release.

Just because a victim does not have any physical signs of strangulation does not mean it didn't happen.

Mandatory Arrests

ORS 133.055 states when a peace officer responds to an incident of a domestic disturbance and has probable cause to believe that an assault has occurred between family or household members, as defined in ORS 107.705, or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.

Assault I, II, III, and IV	Menacing	Strangulation

The officer is not required to arrest both persons, and this practice is highly discouraged.

An arrest is the preferred response only with respect to the primary aggressor. When stories between the parties conflict, the officer should make every effort to look at all of the factors and determine who the primary aggressor is. The person who started the fight is not necessarily the primary aggressor. Nor is it always the person who caused the worst injury or the person who called 9-1-1.

In order to intervene effectively in domestic violence cases, it is important that officers understand the complex issues of violence within intimate relationships, including the:

1. intent of the offender,
2. the meaning of the act toward the victim,
3. the effect of the violence on the victim, and
4. the context within which any given act of violence occurred.

Determining Primary Aggressor

When making these arrest decisions, officers should utilize the totality of information gained from a thorough and comprehensive investigation to make a determination of who is the predominant aggressor. Officers must determine the person who poses the most serious ongoing threat to whom in the context within which the incident occurred. The officer shall make every effort to determine who is the assailant or potential assailant by considering, among other factors:

- The comparative extent of the injuries inflicted or the seriousness of threats creating a fear of physical injury;
- If reasonably ascertainable, the history of domestic violence between the persons involved;
- Whether any alleged crime was committed in self-defense; and
- The potential for future assaults.

Common methods used to identify alleged primary aggressor:

- Compare evidence (visible and non-visible) to statements.
- Compare victim/witness/suspect statements.
- Assess verbal/non-verbal communication.
- Review domestic violence history.
- Injuries (offensive v. defensive)
- Physical size differences.
- Consider the intent of the law.
- Consider the use of a weapon or threatened use of a weapon.
- Assess statements of children and neighbors.
- Assess verbal and non-verbal communication of parties involved.

Factors that should **NOT** be considered when making an arrest for domestic violence:

- The relationship of the parties.
- The likelihood of the victim cooperating with the prosecution.
- Sexual orientation
- Race
- Age
- Profession
- Disability
- Cultural, social or political position
- Prior contacts with parties
- Victim's request not to arrest suspect
- Verbal assurances that abuse will stop
- The suspect has left the scene
- Denial of abuse by either party when there is evidence of abuse at the scene
- Lack of court order
- Fear of reprisals against the victim by the suspect
- Adverse financial consequences to the victim or suspect
- Intoxication (drugs or alcohol) by either the victim or the defendant
- Presence of children or the immediate dependence of the children on the suspect
- Lack of restraining order
- Sympathy for the suspect
- Assumptions as to the tolerance of violence by cultural, ethnic, religious, racial, or occupation groups
- Absence of visible injury or complaints of injury
- Co-worker, friend, relative

Officer Liability

Officers are often concerned about the mandatory arrest laws and their liability in making the mandatory arrest. However, an officer must also consider the liability he or she faces when not making the arrest, and the victim is exposed to violence from the suspect who is not arrested. Pursuant to ORS 133.315, no peace officer shall be held criminally or civilly liable for making an arrest pursuant to ORS 133.055 (Criminal citation) (2) or 133.310 (Authority of peace officer to arrest without warrant) (3) or (5) provided the peace officer acts in good faith and without malice.

When a peace officer responds to an incident of a domestic disturbance and has probable cause to believe that an assault has occurred between family or household members, as defined in ORS 107.705 (Definitions for ORS 107.700 to 107.735), or to believe that one such person has placed the other in fear of imminent serious physical injury, the officer shall arrest and take into custody the alleged assailant or potential assailant.

Protective Orders

A restraining order or protective order is a legal order issued by a state court that requires one person to stop harming another.



According to the Oregon State Bar, an individual can get a restraining order under the Family Abuse Prevention Act if their situation fits the following criteria:

- Age of Petitioner. You are at least 18 years old. If you are younger, then you may seek a restraining order (1) if you are or you were married to the abuser, and/or (2) you have been in a sexual relationship with the abuser, and (3) the person who abused you is at least 18 years old. If you are over 18 and were protected by a restraining order as a child and that order is still in effect, you may ask the court to continue that order.

- Relationship to Abuser – Family and Household Members. The person who abused you is: 1) your husband, wife or domestic partner; or 2) your former husband, wife or domestic partner; or 3) an adult with whom you are living (or did live) in a sexual relationship; or 4) an adult with whom you have been in a sexual relationship in the last two years (this two-year requirement does not apply to a petitioner who is a minor); or 5) an adult related to you by blood, marriage (caution: legal marriage in this context is distinct from co-habitation) or adoption; or 6) the parent of your child.

- Meaning of Abuse. If in the last 180 days, the person you wish to restrain has: physically injured you; or tried to physically injure you; or made you afraid that he or she was about to physically injure you or made you have sexual relations against your wishes by using force or threats of force. (Note that any time period in which the person who abused you was in jail or lived more than 100 miles from your home does not count as part of the 180-day period. This means you may still be able to get a restraining order even if it has been more than 180 days since you were abused.). When you complete your petition, please make sure that you describe in detail the nature and the dates of the abuse.

- Danger of Further Abuse. You have to show that you are in danger of further abuse, such as threats from the abuser. Danger of further abuse can be shown with incidents of prior abuse, even if the prior abuse happened more than 180 days ago.

- Credible Threat to Safety of Petitioner or Petitioner's Child. In court, you have to show that the abuser represents a credible threat to your physical safety or to your child's physical safety. Showing danger of further abuse usually satisfies the requirement to show credible threat to yourself or your child.

- NOTE: A judge cannot give you a restraining order solely for threats to take your children, rude behavior, verbal or emotional abuse, or damaged property unless you were in fear that you were about to be physically injured.

Once issued, the order is effective for ~~one year~~ two years (effective Jan 1, 2024). However, the abuser may object by requesting a hearing within 30 days after he or she was served with the order. If the abuser does not do that, then the restraining order will remain effective. After the 30-day period, the abuser may only request a hearing dealing with modification of custody or parenting-time provisions or requesting less restrictive terms regarding ouster.

Violation of a restraining or stalking order are mandatory arrests under ORS 133.310 (3), as is the failure to comply with a no-contact condition in a release agreement as described in ORS 133.310 (6).

ORS 24.190 Foreign Restraining Orders

Under Oregon law, protection orders from other states, Indian tribes, or territories are called "foreign restraining orders" and require enforcement action.

Examples:

- District of Columbia
- Indian tribes
- Commonwealth territory

When there is probable cause to believe that a violation of a foreign restraining order has occurred, officers shall take into custody a person restrained by the order when a protected party

1. Presents a copy of the foreign order to the officer and represents to the officer that the order supplied is the most recent order in effect and the person restrained by the order has been personally served or has actual notice of the order
   Or
2. Where a voluntary entry of the order into LEDS or the National Crime Information Center (NCIC) establishes the existence of the foreign restraining order.

ORS 163.192 Endangering a Person Protected by a Family Abuse Prevention Act Restraining Order

A person commits the offense if having been (1) served with the order (or appeared in Court, waiving service), (2) intentionally engages in conduct prohibited by the order; and (3) while engaging in the prohibited conduct, recklessly creates a substantial risk of physical injury to the protected person, or intentionally attempts to place them in imminent fear of physical injury.

ORS 133.035 Emergency Protective Order

Authorizes a police officer to obtain an ex parte emergency protective order when the police officer has responded to an incident of domestic violence or the person is in imminent danger of abuse by a family or household member. The emergency protective order expires seven days from the date the Court signs the order.

ORS 166.250 Unlawful Possession of Firearms

Prohibits persons from possessing firearms or ammunition if they are subject to a restraining order **or** have been previously convicted of a qualifying misdemeanor. Persons are not allowed to possess any firearm or ammunition if they are subject to a court order that restrains the person from stalking, intimidating, molesting, or menacing an intimate partner, a child of an intimate partner, or a child of the person. The Court must have made a finding that the person represents a credible threat to the physical safety of an intimate partner, a child of an intimate partner, or a child of the person. To qualify, the order must also be one in which the person had actual notice and a hearing where they had the opportunity to be heard. Persons are not allowed to possess any firearm or ammunition if they have been convicted of a qualifying misdemeanor where the victim was, at the time of the offense, a family or household member of the victim of the offense. A "qualifying misdemeanor" is any misdemeanor that has, as an element of the offense, the use or attempted use of physical force or the threatened use of a deadly weapon.

No Contact Orders

ORS 135.247 requires that all defendants in custody for domestic violence and sexual assault crimes shall be subject to a no-contact condition with their victim(s). This shall be put into place by the Judge at arraignment. It may also be put into place prior to arraignment by a release officer who denies release for a defendant but adds it as a condition while the defendant remains in custody. The defendant shall be given a copy of this condition in writing.

The no-contact order shall remain in effect until the defendant is sentenced for the crime, the charge is dismissed, or the defendant is acquitted of the crime. The victim may petition the Court to terminate the no contact order prior to its termination after a hearing on the matter, and a finding by the Court that terminating the order is in the best interests of the parties and the community.

Violation of this order is punishable by contempt of the Court.

Defendants are additionally prohibited from attempting to contact the victim directly **or** through a third party.

Stalking

Each County in Oregon is unique regarding the procedure and policies with this statute. Your DA's office will have more information.

ORS 163.732 defines stalking as knowingly alarms or coerces another person or a member of that person's immediate family or household by engaging in repeated and unwanted contact with the other person. This crime is an A Misdemeanor.

ORS 163.750 defines violating a stalking order as a person served with a court's stalking protection order, subsequent to the order, has engaged intentionally, knowingly or recklessly in conduct prohibited by the order. This crime is a C Felony.

How to get a Stalking Order:

- Probable cause
    - Mandatory to serve stalking order
    - ORS 163.735- Citation to appear
- Good for life
- Automatic hearing
- No relationship restrictions

Federal Statutes

Possession of Firearm

a. 18 USC, § 922 (g)(8) (while subject to protection order): It is a federal crime when a person ships or transports in interstate or foreign commerce, or possesses in or affecting commerce, any firearm or ammunition, or receives any firearm or ammunition which has been shipped or transported in interstate or foreign commerce, when that person is subject to a court order that; was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate; restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury;

b. 18 USC, § 922 (g)(9) (after conviction for misdemeanor crime of violence): It is a federal crime when a person ships or transports in interstate or foreign commerce, or possesses in or affecting commerce, any firearm or ammunition, or receives any firearm or ammunition which has been shipped or transported in interstate or foreign commerce when that person has been convicted in any court of a misdemeanor crime of domestic violence.

Interstate Domestic Violence – Crossing a State Line

a. 18 U.S.C., § 2261 (a)(1) (travel with intent to injure which results in injury): It is a federal crime when a person who travels across a state line or enters or leaves Indian Country with the intent to injure, harass or intimidate that person's spouse or intimidate that person's spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner.

b. 18 USC, § 2261 (a)(2) (forced travel which results in injury): It is a federal crime when a person who causes a spouse or intimate partner to cross a state line or leave or enter Indian Country by force, coercion, duress or fraud and in the course or as a result of that conduct, intentionally commits a crime of violence and thereby causes bodily injury to the person's spouse or intimate partner.

c. 18 USC, § 2261A (travel with intent to stalk): It is a federal crime when a person travels across a state line or within the special maritime and territorial jurisdiction of the United States with the intent to injure or harass another person, and in the course of or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to that person or a member of that person's immediate family.

Interstate Travel to Violate Protection Order

a. 18 USC, § 2262 (a) (1) (travel with intent to violate protection order): It is a federal crime when a person travels across a state line or enters or leaves Indian Country with the intent to engage in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued.

b. 18 USC, § 2262 (a)(2) (forced travel which results in injury in violation of protection order): It is a federal crime when a person causes a spouse or intimate partner to cross a state line or to enter or leave Indian Country by force, coercion, duress, or fraud, and in the course or as a result of that conduct, intentionally commits an act that injures the person's spouse or intimate partner in violation of a valid protection order issued by a state.

Resources for violations of Federal Statutes

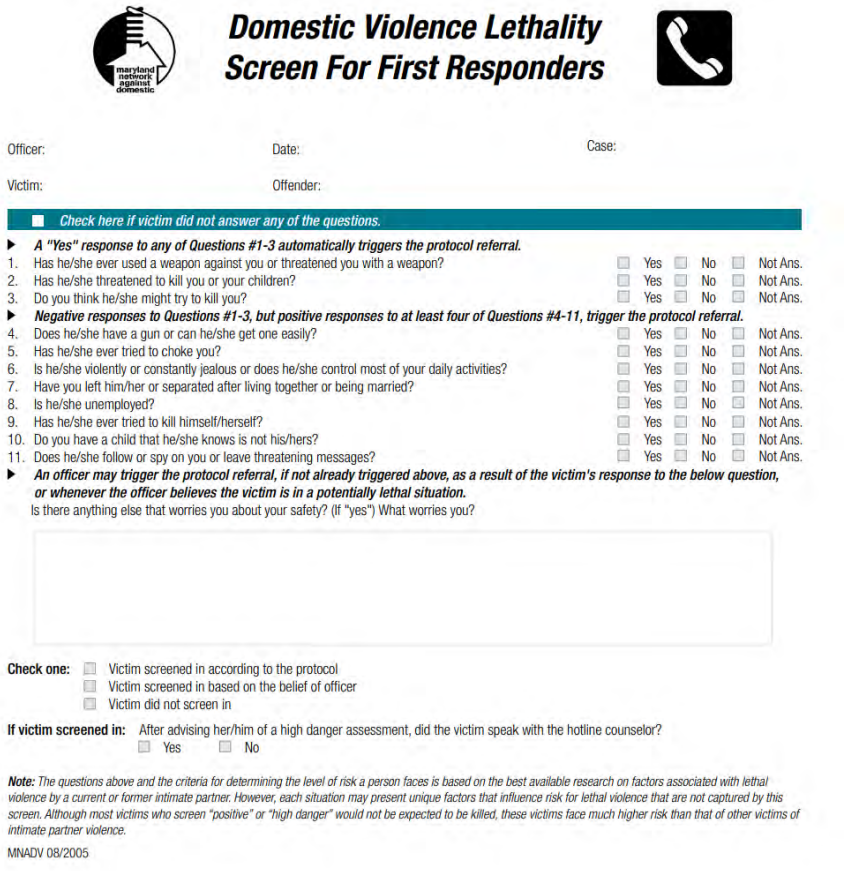
- Attorney for the District of Oregon
  - Portland 503-727-1000
  - Eugene 541-465-6771
  - Medford 541-776-3564
- ATF or FBI
- Contact your local DA to assist you in taking a case to federal prosecution.
- Full Faith and Credit Project is a federally financed program that employs people who can clarify and answer questions that law enforcement officers may have regarding enforcement of the federal statutes. 1-800-256-5883

The Investigation

Lethality Indicators

As previously described, without intervention, the frequency and severity of the abuse tends to increase over time. While it is not possible to predict when such violence will escalate to lethal violence, research provides some common factors to be aware of. The presence of risk factors do not mean a subject will commit violence, but they do suggest a correlation: a subject who commits certain acts is more likely than a subject who does not commit these acts, to severely assault or kill an intimate partner (Weisberg, 2019). Your agency may utilize a risk assessment checklist, such as the Lethality Assessment Program (LAP) to help screen for these factors. Examples:

- Victim thinks the subject might try to kill them.
- Subject has ever used or threatened use of a weapon.
- Subject has ever tried to choke victim.
- Victim has left/separated from the subject after living together or being married.



Domestic Violence Lethality Screen For First Responders

Officer: Date: Case:

Victim: Offender:

☐ *Check here if victim did not answer any of the questions.*

▶ ***A "Yes" response to any of Questions #1-3 automatically triggers the protocol referral.***

1.	Has he/she ever used a weapon against you or threatened you with a weapon?	☐ Yes	☐ No	☐ Not Ans.
2.	Has he/she threatened to kill you or your children?	☐ Yes	☐ No	☐ Not Ans.
3.	Do you think he/she might try to kill you?	☐ Yes	☐ No	☐ Not Ans.

▶ ***Negative responses to Questions #1-3, but positive responses to at least four of Questions #4-11, trigger the protocol referral.***

4.	Does he/she have a gun or can he/she get one easily?	☐ Yes	☐ No	☐ Not Ans.
5.	Has he/she ever tried to choke you?	☐ Yes	☐ No	☐ Not Ans.
6.	Is he/she violently or constantly jealous or does he/she control most of your daily activities?	☐ Yes	☐ No	☐ Not Ans.
7.	Have you left him/her or separated after living together or being married?	☐ Yes	☐ No	☐ Not Ans.
8.	Is he/she unemployed?	☐ Yes	☐ No	☐ Not Ans.
9.	Has he/she ever tried to kill himself/herself?	☐ Yes	☐ No	☐ Not Ans.
10.	Do you have a child that he/she knows is not his/hers?	☐ Yes	☐ No	☐ Not Ans.
11.	Does he/she follow or spy on you or leave threatening messages?	☐ Yes	☐ No	☐ Not Ans.

▶ ***An officer may trigger the protocol referral, if not already triggered above, as a result of the victim's response to the below question, or whenever the officer believes the victim is in a potentially lethal situation.***

Is there anything else that worries you about your safety? (If "yes") What worries you?

Check one: ☐ Victim screened in according to the protocol
☐ Victim screened in based on the belief of officer
☐ Victim did not screen in

If victim screened in: After advising her/him of a high danger assessment, did the victim speak with the hotline counselor?
☐ Yes ☐ No

Note: *The questions above and the criteria for determining the level of risk a person faces is based on the best available research on factors associated with lethal violence by a current or former intimate partner. However, each situation may present unique factors that influence risk for lethal violence that are not captured by this screen. Although most victims who screen "positive" or "high danger" would not be expected to be killed, these victims face much higher risk than that of other victims of intimate partner violence.*

MNADV 08/2005

An assessment tool that can be used by victims to raise their awareness of danger, the Danger Assessment, includes questions such as:

- Has the physical violence increased in severity or frequency over the past year?
- Does he own a gun?
- Do you have a child that is not his?
- Does he control most or all of your daily activities? (For instance: does he tell you who you can be friends with, when you can see your family, how much money you can use, or when you can take the car?

Research finds that victims' perceptions of their risk of danger is inaccurate. Fewer than half of the women who are eventually killed by their partners accurately perceive their risk of death. Various reasons exist why victims' perceptions of risk are so unreliable. Some victims are unable to accurately perceive their risk because they experience the victimization as a normal part of intimate partner relationships. Use of risk assessment helps alert the victim to both the likelihood and severity of re-abuse.

For officers, using a risk assessment tool can help in the identification high-risk victims and assist in safety planning. Studies have found that in jurisdictions where officers use the LAP screen, more protective strategies were put into place and there was less severe and less frequent re-victimization. Additionally, studies find strengthened evidence collection leading to improved prosecution and greater batterer accountability (Weisberg, 2019).

It is important for officers to know local resources to assist victims. For example:

- Domestic violence shelter
- Department of Human Services (DHS)
- District Attorney's office – Advocates
- Adult and Family Services
- Law enforcement agencies
- AT&T Language Line
- Social Service Agencies- CARDV, other
- Restraining Orders

Advising the Victim – ORS 133.055 (3)

Remember your Supporting Victims of Crime course, the elements of the rights and remedies brochure should be explained to the victim.

- Convey to the victim concern for his/her safety.
- Inform the victim on how to get a restraining order.
- Advise the victim that the incident report will be sent to the local domestic violence center.
- Advise the victim of what to expect in the near future concerning the processing of the case.

Working with Advocates

What is the role of an advocate? Victim advocates provide support, help victims understand the criminal justice processes, and explain community resources. There are often advocates located within the justice system, such as within the District Attorney's Office, and there are community-based advocates, such as in a non-profit. Some law enforcement agencies partner with volunteer advocates who can help develop safety plans. Some advocate services:

- Providing information on victimization
- Providing information on victims' legal rights and protections
- Providing information and navigation in the criminal justice process
- Providing information and assistance in applying for Protective Orders
- Providing emotional support to victims
- Providing systems navigation with DHS Child Welfare and Self Sufficiency
- Helping victims with safety planning
- Helping victims with victim compensation applications
- Helping victims submit comments to courts and parole boards
- Intervening with creditors, landlords, and employers on behalf of victims
- Helping victims find shelter and transportation
- Provide victims with immediate physical needs, i.e., food, diapers, clothing, etc.
- Providing referrals for other services for victims
- Notifying victims of inmates' release or escape (VINES)

It's important for Officers and Advocates to both know each other's roles but stay in their lane when working together. When an advocate is not available, then the officer may need to help with safety planning; information on the victim's legal rights and protections, transporting the victim to a safe location, provide information and navigation of the criminal justice system, inform the victim about VINES and how to register.

Also, most community-based advocates are bound by confidentiality and have privilege when talking to a victim. They will need a Release of Information (ROI) from the victim to share part or all of what the victim has told them with officers. This does not preclude the officer from sharing their concerns with the advocate to better help protect the victim through safety planning, but it will prevent the advocate from sharing information with the officer. Government-based advocates generally do not have confidentiality or privilege attached to their communications with victims. Often, they will be mandatory reporters for child abuse and self-harm (i.e., suicide). Understanding the differences between the types of advocates and their legal requirements surrounding confidentiality and privilege will make the working relationship smoother.

Investigation Complexities

Due to the complex dynamics of domestic violence, officers must demonstrate patience, compassion, empathy and professionalism. Remember there are numerous factors that influence a victim's decision to report abuse or leave an abusive situation. Due to this uncertainty, it should be anticipated that the victim will sign an affidavit that recants any earlier statement.

Investigation Challenges:

- Assume the victim will recant.
- Assume the children will recant.
- Assume that any injury will be healed before any hearing.
- Assume that anything that is broken will be fixed or thrown out.
- Assume that anything that is not photographed will be denied.
- Assume that the suspect will contact the victim before the District Attorney will.

Considering these assumptions, what investigation steps are important?

- To protect the victim and children?
- To identify, preserve, and document evidence?

Evidence-Based Prosecution

According to the Office of Justice Programs, evidence-based prosecution refers to the practice of using independent corroborative evidence to prove the elements of the crime without relying on the victim's testimony.

Independent, corroborative evidence that can be used in such cases includes a 911-call recording; visible injuries photographed by a police officer or observed by a person other than the victim; physical evidence at the crime scene such as a weapon, broken furniture, victim's torn clothing, or a damaged telephone; medical testimony that documents injuries or statements made by the victim; eyewitnesses who saw or heard the event; transcripts of prior testimony by the victim; statements that fall under exceptions to the hearsay rule; and admissions by the defendant.

Corroboratory Evidence/Statements

A domestic violence investigation is a search for the truth. Statements are great evidence, but corroborating the victim/witness/suspect statements with other accounts of the incident or comparing to what physical evidence is at the scene will help determine what happened.

Without victim cooperation:

- Hearsay Exceptions – ORS 40.460
- Excited utterances – document
- Medical diagnosis and treatment
- 24-hour rule – ORS 40.460 (26)(a)

Interviewing the Suspect

Remember, the suspect is a master at manipulating people and situations. They will try to manipulate officers as well. When interviewing the suspect:

- Do not make accusatory statements while questioning the batterer. Allow them to tell their version of the incident before confronting them with contradictory information.
- Do not collude or support the suspect's statements as to the reasons for the abuse.
- Document all spontaneous statements as to the reasons for the abuse.

Children and Domestic Violence

Source: The National Child Traumatic Stress Network

Children exposed to domestic violence may experience traumatic stress in response to events that they perceive to be dangerous or threatening. Studies have shown that children exposed to domestic violence are vulnerable to developing mental health problems and becoming victims and perpetrators in the future. The actions of law enforcement officers can have a powerful impact in helping to stop this devastating cycle of violence.

When responding to a domestic violence scene:

- Check for signs of children's presence; recognize the ways that children may be present, both directly and indirectly.
- Try not to interview parents in a child's presence.
- Avoid making an arrest in a child's presence, if possible.
- Keep children with known adults; whenever possible – identify someone at the scene who can take care of them.

Interviewing Children

- Do not use them as translators
- Note statements made to the child
- Document:
    - excited utterances
    - signs of injuries
    - healing wounds
    - demeanor

An assault is witnessed if the assault is seen or directly perceived in any other manner by the child. Call the DHS Hotline if children are present, witness, or reside in the home.

Documentation

- A report must be made whether an arrest is made or not.
    - Document why no arrest was made.
    - If both persons are arrested, document why (this should rarely be the case, i.e., true mutual combat.) You will need to justify why neither party was identified as the primary aggressor.
- Documentation will give a history to the location if there are future calls.
- When given rights and remedies (regardless if an arrest is made) there should be documentation.

The agency must send a copy of the report and any subsequent, supplemental, or related report minus all victim/witness statements and other materials that are part of an active criminal investigation to the certified domestic violence center.

Call Response

According to Lexipol, domestic disturbance calls are among the most dangerous calls for officers. In a 2018 article, the following explanation regarding contributing factors was provided:

> *Why are domestic incidents so dangerous? Emotions run extremely high during such calls. The people involved are often desperate and conflicted, and alcohol or drugs may be a factor. The report also acknowledges poor information sharing and a lack of coordination between responding officers as factors. But the authors focus in on something else: the fact that officers are frequently dispatched alone or respond alone to such calls until backup arrives.*

Throughout the academy, you have learned and practiced safe and effective tactics. Consider how these tactics apply in a domestic disturbance response.

Crisis Intervention

Crisis intervention is the act of entering a situation that has reached a critical phase in order to modify and defuse it. Throughout the academy, you have learned and practiced communication strategies for a variety of circumstances, including crises. An aggressive approach to resolving crisis situations or disputes can result in negative responses and situations. When handling crises, the officer should employ calming intervention techniques.

Civil Stand-by

Oregon law provides an opportunity for individuals to request an officer accompany them during a meeting with the subject of a restraining order. Such interactions are limited to 20 minutes and are intended to allow the person to collect personal belongings. During a civil stand-by, officers do not intervene in disputes over ownership of the property, nor can they require the subject to grant access to the property.

ORS 107.719 states a peace officer who accompanies removing essential personal effects pursuant to an order issued under ORS shall remain for up to 20-minutes and may interrupt the removal of property at any time. Nothing in this subsection shall affect a peace officer's duty to arrest under ORS 133.055 and 133.310. The party removing essential personal effects from the residence is entitled to be accompanied by a peace officer on one (1) occasion only. The peace officer that accompanies a party removing essential personal effects shall have immunity from any liability, civil or criminal, for any action of the party committed during the removal of essential personal effects.

Note: During a civil standby, an officer may be called away for emergencies. Check with local policy and procedures with your agency and district attorney's office on what to do if this occurs.

Community Competency

Source: U.S. Department of Justice- Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence (2015)

Sexual assault and domestic violence are crimes that disproportionately impact women, girls, and lesbian, gay, bisexual, and transgender (LGBT) individuals in the United States. According to surveys conducted by the Bureau of Justice Statistics and the Centers for Disease Control and Prevention (CDC):

- 90 percent of all cases of rape involve female victims.
- Nearly one in five women in the United States (18.3 percent) have been raped.
- About one in four women (24.3 percent) and one in seven men (13.8 percent) in the United States have experienced severe physical violence at the hands of an intimate partner.
- 44 percent of lesbian women and 61 percent of bisexual women have experienced rape, physical violence, and/or stalking by an intimate partner.
- 26 percent of gay men and 37 percent of bisexual men have experienced rape, physical violence, and/or stalking by an intimate partner.
- While there is a lack of data on the violence experienced by transgender individuals, community-based studies indicate high levels of victimization.

Gender Bias

One critical part of improving police response to allegations of sexual assault and domestic violence is identifying and preventing gender bias in policing practices. Gender bias in policing practices is a form of discrimination that may result in police providing less protection to certain victims on the basis of gender, failing to respond to crimes that disproportionately harm people of a particular gender or offering reduced or less robust services due to a reliance on gender stereotypes.

Explicit and implicit biases, including stereotypes about gender roles, sexual assault, and domestic violence, are embedded in our culture and can affect people in all different professions. With respect to policing, these biases may affect law enforcement officers' perceptions of sexual assault and domestic violence incidents and prevent them from effectively handling allegations of these crimes. The intersection of racial and gender stereotypes and biases can also pose unique difficulties for women and

LGBT individuals of color seeking police services to address sexual assault and domestic violence incidents. In some cases, a police officer may discriminate against victims of sexual assault or domestic violence because of a general bias against women or LGBT individuals. More commonly, discrimination may be based on explicit stereotypes about women or LGBT individuals. Acting on stereotypes about why women or LGBT individuals are sexually assaulted, or about how a victim of domestic violence or sexual assault should look or behave, can constitute unlawful discrimination and profoundly undermine an effective response to these crimes. For example, if an officer believes a sexual assault to be less severe because the victim was assaulted by an acquaintance or was intoxicated when the assault occurred, or based on stereotypical assumptions about a victim who is a gay man or lesbian woman assaulted by his or her partner, that is gender bias and may constitute unlawful discrimination.

Effective Response Strategies

1. Recognize and Address Biases, Assumptions and Stereotypes about Victims

   In responding to a report of sexual assault or domestic violence, law enforcement officers should not base their judgments as to the credibility of a victim's account on assumptions or stereotypes about the "types" of people that can be victims of sexual assault, or about how victims of sexual assault and domestic violence "should" respond or behave

2. Treat All Victims with Respect and Employ Interviewing Tactics That Encourage a Victim to Participate and Provide Facts About the Incident

   A victim who is treated with respect is more likely to continue participating in an investigation and prosecution than one who feels judged or blamed for a sexual assault or domestic violence incident. Law enforcement agencies should take affirmative steps to ensure that, throughout their investigations, officers treat victims with respect and dignity, and use appropriate trauma-informed interviewing techniques to establish a rapport with the victim.

3. Investigate Sexual Assault or Domestic Violence Complaints Thoroughly and Effectively

   Unlike many other crimes, incidents of sexual assault and domestic violence frequently occur in more private settings, with few, if any, witnesses present. As a result, it is crucial that LEAs undertake a thorough investigation of these crimes by gathering, preserving and analyzing as much evidence, particularly corroborative evidence, as quickly as they can

4. Appropriately Classify Reports of Sexual Assault or Domestic Violence

   Complaints of sexual assault and domestic violence should be classified in a manner that will allow them to be fully investigated. If a sexual assault or domestic violence complaint is given an improper or non-criminal classification, the case may be closed before an investigation has been conducted. Like any other allegation of a crime, the determination that a sexual assault or domestic violence complaint is unsubstantiated should be made only after a thorough and full investigation, as discussed in Principle 3, and not presumptively at the classification stage. In order to encourage accurate classification of reports of sexual offenses, officers must be knowledgeable not only about their agency's procedures for documenting such reports, but also about the elements of sexual assault and domestic violence offenses, so that they can better identify incidents that meet those criteria.

5. Refer Victims to Appropriate Services

   Officers should take steps to address the medical, emotional, safety and other needs of victims of sexual assault and domestic violence at the time they report an incident or make a complaint.

6. Properly Identify the Assailant in Domestic Violence Incidents

   It is essential that officers are trained to identify the predominant aggressor when responding to domestic violence incidents, and make arrests accordingly. Law enforcement officials should be aware of the potential for abusers to report domestic violence complaints preemptively, claiming that they themselves are the victims of domestic violence

Summary

- Domestic violence involves many behaviors, which may or may not be crimes.
- Law enforcement intervention is vital to the process of breaking the cycle of violence.
- An arrest provides safety to victims, families, and the community.
- An arrest sends the message that domestic violence will not be tolerated.
- The officer should be aware of local resources and service providers.
- Refer police report to DA and victim's advocate.
- Know your local procedure for obtaining a domestic violence restraining order.
- Always provide victim's assistance cards.
- Determine if follow-up for the case is necessary. Complete the follow-up or refer the follow-up according to your agency's policy.

Basic Police Academy

Drugs That Impair Driving



Drugs that Impair Driving





Participant Manual

March 2016

Drugs that Impair Driving

The Drugs that Impair Driving course is a cooperative effort between the Oregon Department of Public Safety Standards and Training (DPSST) and the Oregon Drug Evaluation and Classification Program. This 8-hour course is recognized by the Board on Public Safety Standards and Training as meeting the training requirements of ORS 813.131(3).

DPSST would like to recognize the efforts of the following individuals in putting this course together:

David Beatty, DPSST Traffic Safety Training Coordinator Lt.

Evan Sether, OSP, Former Oregon State DRE Coordinator

Lt. Robert Hayes, Albany PD

Officer Jeff Durbin, Gresham PD (retired 2020)

Questions regarding this course should be directed to the DPSST Traffic Safety Training Coordinator:

David Beatty
4190 Aumsville Hwy SE
Salem, OR 97317
David.Beatty@dpsst.oregon.gov
503-378-8742

Drugs that Impair Driving



Drugs that Impair Driving

Session I – Introduction to DID



Overall Course Goals

- This course will train participants to observe, identify, recognize and articulate the signs of impairment related to drug impaired driving in order to comply with ORS 813.131(2)
- Students will be able to recognize and respond properly to medical conditions that mimic drug impairment



Overall Course Objectives

- Participants will be able to describe the relationship of drugs to impaired driving incidents (I)
- Participants will demonstrate the attitude that enforcing DUII laws, including drug impaired driving, is important (I)
- Participants will be able to list the procedures required under the Oregon Implied Consent law to request urine (I)

Overall Course Objectives

- Participants will be able to use the alternative field sobriety tests listed in OAR 257-025-0012 under field conditions to detect impairment (II)
- Participants will be able to list the methods of ingestion for drugs (III)
- Participants will be able to list the seven drug categories (IV)
- Participants will be able to document and articulate the signs of drug impairment clearly and convincingly in reports and testimony (IV)

Overall Course Objectives

- Participants will be able to list and recognize the possible outcomes of poly-drug use (V)
- Participants will be able to recognize and deal with medical conditions that mimic drug impairment (VI)
- Given a group of written scenarios, participants will demonstrate the ability to associate the observable signs of drug impairment with a particular drug category (VII)

Drug Definition



What's the Most Common Drug?



2013 National Survey on Drug Use and Health (Alcohol)

- 137 million people (52%) consider themselves to be drinkers
- 60 million people (23%) reported binge drinking
- Heavy drinking was reported by 6.3% of the population – about 16.5 million people
- 11% of the population – almost 29 million people – reported driving under the influence of alcohol at least once in the past year



2013 National Survey on Drug Use and Health (Alcohol)

- For people 21-25 years of age, almost 20% reported driving under the influence of alcohol in the past year.
- Males (14.1%) were more likely than females (7.9%) to have driven under the influence of alcohol in the past year

2013 National Survey on Drug Use and Health (Illicit Drugs)

- 24.6 million Americans are current illicit drug users. The percentage of Americans using illicit drugs has increased from 7.9% in 2004 to 9.4% in 2013.
- Almost 20 million of these use marijuana

2013 National Survey on Drug Use and Health (Illicit Drugs)

- Tranquilizers 1.7 million
- Stimulants 1.4 million
- Methamphetamine 595,000
- Cocaine 1.5 million
- Heroin 289,000
- Hallucinogens 1.3 million

2013 National Survey on Drug Use and Health (Illicit Drugs)

- 9.9 million people (3.8%) reported driving under the influence of illicit drugs during the past year.



What are not Drugs?

What substances would a physician call “drugs” that don’t fit this definition?

What substances fit our definition for “drug”, but are not considered impairing substances under Oregon’s DUII statute?



Group Exercise

- Discuss in your groups:
  - How should you deal with people who claim to be impaired by something not covered in the DUII statute?
- Report your conclusions back to the class



This course will NOT make you a Drug Recognition Expert (DRE)…

…but this **IS** the training that certifies you to request urine under Implied Consent



ORS 813.131
Implied Consent to Urine Test



Implied Consent Procedures

- Follow all Implied Consent procedures for alcohol
- Read Section II of the Implied Consent Rights and Consequences (back of the 1st page of the Implied Consent Combined Report)
- The individual retains the same rights to consultation as with the decision to provide a breath sample

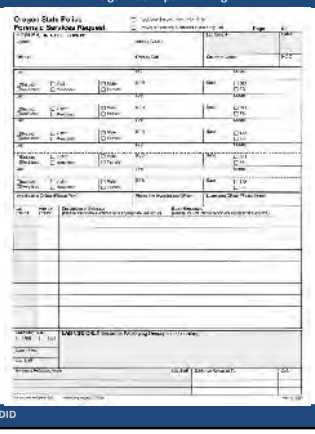


Implied Consent Procedures

- If the person consents you must give them privacy to provide the sample
- You can (and should) prevent tampering
  - Shut off the water supply to the toilet
  - Put dye in the toilet
- Use the collection sample provided by the OSP crime lab

Implied Consent Procedures

- Submit the sample to the OSP Crime Lab using the OSP Form 49
- The form should specify "Test for Controlled Substances"
- Specify which substance, if you know



Implied Consent Procedures

- Prepare the Implied Consent Combined Report when:
  - The individual refused to provide a urine sample
  - The individual provides the sample, but there is an additional suspension.
  - Example – a minor has a BAC of .04%, and shows signs and symptoms of Cannabis use. Even if the minor submits to the urine test, there is still a suspension due to having a BAC above .00%

Implied Consent Procedures

- You cannot require someone to submit to a urine sample under Implied Consent if they refuse the breath test, unless:
- The individual was involved in a motor vehicle crash and there is reasonable suspicion to believe they are under the influence of a controlled substance, or and inhalant, or a combination.

Implied Consent Hearings

- Just as in DUII – alcohol, the driver has the right to a hearing to determine the validity of the suspension.
- It is an affirmative defense that the suspect was medically unable to provide a urine sample. The burden of proof lies with the defendant.

Citing the Driver

- Do not charge DUII – Drugs on your citation. Not all drugs are controlled substances.
- Charge "DUII – Controlled Substance" or "DUII – Inhalant"
- State v. Stiles requires you to cite "DUII Alcohol/Controlled Substances" if you suspect both alcohol and drugs

Questions?

Drugs that Impair Driving

Session II - Alternative Field Sobriety Tests

Session Objectives

- Students will be able to list alternative field sobriety tests approved for use by sworn police officers per OAR 257-025-0012
- Students will be able to give instructions for each of the alternative field sobriety tests
- Students will be able to list signs of impairment associated with each alternative field sobriety test

OAR 257-025-0012
Approved Field Sobriety Tests

Modified Finger to Nose Test

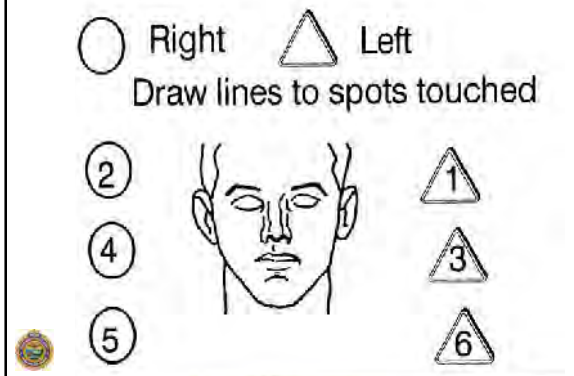
- Instruct the suspect to:
  - stand straight
  - heels together
  - eyes closed
  - arms at sides
  - fists clenched with index fingers pointed down
  - tilt head back

Modified Finger to Nose

- Instruct the suspect to touch the tip of the person's nose with the tip of the index finger by bringing the person's arm and hand from the person's side directly to the end of the nose;
- Repeat with the other index finger and repeat the test in the same manner;
- Remind suspect to return hand to starting position after touching nose;
- Demo the test.

What to Document

- Did the driver follow instructions?
- Did the driver touch the tip of the nose?
- Did the driver use the tip of the index finger?
- Did the driver sway?
- Did you notice any body or eye tremors?



Student Practice

Finger Count

- Have the person hold a hand out;
- Touch the tips of each of the four fingers with the tip of the thumb of that same hand;
- Count 1-2-3-4, 4-3-2-1;
- Demo the test.

What to Document

- Did the driver follow instructions?
- Did the driver touch the tip of each of the four fingers?
- Did the driver touch the tip of the thumb?
- Did the driver count properly?



Student Practice



Alphabet

- Have the person say the alphabet or any portion of the alphabet the officer may choose (only forward).



What to Document

- What level of education does the driver have?
- Did the driver skip any letters?
- Any unusual verbalization (singing the alphabet, for example)?

Counting

- Have the person count a series of numbers, backward and/or forward.
- Example: 99-61

What to Document

- What level of education does the driver have?
- Did the driver skip any numbers?
- Any unusual verbalization?

Internal Clock and Romberg Balance Test

(Commonly called "Modified Romberg Test")

Divided Attention Test

(Mental and Physical Tasks)

Internal Clock and Romberg Balance Test

Two Stages:

1. Instruction Stage
2. Balancing Stage

Internal Clock and Romberg Balance Test

Three Parts

1. Estimate the passage of 30 seconds
2. Observation of tremors
3. Observation of sway

Internal Clock & Romberg Balance Test
Instruction Stage

- Instruct the subject to stand straight with feet together and the arms down at their sides
- Tell the subject to remain in that position until you have finished giving the instructions
- Emphasize that he or she must not start the test until you say “begin”
- Ask the subject if he or she understands the instructions so far and elicit a verbal response

Internal Clock & Romberg Balance Test
Instruction Stage

- Tell the subject, “When I tell you to, tilt your head back slightly and close your eyes”
- Tell the subject, “When you think 30 seconds has gone by, bring your head forward, open your eyes, and say, “Stop”
- Ask the subject if he or she understands

Internal Clock & Romberg Balance Test
Balancing Stage

- Instruct the subject to tilt his or her head back and close their eyes
- Use a timing device and pick a convenient time to start the test
- Tell the subject to begin
- Keep track of time while the subject performs the test
- When the subject opens his or her eyes, ask, “How much time was that?”

What to Document

Document the subject's ability to estimate the passage of time

- Record the subject's exact verbal response to "how much time was that"
- Document the actual time subject keeps their eyes closed or until subject says "stop"
- A time less than 25 seconds, or greater than 35 seconds is considered a time perception issue

What to Document

Estimate the Approximate Inches of Sway

- Forward, back, side to side, and circular
- Use fixed objects in the background to assist in your estimation of inches of sway

What to Document

Document the presence of tremors

- Eyelid tremors
- Body tremors

Student Practice

Lack of Convergence (LOC)

- Stand with feet together
- Arms at sides
- Explain to the suspect what you are going to do
- Position a small, non-sharp stimulus (eraser, back of a pen) 12-15 inches away from the suspect's face
- "Follow the stimulus with your eyes only."

Lack of Convergence (LOC)

- Rotate the stimulus around the subject's face to ensure that the suspect is following it
- At the end of the last rotation bring the stimulus downward to the bridge of the nose
- Hold the stimulus approximately 2" from suspect's nose for approximately one second to see if the eyes converge and stay that way.

Lack of Convergence (LOC)

- If the eyes converge (cross), then LOC is not present
- If one or both eyes cannot cross, or cross and then drift away, LOC is present
- If LOC is present, officer should document the path of the eyes
- LOC ***by itself*** is not definitive because LOC occurs naturally in about 30% of the general population



What to Document

- Did the driver follow instructions?
- Did the eyes converge on the stimulus?
- Did either eye drift away from the stimulus?

Student Practice

Pupil Size Estimation

- In room light the average pupil size ranges from 2.5mm to 5.0mm
- In near total darkness the average pupil size ranges from 5.0mm to 8.5mm
- In direct light the average pupil size ranges from 2.0mm to 4.5mm
- Some drugs will cause pupils to become larger (dilate) or smaller (constrict)

Pupil Size Estimation

- Have the subject focus on an object in the background
- Hold the pupilometer alongside each of the subject's eyes
- Move the pupilometer up and down until the circle closest in size matches the pupil
- Record the pupil size





What to Document

- What was the light condition(s) for the pupil size estimation?
- What did you estimate the size of each pupil to be?

Student Practice



Pulse and Pulse Rate

- Pulse is the expansion and relaxation of an artery, generated by the pumping action of the heart
- Pulse Rate is the number of pulsations in an artery in one minute
- An Artery is a strong, elastic blood vessel that carries blood from the heart to the body tissues



Pulse and Pulse Rate

- The Radial Artery is located in or near the natural crease of the wrist near the thumb.
- The Brachial Artery is located in the crook of the arm.
- The Carotid Artery is located on the neck, on either side of the Adam's Apple.



Measuring Pulse Rate

- Locate an artery and press your fingertips on it until you feel the artery expand each time the blood surges through it.
- Count the number of pulsations in one elapsed minute (or 30 sec. X 2).
- Don't use your thumb to measure pulse rate.
- A pulse rate between 60 and 90 bpm is considered in the normal range.



What to Document

- What artery did you use to measure the driver's pulse?
- What was the driver's pulse rate?



Student Practice



Drugs that Impair Driving

Session III - Drugs in the Human Body

Session Objectives

- Describe the how drugs might affect the human body
- Identify methods of ingestion and general effects of drugs
- Identify signs that indicate method of ingestion

To Identify the Effects of Drugs on the Human Body, We Will:

- Recognize changes in behavior
- Recognize observable signs and symptoms related to an impaired individual

What is Homeostasis?

Homeostasis Examples?

What Do Drugs and Alcohol Do to Homeostasis?

The Impact of Drugs

- Methods of Ingestion – how drugs enter the body
- Onset of Effect – how long until the effects start
- Duration of Effects – how long the effects last

Methods of Ingestion

Ingestion is any manner by which alcohol or other drugs enter the human body

Small Groups: What ways can drugs be ingested?

Oral

- Look for
  - Debris in mouth
  - Vomit
- Smell for
  - Odor

Injection

- Look for
  - Injection sites
  - Skin Abscesses
  - Needles
  - Spoons or other metal containers with burn marks on the bottom
  - Filters

Drugs That Impair Driving



Drugs That Impair Driving



Drugs That Impair Driving



Drugs That Impair Driving



Drugs That Impair Driving



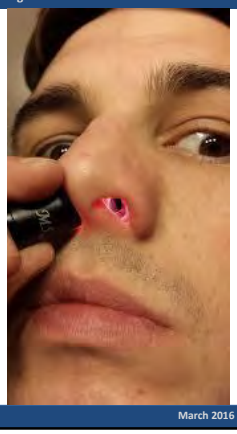
Drugs That Impair Driving



Insufflation

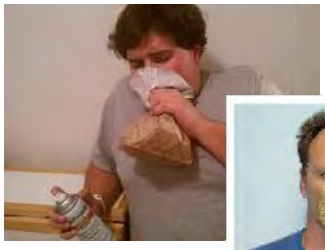
- Look for
  - Powder residue in nostril
  - Redness in nasal area
  - Runny nose
  - Deviated or perforated septum
  - Rolled up papers, straws, or other paraphernalia

Perforated Septum



Inhalation

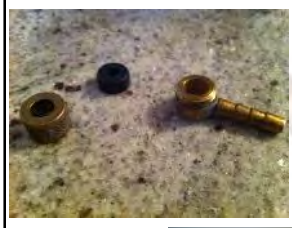
- Look for
  - Visible traces of inhalant around nostrils and/or mouth
  - Rags or bags soaked with chemical inhalants
  - Empty containers
- Smell for
  - Odor of chemical substance



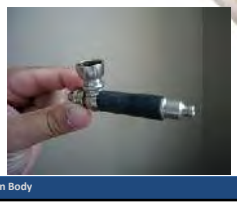


Smoking

- Look for
  - Smoking paraphernalia
    - Pipes
    - Papers
    - Lighters
  - Burns or blisters on lips, tongue, throat
- Smell for
  - Odor of burned drugs









Transdermal

- **Use gloves when handling any potential drug**
- Look for:
  - Unknown liquids
  - LSD "tabs"
  - Patches







Rectal / Urogenital

- Look for
  - Enemas
  - Suppositories





Drugs that Impair Driving

Session IV - Introduction to the Seven Drug Categories

Session Objectives

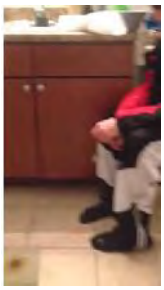
- Students will be able to list the seven drug categories
- Students will be able to recognize the signs and symptoms associated with each drug category
- Students will be able to list common drugs associated with each drug category
- Students will be able to recite how drugs from each category are commonly ingested

The Seven Drug Categories

- Central Nervous System (CNS) Depressants
- CNS Stimulants
- Hallucinogens
- Dissociative Anesthetics
- Narcotic Analgesics
- Inhalants
- Cannabis

CNS Depressants

Xanax video



Initial Indicators – CNS Depressants

- HGN and VGN
- Slows down the central nervous system
- May have many of the same signs and symptoms as alcohol impairment

CNS Depressants

- Alcohol
- Barbiturates
- Non-Barbiturates
- Anti-Anxiety Tranquilizers
- Anti-Depressants
- Anti-Psychotic Tranquilizers
- Combinations

Barbiturates

- Amobarbital (downers)
- Pentobarbital (yellow jackets)
- Phenobarbital (goof balls)
- Secobarbital (reds)
- Tuinal (rainbows)









Non-Barbiturates




- Soma
- Chloral Hydrate
- Benadryl/Sominex/Dramamine
- Dilantin
- Lunesta
- GHB
- Ambien






Anti-Anxiety Tranquilizers

- Alprazolam (Xanax)
- Chlordiazepoxide (Librium)
- Clonazepam (Klonopin)
- Diazepam (Valium)
- Flunitrazepam (Rohypnol)
- Lorazepam (Ativan)
- Temazepam (Restoril)
- Triazolam (Halcion)

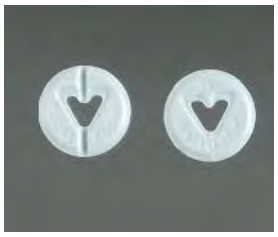
Xanax (Alprazolam)





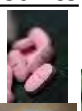
Valium





Anti-Depressants

- Paroxetine (Paxil)
- Fluoxetine (Prozac)
- Sertraline (Zoloft)
- Duloxetine (Cymbalta)
- Venlafaxine (Effexor)
- Bupropion (Wellbutrin)








Anti-Psychotic Tranquilizers

- Aripiprazole (Abilify)
- Quetiapine (Seroquel)
- Risperidone (Risperdal)
- Haloperidol (Haldol)
- Lithium Carbonate (Lithane)




Combinations

- Limbitrol
- Librax
- Triavil / Etrafon

Ingesting CNS Depressants

- Normally taken orally (alcohol and pills)
- Injection (barbiturates)

Duration of Effects

Drug	Onset	Duration

Depending on the particular drug, impairment from a CNS Depressant can last from a few minutes to 14 hours.

*** depends on method of ingestion*

CNS Stimulants

Methamphetamine video



Initial Indicators – CNS Stimulants

- Does NOT cause HGN and VGN
- May cause dilated pupils
- Speeds up the central nervous system

CNS Stimulants

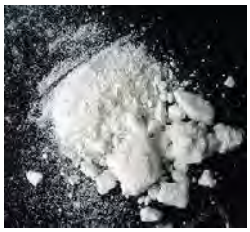
- Amphetamines
- Methamphetamine
- Cocaine
- Other

Methamphetamine





Cocaine





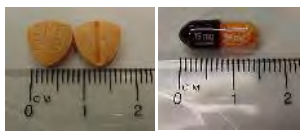
Ritalin



Adderall



Dexedrine



CNS Stimulants

Methods of Ingestion

- Oral
- Smoking
- Injection

Duration of Effects

Drug	Onset	Duration
Cocaine (Powder)	Immediate**	30-90 Minutes
Cocaine (Crack)	Immediate**	5-10 Minutes
Amphetamine	30-40 Seconds	4-8 Hours
Methamphetamine (Crank or Speed)	30-40 Seconds	12+ Hours

*** depends on method of ingestion*

Hallucinogens

Ecstasy Video



Initial Indicators – Hallucinogens

- Does NOT cause HGN and VGN
- Dilated pupils
- Bizarre behavior
- Difficulty speaking
- Hallucinations
- "Synesthesia"

Hallucinogens

- LSD
- Psilocybin (mushrooms)
- Mescaline (Peyote)
- MDMA (Ecstasy)
- Other hallucinogens

LSD

- Colorless, odorless
- Usually liquefied, blotted, and ingested orally



Psilocybin

- Psilocybin is found in certain types of mushrooms





Mescaline

- Peyote is a spineless cactus containing mescaline, a psychoactive alkaloid







MDMA

- AKA Ecstasy or Molly
- A synthetic, psychoactive drug with stimulant properties



Ecstasy



Other Hallucinogens

- Morning glory
- Jimson weed
- Colorado River Toad
- Salvia









Salvia Video



Hallucinogens

Methods of Ingestion

- Oral (Mushrooms, Peyote, Molly)
- Smoking (LSD, Mescaline)
- Injection (LSD)
- Insufflation (Molly)
- Transdermal (LSD)

Duration of Effects

Drug	Onset	Duration
LSD	30-60 Minutes	4-6 Hours
Peyote	30 Minutes-1 Hour	10-12 Hours
Psilocybin Mushrooms	Within 30 Minutes	3-5 Hours
MDMA	30 Minutes-1 Hour	4-24 Hours

Dissociative Anesthetics

PCP Video



Initial Indicators – Dissociative Anesthetics

- HGN and VGN
- Slurred speech
- Slowed responses
- Frenzied behavior
- Hallucinations
- May remove clothes
- May be combative, and very strong

Dissociative Anesthetics

- Dextromethorphan (DXM) (not controlled)
- Phencyclidine (PCP or Angel Dust)
- Ketamine (Special K)







Dissociative Anesthetics

Methods of Ingestion

- Oral
- Inhalation
- Injection
- Transdermal
- Eye drops



Duration of Effects

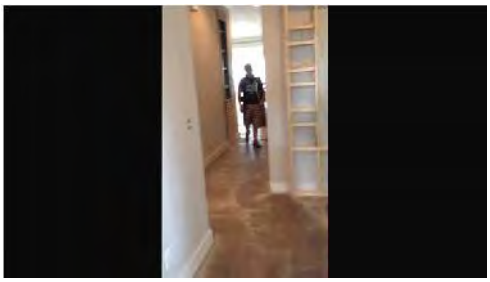
Drug	Onset	Peak	Duration
PCP	1-5 Min	15-30 Min	4-6 Hours
DXM	15-30 Min		3-6 Hours



Narcotic Analgesics



Heroin video



Initial Indicators – Narcotic Analgesics

- Does NOT cause HGN and VGN
- Constricted pupils
- Drowsiness
- Droopy eyelids

Narcotic Analgesics

- Morphine
- Heroin (smack, H, horse) and
- Codeine
- Hydrocodone (Vicodin, Lortab),
- Oxycodone (Oxycontin, Percocet, Percodan)
- Hydromorphone (Dilaudid)
- Methadone and Tramadol
- Desomorphine (Krokodil)

Morphine and Heroin



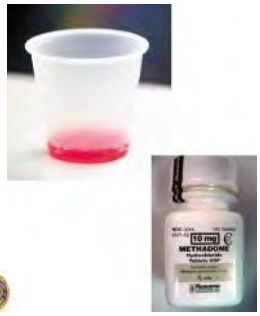
Codeine



Hydrocodone, Oxycodone, Hydromorphone



Methadone and Tramadol



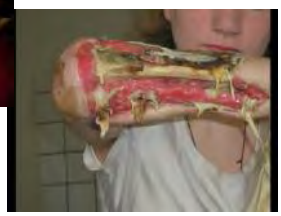




Desomorphine (Krokodil)

Codeine tablets boiled with paint thinner, gasoline, or other solvents





Narcotic Analgesics

Methods of Ingestion

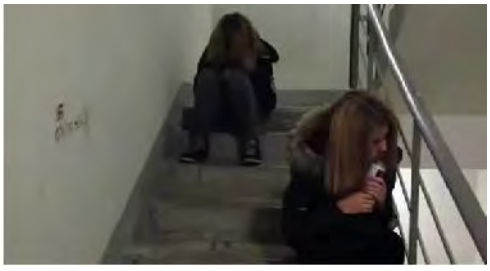
- Oral
- Smoking
- Injection
- Insufflation
- Rectal
- Transdermal

Duration of Effects

Drug	Onset	Duration
Heroin	**5-30 Minutes**	**4-6 Hours**
Methadone	**5-30 Minutes**	**Up to 24 Hours**
Dilaudid	**15 Minutes**	**5 Hours**
Percodan	**15 Minutes**	**4-6 Hours**

Inhalants

Inhalant video



Initial Indicators – Inhalants

- HGN and VGN
- Confusion and/or Disorientation
- Traces of chemical substance around mouth and nose
- Behavior similar to alcohol impairment

Initial Indicators – Inhalants

- The most commonly abused Inhalants produce alcohol-like signs and symptoms; however…
- …due to the many chemicals that may cause impairment, Inhalants vary widely in the specific effects produced

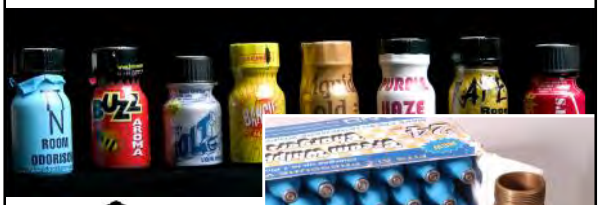
Inhalants

- Solvents (paint thinner, degreasers, glues)
- Gases (gasoline, butane, propane, refrigerants)
- Household Aerosol Propellants (spray paint, hair spray, fabric protectors)
- Anesthetic gases (chloroform, ether, nitrous oxide)
- Nitrites (poppers, room odorizers, whippets)

Anesthetic Gases



Nitrites



Room Odorizers



Whippets

Cannabis

Marijuana video



Initial Indicators – Cannabis

- Does NOT cause HGN and VGN
- May cause dilated pupils
- Redness of the conjunctiva
- Laughing
- Forgetfulness
- Body tremors
- Possible paranoia

Cannabis

- Marijuana
- Hashish
- Hash Oil
- Synthetic Marijuana (K2, Spice, Marinol)

Drugs That Impair Driving

Marijuana






Session IV - Introduction to the Seven Drug Categories

Drugs That Impair Driving

Hashish






Session IV - Introduction to the Seven Drug Categories

Drugs That Impair Driving

Hash Oil





Session IV - Introduction to the Seven Drug Categories

K2, Spice, Marinol



Cannabis

Methods of Ingestion

- Oral
- Smoking

Duration of Effects

Method of Ingestion	Onset	Peak	Duration
Smoking	10 seconds	10-30 min	2-5 hours
Oral	15-30 min	Varies	Varies

**Users may exhibit impairment for up to 24 hours without awareness of effects

Uncategorized Drug

- Bath Salts

Bath Salts video



Drug Categories and the Eyes

- **DIDA** drugs cause HGN
  - **D**epressants
  - **I**nhalants
  - **D**issociative **A**nesthetics
- Any drug that causes HGN may cause VGN

Drug Categories and the Eyes

- Non-DIDA drugs affect pupil size
  - Narcotic Analgesics constrict pupils
  - Hallucinogens, Stimulants and Cannabis dilate pupils

** Certain CNS Depressants also dilate pupils

Drug Categories and the Eyes

- DIDA-C drugs may cause Lack of Convergence (LOC)
  - CNS **D**epressants
  - **I**nhalants
  - **D**issociative **A**nesthetics
  - **C**annabis

EYE MATRIX

	HGN	VGN	Pupils	LOC
CNS Depressants	Y	Y		Y
Inhalants	Y	Y		Y
Dissociative Anesthetics	Y	Y		Y
Narcotic Analgesics			Constricted	
Hallucinogens			Dilated	
CNS Stimulants			Dilated	
Cannabis			Dilated	Y

CNS Depressants Intoxication

Eyes

Face



Vital Signs

Speech

Psychophysical Changes

Other

NOTE: Not all signs appear in all users. Tolerance, dose and poly-drug use all impact the presence and signs symptoms.

CNS Stimulants Intoxication Signs and Symptoms

Eyes

Psychophysical Changes



Speech

Face

Vital Signs

NOTE: Not all signs appear in all users. Tolerance, dose and poly-drug use all impact the presence and signs symptoms.

Hallucinogens Intoxication Signs and Symptoms

Eyes

Effects



Speech

Face

Vital Signs

NOTE: Not all signs appear in all users. Tolerance, dose and poly-drug use all impact the presence and signs symptoms.

Dissociative Anesthetics Intoxication Signs and Symptoms

Vital Signs

Speech

Face

Anesthetic Effects



Eyes

Psychological Changes

Psychophysical Changes

Other

Mental Impairment

NOTE: Not all signs appear in all users. Tolerance, dose and poly-drug use all impact the presence and signs symptoms.

Narcotic Analgesics Intoxication Signs and Symptoms

Eyes

Face



Speech

Vital Signs

Effects

Other

NOTE: Not all signs appear in all users. Tolerance, dose and poly-drug use all impact the presence and signs symptoms.

Inhalant Intoxication Signs and Symptoms

Eyes

Speech

Face



Mental Impairment

Vital Signs

Psychophysical Changes

Psychological Changes

Other

*** Depends on the substance used. Most likely abused inhalants produce alcohol-like signs and symptoms.**
NOTE: Not all signs appear in all users. Tolerance, dose and poly-drug use all impact the presence and signs symptoms.

Cannabis (marijuana) Intoxication Signs and Symptoms

Eyes

Speech

Mental Changes



Face

Vital Signs

Psychological Changes

Other

NOTE: Not all signs appear in all users. Tolerance, dose and poly-drug use all impact the presence and signs symptoms.

Drugs that Impair Driving

Session V - Poly Drug Use

Session Objectives

- Define the term “Poly Drug use”
- Be able to list the percentage of poly drug impaired drivers according to the most recent NHTSA research
- Be able to recognize the signs and symptoms of poly drug use in drivers
- Be able to describe Null, Additive, Overlapping and Antagonistic Effects

Poly Drug Use

Poly Drug use is defined as using two or more drug categories at the same time.

How Common is Poly Drug Use?

- 2012 Study of Fatality Analysis Reporting System (FARS) 2005-2009:
- Of 20,150 dead drivers studied:
  - More than half (57%) had been using at least one drug
  - 20% had been using two or more drugs
- Most drug common combinations :
  - Alcohol and Cannabis
  - Alcohol and Stimulants

What Happens with Polydrug Use?

- Four groups
- In your groups, postulate what might happen for the scenario you are given

What Happens with Polydrug Use?

- Four possible results:
  - Null Effect
  - Additive Effect
  - Overlapping Effect
  - Antagonistic Effect

Null Effect



EXAMPLE: CNS Stimulants won't cause HGN
+ Narcotic Analgesics won't cause HGN
=

Additive Effect



EXAMPLE: Inhalants will cause HGN
+ CNS Depressants will cause HGN
=

Overlapping Effect



EXAMPLE: CNS Stimulants won't cause HGN
+ CNS Depressants will cause HGN
=

Antagonistic Effect



EXAMPLE: CNS Stimulants dilate pupils
+ Narcotic Analgesics constrict pupils
=

Questions?

Drugs that Impair Driving

Session VI – Medical Conditions that Mimic Impairment

Medical Conditions that Mimic Impairment

- What medical conditions might mimic impairment?

Medical Conditions that Mimic Impairment

Medical Conditions that Mimic Impairment

- 1 group for each of the 10 conditions listed
- 5 minutes to discuss how that condition might mimic impairment
- Present your findings to the class



Traumatic Head Injuries



Stroke



Hypoglycemia

"Insulin Shock" or "Diabetic Shock" or "Low Blood Sugar"

Hypoglycemia Video



Diabetes Video



Hypoxia

Lack of oxygen to the body

Conjunctivitis

Shock

Mental Conditions



Hypothermia

Low Body Temperature



Neurological Disorders



Behaviors Affecting Body Functions



Questions?



Scenario I

While checking an interstate rest area, you notice a vehicle parked, engine running, with the driver apparently sleeping. After awakening the driver, who claims she was not sleeping, you notice that her actions are very slow and lethargic. There is no odor of an alcoholic beverage on this person's breath, and she states she has not been drinking. As you administer the SFSTs, you observe no HGN and no Vertical Nystagmus. You also observe that her pupils are extremely small, and the eyelids are droopy. As the driver is performing the walk and turn and one leg stand tests, her movements are slow. Administration of the Romberg test disclosed that the subject has a slow internal clock.

Scenario II

On a Saturday evening, following a concert, you stop a vehicle for weaving down the street. During the initial conversation with the subject, you notice that he is talking very rapidly, has extremely large pupils, and is paranoid. The subject states that he was trying to avoid the large snails on the road. There is no odor of an alcoholic beverage on this person's breath. As you administer the SFSTs, you observe no HGN or Vertical Nystagmus. As the driver is performing the walk and turn and one leg stand, his movements are fast, then slow, then fast again; and he is having difficulty dividing attention. Administration of the Romberg test discloses a fast internal clock. After the Romberg test, the subject stated he was confused by the loud noise coming from the Officer's raincoat.

Scenario III

It is August, you arrive at the scene of a serious traffic crash. You notice that the driver is wearing a long sleeve shirt, and different smelling smoke escapes from the vehicle. He is not able to stay awake, but is able to answer your questions. The sleeve of his shirt slides up, and you notice red marks on his arms. He has no HGN or Vertical Nystagmus. As the driver is performing the walk and turn and one leg stand tests, his movements are slow and deliberate. Administration of the Romberg test shows that the subject has a slow internal clock. His eyes are reddish and pupils appear normal.

Scenario IV

On a Saturday evening following a concert, you stop a vehicle for speeding (70 in a 35). During the initial contact, you notice the driver is talking very rapidly, has extremely large pupils, and is anxious. There is no odor of an alcoholic beverage on her breath. As you administer the SFSTs, there is no HGN or Vertical Nystagmus. As the driver is performing the walk and turn and one leg stand, her movements are fast. Administration of the Romberg test discloses she has a fast internal clock and muscle tremors.

Scenario V

You receive a call to back up a fellow officer who has stopped a vehicle suspected of DUII. Upon arrival, you observe the driver is naked (temperature is 30 degrees). He appears somewhat cooperative, but not non-communicative. There is no odor of an alcoholic beverage on his breath. As you administer the SFSTs, you observe HGN with immediate onset, and Vertical Nystagmus. As the driver is performing the walk and turn and one leg stand tests, his movements are slow and rigid. He was having difficulty dividing attention. Administration of the Romberg test discloses that he has a slow internal clock. His skin is warm to the touch.



Scenario VI

You respond to a one car property damage crash. In your initial contact with the driver, you observe he is drowsy. There is no odor of an alcoholic beverage on his breath, but you observe HGN, and Vertical Nystagmus. As the driver is performing the walk and turn and one leg stand, his movements are slow and his muscle tone appears to be flaccid. Administration of the Romberg test shows the driver has a slow internal clock. The driver's pupils appeared normal in size.

Scenario VII

You receive a call to assist a local officer who stopped a vehicle for obvious impaired driving. The driver displayed numerous clues and indicators of impairment during the SFSTs. However, the driver did not demonstrate any clues for the HGN or Vertical Nystagmus. Larger that normal pupils and fluttering eyelids were evident during the Romberg. His internal clock was slow at 60 seconds. The whites of his eyes appear reddish. He seems totally unconcerned with the thought of being possibly arrested.

Scenario VIII

You stop a vehicle for running a red light. As you observe the driver, he is slow to respond, perspiring, and is easily agitated. As the driver is performing the walk and turn and one leg stand, you observe that he is having a difficult time dividing attention. He has HGN and Vertical Nystagmus. His eyes are reddish, and the pupils are larger than normal. Administration of the Romberg test shows a distorted internal clock.

Basic Police Academy

Effective Interactions with the Deaf and Hard of Hearing Community



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Effective Interactions with the Deaf and Hard of Hearing Community

Instructional Goals:

This course is designed to:

1. Develop a new officer's understanding of the deaf and hard of hearing community.
2. Provide new officers with communication tools and strategies to improve interactions with the deaf and hard of hearing community.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify appropriate auxiliary aids.
2. Accurately assess a situation to determine whether an auxiliary aid, including an interpreter, is required.
3. Demonstrate effective and professional communication.

Content Outline:

Civil Rights- Americans with Disabilities Act

Increasing Cultural Understanding

a. Diversity
b. Terminology
c. Language Development

Tactical Social Interactions

a. Communication and Language
b. Effective Interactions
c. De-escalation and Defusing Hostilities

Police as Guardians

d. Cultural Vulnerabilities

The Role of an Interpreter

d. Tips for Communicating Through an Interpreter

Introduction

Introduction Content from the AELE Monthly Law Journal

Police frequently encounter persons with moderate to profound hearing loss while carrying out their law enforcement duties. Deaf persons may be criminal suspects, arrestees, crime victims, persons in need of assistance, or witnesses. Difficult issues may arise concerning communication, often in tense situations. Did the suspect disobey the officer's command, or did he simply not hear it or not hear it well enough to understand it? Will their failure to hear be mistaken for intentional defiance? Will the crime victim, a person in need of assistance, or witness be able to adequately communicate with the officer on the scene or the 911 dispatcher? Will they be able to receive and follow information or directions that may be essential for their safety and lives?

It is because of these critical questions and more that we take some time to learn about the various members of our diverse communities.

Source: Police Interactions with Deaf Persons - AELE. http://www.aele.org

Civil Rights

Content from the National Association of the Deaf

Two federal disability discrimination statutes apply to state and local enforcement agencies.

- The first federal statute is section 504 of the Rehabilitation Act, which prohibits recipients of federal financial assistance from discriminating against individuals based on disability.

- The second federal statute is Title II of the Americans with Disabilities Act (ADA). All state and local police departments are prohibited from discrimination based on disability.

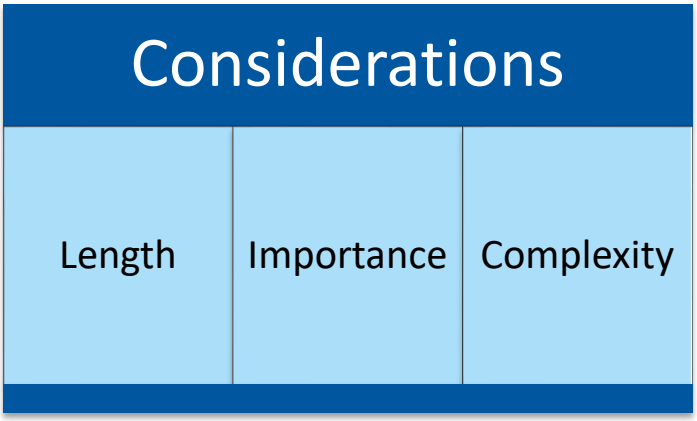
Source: National Association of the Deaf https://www.nad.org/resources/justice/police-and-law-enforcement/communication-access-with-police-and-law-enforcement/

Under the ADA and its regulations, state and local law enforcement agencies are required to provide accommodations, such as:

- Qualified interpreters
- Real-time captioning (also called CART)
- Assistive listening devices
- Or other auxiliary aids and services to ensure effective communication with deaf and hard of hearing (HOH) individuals.

Law enforcement agencies must consult with the deaf or hard of hearing individual about the choice of auxiliary aid or service would result in effective communication.

Although in some circumstances, a notepad and written materials may be sufficient to permit effective communication, at other times, they may not be enough. For example, a qualified interpreter may be necessary when the information being communicated is complex or is exchanged for a lengthy period. Generally, factors to be considered in determining whether an interpreter is required include the context in which the communication is taking place, the number of people involved, and the importance of the communication.



The Department of Justice states: If a deaf or hard of hearing person is arrested, the arresting officer's Miranda warning should be communicated to the arrestee on a printed form approved for such use by the law enforcement agency where there is no qualified interpreter immediately available and communication is otherwise inadequate. The form should also advise the arrestee that the law enforcement agency has an obligation under Federal law to offer an interpreter to the arrestee without cost and that the agency will defer interrogation pending the appearance of an interpreter.

Research with deaf adults indicates that the Miranda warning is confusing to them when it is presented in written English as well as when translated into ASL. Legal concepts such as "the right to remain silent, right to an attorney" were difficult to comprehend and translate. It contains multiple-meaning words- right, silent, present.

SOURCE: The Bill of Rights, Due Process and the Deaf Suspect/Defendant (2007)

The provision of interpreter services or other auxiliary aids and services should not be limited to arrestees. Victims and complainants should certainly also be provided with those services.

The interpreter must be qualified. When effective communication does not result from the use of an interpreter, as judged by the deaf or hard of hearing person, the interpreter, or a law enforcement official, another interpreter must be secured who is qualified to interpret in that situation. The responsibility is on the law enforcement agency to ascertain the type of sign language or other modes of communication with which the deaf individual feels most comfortable.

Law enforcement obligations to deaf or hard of hearing persons who have been arrested or held for questioning are founded in constitutional as well as statutory law. Courts have suppressed evidence obtained from a deaf defendant, where it was found that the constitutional rights warning was not adequately communicated to the defendant. See State of Maryland v. Barker and State of Oregon v. Mason.

In both of these cases, the warnings were conveyed in sign language but were not broken down to the defendant's language level. Securing a qualified interpreter for a timely interpretation of the rights, accompanied with careful explanation and breakdown of every legal term and sign, is one way a law enforcement agency may prevent objections to the adequacy of this communication, as well as comply with the legal requirements of Section 504 and the ADA. The presentation of printed advice of rights form without a qualified interpreter may not be sufficient.

If the person uses sign language, what kinds of communication will require an interpreter?
The length, importance, or complexity of the communication will help determine whether an interpreter is necessary for effective communication. • In a simple encounter, such as checking a driver's license or giving street directions, a notepad and pencil usually will be sufficient. • During interrogations and arrests, a sign language interpreter will often be necessary to communicate with an individual who uses sign language. • If the legality of a conversation will be questioned in court, such as where Miranda warnings are issued, a sign language interpreter may be necessary. Police officers should be careful about miscommunication in the absence of a qualified interpreter. In essence, a head nod may be an attempt to appear cooperative in the midst of misunderstanding, rather than consenting or a confession of wrongdoing. • In general, if an individual who does not have a hearing disability would be subject to police action without interrogation, then an interpreter will not be required unless one is necessary to explain the action being taken. *Source: Commonly Asked Questions About the Americans With Disabilities Act and Law Enforcement https://www.ada.gov/q%26a_law.htm* *Source: Guide For Law Enforcement Officers When in Contact with People Who Are Deaf or Hard of Hearing https://www.ada.gov/humbolt_pca/humboldtattD.htm*
Do I have to take a sign language interpreter to a call about a violent crime in progress or a similar urgent situation involving a person who is deaf?
No. An officer's immediate priority is to stabilize the situation. If the person being arrested is deaf, the officer can make an arrest and call for an interpreter to be available later at the booking station.

Increasing Cultural Understanding

Content from the National Association of the Deaf

Diversity

As with other cultural groups, members of the Deaf community share common values, norms, traditions, language, and behaviors. Deaf people do not think of themselves as handicapped, impaired, or disabled. They celebrate and cherish their culture because it gives them the unique privilege of sharing a collective identity, history, and language. Deaf people are considered a linguistic minority within American culture. They have their own culture and, at the same time, live and work within the dominant American culture.

The deaf and hard of hearing (HOH) community is diverse. There are variations in; how a person becomes deaf or HOH, level of hearing, age of onset, educational background, communication methods, and cultural identity. How people "label" or identify themselves is personal and may reflect identification with the deaf and hard of hearing community, the degree to which they can hear, or the relative age of onset. For example, some people identify themselves as "late-deafened," indicating that they became deaf later in life. Other people identify themselves as "deaf-blind," which usually means that they are deaf or hard of hearing and also have some degree of vision loss. Some people believe that the term "people with hearing loss" is inclusive and efficient. However, some people who were born deaf or hard of hearing do not think of themselves as having lost their hearing. Over the years, the most commonly accepted terms have come to be "deaf," "Deaf," and "hard of hearing."

Source: National Association of the Deaf https://www.nad.org/resources/american-sign-language/community-and-culture-frequently-asked-questions/

Terminology

Members of the hearing world often group deaf and hard of hearing persons into one category. In reality, there are multiple groups included within the broad "deaf and hard of hearing" category, and the various groups have distinctly different characteristics. Following are just some of these definitions:

- Culturally Deaf- Culturally Deaf people are those who are born deaf or became deafened early in life and rely primarily on sign language for communication.

- Deaf- The word Deaf with a capital "D" refers to members of the Deaf community who share common values, norms, traditions, language, and behaviors.

- deaf- The word deaf using the lower case "d" denotes the inability to hear clearly.

- d/Deaf- When d/Deaf is used, it refers to both groups; those who cannot hear clearly and those who identify with the Deaf community and culture.

- Deaf-Blind- Refers to people who have significant, but not necessarily total, loss of both vision and hearing (dual sensory loss). Deaf-Blind people may be culturally Deaf, oral deaf, late-deafened, or hard of hearing, and his/her mode of communication varies accordingly.

- Hard-of-Hearing (HOH) - The term used to describe a degree of hearing loss ranging from mild to profound for which a person usually receives some benefit from amplification. Most people who are hard of hearing are oralists (communicate by using their voice), although a small number learn sign language. Usually, they participate in society by using their residual hearing with hearing aids, speech reading, and assistive devices to facilitate communication.

- Hearing People- "Hearing people/person" means people/person who can hear.

- Hearing- "Hearing" is a cultural status as well as a physical ability. If a Deaf person says, "My boss is Hearing." It means that the boss is able to hear and is a member of the hearing community. The phrase "I'm Hearing" doesn't mean that you are listening to something, but rather it means that you are not Deaf.

- Hearing-Impaired (HI) - Within the Deaf culture, the term "hearing impaired" is often thought of as offensive. It suggests that Deaf people are "broken" or "inferior" because they cannot hear instead of merely being different. The term focuses on what people can't do. It establishes the standard as "hearing" and anything different as "impaired," or substandard, hindered, or damaged. It implies that something is not as it should be and ought to be fixed if possible.

- Late Deafened (LD) - Refers to people who became deaf post-lingually (after learning to speak), and were raised in the hearing community. Most late-deafened people do not learn sign language.

- Oral Deaf- This term refers to people who are born deaf or become deaf pre-lingually, but are taught to speak and do not typically use American Sign Language for communication.

As with all cultures, words and labels can have a profound effect on people. Show your respect for people by refusing to use outdated or offensive terms. When in doubt, ask the individual how they identify themselves.

Source: Characteristics of deaf community subgroups.
http://www.hearinglossweb.com/characteristics-of-deaf-community-subgroups/

Source: National Association of the Deaf https://www.nad.org/resources/american-sign-language/community-and-culture-frequently-asked-questions/

Language Development

There are several factors impacting language development for deaf or HOH individuals. They may experience a language delay due to their language skills developing differently than those of a hearing person.

Deaf persons often don't establish a language base. The first few years of life are the most crucial to a child's development of language skills, and even the early months of life can be important for establishing successful communication. Because of brain changes during early childhood, children who have not acquired a first language in the early years might never be completely fluent in any language. If they miss this critical period for exposure to a natural language, their subsequent development of the cognitive activities that rely on a stable first language might be underdeveloped, such as literacy, memory organization, and number manipulation.

Language delay may also be the result of the environment. Deaf and HOH persons often experience different socialization while growing up, they may have been isolated from others, and there may not have been a connection to either the deaf or hearing communities. Often others will change the way they act toward them. All of this may result in them having missed information, missed development of skills, and missed opportunities for socialization. All of this may impact your two-way communication with them.

Source: American Sign Language https://www.nidcd.nih.gov/health/american-sign-language

Source: Language acquisition for deaf children: Reducing the harms https://harmreductionjournal.biomedcentral.com/articles/10.1186/1477-7517-9-16

Tactical Social Interactions

Communication	Language
Communication is the exchange of information. Language can be used to share this information either by speaking or signing.	Languages are used to help people communicate. Languages are made up of words and rules (grammar) that tell how these words are used. Words can be spoken, signed, or written, and thus languages can be spoken, signed, or written.

There are approximately twenty different types of communication within the deaf/hard of hearing community. Knowing a few signs might be useful; however, no one form of sign language is universal; there are an estimated three hundred sign languages in use around the world. American Sign Language (ASL) is the most common in North America, but it is a different language than British Sign Language even though both are from English speaking countries.

American Sign Language (ASL) is a complete, complex language that employs signs made by moving the hands combined with facial expressions and postures of the body. ASL is a language completely separate and distinct from English. It contains all the fundamental features of language; it has its own rules for pronunciation, word order, and complex grammar. While every language has ways of signaling different functions, such as asking a question rather than making a statement, languages differ in how this is done. For example, English speakers ask a question by raising the pitch of their voice; ASL users ask a question by raising their eyebrows, widening their eyes, and tilting their bodies forward. Just as with other languages, specific ways of expressing ideas in ASL vary. In addition to individual differences in expression, ASL has regional accents and dialects. Just as certain English words are spoken differently in different parts of the country, ASL has regional variations in the rhythm of signing, form, and pronunciation.

Another type of communication is speechreading (aka lip-reading); however, do not assume that all deaf or hard of hearing people can read lips. Only a fraction of speech sounds can be seen on the lips. A perfect speech reader only would be able to speech read about one-third of what is said. They guess at the rest, taking into consideration their understanding of the spoken language, the body language of the speaker, and the subject under discussion. The content of the conversation influences the ability to understand through speechreading. If the person knows what the topic is, and is familiar with the language used, it will be easier to speech read. If the topic is unfamiliar, especially if it requires unfamiliar vocabulary, speechreading will be very difficult.

The environment in which the conversation takes place is important for speech readers. Good lighting is a must. It is also critical that light is shining on the speaker's face and not the individual. If the light source is behind the speaker, their face will appear in shadow, making speechreading more difficult. Extra movement and sound in the room will also interfere with speechreading. Remember, the speech reader is using as much hearing as they have, so a quiet environment is essential.

Another factor to consider for speechreading is the fatigue factor. It is a lot of work to listen with your eyes, and this can be very exhausting. If one is tired, upset, or unable to concentrate, speechreading abilities are lowered.

Lastly, several factors influence whether a person is easy or difficult to speech read. Someone with a foreign accent, unusual pronunciation, or speech disability will be harder to speech read. People who barely move their lips when speaking are also tricky to speech read. Facial expressions, body language, and mouth movement may help, but they can also cause a distraction if overdone. The rate of speech is also important. Slightly slower speech will be understood more easily than rapid speech. Anything covering or distorting the mouth or face will interfere. Overgrown mustaches, chewing gum, cigarettes, and hands over the mouth are all obstacles to effective speechreading.

During interactions, you may notice the person wearing a hearing aid or a cochlear implant. Although these devices may help with communications, there are still limitations. A cochlear implant (CI) is a small, complex electronic device that can help to provide a sense of sound to a person who is profoundly deaf or severely hard-of-hearing. The implant includes an external portion sitting behind the ear and a second portion surgically placed under the skin. A cochlear implant is very different from a hearing aid. While the processor (the part that sits behind the ear) looks similar to a behind-the-ear hearing aid, it is a tiny computer that digitizes sound signals. Cochlear implants bypass damaged portions of the ear and directly stimulate the auditory nerve. Hearing aid users often have hearing loss that can be mitigated by increasing the volume of the sounds around them, which are how hearing aids function. Those who need cochlear implants; however, don't just struggle with the volume of the sound—their brains are missing bits and pieces of sound signals.

The use of a cochlear implant requires both a surgical procedure and significant therapy to learn or relearn the sense of hearing. Not everyone performs at the same level with this device. Hearing with a cochlear implant is not like regular hearing or hearing with a hearing aid. Still, the implants allow people to have conversations, recognize warning signals, and understand environmental sounds. Cochlear implant users have reported that voices have a more robotic sound to them. Still, they are often able to understand and participate in conversations, both in-person and over the telephone.

Effective Interactions

Considering what we know about diversity within the Deaf culture, the variety of communication needs, and legal parameters, how does one go about applying this in an interaction?

1- Recognize non-verbal and verbal indicators that a person is deaf or hard of hearing:

- They may pat or point to their ear, they may reach for something to write on or a card with pictures to point at, they may have a television or radio turned up loud, they may ask you to repeat what you've said, they may appear to be ignoring what is being said around them, they may tell you they cannot hear, you may see a hearing aid, their voice may sound very different to what is considered "normal," they may be communicating with someone else with animated hand gestures.

  Think- Are there any indicators that their failure to respond to your directions or questions could be the result of deafness/HOH?

2- Withhold judgment

3- Recognize there are laws and policies pertaining to this interaction.

- The Americans with Disabilities Act has specific requirements for this interaction.

- Your agency has adopted a specific policy regarding communicating with people who are deaf or hard of hearing. You must be familiar with this policy.

  Think- Should you arrange accommodations for this interaction?

4- Assess the deafness

5- Assess language ability

6- Consider what auxiliary aids are available: gestures, visual aids, notepad and pen or pencil, computer/typewriter, assistive listening system or device, teletypewriter (TTY), qualified oral or sign language interpreter, Video Remote Interpreter (VRI), Flip Book (see Missouri & Illinois), Visor Card (see Missouri) and more.

7- Identify the most effective method of communicating with the individual. This should be for two-way communication; it is not just for the officer to provide information but also for the deaf/hard of hearing person to ask questions, clarify, make statements, express concerns, etc.

8- First, try communicating with the person in writing by writing, "how would you like to communicate?" Then look for indicators that the person is able or unable to read and at what level their understanding seems to be.

Source: American Sign Language - NIDCD. https://www.nidcd.nih.gov/sites/default/files/Documents/health/hearing/NIDCD-American-Sign-Language.pdf

Consider This

Handcuffing a person who relies on the use of their hands to communicate removes their ability to communicate and can increase frustration and/or emotional responses.

Explain why and when handcuffs will be taken off.

The U.S. Department of Justice lists these tips for consideration whenever possible:

- Before speaking, get the person's attention with a wave of the hand or a gentle tap on the shoulder.
- Face the person and do not turn away while speaking.
- Try to converse in a well-lit area.
- Do not cover your mouth or chew gum.
- If a person is wearing a hearing aid, do not assume he or she can hear you well.
- Minimize background noise and other distractions whenever possible.
- When you are communicating orally, speak slowly and distinctly. Use facial expressions to reinforce what you are saying.
- Use visual aids whenever possible such as pointing to printed information on a citation or other document.
- Remember that only about one-third of spoken words can be understood by speech reading.
- When communicating in writing, keep in mind that some individuals who use sign language may lack good English reading and writing skills.
- If someone with a hearing disability cannot understand you, write a note to ask them what communication aids or services are needed.
- If a sign language interpreter is requested, be sure to ask which language the person uses. American Sign Language (ASL) and Signed English are the most common.
- When you are interviewing a witness or a suspect or engaging in any complex conversation with a person whose primary language is sign language, a qualified interpreter is usually needed to ensure effective communication.
- When using an interpreter, look and speak directly at the deaf person and not the interpreter.
- Talk at your regular rate or slightly slower if you usually speak fast.
- Only one person should speak at a time.
- Use short sentences and simple words.

De-Escalation and Defusing Hostility

Miscommunication can lead to conflict. It takes effective communication to defuse hostility and de-escalate a situation.

On the most basic level, a situation is de-escalated by relieving anxiety and avoiding further escalation. This can be accomplished by maintaining a calm demeanor, allowing venting, developing rapport, empathizing, and asking questions (How can I help? What do you need?). Just because a deaf or HOH person is making wild signs does not mean they are ignoring you or are mad at you. Remember, ASL uses body language, facial expressions, and postures to deliver and receive communication. You may be decoding their message inaccurately.

In situations involving frustration or high emotions, persons may demonstrate lower coping skills. Partnering this with communication barriers, this could lead to miscommunication or even assumptions that the person needs other services such as Developmental Disabilities, Mental Health, medications, or hospitalization.

Police as Guardians- Cultural Vulnerabilities

Several studies have indicated a higher prevalence rate of domestic violence among deaf and hard of hearing individuals as well as identifying factors that may make them more vulnerable to abuse. Factors include:

- Difficulties with parental acceptance of or an inability to communicate with their Deaf child may result in weak family and social support networks.
- Lack of communication and attachment during the formative years can adversely impact social learning experiences.
- Individuals who become deaf later in life may feel lonely and isolated.
- Perpetrators may view their intended victim as having limited access to communication, thereby reducing the likelihood that the assault would be reported.
- Perpetrators may hone into an individual's lack of family support, social isolation, or lack of economic dependence and see this as an opportunity with low risk for consequences.

Understand that sign language is a language, and people who use sign language as their primary communication need interpreters just like non-English speakers do. It's also vital that the interpreter be impartial. Don't ask a family member or companion to interpret for you because they might be emotionally compromised, take sides, and give you a biased translation.

The Role of an Interpreter

Signer	Interpreter
May know a few signs or have a small vocabulary. May not be fluent enough to communicate intricate and important details. Can be used for simple questions, directions, and information. May be a family member or a friend and may not be impartial.	A sign language interpreter is a trained professional who facilitates communication and conveys all auditory and signed information so that both hearing and deaf individuals may fully interact. The interpreter is bound by a code of ethics, which includes keeping all material interpreted strictly confidential. Also, interpreters are to maintain the integrity of the message, always conveying the content and spirit of the speaker. The interpreter's mission is to facilitate communication; he/she should neither add nor delete any information at any time. Because of the specific nature of the interpreter's role, it is important not to ask the interpreter for his/her opinion or to perform any tasks other than interpreting.

Tips for Communicating Through an Interpreter

- Speak directly to the deaf individual, facing them, not the interpreter.
- Spell out technical words
- Speak at a reasonable pace
- Use "I" and "you" references; the interpreter will relay your exact words. Avoid speaking of the individual in third person. Using "ask her" or "tell him" can be confusing.

Source: Effective Communication: The ADA and Law Enforcement.
https://www.adainfo.org/sites/default/files/Effective-Communication-Enforcement-1.pdf

In-Class Activity: Accommodations

Scenario #1: An officer clocks a car on the highway driving 15 miles above the speed limit. The driver, who is deaf, is pulled over and issued a noncriminal citation. The individual is able to understand the reasons for the citation because the officer exchanges written notes with the individual and points to information on the citation.

Questions:

- Was this an appropriate means to communicate in this situation?
- Is an interpreter needed? Why or why not?

Scenario #2: An officer responds to an assault call and, upon arriving at the scene, observes a bleeding victim and an individual holding a weapon. Eyewitnesses observed the individual strike the victim. The individual with the weapon is deaf, but the officer has probable cause to make a felony arrest without an interrogation.

Questions:

- Was this an appropriate means to communicate in this situation?
- Is an interpreter needed? Why or why not?

Scenario #3: Officers take a deaf homicide suspect into custody. At the police department, the suspect is provided an interpreter to translate his Miranda rights from a written card. After 3o minutes, the interpreter concludes that the suspect does not understand his rights, but the suspects asks for an attorney. Officers take the suspect home, where they ask for his clothes and ask him to take a polygraph, both of which he complies with.

Questions:

- Was an interpreter needed in this situation? Why or why not?
- Was the attempt at using a certified interpreter to translate Miranda rights sufficient in this matter? Why or why not?

Scenario #4: An officer responds to the scene of a domestic disturbance. The husband says the wife has been beating their children, and he has been trying to restrain her. The wife is deaf. The officer begins questioning her by writing notes, but her response indicates a lack of comprehension. She requests a sign language interpreter.

Questions:

- Was this an appropriate means to communicate in this situation?
- Was an interpreter needed in this situation? Why or why not?

Scenario #5: An officer responds to the scene of a car accident where a man has been seriously injured. The man is conscious but is unable to comprehend the officer's questions because he is deaf. A family member who is present begins interpreting what the officer is saying.

Questions:

- Was this an appropriate means to communicate in this situation?
- Was an interpreter needed in this situation? Why or why not?

Source: Commonly Asked Questions About the Americans With Disabilities Act and Law Enforcement https://www.ada.gov/q%26a_law.htm

Case Study #1

A MOTORIST, who is severely hearing-impaired, was involved in a car accident when he rear-ended another vehicle traveling on the shoulder of a highway. Two DEPUTIES arrived at the scene of the accident in response to a report of an "incoherent subject" at the location. Shortly after they arrived, the MOTORIST informed them of his hearing disability.

One of the DEPUTIES proceeded to administer three sobriety tests. Before administering the tests, one of the DEPUTIES turned on the video camera in his patrol car, which was standard procedure when an officer suspects that there may be a need for an arrest. The tests administered included a "walk and turn" test, a "one-leg stand" test, and a "finger-to-nose" test.

After the DEPUTY demonstrated the "walk and turn" test for him, the MOTORIST performed the task as demonstrated. The DEPUTY had his back turned to the MOTORIST while giving instructions. When performing the test, the MOTORIST took more than the required nine steps before turning around and returning to the starting point.

The DEPUTY demonstrated the one-leg stand test but spoke very quickly while giving instructions. The MOTORIST was able to complete the task as demonstrated, but he counted to fourteen, rather than ten while doing so.

On the "finger-to-nose" test, the DEPUTY requested that the MOTORIST touch his nose six times, and the MOTORIST performed the task as demonstrated, but he touched his nose approximately twenty-five times. The DEPUTY then concluded that the MOTORIST was unable to complete the tests as instructed, and arrested him for driving while intoxicated.

The MOTORIST contended that he did not understand the instructions given, and would have been able to perform the tests as requested if he had. Before arresting the motorist, the DEPUTY read him his Miranda warnings, but the MOTORIST did not respond when asked if he understood his rights.

At the police station, the DEPUTY read the motorist his rights again and wrote the Miranda warnings on a blackboard. The DEPUTY interrogated the motorist to ensure that he understood the circumstances of his arrest. The DEPUTY asked the MOTORIST six times to take a blood test before he consented to do so. After passing the blood test, the MOTORIST was released.

Source: Police Interactions with Deaf Persons - AELE. http://www.aele.org/law/2009all03/2009-03MLJ101.pdf

Case Study #2

A call was placed to 9-1-1 about 9:20 a.m. after the VICTIM fled his apartment to escape his PARTNER, who had grabbed him by both ankles and dragged him along the floor. Because the VICTIM'S cell phone was almost out of power, he sent a text message to a FRIEND, who is also deaf, asking her to contact 9-1-1.

The FRIEND contacted emergency dispatch through a video relay operator to report the assault. The FRIEND told dispatch that the victim, deaf since birth, needed an American Sign Language interpreter. The 9-1-1 DISPATCHER said officers would get an interpreter if necessary. When the FRIEND asked for the dispatcher's name, the DISPATCHER said he was ending the call.

When police arrived, the VICTIM asked for a sign interpreter. He tried to use a laptop computer to communicate with the police, but he couldn't get it to work. The VICTIM wasn't aware that his PARTNER had removed the computer's hard drive. The VICTIM showed police a red mark on his back.

The responding OFFICERS believed the VICTIM just wanted to get back into his apartment and helped him do so. Once inside, they talked to the victim's PARTNER, who was not deaf. Both men agreed they felt safe and would work things out. The OFFICERS left.

Later that night, the victim's PARTNER kicked in his locked bedroom door and tried to choke him. As the VICTIM ran out of the bedroom, his PARTNER broke a lamp, threw glasses, and threatened to kill him if he left. Again, the VICTIM sent a text message to his FRIEND, asking her to contact 9-1-1. She did, asking the DISPATCHER at 10:49 p.m. to send police and noted that the VICTIM was deaf and needed an interpreter.

The VICTIM met OFFICERS -- some of whom had been on the earlier call -- on the street outside. He tried to explain that his PARTNER had attacked him, and he asked again for an interpreter. OFFICERS said that the VICTIM was able to communicate with officers in writing and with hand motions. One OFFICER called dispatch and asked for someone who knew American Sign Language.

When the SIGNING OFFICER arrived, she apologized to the victim in American Sign Language for her beginner-level sign skills. The SIGNING OFFICER suggested that another officer remove his car's mobile computer so the VICTIM could type a statement. By that time, the VICTIM was back in his apartment, trying to type one on his computer.

The OFFICERS took photos of the VICTIM'S injuries and arrested his PARTNER on assault and harassment charges. The SIGNING OFFICER helped another OFFICER communicate with the VICTIM to explain how he could obtain a restraining order.

By the time the police report was written, OFFICERS had not received the VICTIM'S statement and that the VICTIM had trouble e-mailing it. The statement reached police by 12:11 a.m.

Source: Lack of Portland police, 9-1-1 policies for interpreters ....
https://www.oregonlive.com/portland/2012/11/portland_police_and_9-1-1_fail.html

License:



LEDS:

10000ORTEST DLR.01132022

KEIZER OR 97303
LIC.NO: TYPE:C END:
EXP:10-12-2028 ISS:04-06-2021 DOB: 1ST LIC:10-16-2003
SEX:M HEIGHT:6-05 WEIGHT:200 CDL:NO VETERAN:NO DEAF:NO
STOPS:00 RES:
****STATUS ON 01-13-2022****

Vehicle Registration:



LEDS:

10000ORTEST REG.01142022
L:
MA:TOYT /CAM S:4D Y:1999 L: SP:0 06-30-2017
ID: TI:
CD:C EXP:08-18-2019 P/DT:01-07-2015 FL:49
FM: VEHICLE SOLD - BUYER INFO ON FILE
04:
R:
BEND OR 97701 09 DESCHUTES COUNTY

DEAF OR HARD OF HEARING: N

INSURANCE INFORMATION

COMPANY: PROGRESSIVE UNIVERSAL INSURANCE COMPANY
POLICY NO: (POLICY) TYPE: VEHICLE
EFFECTIVE: 03-05-2020 TERMINATION: 09-04-2021

DISPLAY COMPLETE R=Y C=N S=N

Resources for Law Enforcement

- Communicating with People Who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers- An 8-panel pocket guide from the Justice Department
- Model Policy for Law Enforcement on Communicating with People Who Are Deaf or Hard of Hearing- This 4-page document from the Justice Department Office of Civil Rights "serves as a model for law enforcement agencies when adopting a policy on effective communication with people who are deaf or hard of hearing. Agencies are encouraged to download and adapt the policy to suit their needs."
- IACP Model Policy No. 94, Deaf and Hearing Impaired (July 2003)
- National Association for the Deaf- http://nad.org

Sources and Resources

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National Association for the Deaf http://nad.org

Basic Police Academy

Elder Abuse



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Elder Abuse Investigations

Instructional Goal:

This course is designed to introduce a new police officer to basic factors related to elder abuse response and investigations.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Define the responsibilities of law enforcement in a report of elder abuse.
2. Identify potential indicators of elder abuse.
3. Articulate a plan for investigation of a given situation.

Content Outline:

- Elder Abuse Defined
- Oregon Revised Statutes
- Mandatory Reporting
- Adult Protective Services
- Communication
- Abusers
- Risk Factors
- Types of Elder Abuse: Physical, Sexual, Psychological, Neglect, Self-Neglect, Abandonment, Financial Exploitation
- Resources
- Other Terms
- Checklists

This course will focus on a vulnerable but less discussed population, older adults. According to the National Council on Aging, approximately 1 in 10 Americans aged 60+ have experienced some form of elder abuse. Some estimates range as high as 5 million elders who are abused each year. One study estimated that only 1 in 14 cases of abuse are reported to authorities. Factors including social isolation and mental impairment contribute to the vulnerability of this population. Elders who have been abused have a significantly higher risk of death. Additionally, financial abuse and fraud cost elders billions of dollars each year.

According to the National Center on Elder Abuse, elder abuse is a complex phenomenon. No single theory will explain all elder abuse. Variables include:

- The relationship between the involved parties (e.g., spouse, adult child, caretaker, or stranger who targets an older adult for their perceived or actual frailties)
- Interpersonal relationships
- Presence or absence of medical, cognitive, and other disabilities
- Type or types of abuse, and
- Setting (private residence, facility, public place)

This course will introduce you to some of these complexities, helping you become aware of indicators and risk factors so you can better protect this vulnerable population. Additionally, this course will introduce you to valuable resources that might assist you in the future.

What is Elder Abuse?

According to the Oregon Department of Human Services Division on Seniors & People with Disabilities, elder abuse includes physical harm, failure to provide basic care, abandonment or involuntary seclusion, unwanted sexual contact, verbal or emotional abuse, neglect, self-neglect, wrongful restraint, and financial exploitation. Abuse can happen in a person's own home or the home of family or friends. It can also occur in a professional care setting such as a nursing facility, a residential care facility, an assisted living facility, an adult foster home, a retirement home, a room, and a boarding home.

Laws pertaining to elder abuse in Oregon can be found in ORS Chapter 124, including:

- Elderly Persons and Persons with Disabilities Abuse Prevention Act (ORS 124.005-124.040)
- Reporting of Abuse (ORS 124.050-124.095)
- Civil Action for Abuse of a Vulnerable Person (ORS 124.100-124.140)
- Penalties (ORS 124.990)

Oregon Law- Definitions under ORS 124.050

Abuse	Means one or more of the following: • Any physical injury to an elderly person caused by other than accidental means or which appears to be at variance with the explanation given of the injury. • Neglect. • Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations, owed an elderly person by a caretaker or other person. • Willful infliction of physical pain or injury upon an elderly person. • An act that constitutes a crime under: o ORS 163.375 (Rape in the first degree) o ORS 163.405 (Sodomy in the first degree) o ORS 163.411 (Unlawful sexual penetration in the first degree) o ORS 163.415 (Sexual abuse in the third degree) o ORS 163.425 (Sexual abuse in the second degree) o ORS 163.427 (Sexual abuse in the first degree) o ORS 163.465 (Public indecency) o ORS 163.467 (Private indecency) o ORS 163.525 (Incest) • Verbal abuse. • Financial exploitation. • Sexual abuse. • Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person. • A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

Elderly Person	Any person 65 years of age or older.
Facility	• A long term care facility as that term is defined in ORS 442.015 • A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility. • An adult foster home as that term is defined in ORS 443.705
Financial Exploitation	• Wrongfully taking the assets, funds, or property belonging to or intended for the use of an elderly person or a person with a disability. • Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate the person's money or property if the person would reasonably believe that the threat conveyed would be carried out. • Misappropriating, misusing, or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability. • Failing to use the income or assets of an elderly person or a person with a disability effectively for the person's support and maintenance.
Intimidation	Compelling or deterring conduct by threat.
Neglect	Failure to provide basic care or services that are necessary to maintain the health or safety of an elderly person.
Services	Includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene, or any other service essential to the well-being of an elderly person.
Sexual Abuse	• Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315 (Incapacity to consent); • Verbal or physical harassment of a sexual nature, including but not limited to severe or pervasive exposure to sexually explicit material or language; • Sexual exploitation; • Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver; or • Any sexual contact that is achieved through force, trickery, threat, or coercion.

Sexual Contact	Has the meaning given that term in ORS 163.305.
Verbal Abuse	Means to threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of: • Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; **or** • Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

Mandatory Reporting

You covered mandatory reporting in Juvenile Law, but mandatory reporting also applies to elder abuse and neglect cases.

ORS 124.055- The Legislative Assembly finds that for the purpose of preventing abuse, safeguarding, and enhancing the welfare of elderly persons, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused elderly persons.

ORS 124.060 identifies the duty to report for any public or private official having reasonable cause to believe that any person 65 years of age or older has suffered abuse.

Protective Services

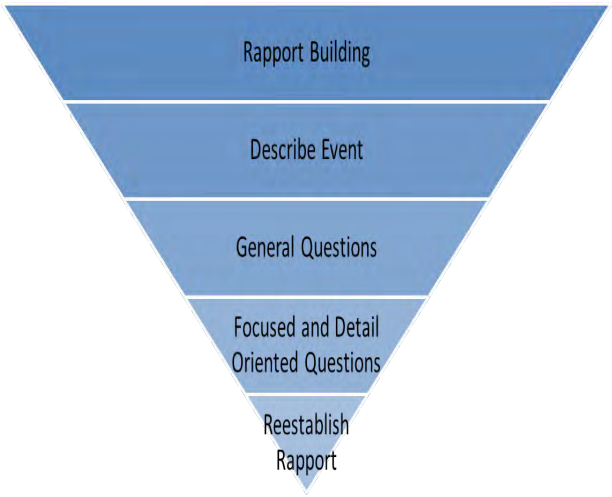
Mandatory reports are made to law enforcement and/or The Oregon Department of Human Services branch for Seniors & People with Disabilities. This division is also referred to as Adult Protective Services (APS). APS operates a statewide reporting hotline (1-855-503-SAFE) and a data tracking system for abuse cases (the Centralized Abuse Management System). Workers are located across the state and coordinate with law enforcement on reports of abuse and accessing services. APS should be contacted each time law enforcement responds to a call involving an abused elder or person with a disability.

APS services:

- Assistance in emergencies
- Intervene when the victim refused services
- Assist with investigation/interrogation of physical/sexual abuse (victim/suspect)
- Assist in relocation and alternative living arrangements
- Find care providers
- Link to medical, legal, financial, or other services
- Initiate guardianship or conservatorship proceedings
- Provide support and advice in questionable situations
- Provide background information on both victim and suspect
- Explain the purpose of the elder abuse restraining order and assist in obtaining one
- Offer case conferences with multi-disciplinary teams
- Conduct cooperative investigations with police and produce reports related to alleged wrongdoing
- Initiate assessment of an elder's physical/mental health, cognitive status, and functional capability
- Provide social service/community resource information
- Obtain records from banks and other financial institutions
- Coordinate resources for tribal issues

Interviewing

Elder abuse investigations may pose unique challenges regarding communication. Think back to what you covered in your Communication series, Supporting Victims of Crime and Criminal Investigations-Interviews. How does all of that apply here?



Remember the standard protocol on interviewing and interrogation and its funnel-shaped process of information gathering? Focus on rapport building. Begin your interview with general, non-invasive questions, such as name, DOB, address, phone number, and who lives in the home. Consider asking what a typical day looks like for them. Move into initial questions about the abuse, then clarify.

The United States Department of Justice *Elder Abuse Guide for Law Enforcement* (EAGLE) provides the following recommendations regarding interviewing older adults. Before beginning your interview, get in the right mind frame. Take a moment to clear your mind of stereotypes, good and bad, about older adults. Like victims of other domestic violence, treat older victims of abuse with respect. Conduct their interviews with the gravity their situations deserve. Know that people with memory problems can tell you what happened—especially if an event made an emotional impact. Believe their story unless you have specific evidence to the contrary.

Do's	Don'ts
DO ask open-ended questions DO speak slowly, using short sentences DO ask about only one thing at a time DO speak at eye level (authority can be intimidating to persons who feel vulnerable) DO be patient – give them time to answer DO believe someone if they say they've been abused	DON'T correct them

Interview at the Right Time & Place

Choose an interview location that's comfortable for the older adult—for example, senior center, doctor's office, coffee shop. Ask the client and/or caregiver for timing tips to ensure the older adult is alert for your interview. For example: Is morning better than afternoon? Does a medication cause drowsiness or confusion after taking it? Be aware of any barriers there might be for effective communication. For example: Does the older adult have their glasses/hearing aid/dentures on and working? Is the interview private and away from the suspect's hearing range? Lastly, be prepared to help. Know your local resources and be prepared to make referrals.

The National Clearinghouse on Abuse Later in Life provides some additional considerations regarding interviewing older adults:

- Convey the message to the older victim that the abusers are responsible for their own behavior. The offender's use of abuse is unacceptable and not justified.
- Acknowledge the older victim's fears, anxiety, anger, or ambivalence; validate the older adult's feelings. Pay attention to your body language and reactions, taking care not to appear to blame, accuse, or disbelieve the victim.
- Watch the victim's body language. Reassure the older victim that cooperation is important and appreciated. The victim is not responsible for the prosecution of the suspect - that it is the responsibility of investigators and prosecutors.
- Older victims may not have the words to describe the abuse they have experienced. Asking about sexual abuse or marital rape may not result in a positive response. Asking if they have ever been forced to have sex or have been forced to perform sexual acts that they are not comfortable with may result in a positive response from victims. Use the same words that the older individual uses for body parts and acts. Do not correct the older adult's language.

Building a Case

In addition to the victim interview, who else should you consider interviewing? What other sources of evidence might you seek? The EAGLE provides the following suggestions:

- Consider speaking with a medical doctor for an opinion on the victim's bruising patterns. If possible, consult with a doctor who is knowledgeable about elder abuse.
- Request medical records that may reveal important information about the victim's past function and abilities. Specifically, seek (subpoena) the following records:
    - Medical photos
    - Descriptions and sizes of wounds
    - Victim's statements about what happened
    - Their own opinion about the cause (if possible)
- Seek a capacity evaluation by a physician or psychologist if the decision-making capacity of the victim is a question. This is especially important for cases involving financial abuse or neglect

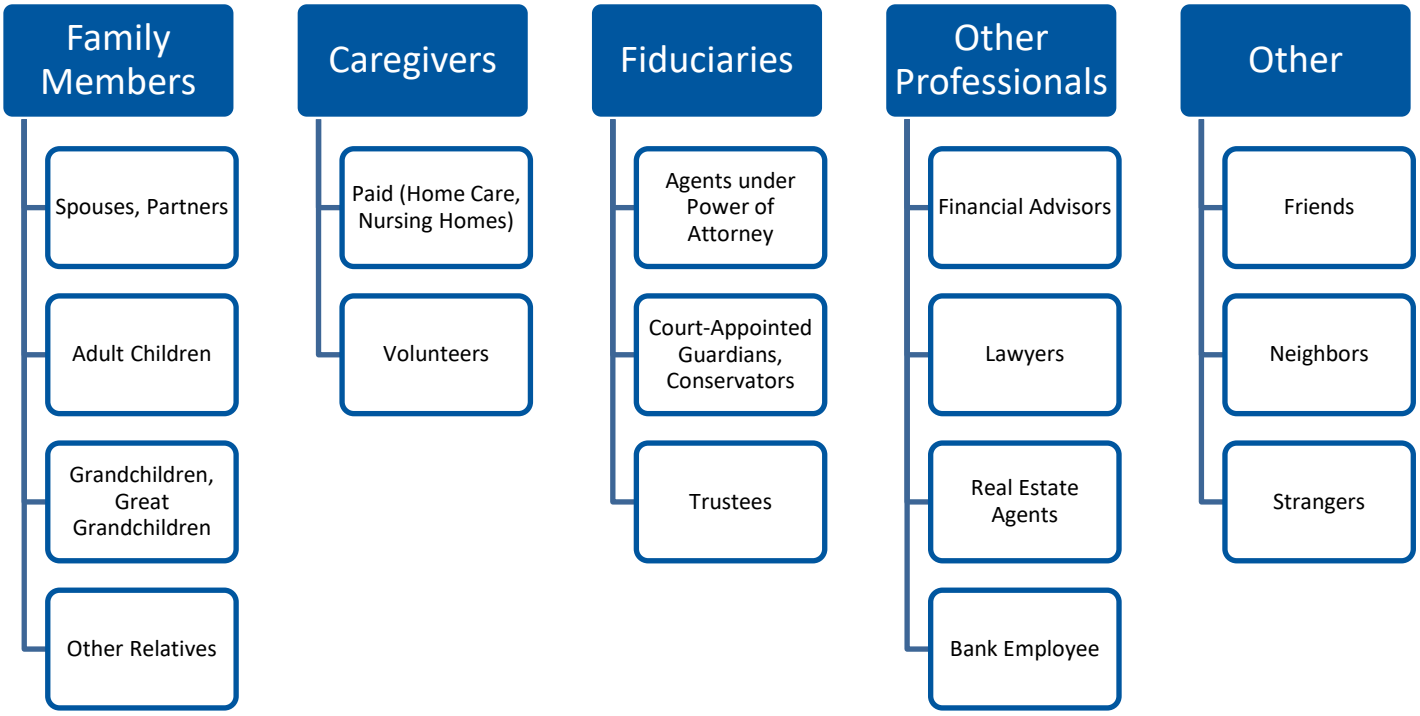
Photographs

In addition to what you covered in Criminal Investigations, here are some photography tips for elder abuse investigations.

- Injuries
- Medications (labels, contents)
- Living quarters of the victim
- Refrigerator contents
- Bedroom, including sheets
- Incontinence supplies
- Any evidence of lack of hygiene, such as finger & toenails, clothes, body filth, and open sores

Abusers

In *Legal Issues Related to Elder Abuse: A Desk Guide for Law Enforcement*, The American Bar Association Commission on Law and Aging and the Bureau of Justice Assistance/U.S. Department of Justice states that older persons may be abused, neglected, or exploited by:



According to the United States Department of Justice *Elder Abuse Guide for Law Enforcement (EAGLE)*, most elder abuse is perpetrated by a family member, caregiver, or anyone providing care, including professionals. If an elder abuse victim lives in a long-term care facility, they are most likely to experience physical and emotional abuse by a nurse's assistant. Abusers are typically people who hold a position of trust, with the opportunity to know the victim's physical or mental vulnerabilities.

Many perpetrators of elder abuse:

- Have no means of support aside from the alleged victims' housing, pension, and social security checks
- Living with the victim
- History of abuse, neglect, or exploitation
- Have mental illness or disabilities themselves
- May appear controlling; do not want victim interviewed alone

A study conducted by the NIJ found that approximately 50% of perpetrators had been using drugs or alcohol when the abuse occurred.

Risk Factors

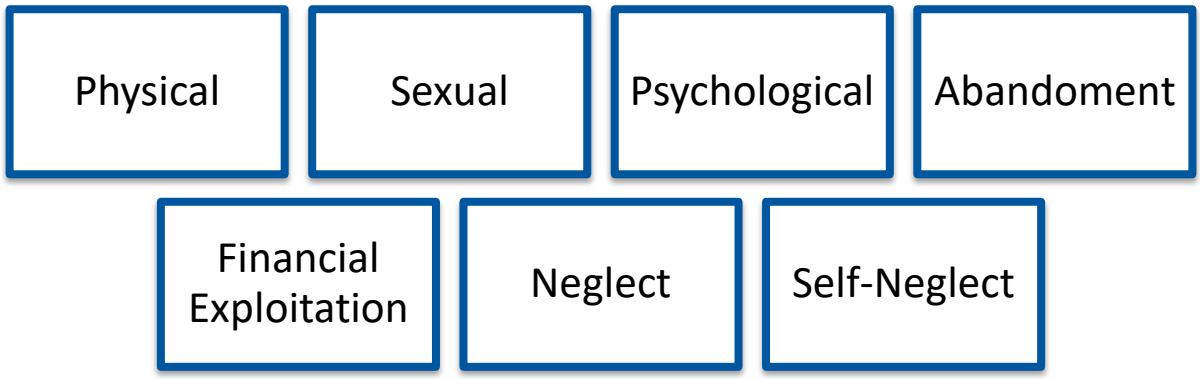
Risk factors are circumstances that seem related to elder abuse. Their existence does not mean that elder abuse is occurring, but their absence does not mean that it is not occurring. Be aware of these risk factors, especially if other indicators such as those listed in Types of Elder Abuse are observed.

Risk factors for being a victim may include:

- Dementia
- Isolation, such as being homebound or homeless
- Lack of social support, such as lack of family or friends nearby
- Living with other people
- Mental illness
- Physical impairments
- Substance abuse

Types of Elder Abuse

The following content is from the National Center on Elder Abuse: https://ncea.acl.gov



The National Center on Elder Abuse identifies seven major types of elder abuse. The following pages list these seven types and include their general definitions and possible indicators of each type. These lists are just a starting point. There are other indicators for each type of elder abuse. Be aware that many elder abuse victims experience more than one type of abuse (poly victimization).

Physical Abuse

Physical Abuse is defined as the use of physical force that may result in bodily injury, physical pain, or impairment.

Physical abuse can include:

- Hitting, slapping, pushing, shaking, kicking, or burning (*common forms of elder abuse*)
- Inappropriately using drugs (for example, unauthorized use of medications such as over/under/mismedicating)
- Inappropriate use of physical restraints (for example, bindings, ropes, cords, locks on the outside the person's bedroom door)
- Force-feeding or withholding food
- Strangulation and suffocation

Based on what you know from your Criminal Law Series, what are some possible ORS statutes related to an elder's physical abuse?

Physical Indicators of Abuse:

- Bruises, lacerations, open wounds, cuts, punctures, burn marks
- Sprains, dislocations, broken bones
- Internal injuries/bleeding
- Patterned injuries
- Physical signs of being restrained or strangled
- Untreated injuries in various stages of healing
- Delayed seeking of medical care
- Laboratory findings of medication overdose or underutilization
- Changes in speaking, swallowing or breathing with a report of strangulation
- An elder's report of being hit, slapped, kicked, or mistreated

There are no gold standard injuries that can only be caused by abuse. Investigators must consider the location, extent, appearance, severity, and number of injuries. Research has identified that injuries to the head and neck, fractures of the head, spine, trunk, and internal injuries suggest abuse (Bonnie & Wallace, 2003). Additionally, the University of California, Irvine conducted a bruising study of older adults who had been abused and found the following results:

- While everyone bruises, physically abused older adults had larger bruises.
- Older adults remembered the cause of the bruise.
- Bruises that are found on the face, upper arms, and torso should be considered suspicious.

Environmental Indicators of Abuse:

- Overturned furniture, holes in walls
- Broken items
- Presence of items that match injury pattern
- Weapons present
- Bindings and restraints
- Medications prescribed for older adult are missing, empty, or unfilled

Consider what you have covered in previous courses regarding conducting an investigation. How does that information apply in the following scenario?

Scenario #1-

Maria, 87 years old, resides in a nursing home. During a visit, Maria's family becomes concerned that she has a number of bruises on her face, arms, and upper torso. Her family asks the caregivers about the bruises, and they are told that Maria bruises easily due to her age and medications, and she must have caused the injuries herself.

Are Maria's injuries suspicious? Why or why not?

What evidence do you have? What evidence do you need to look for?

How might you identify, document, and preserve the evidence?

Who should be interviewed and why?

What might you need to consider when interviewing the victim? Witnesses? Suspect?

What questions would you ask?

What other medical information would be helpful?

What other resources do you need?

Sexual Abuse

Sexual Abuse is defined as non-consensual sexual contact of any kind with an older adult person. This includes any form of unwanted sexual contact and sexual contact with a person legally unable to give consent. You have already covered sexual assault in a previous course. In addition to what you already know, following are some factors specific to elder abuse investigations.

Elder sexual abuse is severely under-reported by victims and professionals. Victims may be unable to report sexual abuse due to physical or cognitive limitations or other medical conditions. Too often, perpetrators select older victims because they are unable to report or, if they do report, will not be believed. When older persons do disclose sexual abuse, assumptions are often made that the older adult is not a credible reporter due to dementia or mental illness.

Physical Indicators of Abuse:

- Bruises to outer arms, chest, mouth, genitals, abdomen, pelvis, or inside thighs
- Bite marks
- Difficulty walking or sitting
- Torn, stained, and/or bloody clothing, including underwear, bedding, or furnishings
- Unexplained sexually transmitted diseases or HIV

Behavioral Indicators of Abuse:

- Unexplained or sudden changes such as:
  - Mood or temperament
  - Personal hygiene
  - Substance use or abuse
  - Regressive behaviors
  - Covering up in many layers of clothing
  - Trying to flee a residence or facility
  - Sleep disturbances
  - Recent resistance to certain kinds of caregiving such as bathing
  - Hyper-vigilance
  - Does not want to be touched
  - Avoidance or fear of specific people
- Coded disclosures:
  - "He's my boyfriend."
  - "He loves me."
  - "I'm his favorite girl."
  - "I'm 80—should I have VD? Could I be pregnant?"

Based on what you know from your Criminal Law Series, what are some possible ORS statutes related to the sexual abuse of an elder?

Consider what you have covered in previous courses regarding conducting an investigation. How does that information apply in the following scenario?

Scenario #2-

Anita is 78 years old and resides in a nursing home. Anita has moderate dementia. One morning Anita tells a day nurse that she was raped by a male nurse working the overnight shift. The day nurse notices Anita is missing clothing items, and she calls the police.

Is Anita potentially a victim of sexual abuse? Why or why not?

What evidence do you have? What evidence do you need to look for?

How might you identify, document, and preserve the evidence?

Who should be interviewed and why?

What might you need to consider when interviewing the victim? Witnesses? Suspect?

What questions would you ask?

What other medical information would be helpful? What steps should you take?

What other resources do you need?

Psychological Abuse

Psychological abuse is defined as the infliction of anguish, pain, or distress through verbal or nonverbal acts. It is the systematic perpetration of malicious and explicit non-physical acts against a victim. Often a pattern of tactics is calculated to undermine the victim's confidence and self-reliance and create fear. Consider how this relates to content you covered in Sexual Assault Investigations and Domestic Violence Investigations.

Psychological abuse often co-occurs with other forms and is used to facilitate the commission of other forms of abuse (Conrad, 2011; Anetzberger, 1998).

Abuser tactics include:

Isolation	Threats and Intimidation	Insensitivity and Disrespect	Shaming and Blaming
Giving the "silent treatment." Denying the victim access to money or economic support Isolating the victim from family, friends, previously enjoyed activities, and information Withdrawing affection Lying or making misleading comments with intent to cause emotional pain Preventing the victim from eating, sleeping, or leaving their residence	Harassing the victim Damaging the victim's property Threatening or physically abusing the family pet Threatening nursing home placement Threatening to injure, permanently disfigure, or kill the victim and/or loved ones.	Verbally insulting or humiliating Treating an older adult like a servant Intentionally disrespecting or disregarding the cultural or religious values/needs of the adult	Treating an older adult like a child Willfully undermining an older person's abilities to make decisions, control their own life, and remain independent for personal benefit Blaming the older person for accidents Falsely claiming that an older person is demented

Indicators Include:

- Social isolation, withdrawal
- Fearful
- Defers in the presence of the suspected abuser
- Crying, shaking, trembling
- May question own capabilities
- Difficulty concentrating
- Increased use of drugs and/or alcohol
- Suicidal thoughts and/or suicide attempts

Based on what you know from your Criminal Law Series, what are some possible ORS statutes related to an elder's psychological abuse?

Consider what you have covered in previous courses regarding conducting an investigation. How does that information apply in the following scenario?

Scenario #3-

While delivering a meal to an elderly neighbor woman, Patty, Linda reported that she overheard Patty's son, Allen, threatening her. Linda reports hearing Allen tell Patty that he would kidnap and torture her beloved cat, Mr. Furry, unless she let him live in her basement apartment.

Is Linda potentially the victim of psychological abuse by Allen? Why or why not?

What evidence do you have? What evidence do you need to look for?

How might you identify, document, and preserve the evidence?

Who should be interviewed and why?

What might you need to consider when interviewing the victim? Witnesses? Suspect?

What questions would you ask?

What other information would be helpful? What steps should you take?

What other resources do you need?

Abandonment

Abandonment is defined as the desertion of an older adult by an individual who has assumed responsibility for providing care for the adult or by a person with physical custody of the adult.

Indicators: Potential Victim

- An older adult who is confused or has dementia who has been left alone for days.
- An older adult who is unable to provide basic information about themselves is found wandering.
- An older adult is left at a mall or hospital emergency department in a strange community.

Indicators: Potential Abuser

- Leaving a person who is unable to provide information about themselves
  - At a hospital
  - At a mall, other location open to the public, or on a road

Based on what you know from your Criminal Law Series, what are some possible ORS statutes related to the abandonment of an elder?

Consider what you have covered in previous courses regarding conducting an investigation. How does that information apply in the following scenario?

Scenario #4-

Glen is a 67-year-old man paralyzed on one side of his body from a stroke. He hired Fred to live in his home and provide personal care. Fred provided good care until the two argued over giving Fred a raise. Glen refused, so Fred left him in his bed, placed the wheelchair in another room, moved the phone out of reach, and left. Three days later, Glen's daughter, Bethany, arrived for a visit and found her father lying in his own waste, dehydrated and delirious.

Is Glen potentially the victim of abandonment by Fred? Why or why not?

What evidence do you have? What evidence do you need to look for?

How might you identify, document, and preserve the evidence?

Who should be interviewed and why?

What might you need to consider when interviewing the victim? Witnesses? Suspect?

What questions would you ask?

What other information would be helpful? What steps should you take?

What other resources do you need?

Neglect

Neglect is defined as the refusal or failure to fulfill any part of a person's obligations or duties to an elder. Neglect may also include the failure of a person who has fiduciary responsibilities to provide care for an elder (e.g., pay for necessary home care services) or the failure on the part of an in-home service provider to provide the necessary care. Neglect typically means the refusal or failure to provide an elderly person with such life necessities as food, water, clothing, shelter, personal hygiene, medicine, comfort, personal safety, and other essentials included in an implied or agreed-upon responsibility to an elder.

Neglect often co-occurs with other forms of elder abuse, especially financial exploitation.

Victims are often frail, physically and/or cognitively impaired, dependent on others, isolated, and/or unable to report.

Indicators: Potential Victim

- Confusion or delirium
- Dehydration
- Malnutrition
- Decayed teeth
- Overgrown nails
- Matted, infested hair
- Over/ Under/ Mis-medicated
- Unexplained weight loss
- Pressure ulcers (bed sores)

Pressure Ulcers and Documentation

Pressure ulcers frequently appear on patients in hospitals, care facilities, and in at-home care situations. They occur when a person remains in the same position for long periods without turning or being turned. Pressure ulcers develop on those bony parts of the body in contact with a surface such as the shoulders, buttocks, hips, ankles, and heels. They should not be on the front of the body as a person unable to reposition themselves should not be positioned face down due to fear of suffocation.

While many pressure ulcers can be prevented, note that not all are preventable even with good care due to the effects of serious underlying medical conditions. As a result, the presence of pressure ulcers alone does not establish neglect has occurred or is occurring.

Indicators: Care Giver

- Missing or absent
- Living in significantly better conditions than elder in the same residence
- More focused on the cost of care than needs of the older adult, especially when elder should be able to afford items or care
- Feels overburdened and/or resentful

Indicators: The Environment

- The residence is poorly maintained, unsafe, or unclean
- Lack of heating or cooling
- Lack of appropriate food for elder
- Foul odors
- Infestations of vermin and/or insects
- Lack of assistive devices (e.g., hearing aids, glasses, dentures, mobility aids) that the older person should have or has had

Indicators: In Facilities

- Failure to provide:
  - Adequate nutrition and fluids
  - Safety measures such as bedrails, as ordered
  - Needed services, e.g., turning a bedridden patient, cleaning bedding and clothing for an incontinent patient
- Failure to notify a responsible party when:
  - A significant change in a resident's situation has occurred
  - A resident is injured
- Withholding services to punish or discipline
- Ignoring calls for assistance

Based on what you know from your Criminal Law Series, what are the possible ORS statutes related to the neglect of an elder?

Consider what you have covered in previous courses regarding conducting an investigation. How does that information apply in the following scenario?

Scenario #5-

33-year-old Elvira provides care for her 94-year-old grandfather, Saleem, who requires constant care. Saleem is brought to the emergency room, comatose, with thirteen severe bedsores, including one that is so deep that Saleem's artificial hip from a recent surgery is visible.

Is Saleem potentially the victim of neglect? Why or why not?

What evidence do you have? What evidence do you need to look for?

How might you identify, document, and preserve the evidence?

Who should be interviewed and why?

What might you need to consider when interviewing the victim? Witnesses? Suspect?

What questions would you ask?

What other information would be helpful? What steps should you take?

What other resources do you need?

Financial Exploitation

Financial exploitation is defined as the illegal or improper use of a vulnerable adult's s funds, property, or assets.

Examples include:

- Theft of cash or other valuables
- Withdrawals from a bank account or use of credit cards
- Transfer of deeds
- Misuse of an older adult's power of attorney
    - Power of Attorney- A written document created by a person with capacity (principal) authorizing another (agent) to make decisions for the principal. Agent's authority is limited to what is stated in POA
    - Guardianship/Conservatorship- A person appointed by the court to manage the personal or financial affairs of an incapacitated person unable to handle their affairs. Supervised by the court
- Misappropriation of an incapacitated older adult's income or assets
- Identity Theft
- Sale of fraudulent investments (Ponzi or pyramid schemes)
- Sale of financial products or services unsuitable for an older adult's circumstances, such as long-term annuities
- Lottery, mail, telephone, or Internet scams
- Door-to-door home repair scams

Consent	Capacity	Undue Influence
Consent means a decision to do something or to allow something to happen. Consent may be given in writing, verbally, or through indicators such as nodding. Generally, to give legally valid consent, a person must: • Have decision-making capacity, • Have knowledge of the true nature of an act, and • Act freely and voluntarily. Lack of legally valid consent may be an element of a crime (e.g., sexual assault, theft).	Decision-making capacity means the cognitive ability to make a decision. Capacity may fluctuate over time and even over the course of a day. There are different standards of capacity for different types of decisions. For financial decisions, a person at least must understand the nature of and the potential effect of the decision. State laws or court decisions may define what standard of capacity is required for a financial decision or action (e.g., making a contract or will). The law presumes that adults have capacity unless a court decides differently and appoints a guardian/conservator to make decisions for the adult.	Undue influence is a psychological and legal concept. Psychologist Margaret Singer defined undue influence as "when people use their role and power to exploit the trust, dependency, and fear of others. They use this power to deceptively gain control over the decision-making of the second person." Legal definitions of undue influence vary somewhat. Courts generally consider: • The relationship between the alleged influencer and alleged victim, • The alleged victim's vulnerability to undue influence, • The alleged influencer's opportunity to gain control, and • Whether the alleged victim's decisions were the outcome of the undue influence. A person with decision-making capacity can be unduly influenced, but it is easier to commit undue influence on someone who has diminished capacity. Generally, a victim of undue influence will not recognize what is happening and will side with the perpetrator. Undue influence invalidates consent. Even if the victim has capacity, a decision made as a result of undue influence is neither knowing nor voluntary.

Indicators: Potential Victim

- Changes in the older adult's appearance, health status, personal habits
- Changes in long time banking or spending patterns
- A confused older person signs something without understanding the consequences

Indicators: Potential Exploiter

- Another person:
    - Cashing an older adult's check or using a credit/debit card without authorization or permission
    - Forging the older adult's signature
    - Coercing or deceiving the older adult into signing any document

Other Indicators:

- Unexplained changes in wills or title documents
- Increased telephone solicitations for funds
- Missing personal property
- Funds wired out of the country for mysterious reasons
- Missing or redirected mail
- Missing personal property
- Names added to older adult's bank accounts

Based on what you know from your Criminal Law Series, what are some possible ORS statutes related to an elder's financial or material exploitation?

Consider what you have covered in previous courses regarding conducting an investigation. How does that information apply in the following scenario?

Scenario #6-

Justin convinced Mildred (his 85-year-old mother) to create a trust and name him as co-trustee. Justin used over $1.5 million from the trust to pay his expenses, credit card bills, and purchase insurance policies. None of these transactions were authorized by Mildred.

Is Mildred potentially the victim of financial exploitation? Why or why not?

What evidence do you have? What evidence do you need to look for?

How might you identify, document, and preserve the evidence?

Who should be interviewed and why?

What might you need to consider when interviewing the victim? Witnesses? Suspect?

What questions would you ask?

What other information would be helpful? What steps should you take?

What other resources do you need?

Self-Neglect

Self-neglect is characterized as the behavior of an elderly person that threatens his/her own health or safety. Self-neglect generally manifests itself in an older person as a refusal or failure to provide himself/herself with adequate food, water, clothing, shelter, personal hygiene, medication (when indicated), and safety precautions. The definition of self-neglect excludes a situation in which a mentally competent older person, who understands the consequences of his/her decisions, makes a conscious and voluntary decision to engage in acts that threaten his/her health or safety as a matter of personal choice.

Indicators: Older Adult

- Displaying mental confusion, depression, paranoia
- Appearing malnourished, dehydrated
- Refusing or failing to seek needed medical care or to take prescribed medications
- Failing to attend to personal hygiene
- Wearing clothing that is dirty or unsuitable for conditions
- Being homeless

Indicators: Environment

- Hoarding (e.g., collecting trash, animals)
- Vermin or insect infestations
- Home is unclean or has hazardous conditions (e.g., holes in floor or roof, exposed electrical wires, piles of animal droppings, rotting food)
- Unpaid bills, rent, lapsed insurance policies
- Plumbing is broken; lack of clean running water
- Utilities unpaid, not working, services turned off

Self-Neglect is not a crime; however, what do you think is the relevance of elder self-neglect to law enforcement?

Consider what you have covered in previous courses regarding conducting an investigation. How does that information apply in the following scenario?

Scenario #7-

Neighbors called police to check on the welfare of Juan, their 91-year-old neighbor. Upon arrival, Juan is found to have had a serious medical condition and was unable to care for himself. The house is full of garbage and rotting food. There are large holes in the floor, exposed electrical wiring, and parts of the roof that are open to the sky.

Is Juan potentially living in an unsafe environment? Why or why not?

What evidence do you have? What evidence do you need to look for?

How might you identify, document, and preserve the evidence?

Who should be interviewed and why?

What might you need to consider when interviewing Juan?

What other information would be helpful? What steps should you take?

What other resources do you need?

What might you do in this circumstance?

Resources

American Bar Association Commission on Law and Aging
www.americanbar.org/aging

International Association of Chiefs of Police
www.theiacp.org

National Adult Protective Services Association
www.napsa-now.org

National Center on Elder Abuse- A national resource center funded by the U.S. Department of Health and Human Services Administration on Aging
www.ncea.aoa.gov

U.S. Department of Justice- Elder Justice Initiative and the Elder Abuse Guide for Law Enforcement
www.justice.gov/elderjustice

Adult Protective Services (local)

Other Terms Related to Elder Abuse Investigations

Term	Definition	Relevance to Elder Abuse
Advance Directive	Advance directives are used to provide directions about health care decisions in case a person loses the capacity to make or the ability to express those decisions.	Advance directives and elder abuse sometimes intersect in ways that may involve crimes.
Deeds and Life Estates	A deed is a legal document that transfers ownership of real estate to someone else. A deed may be used to add someone as a joint owner of the property. A life estate is created when an owner deeds real estate to someone else but reserves the right to continue living on the property for the remainder of his or her life or until some other specified event occurs.	An older person's home may be taken through financial exploitation involving deeds or life estates.
Guardians/ Conservators	A guardian or conservator is appointed by a court to make personal and/or property decisions for a person who does not have decision-making capacity.	Sometimes guardians or conservators misuse their legal authority in ways that result in financial exploitation or neglect of the incapacitated person.
Joint Owners/ Joint Accounts	More than one person can own bank or credit union accounts, investments, securities, real estate, and other forms of property.	Sometimes an older person gives away or loses joint ownership of property through financial exploitation.

Long-Term Care Facility	Long-term care facility is a general term that includes two categories: • Nursing homes • Residential care facilities (e.g., assisted living facilities, board and care homes, personal care homes)	Residents of nursing homes and other types of long-term care facilities can be highly vulnerable to physical and sexual abuse, neglect, financial exploitation, and emotional/ psychological abuse by: • Facility management and staff • Visitors to the facility, including contractors or other workers, residents' family members or guests, family members or guests of other residents • Other residents
Power of Attorney	A power of attorney is a legal document that may be used to plan for possible incapacity because it gives someone authority to act for the person who made the document.	It can be misused to exploit an older person financially.
Representative Payees, VA Fiduciaries, and Other Government Benefit Money Managers	Federal or state agencies that provide retirement/pension or other benefits may name a person or entity to receive and spend money on behalf of a beneficiary who lacks the capacity to manage that money.	The person or entity may misuse the authority over the money to exploit the older person financially.
Trusts	A trust is a legal arrangement in which a person or an institution agrees to manage an adult's assets for that adult's benefit or someone else named by that adult.	A trust can be used as a tool for financial exploitation.
Wills	A will is a legal document that expresses a person's wishes to distribute money or property after death. Wills are not effective until the person has died and the will has been probated.	Financial exploitation related to wills can occur in a variety of ways.

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Elder Abuse Evidence Collection Checklist

Medical Records

☐ Emergency room

☐ Treating physician(s)

☐ Nursing facilities

☐ Pharmacy

☐ Dentist(s)

☐ Prescriptions

☐ Lab reports

☐ Nurses' notes

☐ X-rays

☐ Social workers' notes

☐ Adult Protective Servcies (APS) records of current & prior contacts

☐ Other

Legal Records

All law enforcement contacts with involved parties and witnesses, including:

☐ Physical inventory checklist (Elder Abuse First Responder Checklist)

☐ 911 tapes

☐ Arrest reports

☐ Criminal histories

☐ Jail records, including:
- Phone calls
- Visitor logs by or on behalf of suspects

Testimony & Background Evidence

☐ Psychological/psychiatric evaluation of victim (when consent, undue influence, or capacity may be an issue)

☐ Victim testimony or deposition with full-cross examination, as soon as possible after charging

☐ Videotape the victim at the early stage of the investigation, including the following:
- Orientation (how does the victim perceive time and place)
- Victim testifying to consent
- Victim naming identity of suspect
- Victim signing his/her name in video to compare to signature on questioned documents (financial abuse)
- Impact of crime (video record a walk-through of neglect or abuse crime scene, if possible)

Consultation with Experts

☐ Handwriting analysts

☐ Geriatricians

☐ Forensic accountants

☐ Geriatric psychologists and psychiatrists

☐ Wound care experts

☐ Medical examiner

☐ Civil attorneys

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Elder Abuse Evidence Collection Checklist

Interviews

☐ Witnesses who can describe the victim's condition, activities, and level of functioning and interaction with the defendant at time of incident and before. Describe changes over time.

Possible witnesses:

- Family and friends
- Acquaintances/social
- Banking/financial
- Medical providers (prior and current)
- Hair stylists/barbers
- Faith community
- Local businesses
- Neighbors
- Adult day care services
- Social services (Meals on Wheels, etc.)
- Adult Protective Services
- Payees for expenses the suspect paid with the victim's money
- Civil attorneys
- Delivery personnel
- Postal carriers
- Meter readers

Financial & Legal Records

☐ Credit card records

☐ Investment account records

☐ Credit reports

☐ Suspect's bank records

☐ Victim's bank records

☐ Checkbook registers

☐ Powers of attorney

☐ Prior civil cases

☐ Court/protection orders

☐ Wills and trusts

☐ Property deeds

☐ Conveyances

☐ Advanced care directives/living wills

☐ Guardianship/conservatorship documents

Physical Evidence

Crime scene photos and video, including, if relevant:

☐ Suspect's living area

☐ Victim's living area

☐ Major new purchases made by the suspect

☐ Victim's body

☐ Injuries over time

☐ Other signs of neglect

☐ Clothing victim was wearing at time of incident (include undergarments if applicable)

☐ Bedding

☐ Locks on outside of doors

☐ Writings/journals/letters

☐ Photos and videos related to conduct

☐ Address books and calendars

☐ Defendant's and victim's ISP records

☐ Defendant's computer, flash drives, etc.

☐ Legal file from victim's civil attorney

☐ Assistive devices (or lack thereof)

☐ Nutritional supplements

☐ Receipts for purchases

☐ Restraints and bindings

☐ Checkbooks, check registers

☐ Contents of refrigerator, cupboards, medicine cabinets (include actual bottles/containers for prescriptions to show physician and pharmacy, possession and full/empty status given recommended dosage over time from the date of the last refill)

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Elder Abuse First Responder Checklist

Does the older adult have any impairments?

☐ Hearing impaired/uses hearing aid

☐ Visually impaired (wears glasses, full or partial blindness, cataracts)

☐ Requires walker, wheelchair or cane

☐ Wears dentures

Does the older adult take medications? If so, list:

_____

_____

Does the older adult any medical conditions? If so, list:

_____

_____

Can the older adult do the following things independently (without assistance)?

Bathing	☐ Yes	☐ No	☐ Unknown
Dressing	☐ Yes	☐ No	☐ Unknown
Toileting	☐ Yes	☐ No	☐ Unknown
Transferring	☐ Yes	☐ No	☐ Unknown
Continence	☐ Yes	☐ No	☐ Unknown
Ability to use the telephone	☐ Yes	☐ No	☐ Unknown
Transportation	☐ Yes	☐ No	☐ Unknown

Signs of Physical Abuse

Victim's Self Report	☐ Yes	☐ No	☐ Unknown	Victim's Self Report Description
Bruises	☐ Yes	☐ No	☐ Unknown	_____
Black Eyes	☐ Yes	☐ No	☐ Unknown	_____
Lacerations	☐ Yes	☐ No	☐ Unknown	_____
Ligature / Restraint Marks	☐ Yes	☐ No	☐ Unknown	_____
Broken Bones	☐ Yes	☐ No	☐ Unknown	_____
Burns	☐ Yes	☐ No	☐ Unknown	_____
Bite Marks	☐ Yes	☐ No	☐ Unknown	_____
Over / Under Medicated	☐ Yes	☐ No	☐ Unknown	_____
Hair Pulled Out	☐ Yes	☐ No	☐ Unknown	
Uncooperative Caretaker	☐ Yes	☐ No	☐ Unknown	
Weapons	☐ Yes	☐ No	☐ Unknown	

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Elder Abuse First Responder Checklist

Signs of Sexual Abuse

Victim's Self Report	☐ Yes	☐ No	☐ Unknown	Victim's Self Report Description
Bruises: Breasts/Genital Area	☐ Yes	☐ No	☐ Unknown	
Torn/Bloody Underclothes	☐ Yes	☐ No	☐ Unknown	
Difficulty Walking/Sitting	☐ Yes	☐ No	☐ Unknown	
Sexually Transmitted Disease	☐ Yes	☐ No	☐ Unknown	
Broken Bones	☐ Yes	☐ No	☐ Unknown	
Burns	☐ Yes	☐ No	☐ Unknown	
Bite Marks	☐ Yes	☐ No	☐ Unknown	
Over / Under Medicated	☐ Yes	☐ No	☐ Unknown	
Hair Pulled Out	☐ Yes	☐ No	☐ Unknown	
Uncooperative Caretaker	☐ Yes	☐ No	☐ Unknown	
Weapons	☐ Yes	☐ No	☐ Unknown	

Signs of Neglect/Cruelty

Victim's Self Report	☐ Yes	☐ No	☐ Unknown	Victim's Self Report Description
Lack of Basic Services	☐ Yes	☐ No	☐ Unknown	
Lack of Assistive Devices	☐ Yes	☐ No	☐ Unknown	
Abandonment	☐ Yes	☐ No	☐ Unknown	
Inappropriate Clothing	☐ Yes	☐ No	☐ Unknown	
Inadequate Heating/Cooling	☐ Yes	☐ No	☐ Unknown	
Bed Sores	☐ Yes	☐ No	☐ Unknown	
Unsafe Environment	☐ Yes	☐ No	☐ Unknown	
Fleas/Lice/Roaches/Rodents	☐ Yes	☐ No	☐ Unknown	
Fecal/Urine Odor/Stains	☐ Yes	☐ No	☐ Unknown	
Lock/Chains On Interior Doors	☐ Yes	☐ No	☐ Unknown	

Signs of Emotional Abuse

Victim's Self Report	☐ Yes	☐ No	☐ Unknown	Victim's Self Report Description
Upset/Agitated	☐ Yes	☐ No	☐ Unknown	
Withdrawn/Non-responsive	☐ Yes	☐ No	☐ Unknown	
Nervous Around Caregiver/Other	☐ Yes	☐ No	☐ Unknown	
Caregiver Restricts Communication To Friends & Family	☐ Yes	☐ No	☐ Unknown	
Fearful Of Saying Or Doing Something Wrong	☐ Yes	☐ No	☐ Unknown	

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Elder Abuse Guide *for* Law Enforcement

Elder Abuse First Responder Checklist

Signs of Financial Abuse

Victim's Self Report	☐ Yes	☐ No	☐ Unknown	Victim's Self Report Description
Unemployed Adults Reside In Home	☐ Yes	☐ No	☐ Unknown	
New Names on Signature Card(s)	☐ Yes	☐ No	☐ Unknown	
Unauthorized Withdrawal(s)	☐ Yes	☐ No	☐ Unknown	
Abrupt Changes In Will	☐ Yes	☐ No	☐ Unknown	
Disappearance of Funds/Possessions	☐ Yes	☐ No	☐ Unknown	
Unpaid Bills/Adequate Funds	☐ Yes	☐ No	☐ Unknown	
Forged Signature For Transactions	☐ Yes	☐ No	☐ Unknown	
Appearance Of Uninvolved Relative	☐ Yes	☐ No	☐ Unknown	
Sudden Transfer Of Assets	☐ Yes	☐ No	☐ Unknown	
Unlicensed Personal Care Home	☐ Yes	☐ No	☐ Unknown	
Large Purchases For The Abuser's Benefit	☐ Yes	☐ No	☐ Unknown	
Inappropriate Financial Reimbursement For Services To The Older Adult	☐ Yes	☐ No	☐ Unknown	

Signs of Self-Neglect

Dehydration/Malnutrition	☐ Yes	☐ No	☐ Unknown
Lack Of Medical Attention	☐ Yes	☐ No	☐ Unknown
Unsafe Living Conditions	☐ Yes	☐ No	☐ Unknown
Unsanitary Living Conditions	☐ Yes	☐ No	☐ Unknown
Inappropriate Clothing	☐ Yes	☐ No	☐ Unknown
Lack Of Assistive Devices	☐ Yes	☐ No	☐ Unknown
Inadequate Housing	☐ Yes	☐ No	☐ Unknown

Obtaining Suspect Bank Records
Selecting the Correct Process for your Case
Oregon Department of Justice – Elder Abuse Team

Consent
ORS 192.593

The Suspect...
- Knows of the case.
- Is cooperating with the investigation.

How To Do It:
Refer to ORS 192.596 for content to be included on consent form.

PROS:
- Consent can be gold and more difficult to call to error on behalf of LE.

CONS:
- Can be revoked by suspect prior to obtaining the records.
- Some banks will not accept consent forms even though ORS allows it.
- Can be challenged and prosecution has the burden to prove.

Grand Jury
Supoena with Service to Suspect
ORS 192.596(2)

The Suspect...
- Knows of the case.
- Is available to accept subpoena service (or their attorney can accept).

How To Do It:
Request to DA's Office for a Grand Jury Subpoena Duces Tecum (investigative documents, testimony). Serve to suspect or their attorney then serve to the bank.

PROS:
- Standard to obtain is reasonable cause which allows for a wider investigative scope.
- EASY and could move your case faster.

CONS:
- Must allow for an extra 10 days to give the suspect an opportunity to quash the subpoena.
- Banks will not provide records until after the 10 day waiting period.
- The subpoena cannot be served to the bank until it has been served to the suspect.

4-Part Process
(GJ Sub, Aff' Petition, & Order)
ORS 192.596(6)

The Suspect...
- Has no knowledge of the case and you wish to protect assets and/or be covert.

How To Do It:
Complete affidavit, go to GJ for the subpoena, DA signs the petition and judge signs the order for waiver and non-disclosure. Then serve the GJ sub and the order to the bank.

PROS:
- Protection of assets, victim, witnesses.
- Allows you to conduct investigation covertly.

CONS:
- Labor intensive and can be time consuming.
- Standard is resonable cause, however judges might review the affidavit under a probable cause standard meaning a possible revision or tightening of your requested scope.

Search Warrant
ORS 192.598

The Suspect...
- Use of a SW will apply to almost any case cicumstance as long as PC has been established.

How To Do It:
Discuss your case with a DA/DDA to get guidance and review support. Complete affidavit and search warrant, have it reviewed and them signed by a judge.

**Follow your court's procedure for records management and recording of the SW. Consider your need to also include non-disclosure language in your SW/Aff and have the DA complete a petition.*

Upon completion of servie to the bank, complete and file a SW return.

PROS:
- SW can be served to any bank (out of state banks can pose an issue but it is possible).
- Once the suspect has been indicted, a SW is the only way to get new records and evidence for the case.
- SW is harder for defense to challenge than other processes.

CONS:
- Labor intensive and can be time consuming.
- Uses a probable cause standard thus tighening your scope.

Check with the financial institution to confirm if they will accept legal process at a local branch or require service to the State Registered Agent (Secretary of State Business Registry)

As a rule you should always check with your local DA's Office for preferred practices as those can vary throughout jurisdictions

Basic Police Academy

Emergency Vehicle Operations



Emergency Vehicle Operations

Instructional Goals:

This course is designed to introduce a new officers to safe and efficient operation of emergency vehicles.

This course is designed to enhance a new police officer's judgment and decision making regarding the use of emergency vehicles.

Learning Outcomes:

Upon completion of instruction, students will be able to:

1. Demonstrate safe emergency vehicle operations.
2. Demonstrate sound judgment and decision-making when operating an emergency vehicle.

Content Outline:

- The Science of Driving
- Legal Considerations
- Driving Techniques
- Electronic Safety and Control Systems
- Drivetrain Configurations
- Summary
- EVO Scoring/Expectations

The single most important factor in the EVO program is based on a very simple philosophy:
"It is not how fast you drive; it is how efficient and consistent you are in your driving."

DRIVING PHILOSOPHY

The DPSST Emergency Vehicle Operations program philosophy is quite direct and straight-forward and easily summarized by the following statement: ***"100% control of the vehicle, 100% of the time."***

We often refer to our approach to driving as the "Platform Stability" or "Stable Platform" model of driving. This driving model assumes the vehicles to be inherently stable by design and that these platforms are stable when they are the "flattest." The driver manages the stability of the platform with the physical inputs to the steering, braking, and acceleration systems of the vehicle.

To best implement the philosophy, we rely heavily upon being able to drive with technical regard to the available grip or traction between the vehicle tires and the driving surface. The science of driving is critical to our program philosophy and success. When most of us hear words such as "science," "math," "physics," or other words that remind us of our formative years and a particular topic that seemed somewhat complex and bewildering, our brains cease to function. We do not expect drivers to recite Newton's First Law of Motion in the course of an emergency vehicle response. We do expect drivers to manage the effects Newton's First Law has upon overall vehicle stability and grip.

When we are considering the need to be technically correct concerning grip, our driving decisions immediately begin to promote our philosophy.

The technological advances in vehicles are strengthening our overall program philosophy. While we will discuss ESC systems and other vehicle technologies in some detail later in this manual, all of the mathematical algorithms and programming of these systems are based upon being technically correct with grip, maintaining platform stability as much as possible, and truly attempting to aid the driver to retain 100% control of the vehicle.

When a crash is reconstructed, steering and brakes most frequently become the proximate cause. Whether the crash was a result of too much or too little steering input or the same failures with braking, the actual physics of the incident will typically lead to an error in judgment and application by the driver. A smaller percentage of crashes are a result of improper use of the gas pedal. Like the brake pedal, the gas pedal shifts weight. Abrupt use of the pedal shifts more weight.

THE SCIENCE OF DRIVING

In this section of the manual, you will learn about the impact vehicle dynamics has on the available grip levels between the vehicle tires and the driving surface, gain an understanding of the physics involved in the operation of vehicles, and gain awareness to some of the terminology.

DEFINITIONS

Acceleration	The rate of increase in velocity.
Centrifugal Force	An outward force apparent in a rotating reference frame; it does not exist when measurements are made in an inertial frame of reference.
Centripetal Force	A force that makes a body follow a curved path; its direction is always orthogonal to the motion of the body and towards the fixed point of the instantaneous center of curvature of the path.
Deceleration	The rate of decrease in velocity.
Direction	The way a vector is pointing.
Friction	A force that resists the relative motion or tendency to such motion of two bodies or substances in contact.
G-Force	A vector quantity that tends to produce an acceleration of a body in the direction of its application.
Grip	A one-word amalgamation of all of the physical properties a vehicle possesses relating to changes in speed and direction upon a driving surface; increased grip implies a more stable vehicle, while decreased grip implies a vehicle is losing stability.
Gyroscopic Precession	A phenomenon occurring in rotating bodies in which an applied force is acting 90° to the axis of a rotating object.
Inertia	The tendency of a body at rest to remain at rest or of a body in motion in a straight line to stay in motion in a straight line unless acted on by an outside force.

Kinetic Energy	Energy that a body possesses by virtue of being in motion.
Lateral Acceleration	The component of the vector acceleration of a point in the vehicle perpendicular to the longitudinal axis and parallel to the road plane.
Lateral Axis	An imaginary axis running through the vehicle from side to side through the center of gravity and parallel to the road plane.
Longitudinal Acceleration	The component of the vector acceleration of a point in the vehicle perpendicular to the lateral axis and parallel to the road plane.
Longitudinal Axis	An imaginary axis running through the vehicle from front to rear through the center of gravity and parallel to the road plane.
Magnitude	A property by which an object can be compared as larger as or smaller than other objects of the same kind.
Newton's 1st Law of Motion	An object will remain at rest or in uniform motion in a straight line unless acted upon by an external force. It may be seen as a statement about inertia – objects will remain in their state of motion unless a force acts to change the motion.
Newton's 2nd Law of Motion	The acceleration of an object as produced by a net force is directly proportional to the magnitude of the net force, in the same direction as the net force, and inversely proportional to the mass of the object.
Newton's 3rd Law of Motion	To every action force, there is an opposite reaction force.
Oversteer	The tendency of a vehicle to turn more sharply than intended. This is referred to as a "REAR SKID" by instructors during training exercises.
Potential Energy	The energy possessed by a body by virtue of its position relative to others.
Pitch	Movement around the lateral axis of a vehicle.
Roll	Movement around the longitudinal axis of a vehicle.
Understeer	The tendency of a vehicle to take a straighter path than intended. This is referred to as a "FRONT SKID" by instructors during training exercises.
Vector	A quantity having direction as well as magnitude, especially as determining the position of one point in space relative to another.
Yaw	Movement around the yaw axis of a vehicle.
Yaw Axis	An imaginary axis running through the vehicle from top to bottom through the center of gravity and perpendicular to the road plane.

FRICTION

Friction will always exist when a vehicle is in motion. When a vehicle is in motion, the friction occurring between the vehicle tires and the driving surface is referred to as rotational friction. Rotational friction is mandatory when operating a vehicle in motion. This resistance to the change in relative motion allows the vehicle to accelerate, decelerate, or change direction. When rotational friction between the tires and the driving surface is lost, a vehicle in motion still has sliding friction. The resistance to change in relative motion still exists; however, the vehicle will no longer be capable of any directional change.

> Simply put, when the tires are not rotating, you cannot steer in a different direction. The vehicle will continue to travel in a straight line in the direction the center of gravity is moving until it comes to a stop.

The chart illustrates the overall stopping distance measured at selected speeds from 30 mph through 80 mph with a vehicle retaining rotational friction and a vehicle where the tires slide and only sliding friction exists.

- Red (top) is locked/sliding tire (sliding friction)
- Blue (bottom) is a stop where rotational friction is maintained (rotational friction)
- These distances are based on the average deceleration rate of 26.84 fps2 of a 2011 Ford CVPI.



Drivers use the terms “traction,” “rolling friction,” and “rotational friction” somewhat interchangeably. These terms are close in definition but are not synonymous with one another. What the drivers are describing is the concept of “Grip.”

NEWTON'S LAWS OF MOTION

The laws of nature (physics) are all in play when the movements and actions of vehicles are examined. While drivers are never asked to recite Newton's 1st law of motion while in the middle of an emergency or evasive steering maneuver, an understanding of the physical principles is critical to the driver attempting to avoid a major loss of grip. Driver training programs have historically spent a good deal of time and effort imprinting these physical principles and properties into the person they are working to improve, and this program is no different in that regard. Drivers need to understand the principles in play; however, being able to use the big words and recite nature's laws are not the primary focus of this section.

Newton's First Law of Motion

An object will remain at rest or in uniform motion in a straight line unless acted upon by an external force.

In terms of vehicle operations and stability, the implications of Newton's First Law of Motion are quite simple.

Example #1



When the SUV is parked, the SUV will remain in place unless it is forced to move.

Example #2



When the sedan is in motion, it will continue moving unless it is forced to stop.

When the vehicle is in motion (example #2), it possesses "Inertia." The sedan will travel in a straight line based on the center of gravity until forced to change. The fact that a vehicle will eventually come to a stop is not due to the lack of a force, but rather the presence of an opposing force, which is most commonly the force known as friction. *(See Newton's Third Law)*. Drivers force directional change in the platform with steering. Drivers also change the status of the platform with braking and acceleration adjustments.

Newton's Second Law of Motion

The acceleration of an object as produced by a net force is directly proportional to the magnitude of the net force, in the same direction as the net force, and inversely proportional to the mass of the object.

Newton's second law speaks to the amounts of force needed to move objects. Force is the primary consideration of this natural law of motion. In mathematical terms, force is a result of mass multiplied by acceleration. Drivers become very accustomed to the configuration of their primary vehicle and do not grasp this physical principle until they attempt to operate a different vehicle with a substantial difference in weight.

In our example below, the force is identical in each situation. The mass in the top example is substantially less than the mass in the lower example. Since the mass has changed and the force has remained the same, the amount of acceleration must change as well.

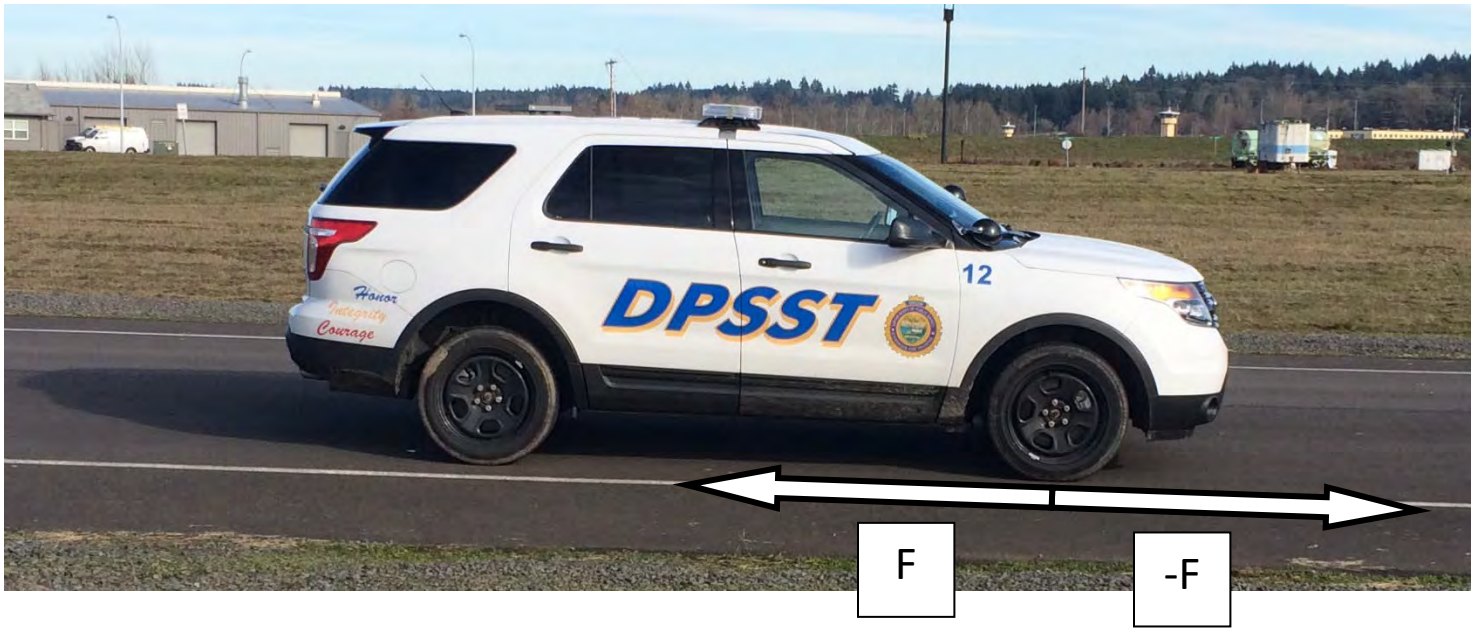
	→	**Delivered Curb Weight**			**More Acceleration**
Equal Force	**Force**	**=**	**Mass**	**X**	**Acceleration**
	→	**Patrol Ready** With Officer, 4490 Pounds Average			**Less Acceleration**

By adjusting the variable (mass) in this instance, the amount of acceleration with the same amount of applied force is greater with the lighter vehicle than the heavier vehicle.

Based on the curb weight at delivery and an average patrol-ready weight of a 2015 Dodge Charger 3.6L Patrol Vehicle.

Newton's Third Law of Motion

To every action force, there is an opposite reaction force.

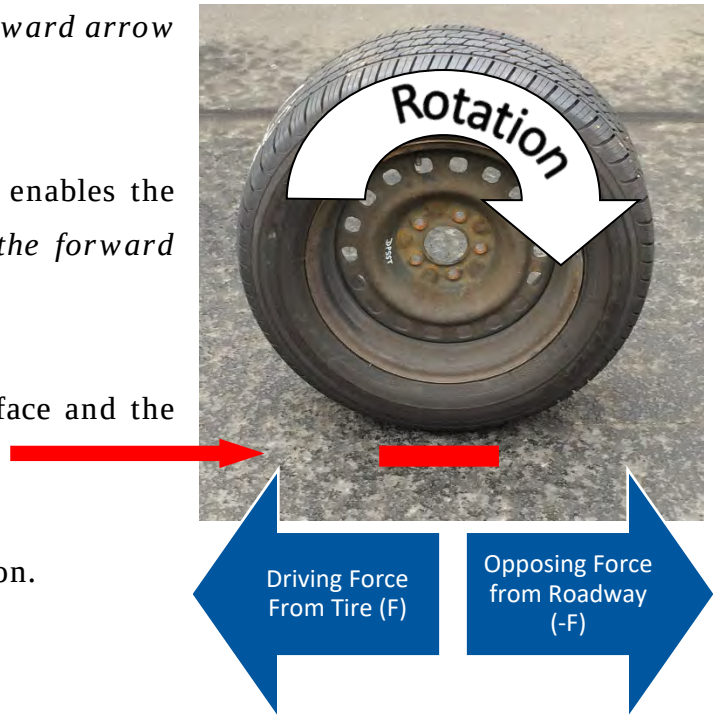


The vehicle's engine provides power to the wheels, which generates rotational friction. The wheels push against the roadway. *(Represented by the backward arrow labeled "F")*

The roadway applies the opposing force that enables the vehicle to move forward. *(Represented by the forward arrow labeled "-F")*

The point of contact between the driving surface and the vehicle is called the contact patch.

This concept is described in the following section.



GRIP AND CONTACT PATCHES

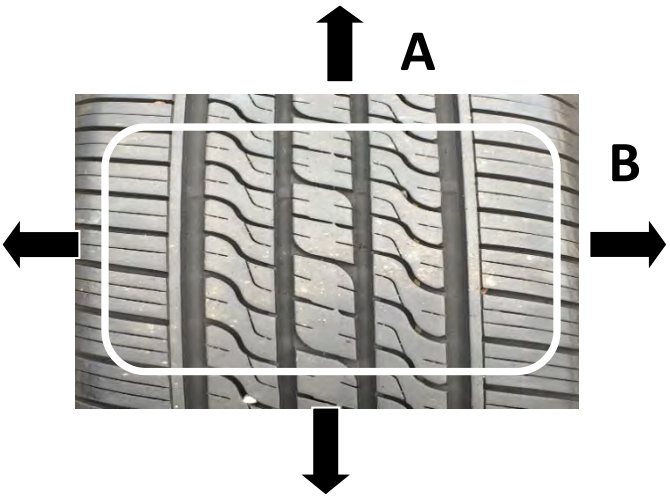
The surface area of a tire that is in contact with the driving surface at any precise moment in time is referred to as the contact patch. Contact patches change in size depending upon the dynamics exerted through the vehicle platform to the tire in relation to the intended change in speed, direction, or both.



The Tire Contact Patch



This little area of rubber can only supply a finite amount of grip



For the purpose of explanation, grip is divided between the front to back (longitudinal) and side to side (lateral) directions.

Longitudinal grip is used up when the driver is accelerating or braking. (Represented by "A" in this illustration.)

Lateral grip is used when the driver is turning corners and steering. (Represented by "B" in this illustration.)

When the safety of the driver is directly correlated to the levels of grip, it is easy to understand why our philosophy and techniques are designed to prepare drivers to be technically correct with regard to the levels of grip throughout all of the driving process.

Here are critical points of the concepts of grip with relation to the tire contact patches:

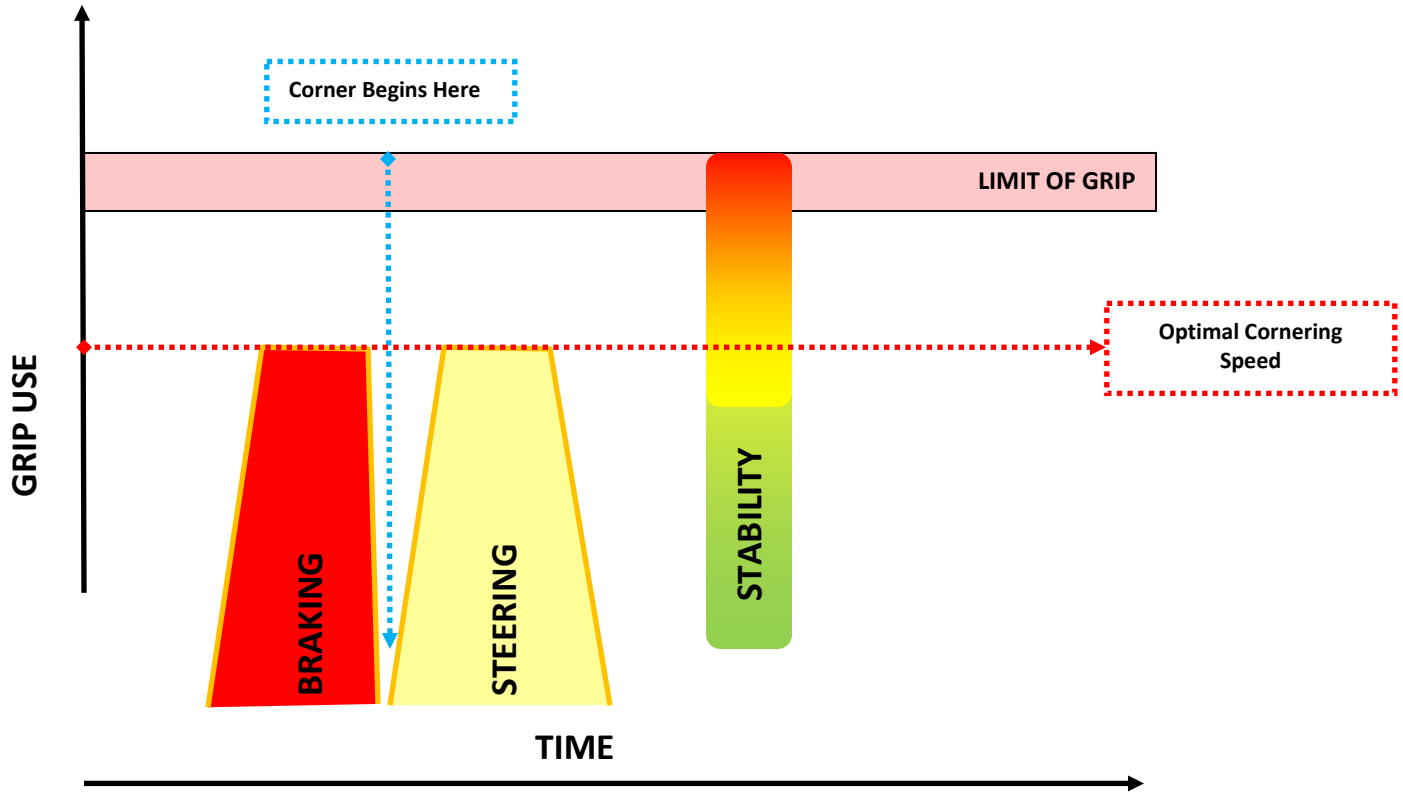
If the available grip is utilized to move in one direction (for example, braking – longitudinally), no grip will be available to change directions (for example, steering – laterally). Fortunately, the techniques and concepts of EVO are designed to assist drivers in maintaining a balance between the forces, leaving grip available for simultaneous demands upon the contact patch. The vehicles are also equipped with technologies that assist the driver in maintaining or restoring this balance. These vehicle technologies are discussed later in this manual.

When the driver turns the steering wheel to take the vehicle into a corner, the rotational friction of the front tires increases. In mathematical terms, the increase is approximately 1.5% for each degree of steering input on the front tires, up to a maximum of 20 degrees.

The result of this increase in grip is about a 30% increase in the braking ability of the front tires. This is sometimes referred to as "steering brake," however, because steering causes weight shift from side and side and forward, overall "grip" is generally decreased when the combined rotational friction of all four tires are analyzed.

The impact to the driver due to this physical reality is quite simple. The additional weight increases the size of the front tire contact patches and makes steering more efficient. The driver can use the advantage of this weight transfer and increase of grip if the weight remains on the front tires throughout the time the steering is needed. Since a significant amount of braking is going to occur due to the addition of steering, the driver can release a proportional amount of brake pedal pressure.

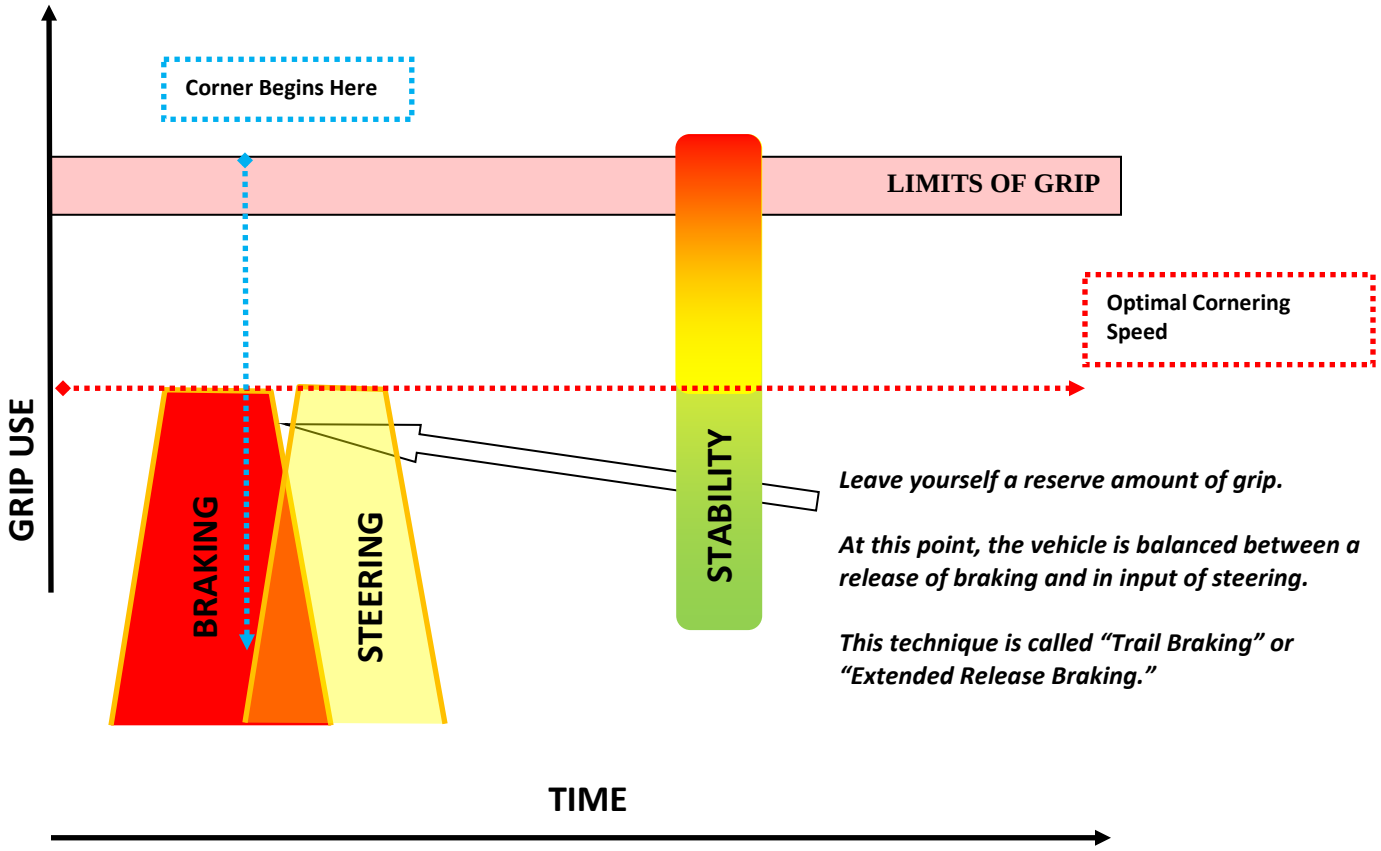
The following graph illustrates the concept of separating forces competing for grip.



Separation of Controls

When a driver first begins learning to drive near the limits of grip, they frequently try to perform the most grip-demanding longitudinal and lateral actions separately. In the example above, the driver recognizes that his speed is above the optimal cornering speed for a turn and applies brakes early. Immediately before the driver needs to start steering when the corner actually begins, the driver releases all of the brake pedal pressure. The driver then begins to input the steering needed for the corner. While the driver has separated the demands on the tire contact patches, the immediate transfer of weight towards the rear when the brake pedal is released is the genesis of a front skid situation if the speed is below the optimal cornering speed. This is neither efficient with regard to grip and weight management, nor is it efficient with regard to optimal speeds for the given driving situation.

The following graph illustrates the concept of balancing forces competing for grip.



Balance of Controls

Drivers that learn to maximize grip throughout the driving experience have learned to combine lateral and longitudinal elements in an effort to extract the last bits of grip and stability from their vehicles. In the graph above, by combining the braking and steering elements in a corner, the amount of weight transfer is significantly reduced, and smaller changes are apparent in the stability.

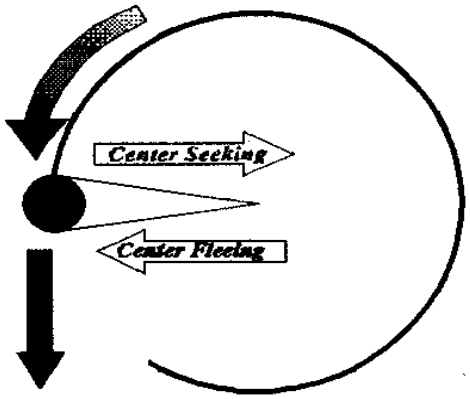
Technique/Decision-Making Tip

Avoid operating any vehicle at the limits of grip. Drive with a reserve. This means you will still retain some grip and stability should you miscalculate a turn or stop. In the graph above, a driver that uses enough thought and discipline to operate below the thresholds of grip and stability will always have a reserve.

Centripetal– Centrifugal Force

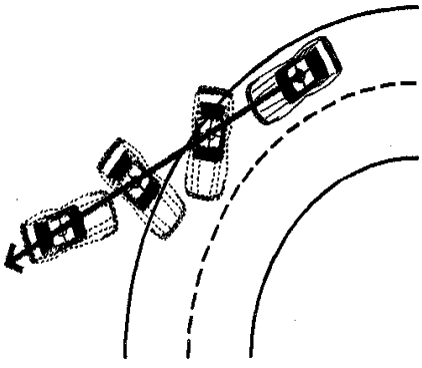
The force that is experienced pushing outward from the center is called centrifugal force. This is a "center fleeing" force. The force, which pulls toward the center, is called centripetal force. This is a "center seeking" force.

Centripetal force is generated by the front tires and allows the vehicle to change direction and turn into a corner. Centrifugal force is the inertia the vehicle possesses and its physical nature to travel in a straight line away from the center of the turn.



The rear tires do not provide a cornering force unless the vehicle is one of those rare platforms manufactured with rear-steer tires. The vehicles currently used by Law Enforcement agencies typically do not have this option available.

If you lose the cornering force (centripetal), the vehicle's center of mass will continue to travel in a straight line. This is true of a vehicle regardless of its orientation (forwards, backward, sideways, or spinning

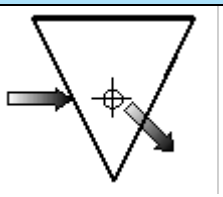
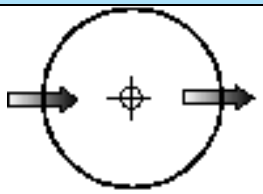
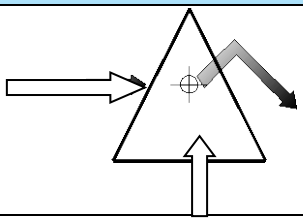


Like a rock on a string, if the turn force of a vehicle in a curve is eliminated, the vehicle's center of mass will go in a straight line!

Stability – Flat Stable Platform

The definition of "stability" is quite simple. How far the center of mass must rise before falling determines the level of stability an object possesses.

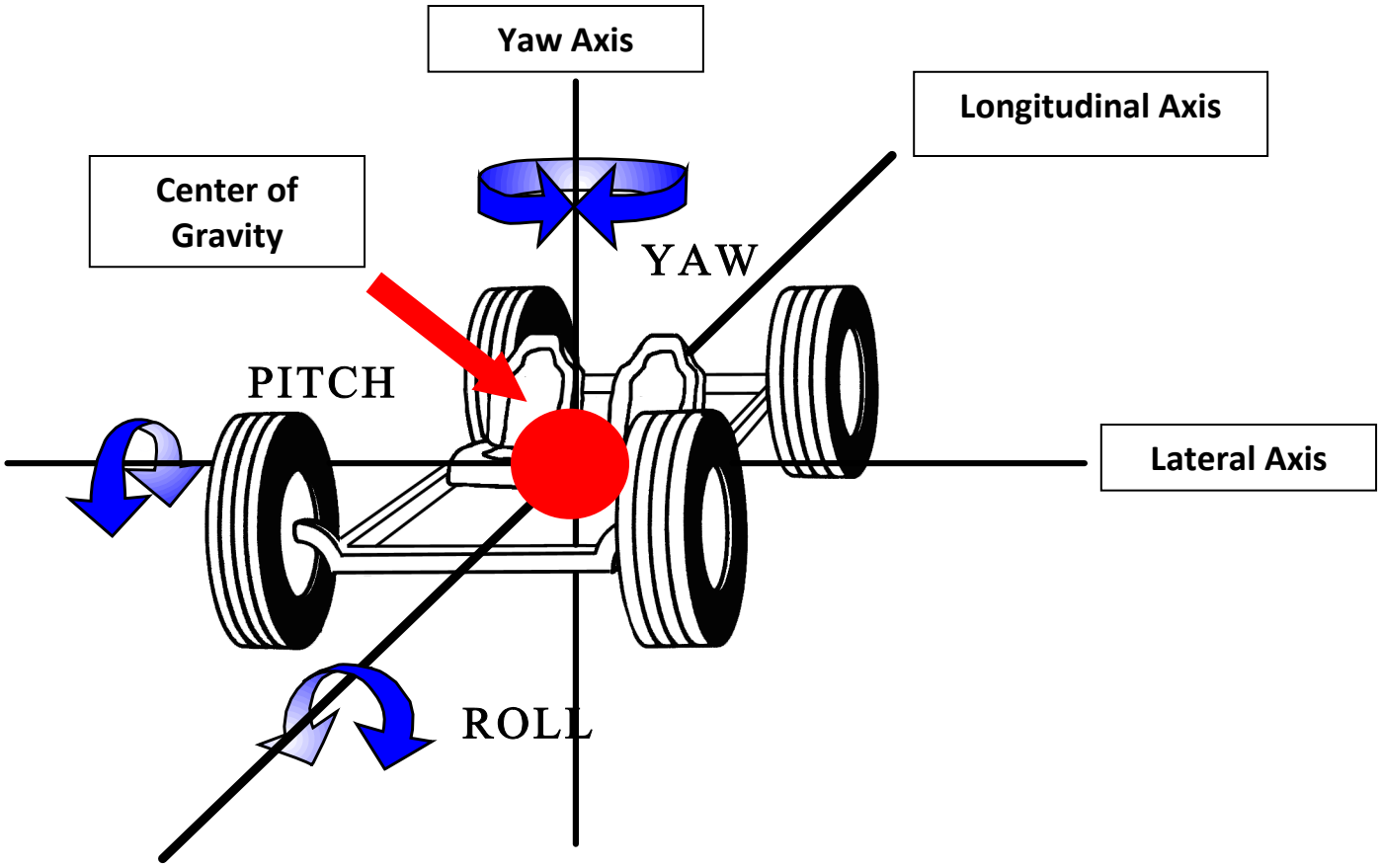
The center mass of a stable object must rise before the object can be turned over.

Unstable Object	***Neutral Object***	***Stable Object***
		
Any force applied to the center of mass on this object will result in the center of mass falling.	Any force applied to the center of mass of this object will result in no change of stability.	Any force applied to the center of mass of this object will cause it to slide. Only when a second force is applied raising the center of mass, will these objects tip over.

Vehicles operated by emergency personnel are all stable by definition. None of the emergency vehicles will just simply "fall over" without external factors raising the center of gravity. While the vehicles used in emergency services are extremely stable by design (and therefore difficult to roll over), the demands placed upon the platform by the drivers create significant changes in overall stability.

AXIS OF MOTION

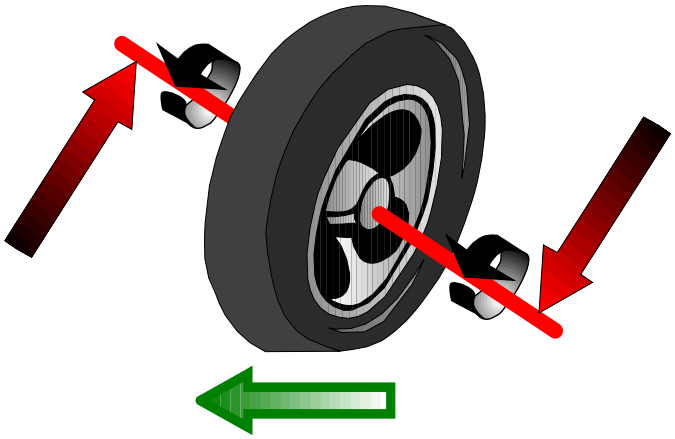
Movement around the center of gravity will occur along at least one (and typically more) axis of motion. These movements cause the center of mass to rise, drop and shift direction. There are three axes of motion to consider, and they intersect at the center of gravity.



PITCH	*YAW*	*ROLL*
Pitch is the movement of weight around the lateral axis. Pitch happens under acceleration, braking, or turning.	Yaw is the movement of weight around the yaw axis. Yaw happens under acceleration, braking, or turning.	Roll is the movement of weight around the longitudinal axis. Roll happens when the vehicle is turning.

GYROSCOPIC PRECESSION

A phenomenon occurring in rotating bodies in which a force is applied acting 90° to the axis of a rotating object.



This force is manifested as "body roll" in a vehicle.

TECHNIQUE/TIP

Utilize a method of steering wheel control where the force of gyroscopic precession is managed.

- Steering Inputs should be completed in one smooth and continuous movement.
- Inputs should not be greater than necessary.

The technique endorsed by this program is referred to as "Shuffle Steering." Refer to the section on driving technique for further information on this technique.

CASE STUDY #1
EXAMINING THE MOVEMENT OF WEIGHT AROUND THE PLATFORM DURING A SINGLE VEHICLE INCIDENT

THE SITUATION:

What happens when a driver allows a vehicle to "drop" one or more tires off of the driving surface?

In our example, a driver is simply traveling down the roadway minding personal thoughts and business. No other traffic or hazards are even present in the environment. This is a common situation drivers find themselves facing, and it creates a situation where the focus of driving is temporarily lost.

When a driver loses focus on the task at hand due to other distractions that can occur in a vehicle, the actual path of travel the vehicle takes begins to deviate from the intended path. In this situation, the course deviation has taken the vehicle over the fog line and resulted in the passenger side of the vehicle having the front tire leave the paved asphalt surface and drift into the graveled shoulder.

What happens next is influenced by multiple factors. The driver, the vehicle, the driving surface, the elements, the condition of the shoulder...all of these things are immediately in play, and the distracted driver is now faced with a critical skill test.

THE FACTS AS THEY CURRENTLY EXIST:

- The passenger front tire in the gravel is traveling at a different speed than the tires on the asphalt.
- The overall rate of speed of the vehicle has not substantively changed.
- The passenger front tire is now causing the front corner of the vehicle to drop.
- The relative center of mass has been raised slightly.

TYPICAL RESPONSE OF THE DRIVER:

The typical reaction of most drivers facing this sudden challenge to their mental and physical driving skills is to steer quickly to the left in an attempt to regain asphalt roadway with the outside tires. This sudden and quick movement of the steering wheel induces significant gyroscopic precession, which causes a continuing rise in the center of mass. One of two things will now occur:

1. The vehicle regains the roadway suddenly and veers into oncoming lanes. This result has its own set of potentially catastrophic outcomes.
2. The vehicle tire significantly slows and begins to dig into the softer shoulder of the roadway, eventually reaching a "tripping point" – a point where the center of mass is high enough to "fall over."

To prevent outcome either outcome #1 or #2, the driver must be aware of the relative center of mass and not attempt any sudden input to the platform when the vehicle's mass has raised or is rising. If the driver fails this sudden and unexpected test of physical driving skill, the vehicle will begin to roll over in outcome #2.

PREFERRED RESPONSE OF THE DRIVER:

The most obvious solution is to be an active participant in the driving experience at all times when operating a vehicle. This is not a completely realistic expectation, so the driver needs to hone the understanding of platform stability and weight management.

The proper technique is to straighten the steering wheel and slow the vehicle down until the return to the roadway can be done safely and in a controlled manner.

OBSERVED VEHICLE DYNAMICS

Weight Transfer to the Front under Braking Application

In this photograph, the driver has applied a significant amount of BRAKING to the vehicle. The vehicle has shifted weight to the front.



An overall increase of grip has occurred on the front tires, but a subsequent loss of grip has occurred on the rear tires.

Rear to Front weight shifts are typically easier to observe from outside than the weight shifts that occur from the Front to the Rear.

The driver will be able to sense the weight shift as different physical forces are exerted upon the driver's body.

Weight Transfer to the Side and Front under Steering Input





In these photographs, the driver has input significant amounts of steering at speed. The weight shifted to the side and also visibly to the front.

The front tires on each platform are bearing the majority of responsibility with regard to grip.

CASE STUDY #2

ONE VEHICLE ROLLOVER INCIDENT IN PHOTOS




In the first photo (left) in this series, the driver lost grip on an asphalt runway and started sliding across a dirt apron along the runway. In the second photo (right), you can see a significant change in grip as the vehicle continues across the dirt apron based on the amount of debris coming off of the wheels.





In the three photos above, the crash begins when the vehicle enters the soft field with the vehicle wheels pointed to the right. This caused the weight shift to the front around the lateral and yaw axes to continue, and when the front tire began to "dig" into the soft dirt in the field, the center of gravity began to rise rapidly.

This is the result of not straightening the steering wheel when leaving the roadway.



LEGAL CONSIDERATIONS OF EMERGENCY VEHICLE OPERATIONS

OREGON REVISED STATUTES

The following statues are related to the operation of emergency vehicles and the manner in which emergency vehicles are defined, exempted, and restricted in Oregon. These statutes are drafted and modified by the Oregon Legislature on occasion and should be checked against the most current printing of the Oregon Vehicle Code.

Police drivers must be fully aware of the limitations imposed on them by ORS. Personnel should be as familiar with these statutes as they are with the use of force guidelines. Officers must understand the scope of their authority and what restrictions and exemptions are granted them by the statutes.

801.260 Emergency Vehicle

Emergency vehicle means a vehicle that is equipped with lights and sirens as required under ORS 820.350 (Ambulance warning lights) and 820.370 (Ambulance or emergency vehicle sirens), and that is any of the following:

1. Operated by public police, fire, or airport security agencies.
2. Designated as an emergency vehicle by a federal agency.
3. Designated as an emergency vehicle by the Director of Transportation. [1983 c.338 §43; 1993 c.751 §5

811.145 Failure to Yield to Emergency Vehicle or Ambulance

1. A person commits the offense of failure to yield to an emergency vehicle or ambulance if an ambulance or emergency vehicle that is using a visual or audible signal in a manner described under ORS 820.300 (Exemptions from traffic laws) and 820.320 (Illegal operation of an emergency vehicle or ambulance) approaches the vehicle the person is operating and the person does not do all of the following:
   (a) Yield the right of way to the ambulance or emergency vehicle.
   (b) Immediately drive to a position as near as possible and parallel to the right-hand edge or curb of the roadway clear of any intersection.
   (c) Stop and remain in such position until the emergency vehicle or ambulance has passed.

2. A person is not in violation of this section if the person is acting as otherwise directed by a police officer.
3. This section does not relieve the driver of an emergency vehicle or ambulance from the duty to drive with due regard for the safety of all persons using the highway, nor does this section protect the driver of any such vehicle from the consequence of an arbitrary exercise of the right of way granted under this section.
4. The offense described in this section, failure to yield to an emergency vehicle or ambulance, is a Class B traffic violation. [1983 c.338 §582; 1985 c.16 §289; 1995 c.383 §46]

820.300 Exemptions from Traffic Laws

1. Subject to conditions, limitations, prohibitions, and penalties established for emergency vehicle and ambulance drivers under ORS 820.320 (Illegal operation of an emergency vehicle or ambulance), the driver of an emergency vehicle or ambulance may do any of the following:
    (a) Park or stand in disregard of a statute, regulation, or ordinance prohibiting that parking or standing.
    (b) Proceed past a red signal or stop sign.
    (c) Exceed the designated speed limits.
    (d) Disregard regulations governing direction of movement or turning in specified directions.
    (e) Proceed past the flashing bus safety lights without violating ORS 811.155 (Failure to stop for bus safety lights) if the driver first stops the vehicle and then proceeds only when the driver:
        (A) Determines that no passengers of the bus remain on the roadway; and
        (B) Proceed with caution.
2. The provisions of this section:
    (a) Do not relieve the driver of an emergency vehicle or ambulance from the duty to drive with due regard for the safety of all other persons.
    (b) Are not a defense to the driver of an emergency vehicle or ambulance in an action brought for criminal negligence or reckless conduct.
    (c) Except as specifically provided in this section, do not relieve the driver of an emergency vehicle or ambulance from the duty to comply with ORS 811.155 (Failure to stop for bus safety lights). [1983 c.338 §757; 1985 c.16 §362; 1995 c.209 §5]

820.320 Illegal Operation of Emergency Vehicle or Ambulance

1. A person commits the offense of illegal operation of an emergency vehicle or ambulance if the person is the driver of an emergency vehicle or ambulance, and the person violates any of the following:
   (a) The driver of an emergency vehicle or ambulance may only exercise privileges granted under ORS 820.300 (Exemptions from traffic laws) when responding to an emergency call or when responding to, but not upon returning from, an emergency. The driver of an emergency vehicle may exercise privileges granted under ORS 820.300 (Exemptions from traffic laws) when in pursuit of an actual or suspected violator of the law.
   (b) The driver of an emergency vehicle or ambulance must use a visual signal with appropriate warning lights when the driver is exercising privileges granted under ORS 820.300 (Exemptions from traffic laws).
   (c) In addition to any required visual signal, the driver of an emergency vehicle or ambulance must make use of an audible signal meeting the requirements under ORS 820.370 (Ambulance or emergency vehicle sirens) when the driver is proceeding past a stoplight or stop sign under privileges granted by ORS 820.300 (Exemptions from traffic laws) (1)(b).
   (d) A driver of an emergency vehicle or ambulance who is exercising privileges granted under ORS 820.300 (Exemptions from traffic laws) by parking or standing an emergency vehicle in disregard of regulation or ordinance prohibiting that parking, stopping, or standing, shall not use the audible signal.
   (e) In exercising the privileges under ORS 820.300 (Exemptions from traffic laws) (1)(e) relating to buses and bus safety lights, the driver of an emergency vehicle or ambulance must first stop the vehicle and then must:
      (A) Determine that no passengers of the bus remain on the roadway; and
      (B) Proceed with caution.
   (f) In proceeding past any stoplight or stop sign under the privileges granted by ORS 820.300 (Exemptions from traffic laws), the driver of an emergency vehicle or ambulance must slow down as may be necessary for safe operation.
   (g) The driver of an emergency vehicle or ambulance must not exceed any designated speed limit to the extent that endangers persons or property.

2. The driver of an emergency vehicle that is operated as an emergency police vehicle is not required to use either visual signal or the audible signal as described in this section to exercise the privileges granted in ORS 820.300 (Exemptions from traffic laws) when it reasonably appears to the driver that the use of either or both would prevent or hamper the apprehension or detection of a violator of a statute, ordinance or regulation.
3. The offense described in this section, illegal operation of an emergency vehicle or ambulance, is a Class B traffic violation. [1983 c.338 §759; 1985 c.16 §364; 1995 c.209 §1]

LIABILITY ISSUES

The following are several examples of restrictions and guidelines for emergency vehicle operation further defined by our Courts through case law. The case decisions discussed are primarily from operations during police pursuits and during emergency runs to incidents, and nearly every case follows similar logic in determining the levels of liability and responsibility be placed on officers during these activities. While the Courts have generally been supportive of the initiation of police pursuits and emergency runs, they have also determined officers have an opportunity to adapt during police activity lasting several seconds to minutes, and unlike some use of force decisions that occur in split seconds, expect that officers to make increasingly better decisions as the timeline extends.

UNITED STATES SUPREME COURT DECISIONS

Graham v. Connor, 490 U.S. 386 (1989)

The Supreme Court vacated and remanded a 4th Circuit decision relating to the use of force. This case has established guiding principles for officers to follow when determining the reasonable amount of force necessary to affect Fourth Amendment seizures.

This particular case involved a diabetic, suspicious activity at a convenience store, an investigatory stop, and force. Following is a quotation from the summary of the incident.

> *"Petitioner Graham, who has diabetes, asked his friend, Berry, to drive him to a convenience store to purchase orange juice to counteract the onset of an insulin reaction. Upon entering the store and seeing the number of people ahead of him, Graham hurried out and asked Berry to drive him to a friend's house instead. Respondent Connor, a city police officer, became suspicious after seeing Graham hastily enter and leave the store, followed Berry's car, and made an investigative stop, ordering the pair to wait while he found out what had happened in the store. Respondent backup police officers arrived on the scene, handcuffed Graham, and ignored or rebuffed attempts to explain and treat Graham's condition. During the encounter, Graham sustained multiple injuries. He was released when Conner learned that nothing had happened in the store."*

Following are several selected quotes from the opinion delivered by Chief Justice William Rehnquist.

> *"This case requires us to decide what constitutional standard governs a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person. We hold that such claims are properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard."*

"Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the countervailing governmental interests at stake."

"Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it."

"Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application; however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. The question is "whether the totality of the circumstances justifies a particular sort of. . . seizure")."

"The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

Brower v. County of Inyo, 489 U.S. 593 (1989)

The Supreme Court reversed and remanded a 9th Circuit decision relating to Fourth Amendment seizure issues regarding the amount of force being applied to affect a seizure. This particular case involved a high-speed police pursuit of a stolen vehicle being operated by Brower, the construction of a roadblock, and the subsequent crash of the vehicle into the roadblock. Brower died as a result of injuries sustained in the crash. The case was filed, claiming excessive force was utilized to seize Brower.

Following are some selected quotes from the opinion of the Supreme Court delivered by Justice Antonin Scalia.

"On the night of October 23, 1984, William James Caldwell (Brower) was killed when the stolen car that he had been driving at high speeds for approximately 20 miles in an effort to elude

pursuing police crashed into a police roadblock. His heirs, petitioners here, brought this action in Federal District Court under 42 U.S.C. § 1983, claiming that respondents used "brutal, excessive, unreasonable and unnecessary physical force" in establishing the roadblock, and thus effected an unreasonable seizure of Brower, in violation of the Fourth Amendment.

Petitioners alleged that "under color of statutes, regulations, customs, and usages," respondents (1) caused an 18-wheel tractor-trailer to be placed across both lanes of a two-lane highway in the path of Brower's flight, (2) "effectively concealed" this roadblock by placing it behind a curve and leaving it unilluminated, and (3) positioned a police car, with its headlights on, between Brower's oncoming vehicle and the truck, so that Brower would be "blinded" on his approach. Petitioners further alleged that Brower's fatal collision with the truck was "a proximate result" of this official conduct.

The District Court granted respondents' motion to dismiss the complaint for failure to state a claim on the ground (insofar as the Fourth Amendment claim was concerned) that "establishing a roadblock [was] not unreasonable under the circumstances." A divided panel of the Court of Appeals for the Ninth Circuit affirmed the dismissal of the Fourth Amendment claim on the basis that no "seizure" had occurred."

As the initial part of Justice Scalia's opinion suggests, the 9th Circuit ruled in favor of the County of Inyo in a divided panel.

Nearing the end of Justice Scalia's opinion, we get several of the following statements.

> *"Seizure" alone is not enough for § 1983 liability; the seizure must be "unreasonable." Petitioners can claim the right to recover for Brower's death only because the unreasonableness they allege consists precisely of setting up the roadblock in such manner as to be likely to kill him. This should be contrasted with the situation that would obtain if the sole claim of unreasonableness were that there was no probable cause for the stop. In that case, if Brower had had the opportunity to stop voluntarily at the roadblock, but had negligently or intentionally driven into it, then, because of lack of proximate causality, respondents, though responsible for depriving him of his freedom of movement, would not be liable for his death."*

> *"Thus, the circumstances of this roadblock, including the allegation that headlights were used to blind the oncoming driver, may yet determine the outcome of this case."*

> *"The complaint here sufficiently alleges that respondents, under color of law, sought to stop Brower by means of a roadblock, and succeeded in doing so. That is enough to constitute a "seizure" within the meaning of the Fourth Amendment. Accordingly, we reverse the judgment of the Court of Appeals and remand for consideration of whether the District Court properly dismissed the Fourth Amendment claim on the basis that the alleged roadblock did not affect a seizure that was "unreasonable."*

On the basis of this Supreme Court decision, it is clear that officers and agencies involved in making decisions to terminate pursuits with force should continue to look to the guidelines established by Graham v Connor in use of force decisions. It is also clear that roadblocks in general, and certainly "dead man" roadblocks such as the one constructed in this case will require the clear articulation of facts to support the force implied with this tactic.

Sacramento v. Lewis, 523 U.S. 833 (1998)

The Supreme Court looked at a 9th Circuit ruling on a case where the question to consider was "Are the Fourteenth Amendment's substantive due process protection, or the Fourth Amendment's guarantee against illegal seizure, violated by a police officer who, in the course of pursuing a subject, causes their death through deliberate or reckless indifference?"

The facts of the situation involve Philip Lewis, a passenger on a motorcycle that was involved in a high-speed police chase, and James Smith, a deputy from Sacramento County that was involved in the pursuit. The chase ended when the motorcycle's driver lost control and tipped the bike over, hurling both the rider and passenger Lewis to the pavement. Smith was unable to stop his car in time and skidded into Lewis, who sustained fatal injuries from the crash. Lewis's parents filed a lawsuit accusing Smith and the Sacramento County Sheriff's Department of "deliberate and reckless conduct," which ultimately deprived their son of his due process right to life and his protection against unconstitutional seizure.

In a unanimous decision, the Court first ruled that the Fourth Amendment's reasonableness standards prevented its illegal seizure protections from applying to high-speed police chases. Such incidents are merely pursuits and do not constitute actual seizures, especially if they fail due to the death of the subject. Moreover, addressing the Fourteenth Amendment challenge, the Court held that Smith's actions, while perhaps unwise, were not intended to injure or kill those pursued. As such, the negligent infliction of harm during a police chase does not violate due process since it is not an unexpectedly shocking or egregious result under the circumstance.

The result of the Court's ruling was that for a case of this nature to be filed in a Federal Court (based on the violation of constitutionally protected right), the standard of proof to be applied is one that "shocks the judicial conscience."

With specific regard to the standard of proof discussion, one significant issue the US Supreme Court mentioned was that this type of case should have been filed in a State Court. A State Court filing would be based on the constitutional protections of the state's constitution, and the standard of proof may be much lower in one of these courts.

Justice David H. Souter wrote the Court's majority opinion. The following are a few quotes from Justice Souter's opinion.

"The issue, in this case, is whether a police officer violates the Fourteenth Amendment's guarantee of substantive due process by causing death through deliberate or reckless indifference to life in a high-speed automobile chase aimed at apprehending a suspected offender. We answer no, and hold that in such circumstances only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation."

"The Fourth Amendment covers only "searches and seizures," neither of which took place here. No one suggests that there was a search, and our cases foreclose finding a seizure. We held in California v. Hodari D., 499 U.S. 621, 626 (1991), that a police pursuit in attempting to seize a person does not amount to a "seizure" within the meaning of the Fourth Amendment. And in Brower v. County of Inyo, 489 U.S. 593, 596—597 (1989), we explained: "that a Fourth Amendment seizure does not occur whenever there is a governmentally caused termination of an individual's freedom of movement (the innocent passerby), nor even whenever there is a governmentally caused and governmentally desired termination of an individual's freedom of movement (the fleeing felon), but only when there is a governmental termination of freedom of movement through means intentionally applied."

"Rules of due process are not, however, subject to mechanical application in unfamiliar territory. Deliberate indifference that shocks in one environment may not be so patently egregious in another, and our concern with preserving the constitutional proportions of substantive due process demands an exact analysis of circumstances before any abuse of power is condemned as conscience-shocking. What we have said of due process in the procedural sense is just as true here: The phrase [due process of law] formulates a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights. Its application is less a matter of rule. Asserted denial is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of

fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial."

"Regardless whether Smith's behavior offended the reasonableness held up by tort law or the balance struck in law enforcement's own codes of sound practice, it does not shock the conscience, and petitioners are not called upon to answer for it under §1983."

UNITED STATES FEDERAL DISTRICT COURT DECISIONS

Biscoe v. Arlington County, VA, 738 F.2d 1352 (1984)

This particular case is often referred to as a "Landmark Case," where the issues of liability during police pursuits can be attached to police officers, agencies, and governmental bodies. Prior to this Federal District Court decision, very few instances of liability being attached to pursuit existed. This case involves the liability of Arlington County, Virginia, and one of its police officers, for serious injuries to an innocent bystander arising out of a high-speed police pursuit of a suspected bank robber into the District of Columbia. Issues of immunity and standards of conduct expected of law enforcement were the primary matters examined in this case.

The Court of record held a jury trial, and the jury found in favor of the plaintiff, awarding him $4,000,000 and his wife an additional $1,000,000. The Court of Appeals heard the case and found with the plaintiffs in nearly every part of the complaint.

The following are several quotes from the opinion filed by Circuit Judge Harry T. Edwards, United States Court of Appeals for the District of Columbia Circuit, including a synopsis of the facts as presented during the trial.

"Late in the morning of September 29, 1979, Lyntellus Brooks and Orlando Durantes robbed the Arlington, Virginia branch of the Washington-Lee Savings & Loan Association. Shortly thereafter, an alarm was broadcast to all Arlington County Police Department ("ACPD") units; some of these units went to the robbery scene, and others to probable escape routes in the County. Police radio broadcasts alerted units to look for the persons who had been involved the

previous day in a robbery of the Potomac Savings and Loan Association and informed them that the car used in that robbery was a green Dodge Dart or Plymouth Duster, with a District of Columbia license plate.

Officer Michael Kyle responded to the alert by positioning his cruiser eastbound along Route 50. About nine minutes after the initial bank alarm transmission, he spotted a light green car driven by a man who resembled pictures of a suspect from the Potomac bank robbery that Kyle had seen the day before. A woman was seated beside the driver. Kyle radioed his suspicion regarding the driver and began to follow the green car along Route 50, with each car traveling within the speed limit. Kyle followed the car onto the Theodore Roosevelt Bridge (which connects Virginia with the District of Columbia), pulled in behind it, and turned on his overhead lights and siren. The car took the E Street Ramp off the Bridge into the District of Columbia, slowed to a stop in the breakdown lane of the ramp, and came to rest three car lengths in front of the police car. Before the stop, the ACPD dispatcher broadcast that the District of Columbia ("D.C." or "District") and United States Park Police were being notified. Also, before the stop, Kyle radioed that the car appeared to have a third passenger--another woman--in the back seat

Once stopped, Brooks, the driver of the car, immediately got out of his vehicle and walked toward Kyle with his hands in the air, leaving his car door open. Kyle got out of his cruiser, with his portable radio in hand, and notified the dispatcher that he had made the stop. Whether the officer also had his revolver drawn at this time was a matter of considerable dispute at trial. Kyle turned Brooks around, walked him back to his car, had him put his hands on the trunk, and ordered him to stay there.

According to plaintiffs' evidence, Kyle did not tell Brooks to turn off the car motor, throw his keys to the ground, or shut the car door; he did not instruct him to lie on the ground, and he did not handcuff or frisk him. Instead, the officer turned to the passenger side of the car to look in the back seat, and, with his hand radio, broadcast his location and requested a clothing description of the bank robbery suspects. While Kyle was so preoccupied--leaving Brooks wholly unattended and unrestrained--Brooks ran to his side of the car, jumped in and drove

off. Brooks testified that he was able to make a quick escape because he had left the engine running and the car door ajar.

Kyle informed his dispatcher of the departure and returned to his car. With his lights flashing and his siren blaring, he pursued Brooks down the E Street Expressway and through the tunnel. Kyle radioed that a fourth passenger in the car was shooting at him, and also that, "I don't know where I'm at." Brooks, who by now was well within the city limits of the District of Columbia and traveling at more than 70 to 80 m.p.h., drove through a red light at 20th Street and sped toward the 19th and E Street intersection. The speed limit over this distance was 30 m.p.h., until one and a half blocks before the intersection, at which point it dropped to 25 m.p.h. Kyle, who knew neither his speed nor the speed limit, followed. The plaintiffs contend that the officer averaged 55.38 m.p.h. over this distance and that his speed during the chase increased to 80 m.p.h. Defendants dispute this assertion but do not deny that Kyle was traveling well in excess of the speed limits.

As Brooks approached the intersection, he saw a car traveling south on 19th Street into the intersection. Brooks' car struck that vehicle and careened off into the southeast corner of the intersection, where it pinned a pedestrian, Alvin Biscoe, against a light pole. The impact, which knocked Biscoe in the air, severed one of his legs and severely injured the other, ultimately requiring amputation.

Officer Kyle, who had by then arrived on the scene, saw Brooks flee from his car. Kyle removed his shotgun and followed. When Kyle reached Brooks, the suspect had been restrained by pedestrians. Kyle hit Brooks on the right side of his head with the butt of the shotgun. Soon thereafter, other police from various jurisdictions, as well as the United States Park Police helicopter, arrived on the scene.

Alvin Biscoe and his wife Eleanor filed a suit for damages against numerous parties, including Officer Kyle, Arlington County, and Brooks. They asserted that from the time Kyle first stopped Brooks' car on the E Street Ramp in the District of Columbia, the officer committed violations of a series of generally accepted police standards--in particular, in his conduct of the felony

stop and the high-speed pursuit--which resulted in the accident. Moreover, they claimed that Officer Kyle violated Arlington County regulations that specifically prohibit its officers from engaging in high-speed chases--defined as greater than 20 m.p.h. above the speed limit--in the District of Columbia.1 In addition, they alleged that Arlington County's negligent training and supervision of Officer Kyle were a cause of the accident that injured Alvin Biscoe. After an 11-day trial, a jury returned a verdict finding that defendant Kyle was negligent in his conduct of the felony stop on the bridge and negligent in his high-speed pursuit of Brooks' vehicle, and that his employer, Arlington County, was similarly liable on a theory of respondeat superior. The jury also found that defendant Arlington County was negligent in its training and supervision of Kyle, and that defendant Brooks was negligent as well. The jury additionally found that all defendants' acts and omissions proximately caused the injuries to the plaintiffs. It awarded $4 million to Alvin Biscoe and $1 million to Eleanor Biscoe; the award to Eleanor Biscoe was reduced on remittitur to $350,000

"Under existing precedent in this Circuit, we have no doubt that the activities at issue here--supervising and instructing officers, conducting a felony stop, and conducting a felony pursuit--are ministerial, not discretionary, acts. They involve day-to-day operational matters, not planning and policy. Thus, addressing the first of these activities, supervision, and instruction, it has been aptly noted that from the very nature of these activities, it is clear that they do not involve the kind of policy-formulating, judgment-making processes encompassed by the term "discretionary." Once the decisions have been made to have a police department, to organize it in a particular way, and to hire a specific individual to be a member of that department, the acts of training, instructing, supervising, and controlling the individual officer are merely "ministerial."

"Similarly, regardless of whether the initial decision of a police officer to stop or pursue a car is ministerial or discretionary, a police officer's execution of such activities is ministerial. This is especially so where, as here, the officer is constrained both by regulations and clearly established policy and standards, about which experts can, and have testified. The judgment that limits must be imposed--as for example, on the speed of a vehicle in hot pursuit--indicates that the ACPD already had made the decision to limit the officer's exercise of discretion;

imposition of such limits also suggests that effective law enforcement would not be hindered by enforced adherence to such regulations. Similarly, established procedures for the conduct of a felony stop, once the stop has been made, curtail an officer's need or opportunity to make policy decisions on the scene."

"Accordingly, we conclude that the particular acts of which plaintiffs complain are ministerial and that both Officer Kyle and the County were properly found to be liable for damages."

Ultimately this case established a higher standard of conduct for police drivers involved in pursuits and mandated that the benefits of immediate apprehension must be weighed against the risks of pursuit. Wording to the effect will be found in nearly every defensible pursuit policy in existence.

SEEKAMP v. MICHAUD, 109 F.3d 802, 1997

This is a case involving a police pursuit and a roadblock that was used to terminate the pursuit. It is an interesting contrast to the prior roadblock case discussed in this manual *(Brower v Inyo*). In this situation, the court affirmed the judgment of the lower court, finding on behalf of the defendants (Officer Michaud and the Maine State Police, that the Fourth Amendment rights of the plaintiff (Seekamp) were not violated and that the case should be dismissed on summary judgment.

BACKGROUND *(From the Case Brief)*

The material facts are not in dispute. At approximately 1:00 a.m. on July 14, 1994, Seekamp left his parents' residence in Scarborough, Maine, for the asserted purpose of picking up the pieces of his former life in Arkansas, where his relationship with a girlfriend and his career in the United States Air Force was abruptly ended by an automobile accident in April 1993, which left him with a brain injury.

As Seekamp was proceeding south through a 50-m.p.h. zone on Route 1, his Chevrolet Monte Carlo was clocked at 63 miles per hour by Scarborough Police Sergeant Eugene O'Neill. After Seekamp failed to heed Sergeant O'Neill's signal to stop, O'Neill followed him into Saco, where local police units joined the pursuit. Undeterred, Seekamp not only ignored the pursuing police vehicles but drove through the Maine Turnpike toll plaza at Saco, and onto a southbound lane, without stopping.

Alerted by Sergeant O'Neill, the MSP assumed further responsibility for the pursuit after learning that the driver of the Monte Carlo had eluded a police officer-a felony under Maine law. Situated farther

south near the Biddeford exit, MSP Trooper Ronald Michaud took up the pursuit at approximately 1:35 a.m. In an effort to force Seekamp to a stop, Trooper Michaud attempted a “rolling roadblock” by driving in front of the Monte Carlo then decelerating to force Seekamp to slow as well. Michaud soon abandoned the rolling roadblock when Seekamp responded with reckless attempts to get around the police cruiser.

At approximately 1:45 a.m., Trooper Michaud received a radio dispatch to the effect that Seekamp's father had advised that his brain-injured son was operating the Monte Carlo but was unarmed and neither suicidal nor under the influence of alcohol or drugs. Trooper Michaud considered the information both stale and unverifiable because Seekamp, Sr., could not have known what happened to his son after leaving the family home some 45 minutes earlier.

Meanwhile, MSP Sergeant Steven Beal and MSP Trooper Thomas Arnold had joined the pursuit north of the Wells exit. During this phase, Seekamp continued his erratic driving and was clocked by Trooper Michaud at speeds up to 97 miles per hour. About the same time and at Trooper Michaud's request, MSP Sergeant Beal directed MSP Trooper Larry McAfee to establish a roadblock north of the York toll plaza.

The roadblock was set up approximately 800 feet north of the York toll plaza, at the end of a 1500-foot straightaway. First, Trooper McAfee commandeered a flatbed tractor-trailer unit loaded with lumber sheathed in white plastic and directed that it be parked across the three southbound travel lanes, with its cab at the guardrail. Once in place, the tractor-trailer unit extended almost entirely across the southbound travel lanes. McAfee completed the blocking of the southbound travel lanes by parking his police cruiser at the rear of the tractor-trailer unit, with its headlights pointing north in the direction from which Seekamp would be approaching.

After turning on the cruiser's headlights, blue lights, and flashers, McAfee directed other tractor-trailers to park along the breakdown lane parallel to the blocked travel lanes. A fifty-foot gap was left between two of the tractor-trailer units parked in the breakdown lane, to permit vehicular traffic to proceed onto the breakdown lane and around the roadblock at slow speed, with police assistance. The headlights of

the tractor-trailer unit at the northern end of the fifty-foot gap illuminated the avenue of vehicular egress along the breakdown lane.

The entire roadblock area was brightly illuminated by overhead street lights, the lights from Trooper McAfee's cruiser, and the headlights of the commandeered tractor-trailer blocking the southbound travel lanes. In addition, upon arrival at the roadblock site to assist Trooper McAfee, MSP Trooper Kevin Curran parked his cruiser in a southbound travel lane with its flashers on and its headlights directed at the roadblock as well.

What with the bright white plastic sheathing around the lumber on the tractor-trailer unit blocking the southbound travel lanes, the roadblock area was visible from approximately 1500 feet along the straightaway approaching the York toll plaza. As the Monte Carlo approached the roadblock, it appeared to brake several times yet failed to come to a complete stop even though the pursuing police cruisers had slowed to allow Seekamp room to maneuver. Ultimately, it collided with the rear axle of the tractor-trailer unit parked across the southbound travel lanes, causing Seekamp a hairline fracture of the hip and a severe facial laceration.

Seekamp brought suit under 42 U.S.C. § 1983 against the subordinate MSP defendants, alleging Fourth Amendment violations; and against MSP Chief Alfred Skofield, Jr., for failure to provide adequate training and supervision. The district court awarded summary judgment to all defendants on the alternative grounds that the roadblock was reasonable, and all defendants were entitled to qualified immunity.

DISCUSSION- Did the Roadblock Effect a Fourth Amendment Seizure?

"The defendants contend that the roadblock did not constitute a Fourth Amendment seizure because it permitted vehicular traffic to maneuver through the fifty-foot opening designedly left between two of the tractor-trailer units parked in the breakdown lane to the right of the westernmost, southbound travel lane. "

"Almost a decade ago, the Supreme Court dealt with a vehicular collision involving a so-called "deadman's roadblock," designed and constructed to block off an entire roadway by placing an unilluminated tractor-trailer unit just beyond a curve and locating a police cruiser directly in front of the roadblock with its headlights aimed at the oncoming target vehicle, thereby blinding the driver to the impassable highway obstruction just around the curve." *Brower v. Inyo County*

"Brower nevertheless enunciates a rule that renders its egregious facts largely immaterial to the required Fourth Amendment inquiry into whether a roadblock "seizure" has occurred."

"Writing for the Court, Justice Scalia explained that a Fourth Amendment seizure occurs "only when there is a governmental termination of freedom of movement through means intentionally applied, explaining that "it [is] enough for a seizure that a person be stopped by the very instrumentality set in motion or put in place to achieve that result."

"A roadblock is not just a significant show of authority to induce a voluntary stop, but it is designed to produce a stop by physical impact if voluntary compliance does not occur. It may well be that respondents here preferred, and indeed earnestly hoped, that Brower would stop on his own, without striking the barrier, but we do not think it practicable to conduct such an inquiry into subjective intent. Nor do we think it possible, in determining whether there has been a seizure in a case such as this, to distinguish between a roadblock that is designed to give the oncoming driver the option of a voluntary stop (e.g., one at the end of a straightaway), and a roadblock that is designed precisely to produce a collision (e.g., one located just around a bend)."

"Thus, for purposes of determining whether the roadblock, in this case, worked a Fourth Amendment seizure under Brower, the controlling consideration is not whether it was brightly illuminated, located at the end of a long straightaway, or afforded a restrictive avenue of egress. Rather, it constituted a Fourth Amendment seizure because Seekamp "was meant to be stopped by the physical obstacle of the roadblock-and he was so stopped."

"The Brower standard for determining whether a Fourth Amendment seizure has occurred applies whenever "there is a governmental termination of freedom of movement through means intentionally applied." Thus, for example, if the MSP troopers had resorted to some other method, such as the use of spike mats, a Fourth Amendment seizure would have occurred provided Seekamp was "stopped by the very instrumentality set in motion or put in place to achieve that result."

ONOSSIAN v BLOCK, 175 F.3d 1169 (9th Cir. 1999)

This case is an interesting follow-up case to the decision rendered in *Lewis V Sacramento County* that we previously discussed. In this case, the Ninth Circuit Court of Appeals addressed the application of *Lewis* to injured bystanders rather than suspects and reached a similar result. It relied upon the observation in the *Lewis* decision that "A police officer deciding whether to give chase must balance on the one hand the need to stop a suspect and show that flight from the law is no way to freedom, and, on the other, the high-speed threat to everyone within stopping range, be they suspects, their passengers, other drivers, or bystanders." (Emphasis added by Lewis court.) The Ninth Circuit concluded, "if a police officer is justified in giving chase, that justification insulates the officer from constitutional attack, irrespective of who might be harmed or killed as a consequence of the chase."

BACKGROUND *(TEXT FROM COURT DECISION)***:**

On the evening of August 17, 1991, Scott Reed passed defendant Los Angeles County Sheriff's deputies Finn and Yates in his hardtop Oldsmobile "muscle car," moving in and out of traffic at about 60 miles per hour on busy Santa Monica Boulevard in Los Angeles. Finn and Yates followed Reed, who continued to drive erratically and recklessly. Finn, who was driving the patrol car, turned on his siren and lights and gave chase. Rather than stopping, Reed attempted to elude Finn and Yates, maintaining speeds of up to 60 or 70 miles an hour.

Defendant deputy Thomas, who was monitoring the chase on his patrol car radio, saw Reed's Oldsmobile run a red light on Melrose Avenue. Finn and Yates had not been able to keep up with Reed, so Thomas took up the pursuit. Three or four seconds later, Reed crashed into the Onossians' vehicle. The entire pursuit lasted about a minute. The deputies' speeds in the two patrol cars never exceeded 45 miles per hour. The closest either car came to Reed's car was a distance of 100 yards.

The Onossians were severely injured. They sued Finn, Yates, Thomas, and various Los Angeles County officials under 42 U.S.C. § 1983, seeking damages for violation of their Fourteenth Amendment due process rights. The district court granted defendants' motion for summary judgment, using this court's then-standard for high-speed chases set forth in Lewis v. Sacramento County, 98 F.3d 434 (9th Cir.1996). Before we heard the Onossians' appeal, the United States Supreme Court reversed our decision in Lewis v. Sacramento County. County of Sacramento v. Lewis, 523 U.S. 833, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998).

The Supreme Court held in Lewis that when injury or death results from a high-speed police chase, “only a purpose to cause harm unrelated to the legitimate object of arrest will satisfy the element of arbitrary conduct shocking to the conscience, necessary for a due process violation.”

“[W]e hold that high-speed chases with no intent to harm suspects physically or to worsen their legal plight do not give rise to liability under the Fourteenth Amendment, redressible by an action under § 1983.”

DISCUSSION *(TEXT FROM COURT DECISION):*
We must decide two questions in this case. First, does the Lewis test apply not only to harm caused to those pursued in a high-speed chase but also to harm caused to other drivers? In Lewis itself, two boys on a motorcycle were pursued by a police patrol car, and one of the boys was accidentally killed. The words of the Lewis holding, read narrowly, apply only to suspects pursued by the police. For example, in the language quoted above, the Court referred to harm to “suspects” rather than harm to people generally.

Similarly, the justification for the Lewis test, understood narrowly, might also apply only to suspects. That is, Lewis establishes a high threshold that must be overcome before someone injured in a police chase can show a due process violation. It might be contended that the duty of police toward innocent people is greater than to fleeing suspects so that another driver or an innocent bystander should be able to recover from the police upon a lesser showing of recklessness or misconduct than that required by Lewis' "shock-the-conscience" test.

We find that such a narrow interpretation does not fully capture the meaning of Lewis. At several points in the Court's opinion, the duty of the pursuing police officer is defined generally, without specific reference to the suspect being pursued. Perhaps most telling is the Court's description of the dilemma of a police officer who must make a "split-second" decision whether to pursue a suspect: "A police officer deciding whether to give chase must balance on the one hand the need to stop a suspect and show that flight from the law is no way to freedom, and, on the other, the high-speed threat to everyone within stopping range, be they suspects, their passengers, other drivers, or bystanders."

As we read the Court's opinion, if a police officer is justified in giving chase, that justification insulates the officer from constitutional attack, irrespective of who might be harmed or killed as a consequence of the chase.

We have already come close to answering the question of a police officer's obligation to non-suspects in a high-speed chase. In *Moreland v. Las Vegas Metropolitan Police Dept., 159 F.3d 365 (9th Cir.1998)*, we held that the Lewis test applied where police killed a bystander in a gunfight outside a bar:
The question we face today is whether this newly minted explanation of the 'shocks the conscience' standard also controls in cases where it is alleged that an officer inadvertently harmed a bystander while responding to a situation in which the officer was required to act quickly to prevent an individual from threatening the lives of others. We conclude that it does.

It is a small step from applying Lewis to a bystander harmed in a gunfight to applying it to another driver harmed in the very situation in which the Lewis test originated. We, therefore, hold that for the Onossians to show that their due process rights have been violated, they must show that the behavior of the police in this case "shocks the conscience."

SUMMARY:

The court concluded as a matter of law that the conduct of the officer in Onossian did not "shock the conscience" as the Supreme Court had used that phrase in Lewis. Quoting the conclusion of the Court:

"Comparing the facts in this case to those in Lewis, it is clear that no reasonable trier of fact could find that defendants' actions shock the conscience. There is no evidence that deputies Finn, Yates, and Thomas intended to cause harm to anyone. Indeed, their actions support precisely the opposite conclusion, for they were attempting to remove a dangerous driver from the streets. Especially convincing is the fact that Reed was endangering the public even before the chase began. It is possible, perhaps even likely, that Reed would have collided with the Onossians or someone else, whether or not the police had been chasing him."

OREGON COURT DECISIONS

Lowrimore *v*. Dimmitt is an Oregon Court of Appeals remand from 1996. This case was tried in Marion County Circuit Court then appealed. The Court of Appeals said officers must evaluate their justification for a vehicle pursuit in an ongoing fashion.

The case involves the stop of a known suspect and a high-speed pursuit through a residential area. The pursuit terminated in a crash resulting in injuries to an uninvolved third party. The Court of Appeals looked at the concept of Discretionary Immunity with regard to pursuit in this matter.

Ultimately the Court indicates that while an officer is protected by discretionary immunity from the decision to initiate enforcement action on a traffic violation, the officer is not protected from a decision to continue the pursuit. Original justification does not provide a blanket authority to continue if the risks could reasonably be seen to be greater than the offense warrants.

LEGAL ISSUE SUMMARY

When the relevant case laws and the Oregon Revised Statutes are carefully examined and reviewed, the message from the Courts and our Legislators is quite clear.

- Officers exercising their privileges in an emergency vehicle, during the performance of their duties, must operate the vehicle both safely and prudently.
- You are required to slow down as may be necessary for safe operation.
- Operators of emergency vehicles are not immune from decisions they make while operating an emergency vehicle.

It is also quite clear from the cases tried in the Federal Circuits, Federal Appellate Courts, and the US Supreme Court, that the cases filed in State Courts will be subject to the statues and constitution of the state and different standards of proof may be applied.

DRIVING TECHNIQUES

The techniques presented in this manual and during EVO courses instructed both Regionally and at DPSST are based upon the science of driving, and the legal considerations of driving that are discussed in this manual. While there are many methods of steering, braking, accelerating and positioning a vehicle upon the roadways and a large number of them are based upon the same science, the EVO program has adopted the following techniques as "approved techniques" for vehicle operation.

It is the goal of the EVO programs to allow drivers opportunities to develop patterns of behavior behind the wheel that encompass the mental and physical requirements of professional emergency vehicle operations. As Newton's Third Law of Motion suggests, every action has a reaction. When this law is considered within the context of driving behavior, every decision resulting in an action by a driver has a reaction that is manifested in the movement of weight around the center of gravity in the vehicle.

GENERAL BODY POSITIONING

Ergonomics is defined as "an applied science concerned with designing and arranging things people use so that the people and things interact most efficiently and safely." *(Merriam-Webster)*

In practical application, ergonomics is designing the job to fit the worker, not forcing the worker to fit the job. When we apply this thinking to a driver and a vehicle, we must set up our "office" to fit the driver. When the emphasis is not on this approach, and we force the driver to fit the vehicle, everything from comfort to performance is adversely impacted, and overall vehicle control suffers.

The correct seating position allows the driver to have a better grip on the steering wheel and better access to the brake and accelerator pedals. Seating positions that seem "cool" will most likely inhibit the driver during emergency or evasive maneuvering.

Getting in the Vehicle/Adjusting the Seat

1. Adjust the height. Try to sit as high up in the car as possible to get the best view of the road and possible dangers.
2. Check the proper distance from the pedals. Have your left foot propped flat against the footrest to push yourself against the seat. This allows the driver to be firmly planted in the seat when cornering.
3. Extend your arm to place your wrist on top of the steering wheel. Your wrist should rest on the top part of the wheel. The driver should be able to grasp the steering wheel with a small bend in the arms, allowing for good steering input and movement in each direction.
4. Properly support your back. Shoulders should rest comfortably against the backrest. Most drivers slouch in the seat with only the lower back supported by the backrest. This makes it very tiring to drive over long periods because the weight of the upper-body is resting on the hands of the driver, which are on the steering wheel.



EYE PLACEMENT

The first component of eye placement begins with the effectiveness of the driver's eyes from a physiological basis. It is important to recognize that every driver will have certain advantages or disadvantages simply from genetics.

VISUAL ACUITY

Visual acuity is a measure of the spatial resolution of the visual processing system. Visual acuity depends upon how accurately light is focused on the retina, the integrity of the eye's neural elements, and the interpretative faculty of the brain. Some people may suffer from other visual problems, such as color blindness, reduced contrast, mild amblyopia, cerebral visual impairments, inability to track fast-moving objects, or one of many other visual impairments and still have "normal" visual acuity. Thus, "normal" visual acuity by no means implies normal vision.

The good news is that drivers can improve their visual acuity. Athletes frequently work on exercises designed to improve focus flexibility, peripheral awareness, depth perception, and dynamic visual acuity.

Focus Flexibility

This is the ability of a driver to change focus from a distant object to a close object (or vice-versa). Drivers should constantly be scanning the driving environment, and the focal points necessarily are constantly changing and evolving.

Drivers can improve their focus flexibility by constantly switching visual focus from close objects to those farther away and back to other objects at varying distances. This does not even require the driver to be in a vehicle and moving down the roadway. Simply shifting focus from a book to a photo on a wall to a scene outside of the window in rapid succession and focusing on what is observed in each of those areas will help to develop flexibility.

While operating a vehicle, the driver should be looking in the distance, scanning back towards the vehicle, looking to the sides, moving in closer to the vehicle, and continuing this process throughout the driving process. Drivers can avoid eye strain created by "staring" into the same area for prolonged periods of time using this method as well.

Peripheral Awareness

Awareness of activity in the periphery is a skill that will not only enhance driving safety but will increase the safety of public safety personnel outside of vehicle operations. This is a skill that must be developed from a simple "officer safety" point of view.

To improve your peripheral awareness, try watching television with your head turned to the left or the right and observing things on the screen carefully and mentally describing the activity. Practice this with your head turned both to the left and the right to develop the periphery in both eyes.

Depth Perception

This component of visual acuity is the ability of a driver to make spatial judgments. Things such as closing speeds, approaching barriers or obstacles, or snow depth are examples of a few spatial judgments a driver makes. While genetic disposition of a driver (how close the pupils are together, for example) determine depth perception to some degree, drivers can again improve their abilities and learn their limitations.

A good method of improving depth perception is to take a straw and a BB. Hold the straw and BB in opposite hands and at arm's length from the body. Practice dropping the BB into the straw.

Dynamic Visual Acuity

This measure of visual acuity is the ability of the eye to see objects when both the eye and an object are moving quickly. This is more difficult to practice as movement is required when you are in a driving environment. Drivers can use some sports testing programs when objects and words move rapidly across a screen, and then identification of the objects is required.

VISUAL PERCEPTION

This concept is the ability to interpret the surrounding environment by processing information that is contained in visible light. In a simple context, what does "seeing" something mean to the driver?

Psychologists, neurologists, and others who study the brain and body suggest that visual perception relies on one of two basic processes (Bottom-Up and Top-Down), and these methods of interpreting the data available through the driver's eyes are competing processes.

The importance of understanding these processes is underscored by a few excerpts from an online newsletter published by MEA Forensic Engineers and Scientists, Ltd. In a 2011 article by Jason Droll, Ph.D. *("Think Fast! The Velocity of Visual Attention in Vehicle Accidents"),* there are several good examples and descriptions of factors influencing driver perception.

"Imagine driving home from work while listening to a radio interview with an actor you can't quite place. Your spouse calls you on your cell phone, and you answer on your blue tooth headset as the radio plays. Can you pick up the dry cleaning? He sounds like the action star. The blue suit. Was he in that Oscar movie last year? The cleaners by the drug store; use your GPS. Dang, the drug store you just passed. Change lanes. Crunch! How could you not have seen that truck pulling out from the stop sign?"

"Collision hazards are often visible, but not seen, because the driver was not attending to the hazard at the critical time or location. These are not uncommon lapses; 78% of all crashes are estimated to involve driver inattention (Dingus et al., 2006). How can inattention account for such frequent lapses in perception, especially for conspicuous and obviously visible hazards?"

Bottom-Up / Top-Down Processing

"What dictates where we attend and where we look? Visual attention and gaze are guided by two factors."

"The first are called "bottom-up" low-level visual properties of the environment, such as a bright spot of color or an area of sharp contrast. A flashing hazard light may capture attention in a bottom-up manner and cause the eye to look to the stimulus (Itti & Koch, 2001). Less conspicuous stimuli, such as a stopped car without lights, may not be attended because it does not "pop-out" of the scene."

"The second way drivers direct their attention and gaze is through "top-down" cognitive goals and task demands, such as when changing lanes or driving on a tight curve. Both tasks require critical visual movements, and drivers typically direct their gaze to predictable key areas at predictable key times."

"The complexity of driving is evident when bottom-up influences compete for a driver's attention. For example, when planning a lane change, drivers may shift their gaze from the car they are following to their rear-view and side-view mirrors to look for surrounding cars. If the lead car brakes during this time, the sudden bottom-up onset of bright vehicle lights compete against the top-down task of searching for surrounding cars."

To read the entire paper on this process, refer to the information in the bibliography.

Ultimately it is the responsibility of the driver to improve visual perception skills and ability. When a driver has active eyes that are constantly gathering data from the driving environment, most immediate demands are reduced to "future" demands – in other words – by seeing and processing data sooner, the surprise is removed. Drivers should develop the ability to become PROACTIVE with their vision.

Eye Placement Considerations

With the background of physiology and the limitations we face as a result of being human beings, it is not important to identify "WHAT" to look for in our driving. Each of the following encompasses visual markers and data the driver should be attempting to identify in the driving environment.

Surface Appraisals

Learning to interpret the actual driving surface is one of the most important tasks a driver must accomplish continuously. The actual driving surface is one of the two main components of grip. As discussed in the section "The Science of Driving" concerning tire contact patches, the roadway is the component that friction from the tire contacts to generate movement.

The following are several examples of what drivers should scan the actual surface of the roadway for and remember the list is by no means all-inclusive.

- Changes in surface type
    - Asphalt
    - Concrete
    - Gravel
    - Dirt
    - Clay

- Changes in the quality/aging of each surface
    - Driving from older and seasoned asphalt onto a new asphalt patch
- Surface Coverings
    - Gravel
    - Dirt
    - Mud
    - Water
    - Snow
    - Ice
- Combinations of surfaces
    - Spots of snow or ice over asphalt
    - Spots of water
- Undulations or depressions in the surface
- Off-camber turns
- Banked turns
- Flat turns
- Amount of improved shoulder space
- Painted lines on roadways
- Wet vs. Dry

Identifying Straight Lines

The stable-platform concept of driving that science demands and that this manual instructs relies upon the driver to identify locations in the driving environment where the vehicle can achieve platform stability. This occurs when the vehicle is able to travel in a straight line, and all of the energy stored in the suspension components is released.

Drivers should always try to be traveling in straight lines. This becomes a complex exercise visually when drivers are in areas with multiple turns, such as mountainous terrain. Learning to identify the straight line will increase the success a driver has with regard to safe and efficient cornering.

The concept of driving lines (paths of travel through corners) will be discussed later in this manual, and in that discussion, the concept of "apexes" will be explained. Drivers must train their eyes to find an apex by locating a straight line. Often this process is reversed, and drivers focus on the roadway looking for the apex of a turn. Drivers should allow the identification of a straight line (a place the vehicle can stabilize) to dictate the location of the apex.

Roadway Hazards

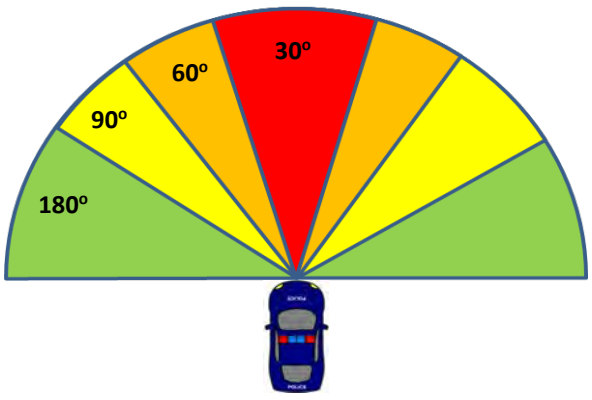
There are times during vehicle operations where hazards in the intended path of travel will be impacted by the vehicle. These hazards can be relatively low-risk such as a small pot-hole or small dead animal in the roadway, or the hazards can be of greater risk to vehicle control and stability such as a large dead animal, washout, or other hazards.

When the driver is faced with the option of either increasing the risk by attempting to avoid the hazard or impacting the hazard itself, early recognition of the potential hazard is a key element to the overall risk the driver will face.

Speed Adjustments

As the speed of the vehicle increases, drivers must begin to scan even farther down the roadway. The perception of speed and depth is critical to success as speed increases, and ***drivers must make the mental adjustment for increased speed operations prior to making the actual adjustment to speed.***

Drivers must continuously scan the environment because the field of vision narrows with the addition of speed and stress. As a driver increases speeds, the field of vision narrows. A driver enjoys approximately 180º of vision at low speed; however, as speeds reach 80 mph, the field of vision has narrowed to approximately 30º.



Night Adjustments

Night driving presents drivers with extreme problems and must be factored into the decision-making process. Reflective paints and lights artificially enhance everything a driver sees. Light travels in a straight line and object between your focal point, and your position will cause the focal point to "blink out." When this situation occurs to a driver, the driver immediately needs to begin adjusting speed and actively scanning for the source that interrupted the previous line of sight.

The reflectivity of the driving surface is an important visual technique to consider in night driving applications. If the road in front of you is getting lighter, the road is on an incline. If the road is getting darker, the road is on a decline.

The physiology of the eye in reduced lighting conditions is a primary limiting factor.

REACTION DISTANCES: DAY vs. NIGHT

Speed in ***M.P.H.***	Velocity in ***F.P.S.***	Day Time Reaction Distance (Reaction Time 1.6 Seconds)	Night Time Reaction Distance (Reaction Time 2.5 Seconds)
25	36.65	58.64 feet	91.62 feet
30	43.98	70.36 feet	109.95 feet
35	51.34	82.14 feet	128.35 feet
40	58.64	93.82 feet	146.60 feet
45	65.97	105.55 feet	164.92 feet
50	73.3	117.28 feet	183.25 feet
55	80.63	129.00 feet	201.57 feet
60	87.96	140.73 feet	219.90 feet
65	95.29	152.46 feet	238.22 feet
70	102.62	164.19 feet	256.55 feet
75	109.95	175.92 feet	274.87 feet
80	117.28	187.64 feet	293.20 feet

Reaction times from Forensic Aspects of Driver Perception and Response by Dr. Paul L. Olsen

Reflective signs and paints are artificially enhanced at night. Look out ahead at the reflectors lining the road; should one blink out and then back on, it means something passed between you and the reflector.

STEERING (GENERAL CONSIDERATIONS)

There are many on-going debates in the driver training community centered on "proper steering" techniques. "Push-pull," "fixed input," "palming," "hand over hand," and many other steering methods are presented as the "best way" to have responsible car control.

Rather than focusing on an in-depth discussion of the positives and negatives of every technique, we focus on the science of driving and managing the contact patches in the most consistent, efficient, and predictable methods we can select. The true answer is that certain steering methods are better than others in certain conditions and less effective in other situations. The truly experienced driver understands this and chooses the correct technique for the task at hand, ensuring the method allows a safety margin for those unforeseen events.

The steering wheel is shifting weight throughout the platform of the vehicle. Inputs of steering are sending weight forward and to the sides, while steering being released is shifting weight back towards the rear of the vehicle and closer to the center of gravity.

In order to minimize excessive and unnecessary shifts in weight, the following concepts must be addressed with steering technique:

- Grip is light and firm on wheel
- Knowledge of the direction the tires/wheels are pointed
- Smooth and continuous input
- Inputs are made at a speed consistent with the vehicles ability to change direction
- Avoids micromanaging or steering adjustments when possible
- Manages the effects of gyroscopic precession
- Steering release is controlled
- Hands remain in a position of advantage throughout steering maneuver

SHUFFLE STEERING TECHNIQUE

The technique we endorse is called "Shuffle Steering." Shuffle Steering allows the driver to meet all of the conceptual criteria listed and is a behavior that works predictably, efficiently, and consistently in nearly every environment of driving a public safety vehicle. Other steering techniques may allow the driver to manage the concepts; however, shuffle steering meets the criteria as outlined.



Begin with the grip on the steering wheel. The hands should be placed in the "3" and "9" positions or slightly lower towards the "4" and "8" positions, depending upon vehicle steering wheel design and ergonomic considerations necessary to each individual driver. The grip is firm between the fingertips and the thumbs.



Drivers should avoid creating a "death grip" on the steering wheel. When the grip is too hard on the steering wheel, the larger muscles in the hands, forearm, biceps, and even the shoulders begin to tense, and this creates a situation where inputs of steering will be made with the large motor-muscle groups in the body. A lighter grip promotes the use of fine motor muscle groups and will result in smoother inputs to the steering. Smoother inputs will equate to better weight transitions throughout the platform.

The right hand will be responsible for the right side of the steering wheel ("12" to "3" to "6") and the left hand responsible for the left side ("12" to "9" to "6").

The hands should not cross over the "12" or "6" positions on the steering wheel.

Shuffle steering is often referred to as "Anticipated Steering," and this moniker fits nicely when the driver begins to prepare for a change in direction. The driver must utilize the eyes correctly, looking for the point where steering is needed and the point where steering can be released. For the purpose of example, we will demonstrate a turn to the left in the description and photos that follow.

As the driver sees a corner, turn, lane change, or other reason input steering, the driver begins to move the left hand towards the "12" position on the steering wheel. While the left-hand moves, the right-hand remains in control of the steering wheel.



With the left hand now at the "12" position, the driver grips the steering wheel and begins to "pull" the steering wheel with the left hand towards the "6" position. The right hand will allow the steering wheel to slide through the grip.

As the left-hand pulls the steering wheel down and through the "9" position, the right hand begins a "mirroring" of the left hand, sliding down the steering wheel towards the "6" position.



As the left-hand moves through the "9," and towards the "6", the right hand begins to mirror the movement by moving towards the "6" as well.



The hands physically touch at the "6," and the right hand will begin to push the steering wheel up towards the "12" position until the necessary steering input is achieved.

When the left hand has pulled the steering wheel down to the “6” position, the right hand should be in the same position. (see the previous photo). At this point, the right hand begins to “push” the steering wheel up towards the “12” position. The left hand allows the steering wheel to slide through the grip and “mirrors” the movement of the right hand.

When all of the necessary steering for the maneuver is into the platform, the driver will maintain the steering input until it is time to begin feeding the steering back out of the platform until the tires and wheels are once again straight.

To release the steering, the process is simply reversed. The right hand will begin to “pull” the steering wheel towards the “6” position. As the right-hand passes the “3” position (if the input was beyond), the left hand begins to slide down the steering wheel to the “6” position. When the right hand has pulled the steering wheel to “6”, the left hand should be in position at “6” and begin to “push” the steering wheel up towards the “12” position. The right hand will mirror the movement of the right hand, stopping in the area of “3”. Once the left hand has reached the “12” position, the driver knows the tires and wheels are pointed straight, and the driver can slide the left hand back towards the “9” position, regaining a good firm grip for straight-line operations.

Steering inputs should be smooth, and the rate of input should be no faster than the vehicle can change direction on the driving surface. Drivers should avoid allowing the steering wheel to slide freely through the hands when the steering is released.

This is due to the necessity to manage the energy that has been stored in the suspension components of the vehicle during the input of steering. In our example, with the right-hand turn, weight was shifted to the front and the driver's side of the vehicle. This weight shift caused the front suspension components (struts/springs) to compress and to store energy. Once this energy has been stored in the components, it is considered to “potential energy” due to its positioning in relation to its design. The energy must be released, so it is to the advantage of the driver to manage the release in a controlled manner. Merely letting the steering wheel slide freely will allow the suspension to manage the rate of release rather than the driver.

BRAKING TECHNIQUES

In many ways, braking is as much a decision-based technique or skill as it is a physical skill. "WHEN" the brakes are applied will more often than not dictate "HOW" the brakes are applied. Drivers that learn to anticipate situations where braking will be required will be inherently smoother, use less brake, and shift weight more efficiently than drivers that are continually surprised. Several braking techniques and concepts are discussed in the following section. A few definitions of different types of braking follow.

Anti-Lock Braking	A vehicle technology that assists drivers to maintain steering ability in emergency braking situations. This most often occurs in situations where the driver needs maximum braking to stop or avoid colliding with an obstacle. The ABS ECU contains thousands of parameters that can be tuned for the car - although most ABS systems are supplied by companies such as Bosch, it's the software tuning that makes individual systems different for different cars. Vehicle manufacturers strike a compromise between stability and braking distances and set parameters for braking on different surfaces and driving scenarios. Even if two different cars have identical ABS hardware - they will be tuned very differently. ABS works best with a firm, steady application of pressure to the brake pedal. During ABS operation, you're likely to experience some vibrations, which are the pressure release valves opening and closing and an indication that the system is working correctly. Do not release pedal pressure until you have safely slowed or stopped.
Cadence Braking *(Non-ABS Vehicles)*	A style of braking application where the driver manually applies brake pedal pressure until the wheels/tires lock and slide and then releases slight pressure to regain grip, then repeats until the desired speed or stop is attained. Typically used in reduced grip environments such as snow, ice, or gravel. Attempting to Cadence Brake on dry surfaces will result in dramatic weight shifts that will create significant vehicle control problems. THIS IS NOT A COMMON TECHNIQUE, NOR SHOULD IT BE USED UNLESS ABS HAS FAILED AND THE SURFACE IS OF REDUCED GRIP.
Emergency Braking	Braking that is necessary when the driver is surprised by something in the environment requiring an emergency stop or slow-down to avoid a collision. This typically leads to intervention from the ABS and possibly the ESC systems in a vehicle.

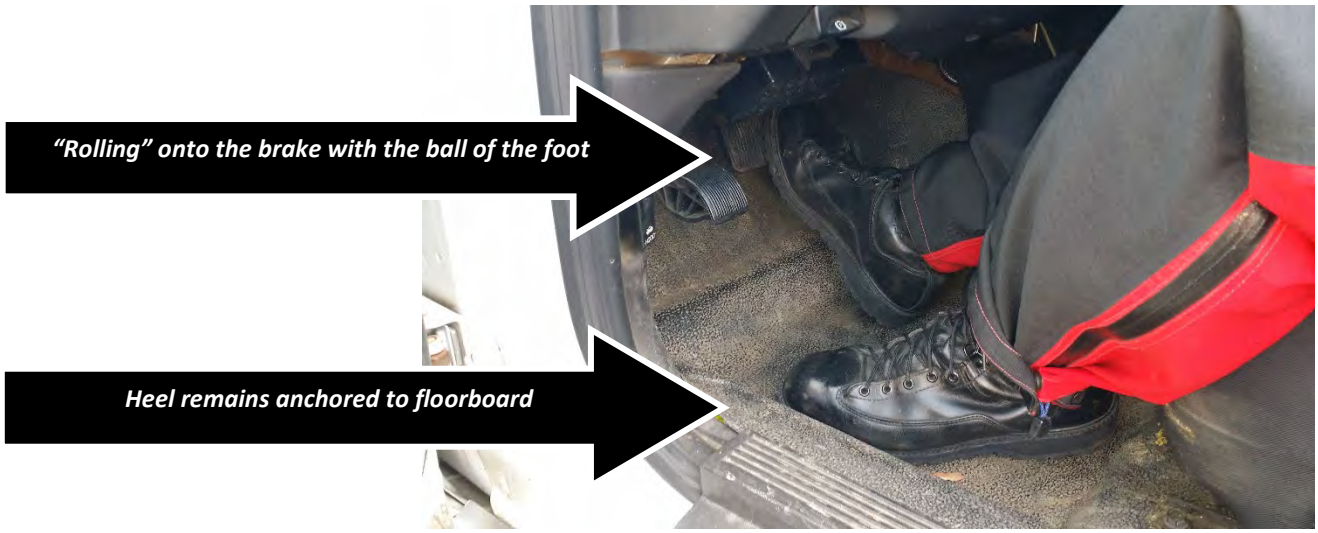
Left Foot Braking *(Not Endorsed or Instructed)*	This is a racing technique. It is often confused with a person who simply uses the left foot to apply the brake when the right foot would normally do so and, as such, becomes a strict liability to being able to separate the control inputs to a vehicle. By definition, left foot braking allows the driver to change the brake bias by either adding power or brake pressure. For example, a driver in a turn begins to experience a rear skid (oversteer) situation and simultaneously releases some brake pressure while adding throttle to change oversteer into a slight understeer. The reverse is also true. If the front begins to understeer, the driver can create a movement towards oversteer by increasing brake pedal pressure against the throttle. **Left foot braking applications are not recommended and will not be instructed in EVO courses taught at DPSST.**
Long Braking	A decision-based braking technique where the driver realizes that the need to slow or stop is approaching and releases the accelerator sooner, allowing the vehicle to shift weight forward slowly. The driver then applies light pedal pressure earlier than in threshold situations; this allows the weight to continue shifting forward but under very direct management from the driver. *SKIDCAR System Inc.* © describes this technique as "applying brake sooner and over a longer distance" to keep the chassis squarely loaded.
Straight-Line/One Pedal Pressure Braking	This is effective braking completed in a straight line, where the driver "rolls" onto the brake pedal smoothly until the necessary pedal pressure is achieved—no additional adjustments (additions or releases of pedal pressures are needed).
Threshold Braking	In early generations of this manual, threshold braking was defined as "Braking to the point of incipient skid." That description is still relevant today; however, vehicle technology begins to intervene once the skid is realized rather than relying on the driver to modulate the pedal pressure manually. Threshold braking is the best strategy to adopt to gain maximum braking performance. The point of maximum braking performance is found before immediately before wheel lock. When using threshold braking, the driver attempts to try and keep the braking pressure just before this point. Practically, it is very difficult to know exactly the point at which wheels will lock will occur. Factors such as grip conditions, tire conditions and temperatures, brake temperatures, and weather play a role in determining the point of wheel lock. Drivers should understand that maximum braking can occur at the threshold. Still, once the system enters into an ABS-assisted mode, the driver should maintain pedal pressure and no longer try to manage the threshold.

Trail Braking / Extended Release Braking	This is a technique drivers should develop to help maintain a good balance in the platform when the vehicle is turning. It is a technique born on the race tracks of the world and not frequently instructed beyond those environments. Drivers should develop the habit of extending the release of the brake pedal as the steering inputs are made, to a point when necessary steering into the platform, braking pedal pressure is removed. When performing this technique at speed, it's important to remember that the majority of the braking should still be completed in a straight line. However, to maximize grip performance from the vehicle (improved stability = improved safety margin), the driver will not begin the release of brakes until steering is beginning.

Foot Positioning During Braking

The brake pedal should be applied with the ball of the foot by "rolling" onto the brake pedal in a sideways manner. The heel of the foot should remain firmly anchored on the floor of the vehicle. When drivers pick their foot off of the floor to apply the brakes, fine motor skills are sacrificed, and inputs to the braking system become increasingly harsh.

GOOD FOOT POSITIONING FOR BRAKING



If you hear comments from the instructor such as:	
"Don't charge the corners." *"Try to squeeze the brake pedal smoothly."* *"Use the ball of your foot on the brake pedal."* *"Don't lift your foot off of the floor to apply the brake."*	You are not as effective with your braking inputs as you should.

Acceleration Techniques

Smooth, progressive accelerator inputs are more important in more powerful cars as there is a greater likelihood of wheel-spin. Drivers should avoid "stomping," "stabbing," "mashing," or any other descriptive form of heavy application of accelerator.

The strategy drivers should adopt is to transmit as much torque from your engine to your wheels as possible (and necessary) without slipping the wheels relative to the ground. If the driver winds up the engine by holding the brake and then pops off of the brake, a wheel-spin is likely. This is because the amount of torque immediately transmitted to the wheels is exceeding the friction between the wheels and the roadway. In most vehicles operated by public safety personnel, the ESC and/or Traction Control systems will sense the wheel-spin and intervene with acceleration. This outcome can place the driver at increased risk.

Drivers should "roll" onto the accelerator pedal, much the same as with the brake pedal, depressing with the ball of the foot in a smooth and controlled manner. As the vehicle begins to move and the friction changes from "static" friction to "kinetic" friction, more acceleration can be added through the pedal.

When a driver can input acceleration without the traction control system kicking in and without the wheels spinning, the maximum acceleration has most likely been achieved.

ROADWAY POSITIONING / CORNERING

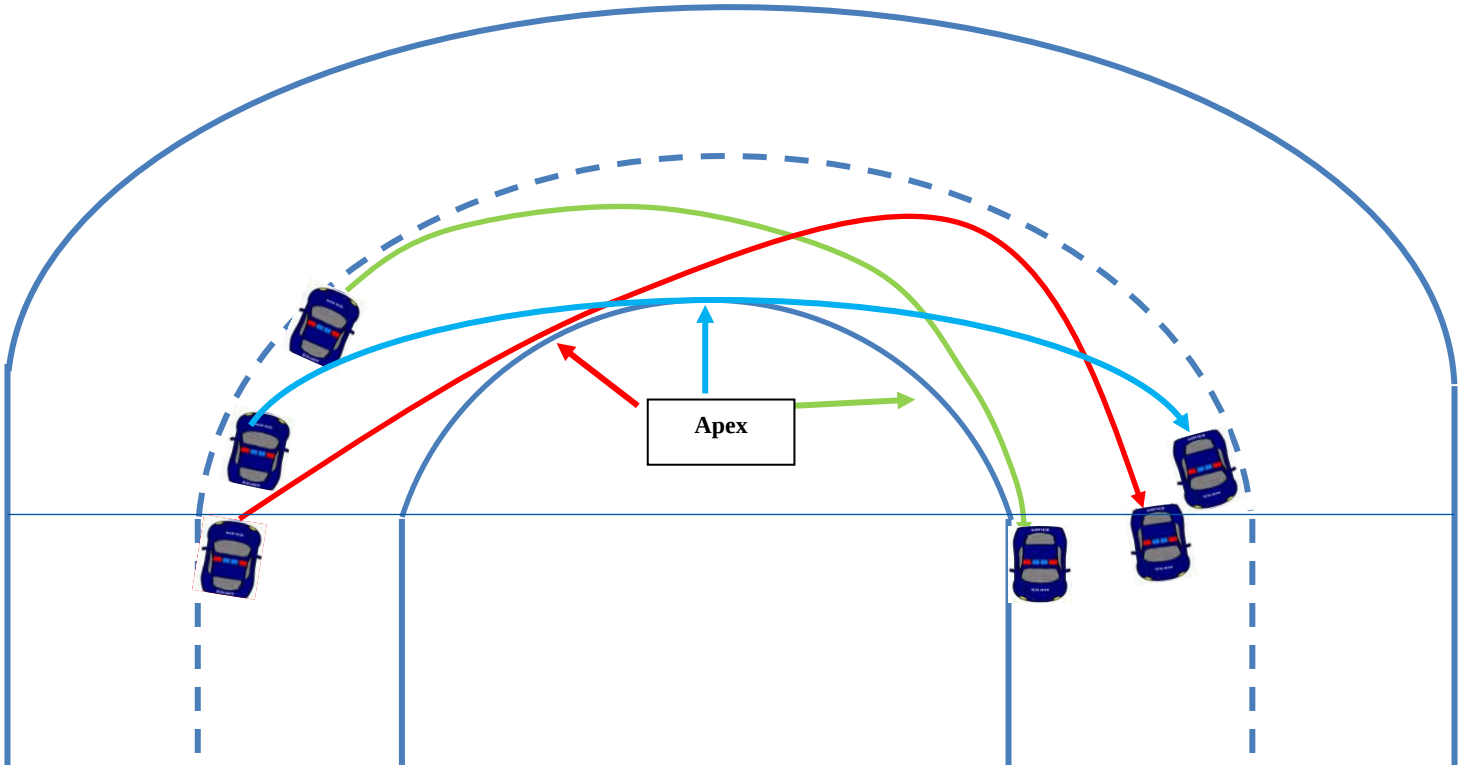
When a driver attends any driving school and begins to consider critical tasks such as stability while the vehicle is changing direction, drivers will receive instruction on "apexing," "racing lines," "late apex lines," "early apex lines," "outside, outside, inside lines," "outside-inside-outside lines," and the list goes on. The "best" path of travel (or line) through a turn is the one that makes the most sense, given all of the information available to the driver at the time of the turn. This implies that multiple paths of travel should be considered by drivers using good proactive driving skills.

The basis for determining a path of travel during a change in direction, whether the change is a minor adjustment in a lane, a change of lanes, a gentle turn on a highway, a blind intersection in an urban environment, or any other change of direction, is where the driver looks as the directional change approaches. ***A driver should adopt "Line of Sight Cornering" skills***.

To make the best decision during a change in direction, the first skill the driver must develop is the active use of eyesight. Eyesight has previously been discussed in some detail, and the visual acuity and visual perception skills are critical to success (or failure) during operations where drivers are changing direction. Driving within your line of sight will help you select the best path of travel in any situation.

A few definitions concerning roadway positioning and cornering follow.

Term	Definition
Apex	The point at which the vehicle is closest to the inside usable portion of the roadway. This is often at the theoretical/mathematical center of a turn, but not always based on the definition used in driver training.
Early Apex Line	A path through a corner where the vehicle is close to the inside of the roadway prior to the mathematical center of the turn. (This path is depicted as the **RED PATH** on the next page.)
Center Apex Line	A path through a corner where the vehicle is close to the inside of the roadway at the mathematical center of the turn. (This path is depicted as the **BLUE PATH** on the next page.)
Late Apex Line	A path through a corner where the vehicle is close to the inside of the roadway after the mathematical center of the turn. (This path is depicted as the **GREEN PATH** on the next page.)
Multiple Apex Line	A path of travel through a long corner where it is possible to stabilize the vehicle in a straight line while still confined within the geographic constraints of the corner.
Straight Line Priority	A method of visually identifying a "straight line" – regardless of where it lies on the roadway (even in the middle of a turn) – where the driver can stabilize a vehicle.



Basic Guidelines to Path Selection

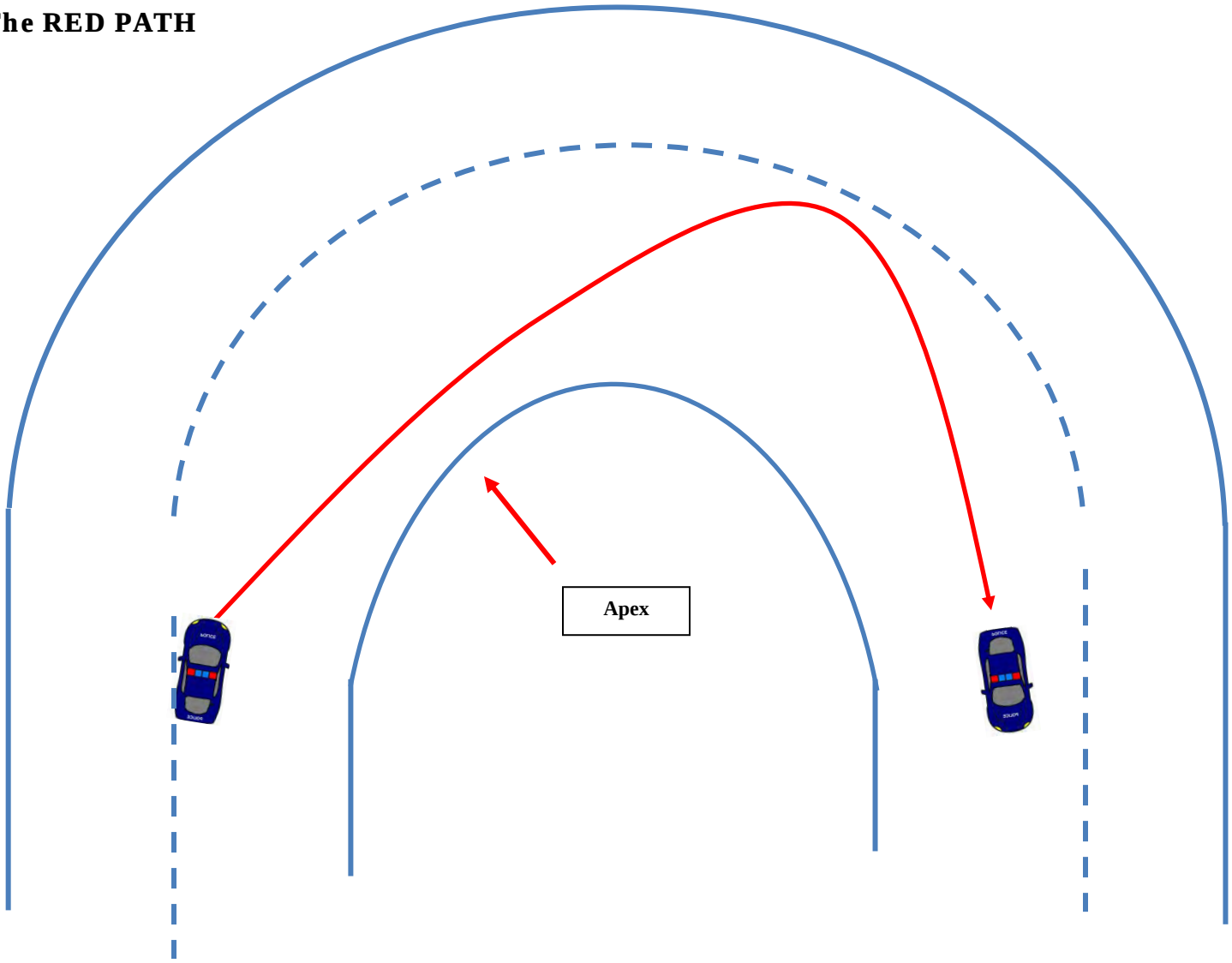
Lane discipline is required. Drivers should not seek paths of travel that intentionally take the vehicle into oncoming traffic lanes.

Drivers should select a path of travel based upon what the eyes say about the environment as it exists in the "here and now" and not based upon prior experiences in the turn. For example, a driver that always drives a blue path "because there is never traffic on the road at this time" will eventually face a test in their ability to control a vehicle in an emergency crash-avoidance maneuver.

Whenever any doubt exists in the mind of the driver, the red and blue paths of travel should not be utilized by the driver.

The red path should only be utilized at very low speeds when the driver can easily stop within the line of sight.

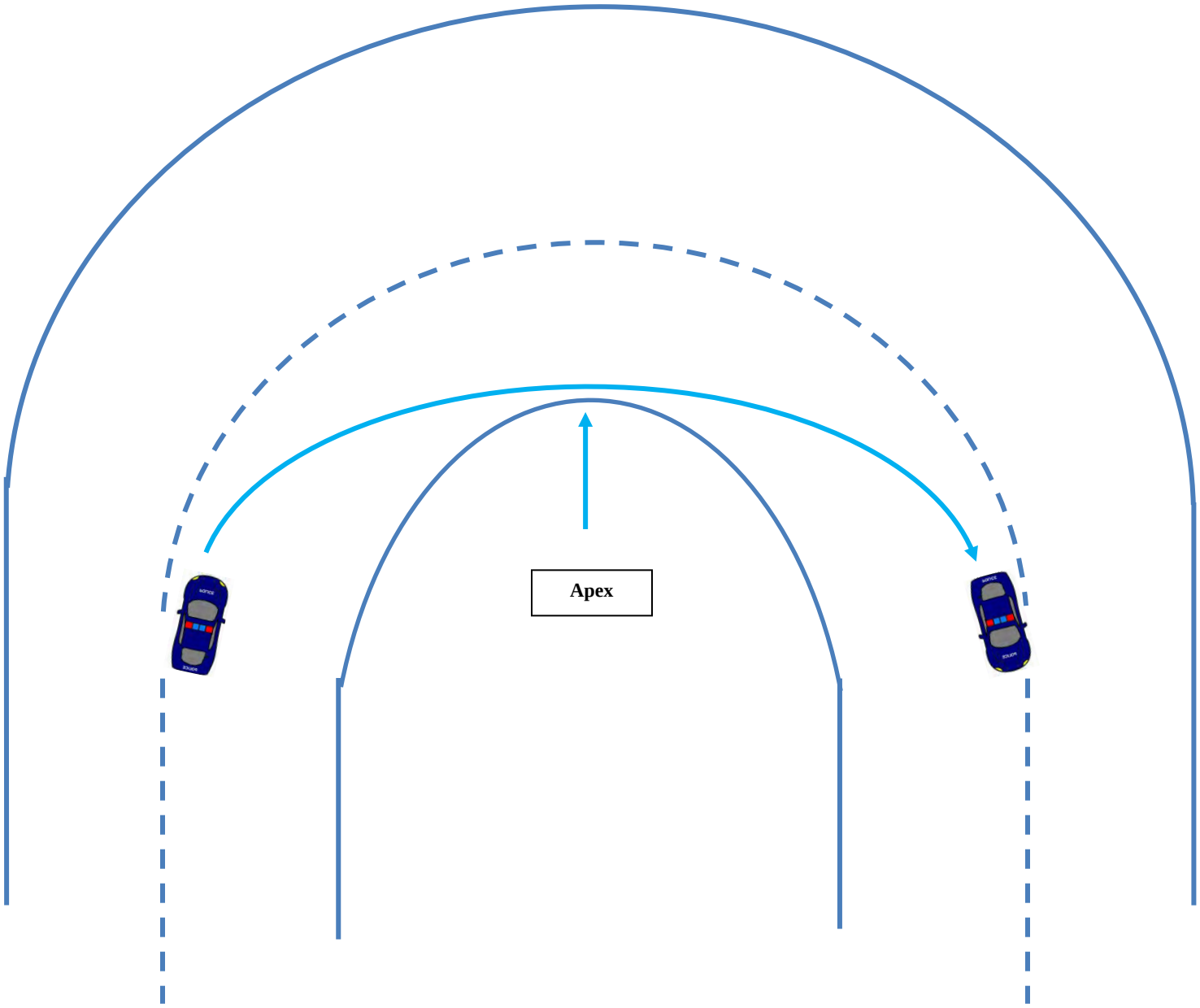
The RED PATH



Inexperienced drivers often choose the red path and begin to steer as soon as they "see" the paint on the road starts to turn. This causes the vehicle to take a very shallow approach to the turn and creates a false sense of security to the driver because of the available driving surface out the driver's side where a mistake can be corrected.

Experienced crash investigators will tell you that crashes that occur in turns due to speed or vehicle path of travel typically occur in the last third of a corner, so our inexperienced driver will not crash where the perceived safety margin is, but in a part of the turn that has not been visually cleared in most circumstances.

THE BLUE PATH

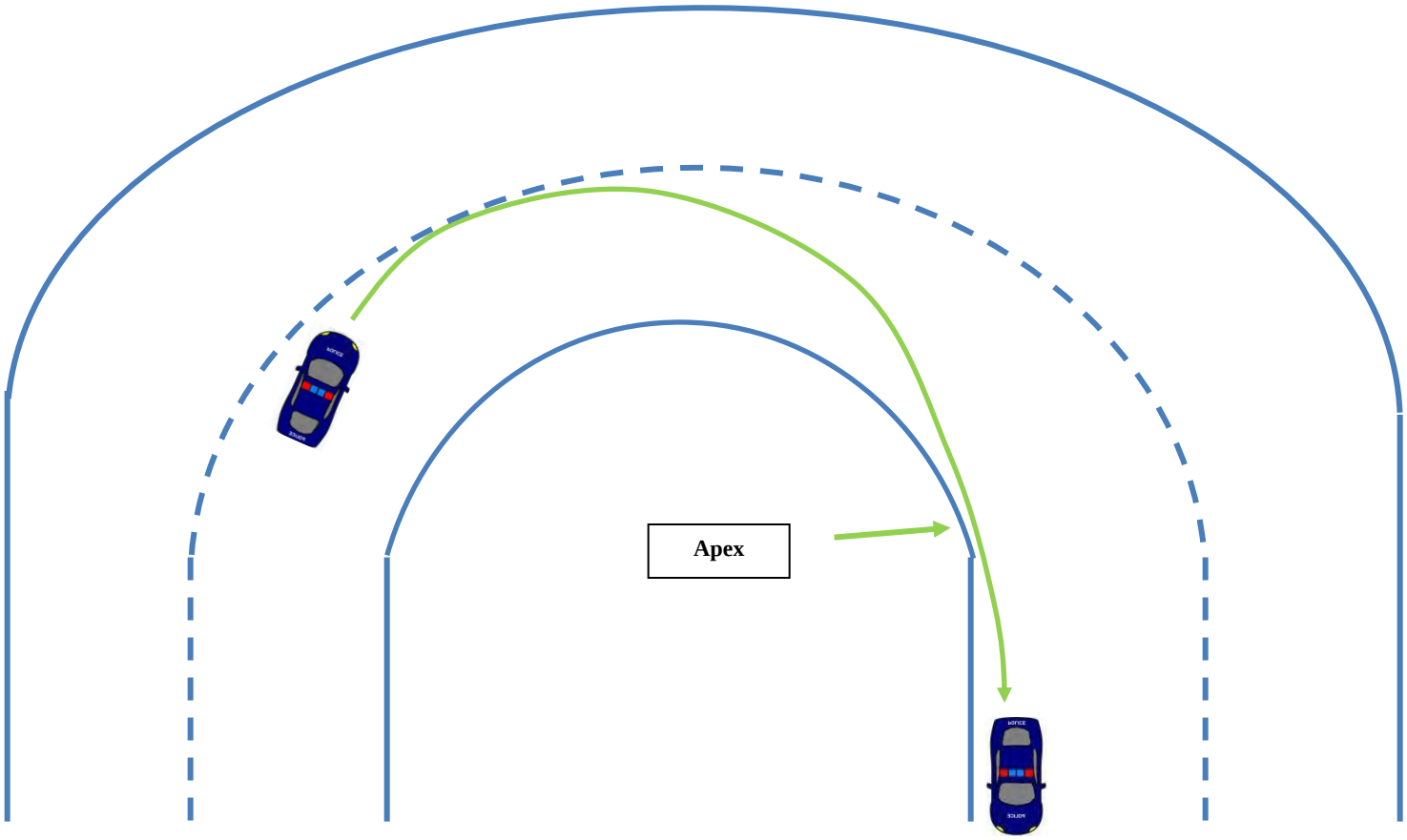


The blue path will work for drivers in certain situations. There are two primary guidelines to consider if this path of travel is selected for use by a driver.

1. The road surface is clear, consistent, and dry.
2. The exit is clearly visible, and no oncoming traffic or other obstructions are present.

In any other circumstances, the blue path becomes difficult to defend when the driver must place the vehicle into unknown grip and obstruction scenarios.

THE GREEN PATH



The green path will work for drivers in nearly every driving situation. While the path of travel is not quite as fast through a turn, the path is very efficient because the driver will not be surprised by changes in grip or the presence of traffic or other obstructions at the corner exit. This path is often called a "Late Apex" line. It is the preferred path of travel for an operator of an emergency vehicle unless specific criteria concerning grip and vision are met in a blue path. This path should be used when:

1. The grip/texture of the roadway are inconsistent or otherwise reduced.
2. The exit is not visible until the driver has moved farther into the corner.

This method of cornering is akin to "Slicing the Pie" while clearing a room, hallway, or other right angles during a tactical search of a location.

The following are several examples of corners on the training facility at DPSST and paths of travel that might be taken while driving those corners. The images used are taken from screenshots of DPSST by Google Maps.



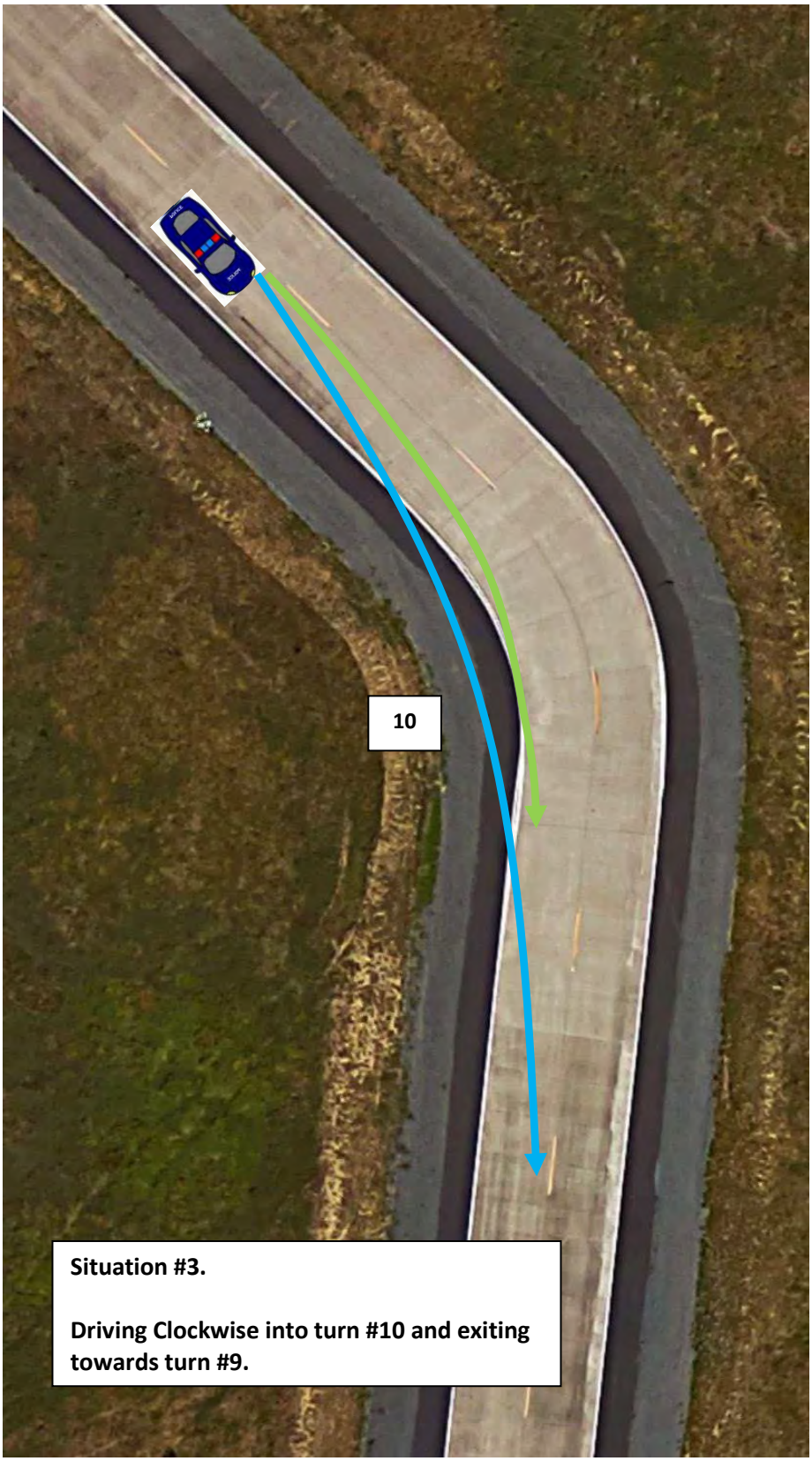




In situation #2, the roadway is gaining elevation from the entry of corner #3 towards the entry of corner #2, and oncoming traffic is not visible. A driver on the green path is adhering to lane discipline and will be not only safe in the event an unseen vehicle appears at the crest of the hill, but will also be in a defensible position, allowing the driver more options to select paths of travel if an emergency develops.

Continuing on the blue path, the driver will face the potential of oncoming traffic at the exit of the turn and be left with few evasive options in the event such activity is needed.

The green path of travel is the better choice in this complex of turns due to the lack of visibility from the entry to the complex of turns through to the exits.



Situation #3.

Driving Clockwise into turn #10 and exiting towards turn #9.

Situation #3 presents some different options to the driver

The roadway is descending in the orientation in which the vehicle is traveling and making a sharp turn to the right. Because of the open nature of the turn and the descending approach, visibility from the vehicle position clear through the turn to the entry for Turn #9 is possible.

BLUE PATH

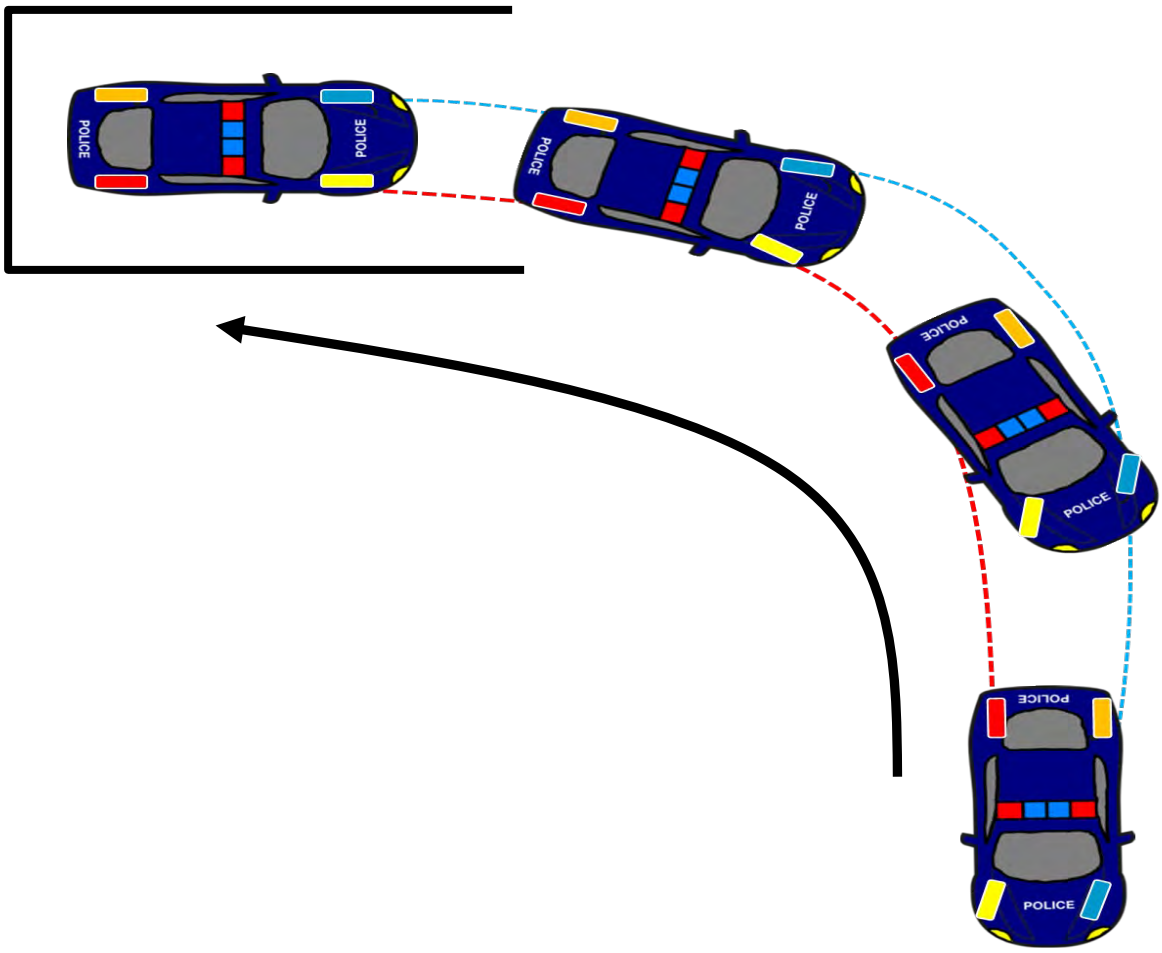
If the driver chooses the utilize the blue path, the driver should be able to absolutely certify that the driving surface is dry and no grip issues will intervene with stability, and that the exit from #10 and the approach into #9 is clear from any oncoming traffic or obstruction. In the case of no information to the contrary of either situation, the blue path is a good choice because it involves less movement of the steering wheel, less weight shift, and maintains a good pace.

GREEN PATH

In the event the roadway surface is wet or if a vehicle or other obstruction is present near the exit of #10, the driver should select the green path.

This is a corner when the driver should visually identify the straight section of roadway between #10 and #9 as soon as possible and then steer to the straight line. This will be different for some drivers as the "corner" actually occurs before the painted roadway indicates.

VEHICLE POSITIONING IN REVERSE (BACKING)



In this diagram, the vehicle is in reverse and maneuvering into a parking area.

Note the red dotted path indicates the path the passenger rear tire travels, and the blue dotted path is that of the driver side front.

The front of the vehicle takes a wider radius path and must be accounted for when the driver has selected a driving maneuver requiring reverse.

DRIVER POSITIONING WHILE BACKING



Good driver position while backing is critical to the safe backing of vehicles.

The best position for backing remains looking over the right shoulder with the left hand against the steering wheel at the "12" position.

Steering inputs are made by maintaining firm pressure against the steering wheel with the left hand.

The driver should occasionally peek at the front of the vehicle to assure that the front-end path of the vehicle is clear.



The design of many patrol platforms enhances the temptation to use mirrors. Small rear windows, higher decks over the rear seats, and protection cages all create visibility issues when trying to see out the rear window. In certain vehicles, the use of mirrors may be unavoidable.

Many vehicles are equipped with back-up cameras. These cameras are very effective at clearing the path of the vehicle while in reverse. If a vehicle is equipped with this technology, drivers should practice using the camera and gain comfort with depth and distance. The driver must still take several peeks at the path of the vehicle as the front-end swings around while backing.

CRASH MANAGEMENT

An emergency vehicle is statistically about eight times more likely to be involved in a crash than other vehicles on the roadway. A significant number of the crashes that do occur involving public safety vehicles involve right-angle intersections, often due to the line of sight the public safety driver is relying upon is not sufficient for the speed the vehicle is operating.

Intersections are not the only high-risk area, unfortunately, and collisions with fixed objects, loss of control due to leaving the driving surface, and even driving into parked vehicles are some of the frequent types of crashes public safety with which public safety is involved.

The most preventable collision for public safety officers is a backing accident. If the driver simply walks around the vehicle before getting inside and driving away, nearly every backing incident will be eliminated.

It is an unavoidable fact that public safety vehicles will still be involved in on-duty incidents and crashes. Once the driver has done every pro-active step available to avoid a crash, there are still options for the driver to choose from. Once a crash is imminent, the driver needs to move from a mindset of “Crash Avoidance” into a mindset of “Crash Management.” By choosing how to crash, the driver can begin to minimize the effects of a crash.

CRASH MANAGEMENT PRIORITY

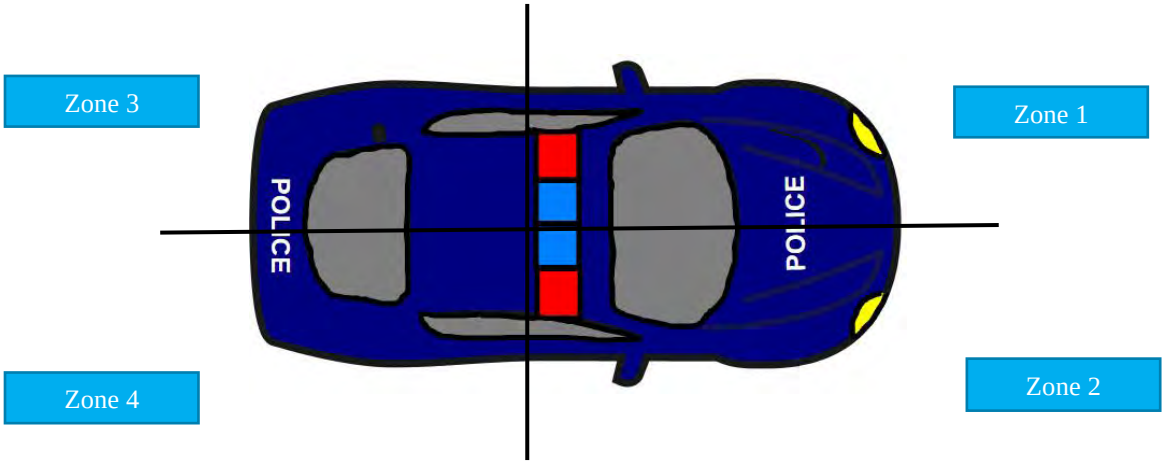
Once a crash is going to occur, the driver should focus completely on continuing to operate the vehicle to satisfy the priorities of life.

Protect Life	Reduce Injury	Protect Property
The driver does everything possible to continue driving throughout the crash, setting up multiple impacts and situations where energy exchanges are reduced to forces less likely to cause death or serious physical injury.	The driver continues to drive through the crash, making the crash last longer in both time and distance. This creates multiple small exchanges of force between the vehicle, occupants, and other objects, reducing the overall risk of injury to occupants.	This is the last thing drivers in a crash should worry about. Once a crash has started, property damage has occurred, so the driver should continue to use driving strategies consistent with the protection of life and reduction of injury.

ZONES OF PROTECTION

When a vehicle is involved in a crash, the driver can still actively influence and manage the outcome by continuing to visually scan for paths of travel, moving the steering wheel to leave the roadway with the tires pointed straight, and other actual driving techniques and decisions. This means the driver needs to take every available opportunity to maneuver the vehicle into "selected" crashes.

One way of structuring a crash is by using a hierarchy of protection, known as "Zones of Protection." Look at the photo of the vehicle below to visualize this concept.



In a crash situation, the driver should attempt to move the vehicle to areas of contact, placing the largest amount of sheet metal between the point of impact and the driver.

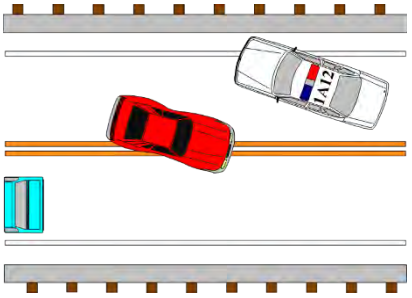
The best place to have contact is in Zone 4. This is an area behind the driver and on the other side of the vehicle. A crash in Zone 3 is preferable to a crash in Zone 1 if the crash will occur on the driver's side of the vehicle. If the crash is going to occur in the front half of the vehicle, the driver should attempt to create the contact in Zone 2. A Zone 1 crash is the least desirable location for a crash to occur.

MINIMIZING / REDISTRIBUTING IMPACT FORCES

The following are a couple of examples where an attentive and well-prepared driver might utilize the concepts of Crash Management.

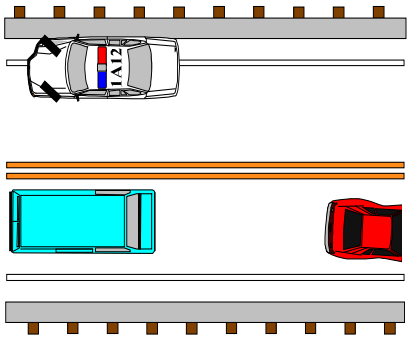
CRASH MANAGEMENT EXAMPLE #1:

In this example, the police driver is attempting to avoid a crash with the red vehicle that has crossed into the police vehicle's path. While the police driver can avoid the Zone 1 crash with the oncoming vehicle, contact with the guard rail is now certain.



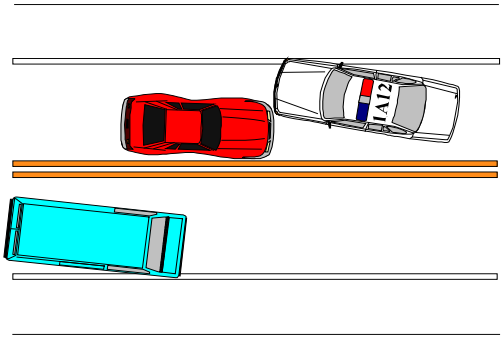
The driver of the police vehicle makes the mental jump from crash avoidance to crash management and simply turns the vehicle into the guard rail, holding it against the guard rail until the vehicle comes to a stop.

By holding the vehicle into the guard rail, the police driver removes the risk of "bouncing" off of the object and into traffic once again; this time with a vehicle that has sustained unknown damage to the front tires, brakes, wheels, etc.



CRASH MANAGEMENT EXAMPLE #2:

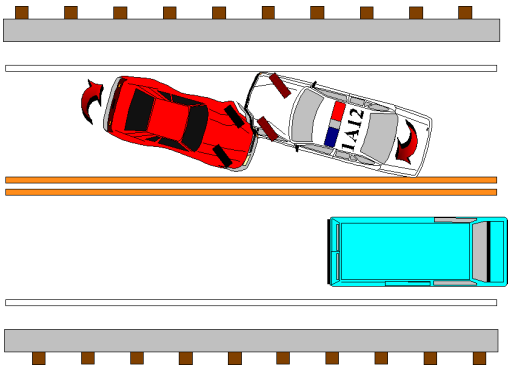
In this example, the police vehicle and the red vehicle are going to have a Zone 1 crash.



The driver of the police vehicle (and the red vehicle as well) can still both take driving measures that will reduce the exchange of force that will happen.

In the first section of this manual, the physics of weight transfer and grip were discussed at length. The driver of the police vehicle can choose to steer away from the crash or to steer into the crash.

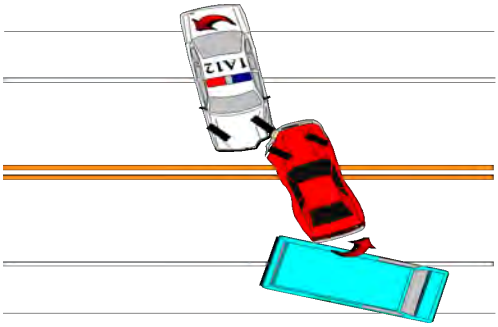
The natural response for drivers is to try and steer away from the contact. When this action is taken, the vehicle begins to rotate. Unfortunately, the rotation is only adding to the force of the crash.



In this diagram, the police driver turns away from the impact. So does the driver of the red vehicle. Their actions counter each other, and neither is effective.

The driver should steer into the crash at impact. This action will cause the back of the police vehicle to begin to rotate away from the point of impact – rather than towards the point of impact when the steering is made away from contact.

This helps to create a spin in the vehicle. When the vehicle is spinning, the energy being dissipated between the tires and the roadway is reducing the overall crash forces being exchanged between the vehicles.



GENERAL RULES FOR REDUCING IMPACT FORCES

1. Try to set up a rear half (Zone 3 or Zone 4) impact.
2. Just prior to impact, turn into the object and hold the steering into the impact.
3. If a Zone 1 or Zone 2 impact is going to occur, steer into the object at impact.
4. Once an initial collision occurs, continue driving and trying to extend the duration of the crash.
5. Mentally prepare for crash situations and rehearse both the mental and physical responses necessary to reduce risks on a continual basis; preparation must be prior to any incidents and should be completed when the situation suddenly occurs – not during the event.

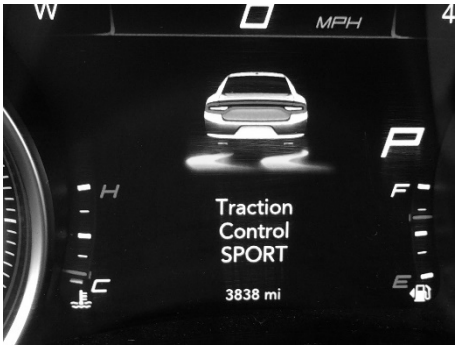
After a crash, the driver needs to continue to think and act in a manner to preserve life. A public safety vehicle - whether it is a police car, ambulance, or piece of fire apparatus – that has crashed is going to draw a significant amount of attention from other motorists. The driver should conduct a thorough assessment of his or her physical condition, and once it is good to move physically, the driver should get away from the vehicle. Remember that the crash is a visual magnet and that people will drive towards what they are focusing upon.

VEHICLE TECHNOLOGY / ACTIVE SAFETY MEASURES

Vehicle technologies are advancing at an exponential rate, and with the advancement of technology, drivers are faced with continuing challenges on the interaction between vehicles and humans. Despite all of the emerging safety, stability, and driver comfort systems in vehicles, the science of driving has not changed, and physics remains the absolute arbiter when everything is examined concerning grip.

The driver is the most important active safety and control system in a vehicle and will continue to be until machines completely replace the need for a driver. Technology is incredible, and the electronic control units (ECU) in a vehicle can make calculations and adjustments to overall vehicle stability in milliseconds – the same adjustments a driver might take several times as long to implement – however a driver relying upon the insight, experience, and judgment derived from active utilization of eyesight is still the only component available to make critical choices and decisions with regard to vehicle operation.

In this segment of the manual, several electronic systems are discussed in some detail as they are technologies that exist in nearly every platform in use as an emergency vehicle and the general public driving fleet. As with any type of technology, the systems in vehicles are evolving and adapting rapidly to the demands of the public, and different manufacturers have decided to calibrate and program their systems slightly differently to gain market advantages and to provide specialized responses to the primary purchasing demographic.



(Photo of Dodge Charger Data Information Center when Traction Control is Active)

TIRE PRESSURE MONITORING SYSTEM

One of the basic components of all current vehicle technologies is the Tire Pressure Monitoring System (TPMS) installed on vehicles. There are a couple of different systems in use by automobile manufacturers including a "Direct" system that measures actual air pressures in real-time using pressure sensors either internally or externally mounted on the wheel, or "Indirect" systems that rely upon the programming of tire sizes and compare wheel speeds against expected rotation rates at certain speeds (an underinflated tire is slightly smaller in diameter and would rotate at an unexpected rate compared to a properly inflated tire at specific speeds.)



Regardless of the type of system in use by vehicles, this information is integral to all of the algorithms needed to program the electronic control modules in modern vehicles.

Tire performance intimately related to tire inflation pressure. Grip begins with the contact patch, and critical performance factors such as braking distance or lateral stability mandate the inflation pressures to be maintained as specified by the vehicle manufacturer. Severely under-inflated tires can lead to thermal degradation and mechanical overload caused by overheating and subsequent, sudden destruction of the tire itself. Fuel efficiency and tire wear are also affected by under-inflated tires.

The physics of vehicles requires the reliability of the mechanical components of vehicles, and nothing is more critical than the relationship of grip that develops between the tires and the driving surface. The science of driving is based on the grip (maximum grip demands that tires are properly maintained and managed to enhance vehicle stability), handling and braking efficiencies, and to provide greater safety for the driver others on the road.



ANTI-LOCK BRAKING SYSTEMS

Anti-lock braking systems (ABS) are active safety features designed to help drivers retain steering control by preventing wheels from locking up during an episode of heavy braking. When a tire ceases to rotate, a skid or slide begins to develop between the tire contact patch and the driving surface. ABS allows a tire that is momentarily locked and, therefore, not rotating, to regain rolling friction with the surface immediately. It does not matter that a roadway or surface is wet, icy, or dry – any heavy or excessive application of brakes on a vehicle that is not equipped with ABS will most likely result in one or more locked (and sliding) tires.

In our section discussing the science of grip, we learned that a tire that ceases to rotate would no longer respond to driver inputs for directional change. Although the vehicle will still be producing sliding friction and slowing down, as a result, the corresponding loss of steering control means the driver no longer has control over the vehicle.

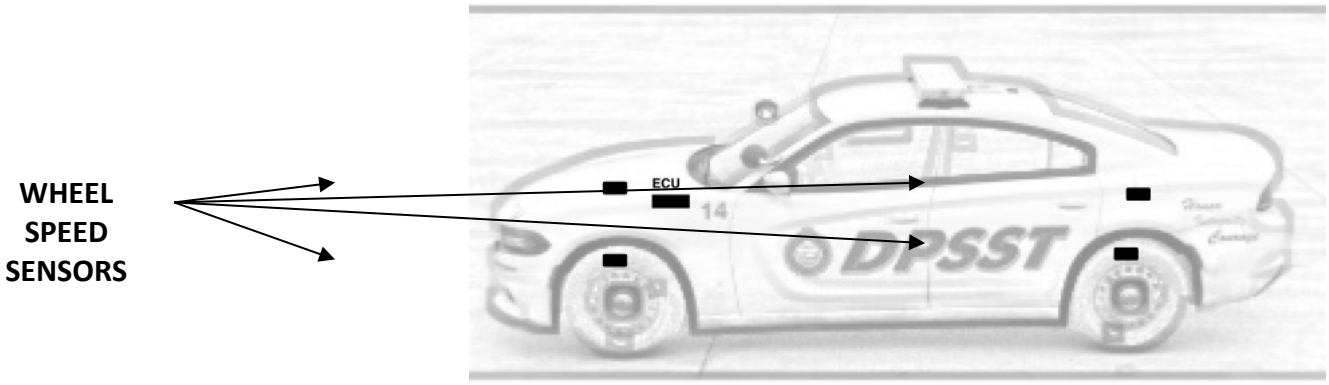
Anti-Lock Braking Systems are designed to activate any time a driver makes heavy applications of brakes and inputs of steering. This is realistically a “stab” and “steer” situation for most drivers, resulting in dramatic shifts of weight and balance in the vehicle platform.

- A vehicle or animal suddenly veers in front of you, forcing you to brake and swerve.
- Bad weather makes the roads slippery, making wheel lock more likely when you must brake to stop.

Not all ABS setups are the same. Some prevent wheel lock on all four wheels, while others prevent only the rear wheels from locking. However, all ABS work by monitoring individual wheel speeds and when potential wheel lock is detected, rapidly applying and releasing the brake to the problematic wheel.

ABS functions by effectively "pumping the brake," using a technique that was taught to drivers before the development of ABS to prevent wheels from locking. The difference is that ABS setups can sense potential wheel lock and address the problem faster and with more efficiency than drivers. All ABS are comprised of three major components:

- Wheel speed sensors that monitor wheel rotation speed;
- Hydraulic units that pump the brakes, and;
- An electronic control unit (ECU) that receives information from the wheel speed sensors and, if necessary, directs the hydraulic units to pump the brakes on one or more of the wheels.



In most ABS setups, the ECU and the hydraulic units are attached together so that while they have different functions, they are physically one unit. The ECU continually checks for signs of rapid wheel-speed deceleration, an indicator that a wheel is about to lock. If a wheel is about to lock, the ECU directs the hydraulic unit to pump the brake to that wheel until it resumes normal rotation.

The primary purpose of ABS is to allow drivers to have directional control over their vehicles after heavy braking. In support of the effectiveness of ABS, it has been associated with:

- a 35% decrease in frontal collisions on wet roads, and;
- a 9% decrease in frontal impacts on dry roads. (A decrease in frontal collisions suggests that ABS allows drivers to steer to avoid a collision.)

Source – National Highway Traffic Safety Administration

One misconception about ABS is that its purpose is to help reduce stopping distance. However, a reduction in stopping distance is not guaranteed and is only a secondary benefit of ABS.

Steering too aggressively can still have severe consequences. On a vehicle without ABS, a panicked driver steers the wheel sharply out of instinct to avoid a collision, but nothing results from this action as steering control is lost when the wheels lock up. Contrast the same response by a panicked driver in a vehicle equipped with ABS. The addition of ABS means that those same exaggerated steering commands will have an effect and could lead to other dangerous situations like road departure, collisions, or rollovers. Regardless of the presence of a functioning ABS unit in a vehicle, drivers should continue to steer as calmly as possible throughout all situations.

Like many other safety features, realizing the full benefits of ABS depends largely on whether or not drivers interact appropriately with it. Interacting appropriately with safety features like ABS means continuing to drive safely and attentively. Driver behaviors like speeding, tailgating, or driving while fatigued can negate the beneficial aspects of ABS.

ABS does not compensate for unsafe driving or poor road conditions. To ensure the ideal performance of ABS, drivers must continue to use caution and good judgment behind the wheel.

ELECTRONIC BRAKE FORCE DISTRIBUTION

Electronic brake-force distribution (EBFD) is an active vehicle safety feature designed to make braking as efficient as possible. As the name suggests, EBFD distributes braking power according to which wheels are braking most effectively at the time. Just as heavy braking causes a driver's body to move forward, slamming on the brakes also pushes the weight of the vehicle forward, so the front wheels bear the most weight. When this happens, the rear wheels may not have enough grip on the road. This can cause the rear wheels to spin and eventually lock up. Locked-up back wheels not only increase the risk of yaw but also force the front wheels to do all the braking work with only half of the total brake force available (since the other half is still being applied to the back wheels). This can result in longer stopping distances and an increased risk of collision.

EBFD reduces these dangers by automatically balancing the brake force applied to each wheel according to the overall weight distribution of the vehicle. The safety systems not only prevent wheel lockage by reducing brake force to spinning wheels but can also allocate more brake-force to wheels that it detects are already braking effectively.

While it may seem like all the tires bear the vehicle's weight evenly, this is rarely the case. EBFD is useful whenever a driver brakes while the vehicle's weight is unevenly distributed across all four tires. Examples of these situations might be:

- While braking, one wheel goes over a pothole, making braking less efficient.
- One of the wheels is on ice and threatening to lock up during an episode of braking.
- A large animal comes out into the road, forcing you to brake and swerve.

EBFD is always installed with ABS and works very similarly to ABS. The important difference between EBFD and ABS is that while both systems prevent wheels from locking, EBFD can also redistribute brake-force according to which wheels are performing better.

As with modern ABS setups, the brake-force modulators and ECU are attached, so while they have different functions, they appear as one unit. The ECU monitors each wheel's responsiveness to the brake and then tailors the amount of brake force applied to each wheel. If the EBFD system senses that one of the wheels is about to lock, or that the car is swaying too much from side-to-side, it redistributes brake force to obtain optimal braking power.

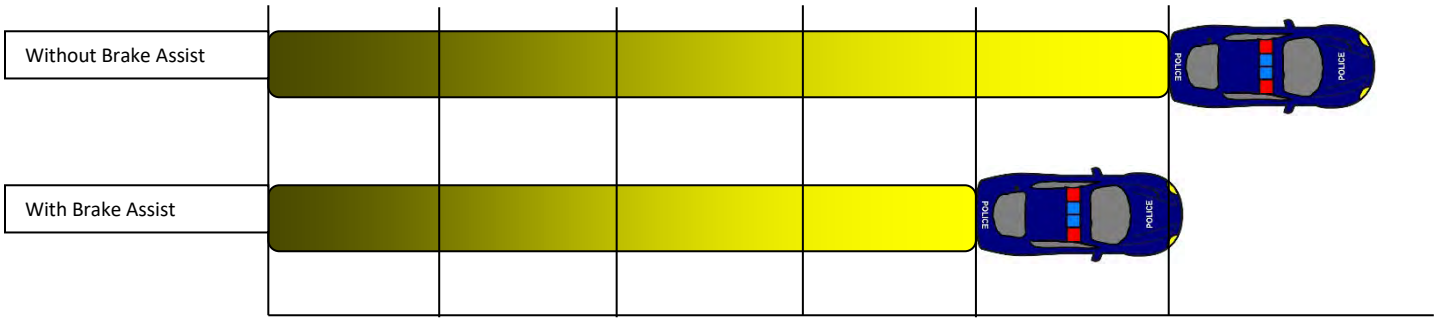
BRAKE ASSIST

Brake assist *(Predictive Braking by some manufacturers)* is a safety feature typically installed in conjunction with ABS. It is designed for use in emergency stopping situations. No shortage of examples may prompt a driver to use a heavy application of braking.

- A cyclist loses balance and veers sharply in front of the vehicle
- A large animal runs out into the road, forcing an emergency stop
- Cresting a hill or exiting a corner, an unexpected line-up of cars awaits

According to the National Highway Traffic Safety Administration (NHTSA), brake assist systems fall into two general categories: electronic and mechanical. The main difference between the two is in the method used to distinguish panic braking from normal braking.

Electronic brake assist systems use an electronic control unit (ECU) that compares instances of braking to pre-set thresholds. If a driver pushes the brake down hard enough and fast enough to surpass this threshold, the ECU will determine that there is an emergency and boosts braking power. Many of these systems are adaptable, which means they will compile information about a driver's particular braking style and tweak the thresholds to ensure the highest accuracy in emergency-situation detection.



BRAKE OVERRIDE

Brake override is an active vehicle safety feature designed to work as a failsafe measure in the event that your vehicle receives mixed signals from the driver. This can happen when both the accelerator pedal and the brake pedal are both applied simultaneously. In vehicles with brake override, the brake pedal is enhanced with "smart" technology that detects when something abnormal occurs. The system recognizes driving behavior that is not "normal" and begins to intervene by overriding the acceleration command and bringing the vehicle to a stop. Brake override is called by several other names, including "smart pedal" and "smart stop technology." Despite the different names, all of the systems function in similar ways.

Figure 1 – Accelerator only

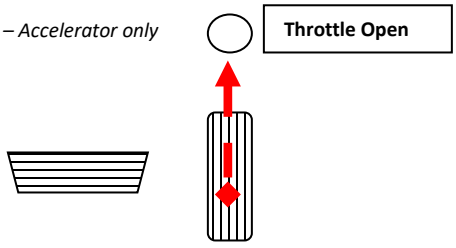
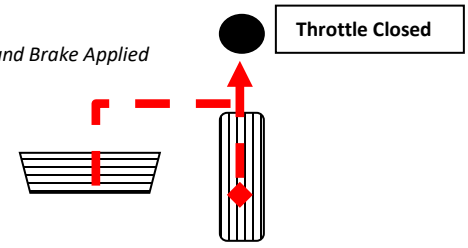


Figure 2 – Accelerator and Brake Applied



TRACTION CONTROL SYSTEMS



Traction control is an active vehicle safety feature designed to help vehicles make effective use of all the traction available on the road when accelerating on low-friction road surfaces. When a vehicle without traction control attempts to accelerate on a slippery surface like ice, snow, or loose gravel, the wheels frequently slip on the surface. The result of wheel slip is that the tires spin quickly on the surface of the road without gaining any actual grip, so the vehicle does not accelerate. Traction control activates when it senses that the wheels may slip, helping drivers make the most of the traction that is available on the road surface.

It is important to remember that traction control cannot create traction where there is none. On a truly frictionless surface such as ice, vehicles with traction control will perform just as poorly as vehicles without traction control.

Traction control is used to help drivers accelerate on slippery or low-friction conditions. These conditions include when roads are wet, icy, uneven, loose, or poorly maintained. Examples of when traction control would be beneficial include the following:

- When accelerating up a hill where the surface is loose and gravelly.
- Hitting a patch of slushy road that causes the vehicle to slow down as the wheels lose traction.
- Accelerating at a green light on an icy road with traffic approaching from behind.

Traction control works similarly to anti-lock braking systems (ABS) and is often considered a supplement safety system to existing ABS configurations. Traction control uses the same components as ABS. It is set up with the ECU and the hydraulic modulator attached together so that while they have different functions, they are physically one unit. The ECU continually checks whether some wheels are spinning faster than others - an indicator that the wheel is losing traction. When possible, wheel slippage is detected, the ECU directs the hydraulic modulator to apply and release the brake in rapid succession to the problem wheel to reduce the speed of its rotation. Some traction control systems also reduce engine power to wheels that are about to slip. Once the wheel has regained traction, the system returns to monitoring wheel speed and comparing the rotational speed of the vehicle's wheels.

As with any safety system installed in vehicles, traction control has limitations. Like many other safety features, the full benefits of traction control depend on whether or not the driver interacts appropriately with the system. Behaviors like speeding, tailgating, and aggressive driving all work against the benefits of traction control. While a vehicle without traction control may experience a reduction in speed on slippery roads, the same speed reduction might not be observed in vehicles with traction control. As such, traction control might allow vehicles to reach a higher speed than is safe for road conditions. Drivers must take extra care to monitor their speed.

ELECTRONIC STABILITY CONTROL SYSTEMS

Electronic stability control (ESC) is an active safety feature designed to reduce the number and severity of motor vehicle crashes that result from a loss of control. ESC helps the driver to assure that grip is being used efficiently and correctly by rapidly intervening in situations where an understeering or oversteering condition begins to develop.



ESC systems are recognized by a variety of trade names including:

- AdvanceTrac
- Dynamic Stability Control
- Electronic Stability Control
- Electronic Stability Programming
- StabiliTrak
- Vehicle Stability Control

ESC systems are made up of several subcomponents that are monitored and controlled by an electronic control unit (ECU). The subcomponents include:

- Yaw sensor that measures the vehicle's rotation
- Wheel speed sensors that measure the speed of rotation for each wheel
- Steering angle sensor that monitors steering input and the driver's intended path of travel
- Hydraulic unit that increases braking or decreases wheel speed

The ECU continually retrieves information from these sensors and compiles the data to determine if any difference exists between the driver's steering input and the vehicle's actual direction of travel. The wheel speed sensors tell the ECU whether some wheels are spinning more quickly than others, an indication that those wheels are losing traction. If the ECU senses that something is going wrong, it will direct the hydraulic unit to apply more brake force to certain wheels to bring the vehicle back under the driver's control. Most ESC systems can initiate a reduction in engine power.

Table 1
ESC Lives Saved Estimates, by Year and Vehicle Type, 2008–2010

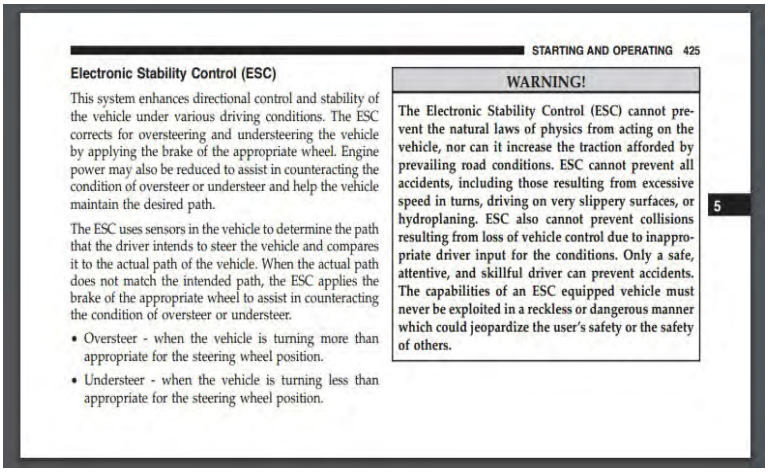
	Year	Passenger Cars With ESC Standard	Light Trucks/ Vans With ESC Standard	Passenger Vehicles With ESC Standard
ESC Lives Saved Estimates	2010	497	366	863
	2009	384	321	705
	2008	328	306	634

Source: NHTSA, NCSA, FARS 2010 ARF and FARS 2008-2009 Final File, IIHS
• Fatality counts used to estimate ESC lives saved are limited to single-vehicle crash fatalities, where the crash did not involve a pedestrian, pedalcyclist, or animal in the first harmful event.

Based on the statistics from a 2011 NHTSA report, ESC is very effective at reducing the number of severe motor vehicle crashes involving both passenger cars and sport utility vehicles.

To completely realize the benefits of ESC, like other safety systems, success is largely dependent upon whether or not the driver interacts appropriately with the vehicle controls. Driver behaviors can completely negate the benefits of ESC. Drivers should remember ESC cannot create traction where none exists.

The following images are taken from the owner's manuals of the commonly used police vehicles.



STARTING AND OPERATING 425

Electronic Stability Control (ESC)

This system enhances directional control and stability of the vehicle under various driving conditions. The ESC corrects for oversteering and understeering the vehicle by applying the brake of the appropriate wheel. Engine power may also be reduced to assist in counteracting the condition of oversteer or understeer and help the vehicle maintain the desired path.

The ESC uses sensors in the vehicle to determine the path that the driver intends to steer the vehicle and compares it to the actual path of the vehicle. When the actual path does not match the intended path, the ESC applies the brake of the appropriate wheel to assist in counteracting the condition of oversteer or understeer.

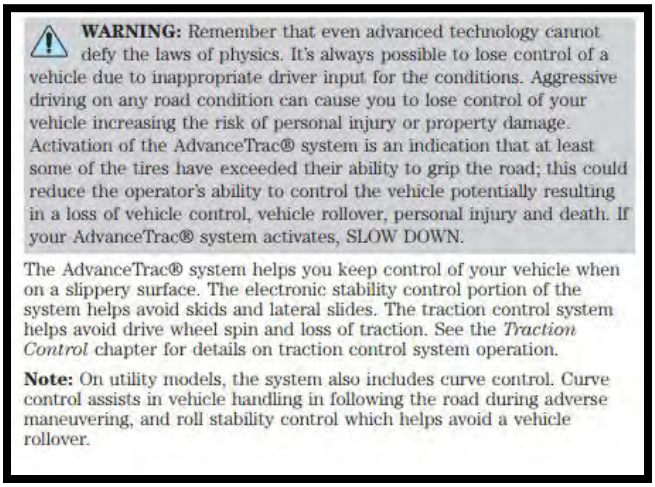
- Oversteer - when the vehicle is turning more than appropriate for the steering wheel position.
- Understeer - when the vehicle is turning less than appropriate for the steering wheel position.

WARNING!

The Electronic Stability Control (ESC) cannot prevent the natural laws of physics from acting on the vehicle, nor can it increase the traction afforded by prevailing road conditions. ESC cannot prevent all accidents, including those resulting from excessive speed in turns, driving on very slippery surfaces, or hydroplaning. ESC also cannot prevent collisions resulting from loss of vehicle control due to inappropriate driver input for the conditions. Only a safe, attentive, and skillful driver can prevent accidents. The capabilities of an ESC equipped vehicle must never be exploited in a reckless or dangerous manner which could jeopardize the user's safety or the safety of others.

5

Excerpt From the 2015 Dodge Charger Owner's Manual



WARNING: Remember that even advanced technology cannot defy the laws of physics. It's always possible to lose control of a vehicle due to inappropriate driver input for the conditions. Aggressive driving on any road condition can cause you to lose control of your vehicle increasing the risk of personal injury or property damage. Activation of the AdvanceTrac® system is an indication that at least some of the tires have exceeded their ability to grip the road; this could reduce the operator's ability to control the vehicle potentially resulting in a loss of vehicle control, vehicle rollover, personal injury and death. If your AdvanceTrac® system activates, SLOW DOWN.

The AdvanceTrac® system helps you keep control of your vehicle when on a slippery surface. The electronic stability control portion of the system helps avoid skids and lateral slides. The traction control system helps avoid drive wheel spin and loss of traction. See the *Traction Control* chapter for details on traction control system operation.

Note: On utility models, the system also includes curve control. Curve control assists in vehicle handling in following the road during adverse maneuvering, and roll stability control which helps avoid a vehicle rollover.

Excerpt From the 2015 Ford Police Interceptor Owner's Manual

EMERGING VEHICLE TECHNOLOGY

Several technologies are emerging with each new model year of vehicles. While it is not feasible to include all of these technologies in this manual, it is the responsibility of drivers to read the materials provided to them by automobile manufacturers such as owner's manuals, supplements, technical bulletins, and other sources of specific information to the platform being operated.

Following are a few more of the vehicle technologies drivers can expect to see entering the market in the next few years. *Images were taken from www.bosch-mobility-solutions.us*

Construction zone assist



Helps maintain a lateral safety distance on construction sites

The construction zone assist is an extension of lane keeping support and is also intended for narrow highway construction sites. It is based on a stereo video camera and is active at speeds of up to 100 km/h (62 mph). The function helps the driver to maintain a lateral safety distance between vehicles in the adjacent lane and guard rails or crash barriers when driving in a narrow lane.

By measuring the height of objects and detecting open spaces thanks to the stereo video camera, the construction zone assist can also detect other vehicles and lane markings, as well as lane boundaries such as cement walls, guard rails and crash barriers. If the vehicle approaches a boundary or a vehicle, the system can warn the driver or correct the vehicle motion via a steering or braking intervention.

The function can also prevent the driver from driving into a space that is too narrow by either warning the driver or automatically braking the vehicle at a later stage. For this purpose, the stereo video camera is supplemented with ultrasound sensors to monitor the lateral close range.

Driver drowsiness detection



Can detect the onset of drowsiness

Monotonous driving, e.g. on expressways, is exhausting and quickly leads to loss of concentration. Based on steering-angle data, the function driver drowsiness detection continuously analyzes the steering behaviour of the driver to identify phases during which the driver does not steer for a brief period and then makes an abrupt correction – often a sign of failing concentration and arising tiredness. The function combines the frequency and strength of these reactions with other data such as vehicle speed, time of day and use of other indicators to calculate a tiredness index. If this index exceeds a specific value, a visual and/or audible signal can warn the driver of becoming tired reminding her/him of the danger of nodding off at the wheel.

As well as warning the driver, data concerning the tiredness of the driver can be used by other systems in the vehicle. In combination with a navigation system, for example, it is possible to display the next available opportunity to stop or take a rest break.

Predictive pedestrian protection



Helps to prevent collisions and minimize accident severity

A predictive pedestrian protection system can recognize impending accidents with pedestrians who are in the same lane as the vehicle or who are moving dangerously into this direction. If the system detects a critical situation for pedestrians, it can warn the driver or automatically initiate emergency braking. In this way, the collision with the pedestrian can be avoided, or the vehicle's speed can at least be reduced as much as possible prior to impact. This can reduce the risk of serious injury to an absolute minimum.

Component

- Mid-range radar sensor
- Radar/Video
- Multi purpose camera
- Stereo video camera

DRIVETRAIN CONFIGURATIONS

Whether you drive a 500-hp sports car or a 96-hp economy hatchback, all that potency under your car's or truck's hood is useless if the engine's torque doesn't get to the drive wheels through a complicated maze of gears.

The drivetrain may be the least understood part of a vehicle. Innovations in four-wheel and all-wheel drive have only made that confusion worse for many drivers. Similar to the explosion of vehicle technologies designed to enhance grip and promote vehicle safety, automobile manufacturers have been developing drive systems in vehicles rapidly. There are four types of drive systems in the current public safety fleet, including Front-Wheel Drive (FWD), Rear-Wheel Drive (RWD), All-Wheel Drive (AWD), and Four-Wheel Drive (4X4).

A “drivetrain” is the combination of the engine which powers the car, and a transmission, which uses the engine’s power to turn the wheels and put the car in motion. The engine and transmission are two separate and very different mechanical systems that are closely mated. Together they make up your car’s drivetrain, also referred to by some as a “powertrain.”

Vehicle Power

Each drivetrain configuration sends the engine’s power to the wheels in a different way. The power of a car is measured (generally) in two ways: horsepower (measured in horsepower units) and torque (measured in foot-pounds). Publications will highlight the advantages of vehicles using either or both of these measures.

Horsepower is a measurement of power. Horsepower propels a car down the road and makes higher top speeds possible. Horsepower is not what actually gets the wheels rotating.

Horsepower = (**Torque** x RPMs) / 5252

Torque is what gets the vehicle moving from a stopped position. Torque begins at the engine and must be transferred to the drive wheels.

Torque is nothing more than a measurement of twisting or rotational force. The easiest way to think of this is to imagine a long shaft — like a car's axle — and imagine it's in a room suspended in midair. Hanging on the bottom of one end is a rope with a weight attached — a very heavy weight. Now imagine using your hands to twist the shaft, thus lifting the weight as the rope rolls around the axle. The amount of force you generate to lift the weight in this manner is the torque that you are able to produce. The measurement for this force is the foot-pound. A foot-pound is the rotational 'force' generated by hanging a one-pound weight at the end of a 1-foot wrench.

So, a technical answer to the question of, "What makes acceleration: torque or horsepower?" is torque—but torque at the wheels, not at the engine. Since drivers are interested in torque at the wheels and not at the engine, the best answer becomes horsepower, because horsepower encompasses not only the engine's torque but the total torque that gets delivered to the wheels.

The ability of a vehicle to move is measured in both horsepower and torque. This is where the drivetrain becomes important. The driver needs to understand the abilities, designs, and limits of each configuration so that a reasonable margin of safety can be maintained during operations. Whether the car is driven by its front wheels, rear wheels, all four wheels, or something in between, there are advantages and drawbacks to each system.

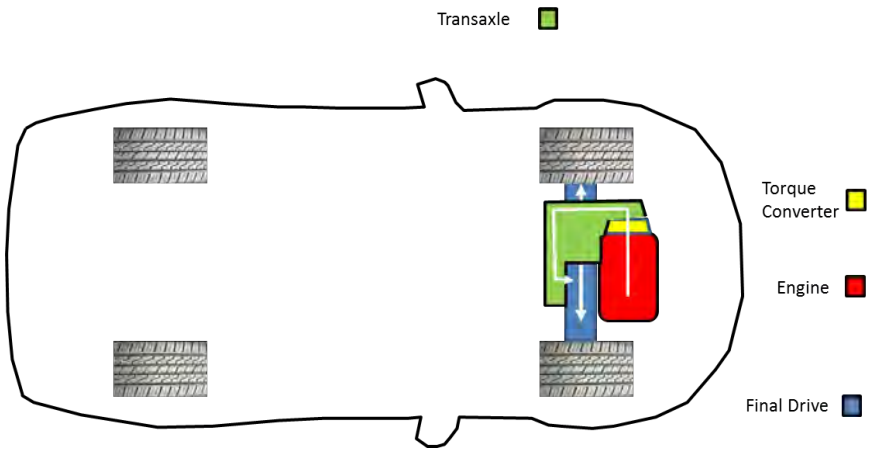
DRIVE COMPARISON CHART

The majority of the patrol vehicles in use across the country are FWD, RWD, or AWD. The agencies utilizing 4X4's typically have those types of vehicles assigned for very specific patrol functions. Following is a comparison chart on the advantages and disadvantages of the popular drivetrain configurations.

	Front-Wheel Drive	Rear Wheel Drive	All Wheel Drive
Production Cost	Least to produce as the need for drive shafts and rear differentials are removed	Higher in cost due to additional components needed	Highest cost to produce
Repair Costs (if needed)	Higher costs as the transaxles, gearboxes, and differentials are all packaged together	Least to repair as most of the components can be worked on individually	Highest cost to repair; more moving parts to wear out; most are extremely reliable and do not require repair however
Weight	Least amount of weight due to the integration of gearbox, drive, etc.	Higher weight	Highest weight
Engine Size	Limited in size due to transverse mounting configuration	No limit in engine size	No limit if longitudinally mounted
Interior Space	Maximum interior space; no humps on the floor for the driveshaft, more trunk space due to lack of rear differential	Lesser interior space due to tunnel for drive shaft; trunk space can be limited by fuel tank installation shifting due to rear axle	Similar to RWD; interior space is compromised by mechanicals intruding into the passenger compartment
General Handling	Tends to understeer (Front Skid); torque steer under acceleration	Generally good, however, tends to oversteer under heavy braking or acceleration	Best handling due to the ability to drive all or selected tires; some tendency to understeer due to weight
Tire Load / Wear	Acceleration, Braking, Steering / Cornering forces all come together on front tires; very little load/demand on rear tires	Tire loads are more evenly distributed – rear tires driving/pushing the vehicle and front tires changing directions and the majority of stopping power	Weight is very evenly distributed in all driving situations
Fuel Efficiency	Lesser Mileage	Better Mileage	Lesser Mileage

FRONT WHEEL DRIVE

Front-Wheel Drive systems (FWD) have two primary advantages over other drivetrain configurations. The first is economy. A vehicle equipped with a FWD system is less expensive to manufacture. Because there are fewer components in these systems and all of the work is near the front, installation and assembly are also improved as a car moves down the production line. A second economic advantage is related to the average fuel economy when compared with other drivetrains. Because the number of materials needed in the drivetrain is fewer (separate transmission and axle assemblies found in other systems are not required), platform weight is reduced.



The second primary advantage of a FWD is directly related to improved grip in reduced grip driving conditions when compared to a Rear Wheel Drive (RWD) vehicle. The front wheels pull the car instead of the rear wheels pushing it. Additionally, the weight of the engine/transaxle being located essentially above the (front) drive wheels helps the vehicle increase contact patch size. Vehicles equipped with FWD are typically very capable in poor weather conditions.

The advantage of weight over the drive tires is also one of the major concerns with FWD systems when optimal handling is essential. Because the vehicle is nose-heavy by design, the additional weight on the front moves the vehicle balance (shifts the center of gravity forward) and creates handling challenges at higher speeds.

In the section discussing contact patches and the amounts of grip available during different driving maneuvers, we learned that asking the same contact patch to perform multiple tasks began rapidly degrading the overall performance of the tire. A FWD vehicle is asking the front tires to perform two tasks at one time every time the steering wheel is turned - and under acceleration, three tasks are being accomplished by the same amount of available contact patch.

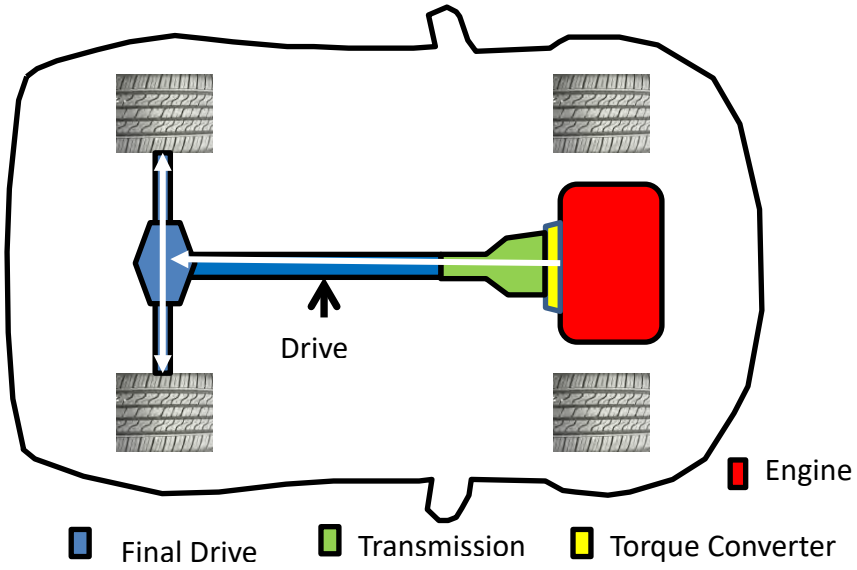
In a FWD car, it can sometimes be difficult or awkward to keep the car pointed straight ahead as the car accelerates. The front wheels may jerk to the left or right — a problem called "torque steer." Modern FWD cars are less prone to this thanks to electronic traction control, but even technology will not overcome the physical tendency to torque steer. This is due to the different lengths of actual lengths of the final drive shafts and the drive shafts being on different angles to the wheels from the transaxle.

A vehicle equipped with FWD is historically fragile when compared with the more robust components in rear and all-wheel drive vehicles. The smaller final drive shafts and the constant velocity joints that link them are susceptible to wear and damage.

REAR WHEEL DRIVE

Rear-Wheel Drive vehicles are the original design of vehicles. RWD is the simplest way to package a car's drivetrain since the components which comprise the system that transfers the engine's power to the wheels can be spread out across the length of the car's underside. RWD is also the best foundation for excellent handling. As with most options on vehicles, the same things that create virtue can also be significant drawbacks.

There are two main advantages to RWD vehicles. RWD is both simple and rugged and can take a lot of abuse without needing expensive repairs. Traditionally this is an advantage to public safety drivers. If the driver accidentally runs over a curb in a solid axle RWD car, the amount of damage is typically small or even non-existent.



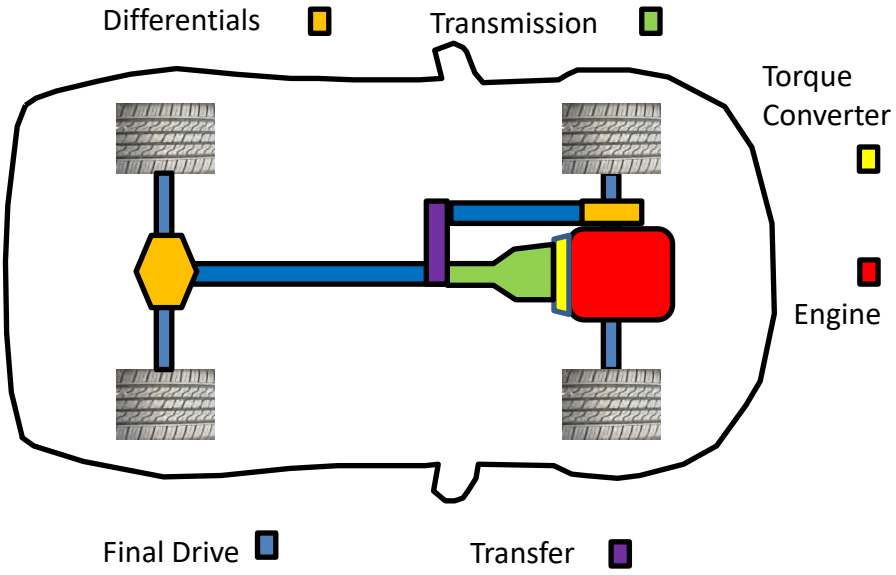
Powering the rear wheels leaves the front wheels to deal with the steering and most of the braking. In the FWD vehicle, the tires are doing all three (steering, powering, braking), and finding the balance can be tricky, particularly as the power increases from the engine.

There is less typically less weight over the car's rear axle, and as such, rear-wheel-drive cars inherently have less traction than others (thus the ability to spin the wheels). That means when roads get slippery, wheels in a rear-drive system can more easily spin, and the car can slide out of control. Modern safety systems like ESC and Traction Control help avoid this problem. Even with small amounts of water, snow, ice, gravel, or dirt in the driving path, a RWD vehicle is prone to loss of grip.

Rear-wheel drive also comes with some packaging issues. To give the driveshaft and rear differential (a gear mechanism that transfers power from the driveshaft to the wheels) enough clearance, a tall transmission tunnel running down the middle of the car is necessary, and it eats up some interior and trunk space. That's where that hump in the middle of a rear-drive car's interior comes from.

ALL WHEEL DRIVE

AWD gives some of the advantages of both RWD and FWD — while minimizing the weaker points of either of those layouts.



The number one advantage of AWD is excellent traction — both on dry pavement and in poor weather. This is why AWD appeals to both the performance-minded enthusiast as well as the person who just doesn't want to get stuck in the snow. Some AWD systems are based on RWD layouts (examples include the Dodge Charger Pursuit Vehicle), while others are built around FWD layouts (such as the new Ford Police Interceptor). The RWD-based versions are usually more performance-oriented, but most AWD vehicles do an impressive job of balancing handling/driving dynamics with "go anywhere, anytime" bad weather capability.

Weight and cost become two of the primary disadvantages of a vehicle equipped with AWD. AWD cars can weigh several hundred pounds more than an otherwise identical RWD or FWD car. This hurts the car's acceleration — at least when compared with an otherwise identical RWD or FWD version of the same car. And the added weight means the car will use more fuel — especially if the engine's power has been increased to compensate for the added weight.

Consider the options frequently chosen by fleet purchasers for public safety.

2016 Dodge Charger Pursuit (Sedan)	
RWD Version with 5.7L V8 Hemi	4382 pounds
AWD Version with 5.7L V8 Hemi	4485 pounds

Both engines have the same outputs. When you compare the absolute top speeds, there is a slightly higher top-end with the RWD package. When you compare the trade-in top speed for the grip in all conditions, the AWD version begins to make sense to purchasers.

PUBLIC SAFETY AND EMERGENCY VEHICLE OPERATION

ATTITUDE

The physical techniques of driving are relatively simple. The most difficult thing driving instructors have to modify is the attitude of the driver. Modifying behavior is a challenge with most drivers, and it is especially so with emergency vehicle drivers. A large number of police collisions are not caused by a technical problem or a lack of skill; rather, the root cause is very frequently a result of a series of poor decisions behind the wheel.

Attitude plays a significant role in how critically we make decisions. Thought must be given, in any training program, to improving the percentage of correct decisions made by our officers. Emphasis should also be placed on the ethical considerations of emergency vehicle operation. Officers must be encouraged to practice what they enforce. It is far too common for professional law enforcement personnel to issue citations to citizens for the same infractions the officer commits daily. Public Safety is under intense public scrutiny, and driving is the most highly visible activity we are involved in daily.

The attitude of a professional public safety driver will (to a very large degree) determine survivability. Survivability truly extends beyond life and death; many successful careers have been interrupted due to extensive physical injuries sustained in vehicle incidents. Career survivability requires continual attention to detail, focus on the task at hand, and an understanding that one of the most frequent activities public safety engages daily is also the highest statistical risk to the personnel. Careers can end prematurely due to poor decision making that results in lawsuits and additional risks to the driver.

Remain professional. Keep events in perspective and maintain a good attitude. Drivers and officers that use this approach will have a strong foundation for decision-making. There are too many cases where attitude leads to poor decision-making. Unfortunately, most of the crashes that occur to public safety drivers are results of poor driving decisions – not a lack of physical driving skills.

PROACTIVE DRIVING

Many people practice some form of defensive driving. The potential trap in a simple "defensive driving" strategy is the mindset this creates in a driver. The term "defensive" puts one in a reactive mindset. Drivers should become proactive drivers. Drivers should drive in a manner that influences and manages the driving environment. Driving in this manner encourages other drivers around you to respond with anticipated maneuvers.

Drivers must always be ready to react to an unanticipated action of another, but approaching the situation from a proactive mindset tends to reduce reaction times, allow for more efficient analysis of situations, and implement driving actions sooner.

The eyes of the driver have the largest impact on proactive driving.

DECISIONS AND JUDGMENT

In the introduction of this manual, the goal of safeguarding lives and property was listed as a primary program goal. The foundation for this goal is sound decision making. Good decision making begins with a professional attitude. Ethics and attitude must guide the decisions we make. The public expects an exemplary performance on your part.

It is very important for the drivers of emergency vehicles to be mentally prepared for the demands placed on them. Focus on the driving process improves everything from our visual acuity to our responses to unexpected changes in the driving environment. A driver that is preoccupied with outside factors can end up in a situation with disastrous results.

The lack of physical preparation can also lead to tragic results. Drivers that do not get enough sleep or are otherwise fatigued will find themselves in a situation where these deficiencies have a direct bearing on performance. Professional public safety drivers should not expose the public to more significant risks than those they are trying to protect against. As the seriousness of the situation increases, drivers find themselves willing to take more risks with their driving. We have to make sure the public is not more afraid of public safety and the manner in which we operate than they are with the incidents initially exposing them to risk.

There are many things a new officer might be thinking about that can distract them from fully concentrating on their driving. Learning a new community, a new department, rules, and regulations, moving to a new community, or purchasing a new home are all real concerns - yet each of these will, to some degree, erode the focus and concentration of driving. When operating an emergency vehicle, officers must learn to compartmentalize and focus on immediate tasks.

Law enforcement driving is a complex task requiring the ability to manage multiple tasks in rapid succession. The officer must operate the vehicle safely and lawfully while being subjected to distractions that other drivers seldom worry about.

Never forget that the public expects nothing less than exemplary driving from law enforcement officers.

DPSST EVO SCORING / EXPECTATIONS

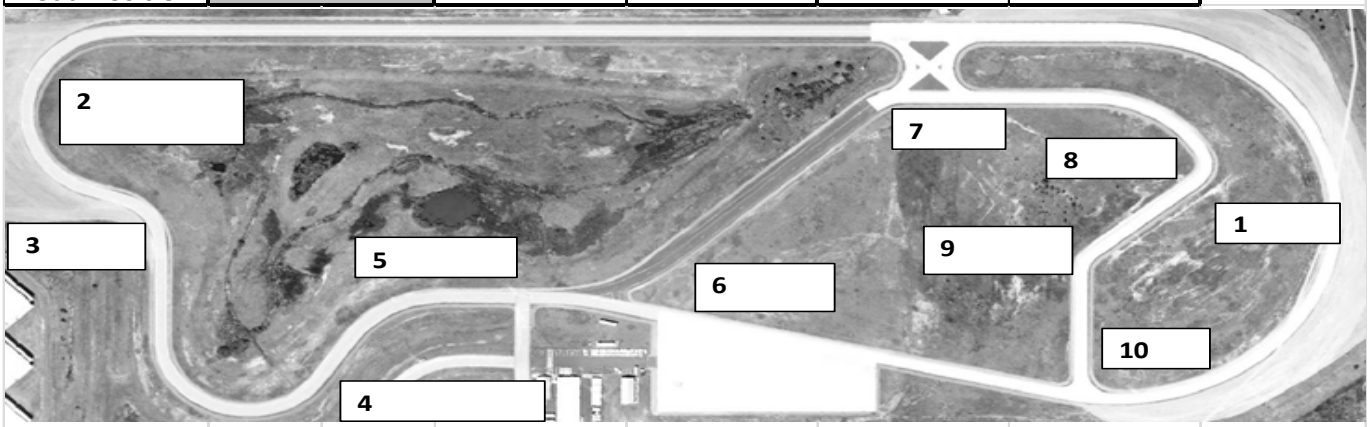
The EVO programs at DPSST rely upon scoring by instructors riding with drivers in training.

A score of twelve (12) is necessary for a driver to achieve a passing evaluation in EVO. The score represents an average of "3's" in each of the major areas of observation, including Steering, Braking, Acceleration, and Roadway Positioning. The sample below is a copy of the first page of the evaluation form used to observe and evaluate driving.

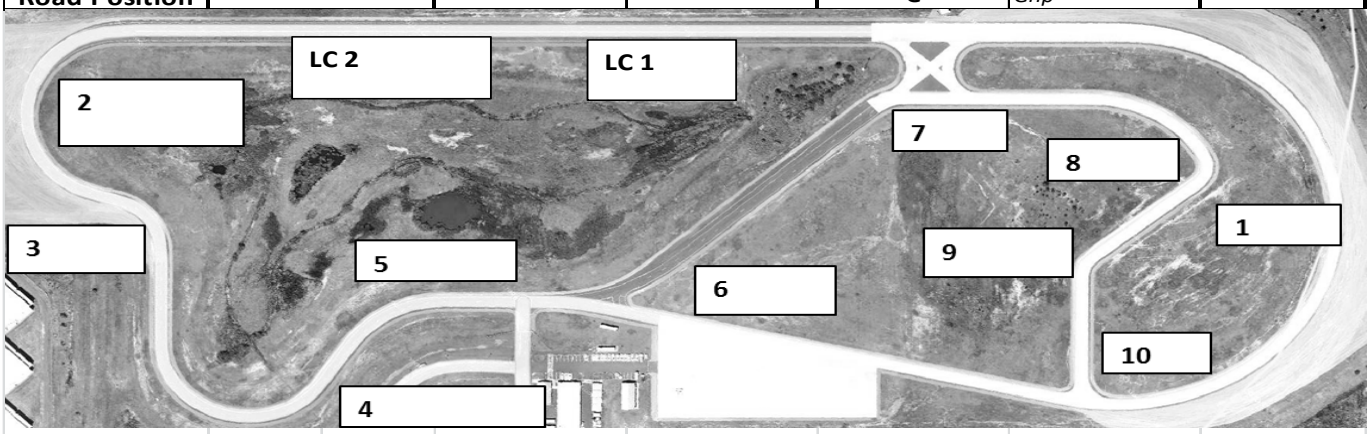
The evaluation course is a four-lap course involving both non-emergency and emergency operation, emergency lane changes, radio utilization, and precision vehicle placement in both forward and reverse operation.

Student Driver			Class
Instructor		Evaluation	Date

	LAP 1	Lap Notes Key			
Speed Limit	65	Steering		Braking	
Lane Changes	NO	+	Demonstrated	+	Demonstrated
Steering		HP	Hand Position	JAB	Jabs / Stabs / Harsh
Braking		JK	Jerks / Rapid Input	1PD	Multiple Applications
Acceleration		MM	Micro-Manages	POP	Pops Off
Road Position		LG	Lets Go		



	LAP 2	Lap Notes Key				
Speed Limit	85	Acceleration		Road Position		
Lane Changes	Yes	+	Demonstrated	+	Demonstrated	
Steering		JAB	Jabs / Stabs	EE	Early Entry	
Braking		POP	Pops Off	CC	Crossed Center	CONES
Acceleration		AE	Applys too Soon	ME	Missed Exit	
Road Position				G	Grip	



Core Task		5 – Outstanding	4- Excellent	3- Acceptable	2- Learning	1 – Not Demonstrating
Braking	***Application***	• Always squeezes pedal firmly and smoothly with pedal pressure commensurate to situation • Brake is always applied with ball of foot and heel firmly anchored on floorboard • Brakes are always applied early and with less overall pressure approaching braking areas • Driver uses brakes to shift weight as needed for grip	• Nearly all applications are a result of a firm and smooth squeeze on the pedal • Pedal pressure exerted on brake is correct in nearly every application • Brake is applied with ball of foot on pedal and heel firmly anchored on floorboard in nearly every situation	• Applies pedal pressure firmly and smoothly or recognizes errors without prompting • Pedal pressure is maintained with ball of foot on pedal and heel anchored on floorboard and driver recognizes situations when this does not occur • Brakes are applied early with less overall pressure approaching braking areas or driver recognizes when this does not occur	• Occasionally applies pedal pressure firmly and smoothly • Requires periodic input from instructor to correct pedal pressure or foot position • Brake applications are occasionally early with less pressure • Brake application areas are frequently discussed with driver	• Pedal pressure is applied in dramatic and hard fashion • Foot position is often with arch area of foot on pedal and heel off of the floor • Brake applications are late and cause heavier pedal pressures • Brake applications are early and require continual adjustment • Driver requires ongoing commentary from instructor
	Release	• Pedal is always released in a controlled manner • Foot remains in firm contact with ball of foot on pedal and heel firmly anchored in all situations • Brakes are always released in synchronization with input of steering • Driver releases pressure to shift weight as needed to maintain grip	• Nearly all pedal releases are completed in a controlled manner • The foot remains in contact with ball of foot on pedal and heel firmly anchored in nearly all situations • Braking releases are nearly always in synchronization with steering inputs	• Pedal is released in controlled manner or driver recognizes when it is too quick • Foot remains in contact with ball of foot on pedal and heel firmly anchored or driver recognizes when the foot "pops off" • Braking releases are synchronous with steering inputs or driver recognizes timing error without prompting	• Occasionally released in controlled manner • Ball of foot occasionally on pedal and heel on floor • Braking releases are occasionally synchronized with steering inputs but require instructor comment to recognize • Periodic input from instructor to recognize	• Pedal is immediately released and suspension rebound is not controlled • Heel of foot is frequently off of the floor and arch is in contract with pedal • Brake releases are not timed with steering inputs • Driver requires continual instructor comment

Core Task		5 – Outstanding	4- Excellent	3- Acceptable	2- Learning	1 – Not Demonstrating
Acceleration	***Application***	• Pedal is always firmly applied by squeezing ball of foot on pedal and keeping heel of foot on floorboard • Pedal pressure is always applied in synchronized manner with steering release • Acceleration never creates a loss of grip on front or rear tires due to timing of application • Driver uses accelerator to shift weight as needed	• Pedal is nearly always firmly applied by squeezing ball of foot on pedal and keeping heel of foot on floorboard • Pedal pressure is nearly always synchronized with steering release • Acceleration rarely creates a loss of grip on front or rear tires	• Pedal is firmly applied by squeezing ball of foot on pedal and keeping heel anchored on floorboard or driver corrects errors without prompting • Pedal pressure is applied with release of steering or driver recognizes timing error • Acceleration does not cause loss of grip on front or rear tires or driver recognizes the result of such an error without prompting	• Pedal is occasionally applied with firm squeeze on pedal by ball of foot with heel anchored on floorboard • Pedal is occasionally applied in synchronization with steering release • Periodic loss of grip on front or rear tires is caused by excessive acceleration • Frequent input from the instructor	• Pedal applied with little or no foot contact with floorboard • Pedal is harshly applied "jabbed" prior to completing release of steering • Loss of grip on front or rear tires frequently occurs due to excessive or ill-timed acceleration • Constant instructor input is necessary for safe operation
	Release	• Pedal is always released while foot is still in contact with pedal unless a dramatic shift in weight is required • Timing with steering input is always synchronized	• Pedal is nearly always released with foot in contact of pedal • Driver recognizes when dramatic shift of weight is needed • Timing with steering is nearly always in synchronization	• Pedal is released with continual contact on pedal or the driver recognizes when error occurs • Driver understands use of pedal to move weight • Timing with steering is synchronized or driver recognizes error	• Pedal is frequently released all at one time (Driver "Pops Off") • Pedal is not used to shift weight without coaching • Accelerator release is not synchronized with steering • Periodic input from the instructor is needed	• Pedal is never released smoothly (Driver "Pops Off" of pedal contact) • Pedal is released prior to any input of steering • Driver does not understand weight shift derived from pedal release • Driver requires constant instructor comment

Core Task		5 – Outstanding	4- Excellent	3- Acceptable	2- Learning	1 – Not Demonstrating
Steering	***Input***	• All inputs are smooth and continuous • Always uses the minimum amount needed to change direction • Always synchronized with release of accelerator and application of brake	• Nearly all inputs are smooth and continuous • Steering amounts are almost always the minimum amount needed to change direction • Rarely makes adjustments to steering inputs • Release of accelerator and input of brakes are nearly always synchronized	• Inputs are smooth and continuous or driver recognizes error without prompt • Minimum amount of steering is needed to change direction or recognized by driver • Driver recognizes times when steering inputs are adjusted • Steering input is synchronized with brakes and accelerator and errors are recognized	• Occasionally inputs smooth and continuous • Occasionally uses minimum amount needed to change direction • Steering not synchronized with release of accelerator and application of brake • Makes several adjustments to steering input	• Continually stops and starts steering input • Inputs harsh and aggressive • Continually uses more steering than necessary to change direction causing multiple steering adjustments • Adds steering before release of accelerator • Adds steering before application of brakes
	Release	• Always smooth and continuous • Always synchronized with release of brake and application of accelerator • Never lets the steering wheel slide through hands during release	• Nearly all releases are smooth and continuous • Release of brakes and application of accelerator are nearly always synchronous • Rarely releases grip on the steering wheel	• Releases smooth and continuous or recognized by driver without prompting • Release of brakes and application of accelerator is synchronized or recognized without prompt	• Occasionally releases steering smoothly and continuously • Occasionally synchronizes release of brake or application of accelerator with release • Frequently lets the steering wheel slide	• Steering release is harsh and abrupt • Steering is rapid and does not maintain release of suspension rebound • Always lets wheel slide through hands • Does not synchronize with brakes or accelerator

Core Task		5 – Outstanding	4- Excellent	3- Acceptable	2- Learning	1 – Not Demonstrating
Road Position	*Path*	• Always in the most advantageous position to begin a turn or corner • Always adjusts road position to account for grip conditions • Vehicle always adjusts position to account for gravel, water, or other road hazard that reduce grip • Never remains in areas of reduced grip • Never departs lane without reason or signal and departures are carefully considered and articulated	• Nearly always in the most advantageous approach position to begin a turn or corner • Nearly always adjusts road position to account for grip conditions such as gravel, water, or other road hazard • Vehicle nearly always avoids areas of reduced grip • Rarely departs lane of travel without reason or signal and recognizes error	• Usually approaches turn or corner on the outside • Usually recognizes gravel, water, or other road hazards that reduce grip and adjusts the approach path • Usually avoids reduced grip conditions when possible • Driver able to articulate position, stability, and options when they are not demonstrated • Occasionally departs lane of travel without reason or signal and recognizes error	• Occasionally approaches a turn or corner on the outside • Occasionally recognizes gravel, water, or other road hazard that reduce overall grip and requires adjustment to the approach path resulting in reduced platform stability • Recognizes factors impacting grip and adjusts late • Struggles to articulate position, stability and options • Consistently departs lane of travel without reason or signal but articulates recognition of error	• Does not recognize gravel, water, or other road hazards that reduce overall grip and require adjustment to the approach path • Cannot articulate position, stability, and options when they are not demonstrated • Does not account for rear tires tracking inside front tires in drive • Does not account for front tires pivoting outside rear tires in reverse • Consistently departs lane of travel without reason or signal w/ no recognition
	Corner Entry	• Vehicle always at widest position available to begin a turn • Vehicle is always stable prior to steering inputs • Vehicle always in position to drive the best path available based upon grip	• Nearly always at widest position available to begin a turn or corner • Platform is nearly always stabilized and flat prior to input of steering • Vehicle is nearly always in a position to drive the best path available based on grip	• Usually as wide as possible to begin turn or corner • Platform is usually stable prior to input of steering • Usually in position to drive best available path based on grip • Driver is able to articulate position, stability, and options when errors occur	• Occasionally enters turn or corner as wide as possible based on the available grip • Vehicle platform is occasionally stable prior to steering input • Occasionally operates in areas of best grip available	• Does not enter turn or corner as wide as possible based on available grip • Does not enter turn or corner with platform stability and is not stable prior to steering input • Does not enter corner in areas of best available grip
	Corner Exit	• Vehicle always stable once steering is released • Vehicle never wanders into incoming traffic or across road edge	• Vehicle is nearly always stable once steering is released • Vehicle rarely wanders beyond lane markings or restrictions	• Usually stable at exit Usually within lane • Driver is able to articulate errors when stability is not achieved	• Vehicle is occasionally stable at exit • frequently leaves lane of travel at exit	• Does not have platform stable at corner exit • Rarely Is within lane of travel at exit

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Emergency Vehicle Operations
Pursuit and Emergency Response



Student Study Guide

EVO

EMERGENCY VEHICLE OPERATIONS
PURSUIT AND EMERGENCY RESPONSE
STUDENT STUDY GUIDE

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INTRODUCTION

Police pursuits and emergency responses as they are practiced in the United States are relatively dangerous and often in-exact operations. Officers, suspects, and the public are frequently at considerable risk to serious physical injury or death even when pursuit management control measures are in place. The management of a pursuit is often a confusing, cumbersome, and difficult task and is most often hampered by a lack of communication between the involved personnel. This guide is designed to help establish some common terminology and concepts that will aid officers and supervisors in the effective and safe management of pursuits and emergency response.

Over the years many EVO Instructor conducting in-service training have heard officers say words to the effect of "I always shuffle steer when I get into a pursuit."

This information is a supplement to the basics of driving contained in the EVO Student Guide. There are no tactics or strategies for pursuit management that will supplant the need to operate vehicles in the most efficient manner possible and in order for an officer to truly say "I always shuffle steer when I get into a pursuit," the officer must be able to say, "I always use shuffle steering and good driving techniques, regardless of the situation."

The unit learning goals for the EVO program remain consistent in pursuits and emergency responses.

UNIT LEARNING GOALS

- *To teach officers the skills they need to perform their jobs safely and efficiently while operating emergency vehicles.*
- *To help enable officers to safeguard lives and property through the use of good judgement during emergency vehicle operation.*
- *To minimize the risk of life and injury through the use of innovative and realistic techniques for avoiding and minimizing collisions.*

The single-most important factor in the EVO program is based on a very simple philosophy and is a critical component of driving in an emergency response or a pursuit.

"It is not how fast you drive; it is how efficient and consistent you are in your driving."

The "Platform Stability" or "Stable Platform" model of driving is even more important as the speeds of operation increase. This driving model assumes the vehicles to be inherently stable by design and that these platforms are stable when they are the "flattest." Remember:

"100% control of the vehicle, 100% of the time"

DEFININTIONS / TERMINOLOGY

Historically a major problem faced by police officers, supervisors, and command staff is a lack of consistent standards and terminology. The Courts have provided guidelines for force and in many cases, applied these concepts and guidelines to pursuits, however clearly established procedures have not been provided. This initially can cause problems for personnel because we often seek "a consistent method" of doing things.

While we strive to maintain consistent conceptual and program materials, it is important to remember that each emergency response and vehicle pursuit will have components that are unlike any other – whether it be due to environmental conditions, equipment restrictions, officer skills and perceptions, or any one of a thousand other variables, we cannot provide one blueprint for success.

The following definitions are intended to establish a baseline for both training and operations of emergency vehicles; however the specific needs of agencies will cause modification of many of these definitions.

Pursuit	An active attempt by a law enforcement officer to apprehend one or more occupants of a moving motor vehicle, providing the driver of such vehicle is aware of the attempt and is resisting apprehension by maintaining or increasing his speed or by ignoring the law enforcement officer's attempt to stop him. *(NCJRS)*
Emergency Response	A response to an incident where there is an imminent threat of serious injury or death to persons, a response to crimes in progress where the threat of violence exists, or there is a threat of a serious public safety hazard.
Pursuit Position	Actual positioning of a patrol vehicle in a path of travel that is off-set approximately one-half of a vehicle width to either side from the positioning of the fleeing vehicle and utilizing both audible and visual emergency equipment.
Slack Pursuit	Establishing a following distance of a minimum of four seconds and maintaining a safe interval between the fleeing vehicle and the police vehicle.
Channelization	The act of restricting the fleeing vehicle to certain paths of travel by the active positioning of police vehicles along the route of the pursuit.
Controlled Tire Deflation Device	Commonly referred to as "spike strips" or "stop sticks", these devices are equipped with small gauge hollow spikes that stick into the tire as it crosses the device and allows a controlled and measured release of tire pressure.
Forcible Stop	The utilization of a controlled tire deflation device, the police vehicle, or other tools applied directly to the fleeing vehicle in an attempt to stop the vehicle. Forcible stops include such tactics as Blocking, Ramming, Boxing, Pinning, PIT, and Roadblocks.
Pursuit Intervention Tactic	This technique is typically referred to as "PIT" or "TVI" (Tactical Vehicle Intervention). The PIT maneuver is intentionally applied contact with the police vehicle to the rear quarter-panel of the fleeing vehicle in an attempt to force rotation of the fleeing vehicle. This forced rotation is typically sufficient to momentarily stop the fleeing vehicle and is often combined with other forcible vehicle contact such as pinning.

DEFININTIONS / TERMINOLOGY

Blocking	A technique similar to channelization, where police vehicles are tactically positioned in the path of the fleeing vehicle to slow the overall speed and to prevent the fleeing vehicle from certain paths of travel. Similar to channeling by both definition and application.
Boxing	A technique requiring two or more police vehicles to bracket (box) the fleeing vehicle and restrict further movement or directional change. This technique typically involves forcible contact between the police and fleeing vehicles. This tactic is sometimes referred to as a "Rolling Roadblock". Boxing tactics can be used on vehicles in motion as well as vehicles that are static.
Pinning	A technique used to prevent further movement of a stopped vehicle. This tactic involves forcible contact between the vehicles. This tactic is often used at the conclusion of a PIT maneuver to restrict any further vehicle movement.
Ramming	Intentional and forcible contact with the fleeing vehicle by a police vehicle with the intent to immediately stop the fleeing vehicle. Ramming often results in significant damage to all of the vehicles and increases the risk of serious physical injury to the occupants of the fleeing vehicle and to the officer.
Road Block	The placement of one or more vehicles (typically police vehicles) in the traveled portion of the roadway, in order to partially or completely block the road and to indicate a denial of passage to the violator's vehicle. A complete blockage of the roadway typically represents a higher level of risk and could be constitutionally unreasonable unless properly constructed and managed.
Pursuit Termination	The active actions of police officers to disengage from the act of pursuit. Often referred to as "discontinuation of pursuit", this tactic involves physically stopping the police vehicle, radioing the termination of action, and seeking another route to travel If possible.

PURSUIT MANAGEMENT

ANALYSIS OF PURSUIT

When the occupants of a vehicle determine that it is necessary to attempt and elude contact with police and a vehicle pursuit is initiated, the management of the pursuit by the officers involved, supporting personnel, supervisors, and command staff all become integral to the discussion. A pursuit must consider the risk of public harm in addition to the decisions of force needed to stop the pursuit and to seize the occupant(s).

> The first fundamental question that will be asked was whether or not there was an appropriate (reasonable) balance between the degrees to which the public was exposed to harm in light of the actual governmental interest in apprehending the occupants of the fleeing vehicle.
>
> The second fundamental question will look specifically to the reasonableness of the force used to conduct the seizure of the occupants. This question looks at the issues of whether the officers used force appropriately or excessively resulting in a constitutional deprivation to the occupants. In this part of the review, two basic questions are asked:
>
> 1. Was there a seizure through a mechanism of force?
> *(If the answer to question #1 is "Yes", proceed to question #2)*
>
> 2. Was the force reasonable when considered against the totality of the circumstances? *(Graham v. Connor)*

When police officers utilize force to mitigate and control resistive behavior of persons, the legal system will analyze the activity and actions based on the "reasonableness" of the actions. This analysis is something officers understand when the force is used in an arrest situation, in a one-on-one force encounter, or similar activity, and officers are well-prepared and versed use of force decision-making skills.

Since the action of pursuing a fleeing vehicle is an attempt to exercise control of the occupant or occupants of the vehicle, police are in fact attempting a constitutional action of seizing the occupants and the legal authority to use force in attempt to seize someone is provided in Oregon Revised Statutes (ORS).

Police pursuits, or "High-Speed Chases" as many are prone to label this activity, are becoming increasingly loaded with risk. Consider a few of the factors contributing to the physical risks:

- *Both the police and fleeing vehicles are faster and loaded with technology designed to assist the driver in maintaining vehicle control.*
- *People under the physiological effects of adrenaline are not equipped to make the best decisions – this applies to both fleeing drivers and to pursuing officers.*
- *Population densities are increasing in all areas, including our rural environments.*

In addition to the physical risks of vehicle pursuit, the risks beyond those of serious physical injury or death continue to exist and to help shape our approach to police response in pursuit situations. These risks include financial risks through liability claims, increased insurance premiums for agencies, and public perceptions.

PURSUIT MANAGEMENT

Pursuits are analyzed both during the event and even more critically in after-action review to help to identity the exposures to risk and to shape future procedures and policies in an attempt to reduce the overall risk to all parties.

The United States Department of Justice (USDOJ) published "The Final Report of The President's Task Force on 21st Century Policing" in 2015. A significant part of this report examined the interactions between law enforcement agencies and the public and while police pursuits were not the topic of the conversation, several of the findings are germane to the discussion when a pursuit analysis is conducted.

> *"Building trust and nurturing legitimacy on both sides of the police-citizen divide is not only the first pillar of this task force's report but also the foundational principle underlying this inquiry into the nature of relations between law enforcement and the communities they serve. Since the 1990s, policing has become more effective, better equipped, and better organized to tackle crime. Despite this, Gallup polls show the public's confidence in police work has remained flat, and among some populations of color, confidence has declined."*
>
> *"Decades of research and practice support the premise that people are more likely to obey the law when they believe that those who are enforcing it have the legitimate authority to tell them what to do. But the public confers legitimacy only on those they believe are acting in procedurally just ways. "*
>
> (Excerpts from the USDOJ Report)

With this thought process as the basis for analyzing the tactics and decisions that police personnel make during the course of a vehicle pursuit, it is important to understand that procedurally just behavior is really grounded on four simple and procedurally just behavior is based on four essential principles.

These principles include:

1. *Treating people with dignity and respect*
2. *Giving individuals "voice" during encounters*
3. *Being neutral and transparent in decision making*
4. *Conveying trustworthy motives*

Experience indicates that adhering to these principles lead to communities that trust their officers are honest, unbiased, benevolent, and lawful. The community therefore feels obligated to follow the law and the dictates of legal authorities and is more willing to cooperate with and engage those authorities because it believes that it shares a common set of interests and values with the police.

PURSUIT MANAGEMENT

PUBLIC HARM AND REASONABLENESS

The most critical element of a pursuit is the need to establish the level of control exerted to the degree of risk posed by the fleeing individual. What is the degree of risk posed to the public by the offense committed by the individual? What is the degree of risk posed to the public should the fleeing individual make good his or her escape?

This public harm risk is different than the degree of risk posed by the pursuit itself. Most pursuits are inherently dangerous by nature. While some are less dangerous than others, the very act of engaging in a pursuit involves vehicular operation approaching the limits of the capabilities of the vehicles (police and fleeing) and the drivers of both vehicles. When these limits are exceeded the risk increases exponentially.

If an officer's actions are reasonable in light of the public harm risk that exists, then the officer's actions are more likely to be defensible in a court of law.

PURSUIT MANAGEMENT TOOLS

Police agencies, supervisors, and officers have several tools at their disposal to effectively manage the public harm and physical risks posed during vehicle pursuits. These tools include policy, training, and supervision.

Policy Development and Support

Policies that shape the operations of emergency vehicles in pursuits are critical to the effective management of pursuits. These guidelines establish the template that all personnel utilize in their decision-making process. Policies help to create an acceptable balance between the *expeditious operation* of police vehicles in emergency situations, and the *responsible and safe operation* of police vehicles in order to protect the general public and the law enforcement personnel involved.

For example, it is fairly common for a department to restrict by policy the number of police vehicles that may engage in a pursuit. The theory is that the fewer vehicles there are involved, the lower the risk and therefore the lower the liability exposure, however most policies also provide an opportunity for personnel to consider the cause and nature of the pursuit and/or the number of suspects involved. Restricting a pursuit of three armed robbery suspects to two single officer patrol units may be safer for the motoring public, but it is not safer for the officers. Policies often create guidance for personnel in these situations.

Officers must become as comfortable with the knowledge and application of pursuit policy as they are with their understanding of Use of Force policy.

PURSUIT MANAGEMENT

Training

Officers should participate in on-going training with regard to their physical driving skills and to their knowledge and decision-making skills. Hands-on training in EVO is expensive and is logistically difficult to present for agencies, but the costs of failing to train are often greater. Officers should actively seek opportunities to improve their understanding of the science of driving and to understand the characteristics of the vehicle they are assigned. This does not require formal training, but it does require officers to read the owner's manuals, review incidents with other personnel, and to invest in their own personal safety.

A major component of many pursuit policies are after-action reviews. Personnel often look at these reviews as potential discipline or even as a waste of time. This thinking is detrimental to the training that can be derived from an honest and critical review of activity.

Supervision

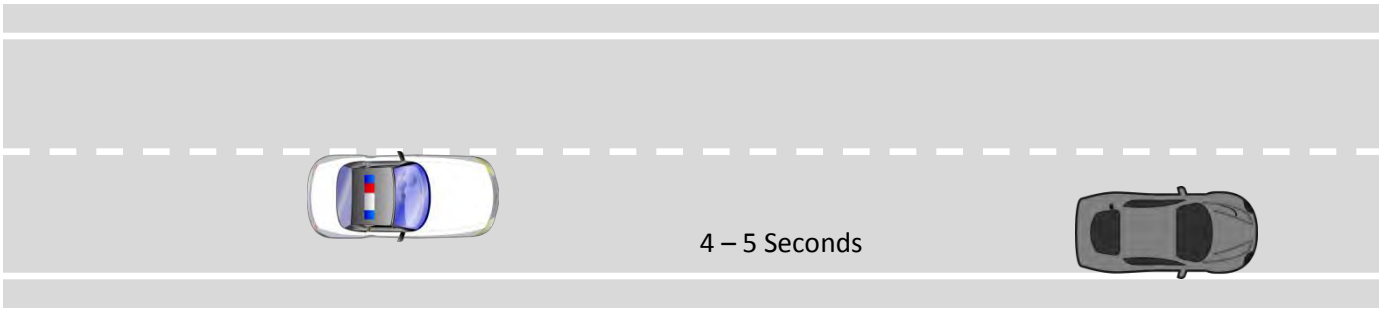
The vague descriptions of pursuit activity that are commonly used during radio transmissions often cause supervisors to make their decisions based on partial information. Supervisors are an integral component of effective pursuit management. Unless the supervisor is actually involved in the pursuit, the supervisor is in a position to apply policy and procedures without the added stresses of performance driving, observation of the fleeing vehicle, and describing the actions in a cohesive and cogent manner over a radio.

Supervisors should take an active role in eliciting information from personnel involved in pursuits.

A common misconception is that only the officer involved in a pursuit and the supervisor on duty can terminate or discontinue a pursuit. Certainly each of these individuals has both the authority and the responsibility to discontinue activity that does not rise to the standards of policy, but other officers can also effectively assist in this process and should be carefully listening to the progress of a pursuit in order to assure that the actions remain within the policy of the agency.

PURSUIT TACTICS

Pursuit Position / Off-Set Position / Slack Pursuit



In the diagram above, the police vehicle has established the preferred pursuit position.

- Police vehicle has established a four to five second following distance
  - Allows plenty of time for the police operator to react to sudden stops, changes of direction, or other driving maneuvers either intended to surprise the officer
  - Creates a reaction distance if the fleeing vehicle suddenly stops
  - Creates a reaction distance if the fleeing vehicle is involved in a crash
  - Allows the officer to maintain visual contact with the fleeing vehicle
  - Encourages the fleeing vehicle to reduce speed because the distance does not create additional pressure or worry about being struck by the police vehicle

- Police vehicle is off-set approximately one-half of a vehicle width from the fleeing vehicle (in this case, the off-set is to the left)
  - Allows maximum lighting and visibility to show past the fleeing vehicle so that on-coming drivers can see the activity sooner
  - Allows the police driver to see more of the fleeing vehicle
  - Provides the police driver an opportunity to see past the fleeing vehicle and helps to break the impact tunnel vision has on the officer
  - Encourages the fleeing vehicle to make right hand turns – left hand turns create a mental image in the fleeing driver's mind that he is about to be struck by the on-coming police vehicle directly in the driver door
  - Right hand turns tend to shorten the overall distance a pursuit travels geographically

- When the police vehicle has established a good following distance and off-set, the police driver should ease off of the accelerator and allow the fleeing vehicle to feel like escape is a potential outcome – this often allows the fleeing driver to relax and the speed of the fleeing vehicle will subsequently slow as well. This tactic is known as "Slack Pursuit" and is one of the first options that police officers should employ.

PURSUIT TACTICS

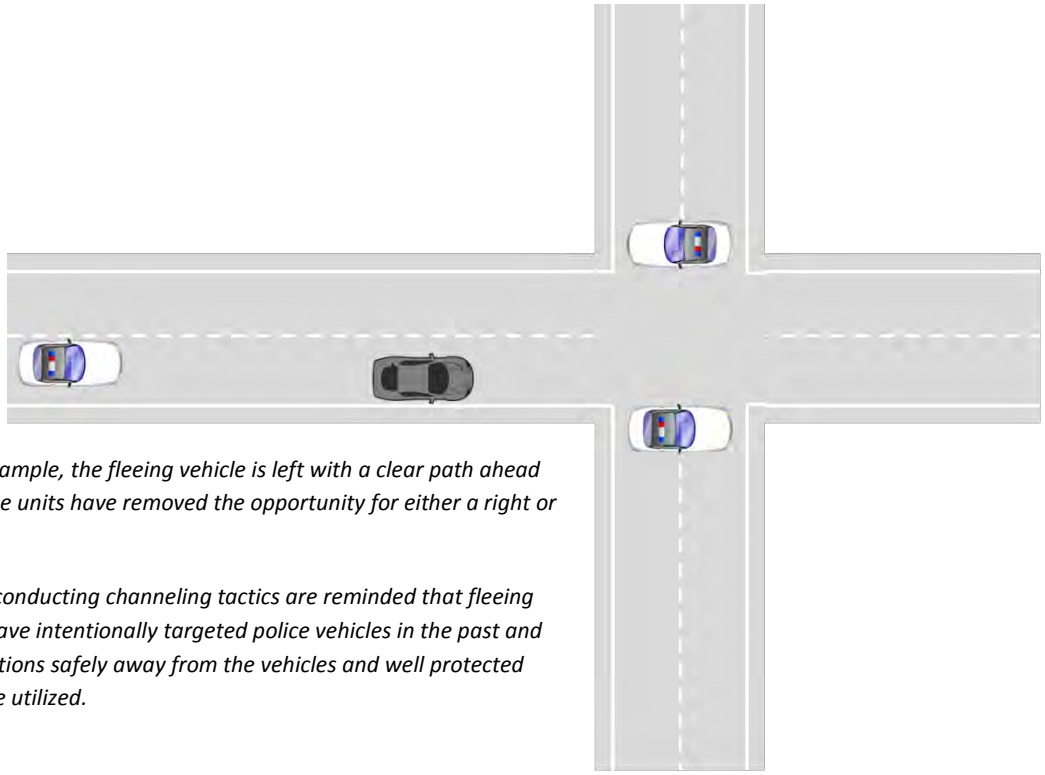
CHANNELIZATION

As pursuits evolve it becomes advantageous for law enforcement personnel to try and direct the fleeing vehicle into areas where overall risk can be effectively managed and reduced. It is a common thought process to try and prevent pursuits from entering busier jurisdictions from areas with less activity. Creating effective barricades to certain paths of travel and leaving other paths available to the fleeing vehicle are the goals of channelization.

Agencies channel vehicles in pursuits for multiple reasons:

1. Direct uninvolved traffic away from an area of potential danger.
2. Stop uninvolved traffic in an area that can be protected.
3. Keep the pursuit on a divided highway or freeway rather than allowing the pursuit to enter a two-lane roadway.
4. Keeping the pursuit on a section of highway where additional tactics such as controlled tire deflation can occur.
5. Keeping the pursuit in an area where support personnel such as K-9 units, SWAT, or other special units are deployed.
6. Keeping the pursuit away from heavily populated areas.

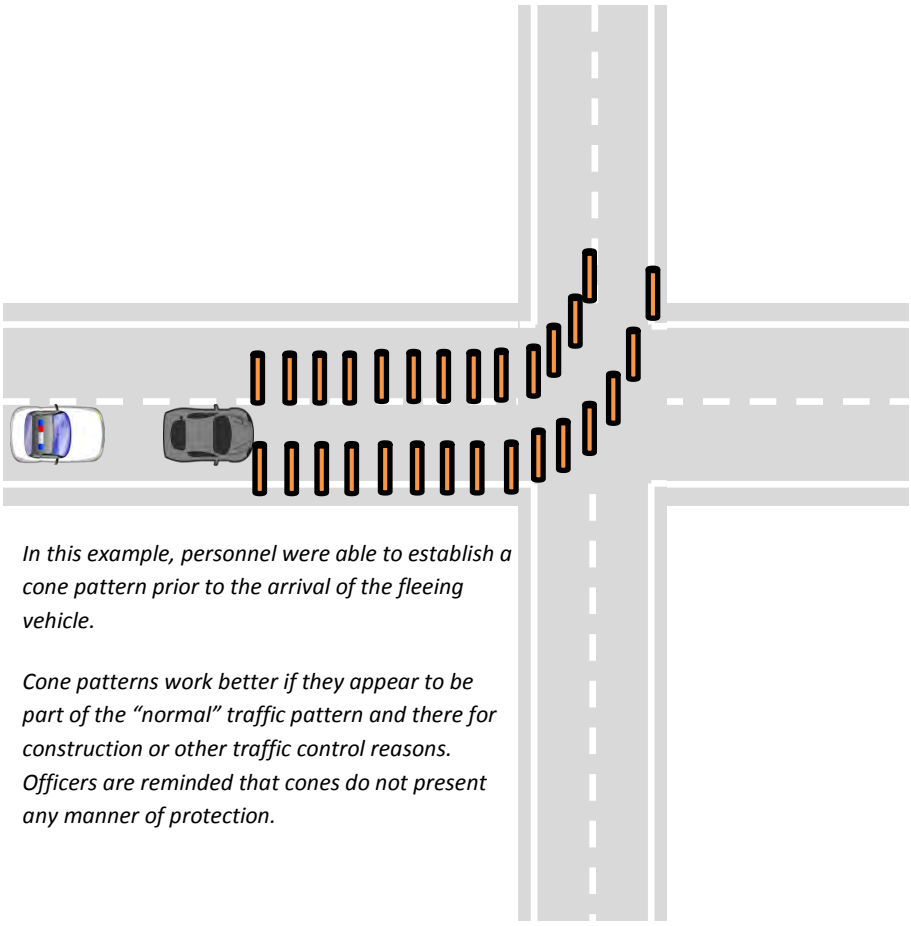
Channelization can be accomplished in a myriad of ways. Probably the most common method is to use police vehicles strategically positioned in the on-coming route of travel to remove one or more options to the driver of the fleeing vehicle. When time permits, other methods include the use of flare patterns, cone patterns, or barricades.



In this example, the fleeing vehicle is left with a clear path ahead and police units have removed the opportunity for either a right or left turn.

Officers conducting channeling tactics are reminded that fleeing drivers have intentionally targeted police vehicles in the past and that positions safely away from the vehicles and well protected should be utilized.

PURSUIT TACTICS



In this example, personnel were able to establish a cone pattern prior to the arrival of the fleeing vehicle.

Cone patterns work better if they appear to be part of the "normal" traffic pattern and there for construction or other traffic control reasons. Officers are reminded that cones do not present any manner of protection.

PURSUIT TACTICS

CONTROLLED TIRE DEFLATION DEVICES

Law enforcement agencies that choose to equip personnel with controlled tire deflation devices have a few options on the market to choose from. These devices range in size and in configuration and are available for several different missions. Agencies that provide this option for officers attempting to slow and eventually stop a vehicle pursuit provide the policy support and training needed for personnel to utilize this equipment.

A few general guidelines and considerations for the use of these devices include:

Communications:

- Officers preparing to deploy a deflation device must communicate with all personnel involved prior to a deployment
- Officers should notify personnel of general location of deployment
- Officers should work with supervisory personnel when time allows and if required by policy

Deployment Locations:

- Officers should select a stretch of roadway where uninvolved traffic (pedestrian and vehicular) can be managed and kept out of the deployment area
- Officers should select a stretch of roadway where tire failure will not create additional risk of serious physical injury or death the occupant(s) of the fleeing vehicle
- Officers must select a location where there is sufficient cover / protection for the officer deploying the device in the event the driver of the fleeing vehicle decides to take extreme evasive action to avoid the devices

Other Considerations:

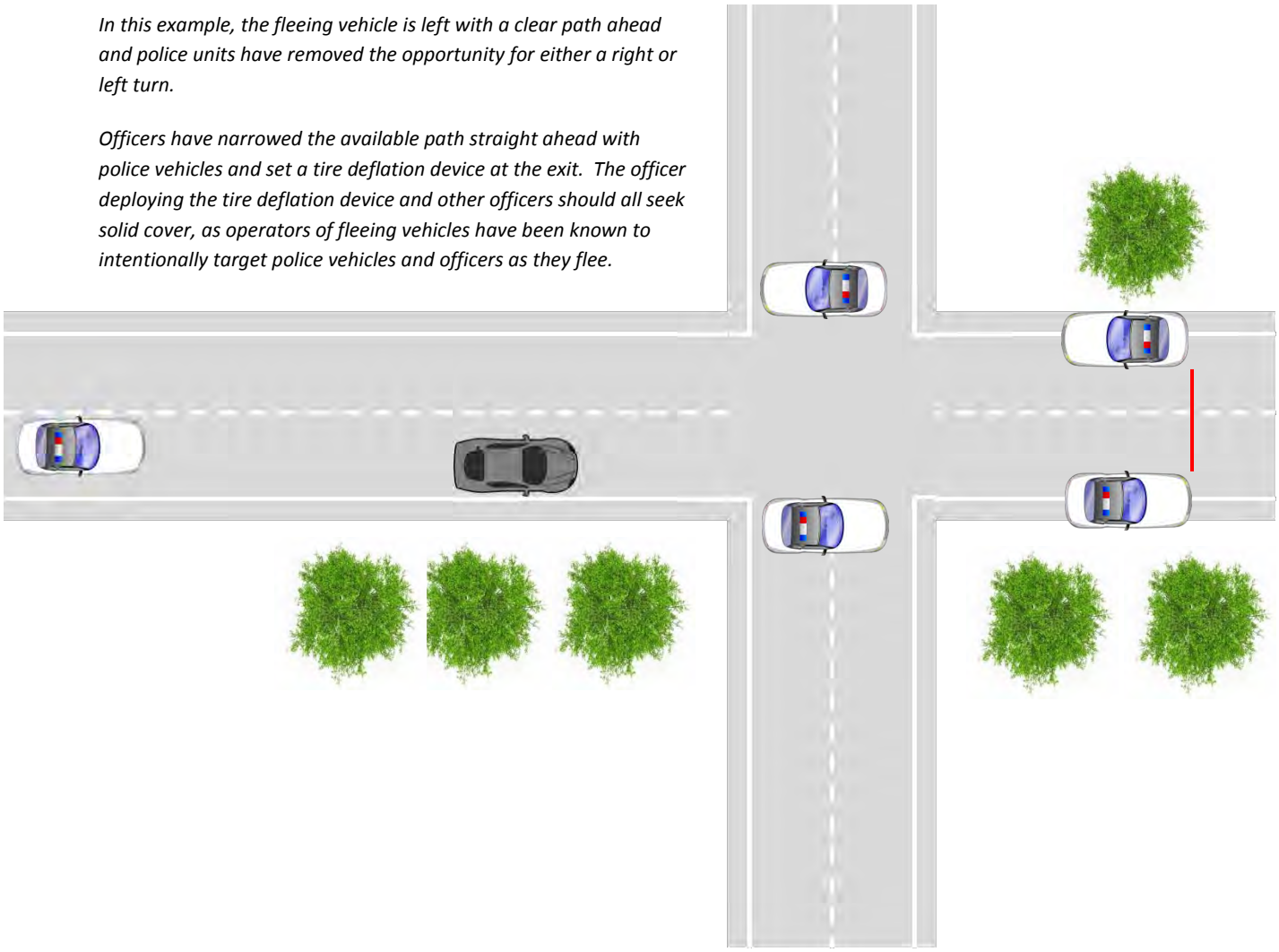
- Deflation devices should not typically be use on motorcycles
- Deflation devices can be used on high center of gravity vehicles, however officers should carefully measure the risks of increase loss of control against the benefits of the use of the device
- Busses, trucks, public transportation, and other vehicles capable of transporting larger numbers of people are generally not good recipients for tire deflation devices due to the increased risks to occupants

Tire deflation devices can be used in conjunction with other tactics including (most frequently) channelization. When these devices are used in this manner, the channelization process tends to leave an option available for travel with the deflation devices into the new path of travel far enough that they are not observed prior to the selection of the new path by the fleeing driver.

PURSUIT TACTICS

In this example, the fleeing vehicle is left with a clear path ahead and police units have removed the opportunity for either a right or left turn.

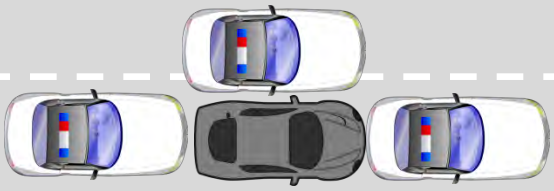
Officers have narrowed the available path straight ahead with police vehicles and set a tire deflation device at the exit. The officer deploying the tire deflation device and other officers should all seek solid cover, as operators of fleeing vehicles have been known to intentionally target police vehicles and officers as they flee.



PURSUIT TACTICS

BOXING

Three Vehicle Boxing



The blocking tactic is one that is used in circumstances where forcible contact between the fleeing vehicle and the police vehicles is accepted as a realistic outcome of the implementation of the tactic.

This tactic is most frequently done with at least three police vehicles, although it has been successfully implemented with two, the driver of the fleeing vehicle is left with more options to force out of a two vehicle box.



Two Vehicle Boxing

This tactic allows the police vehicles to slow the overall speed of the pursuit by coordinating their efforts and to direct the stop to a location that is more desirable for public, officer, and suspect safety.

This tactic requires careful communication and coordination between the involved police drivers to assure the box remains tight and closed around the fleeing vehicle and that once a stop has been achieved, that officers will efficiently clear themselves from the threat alignments of other officers.

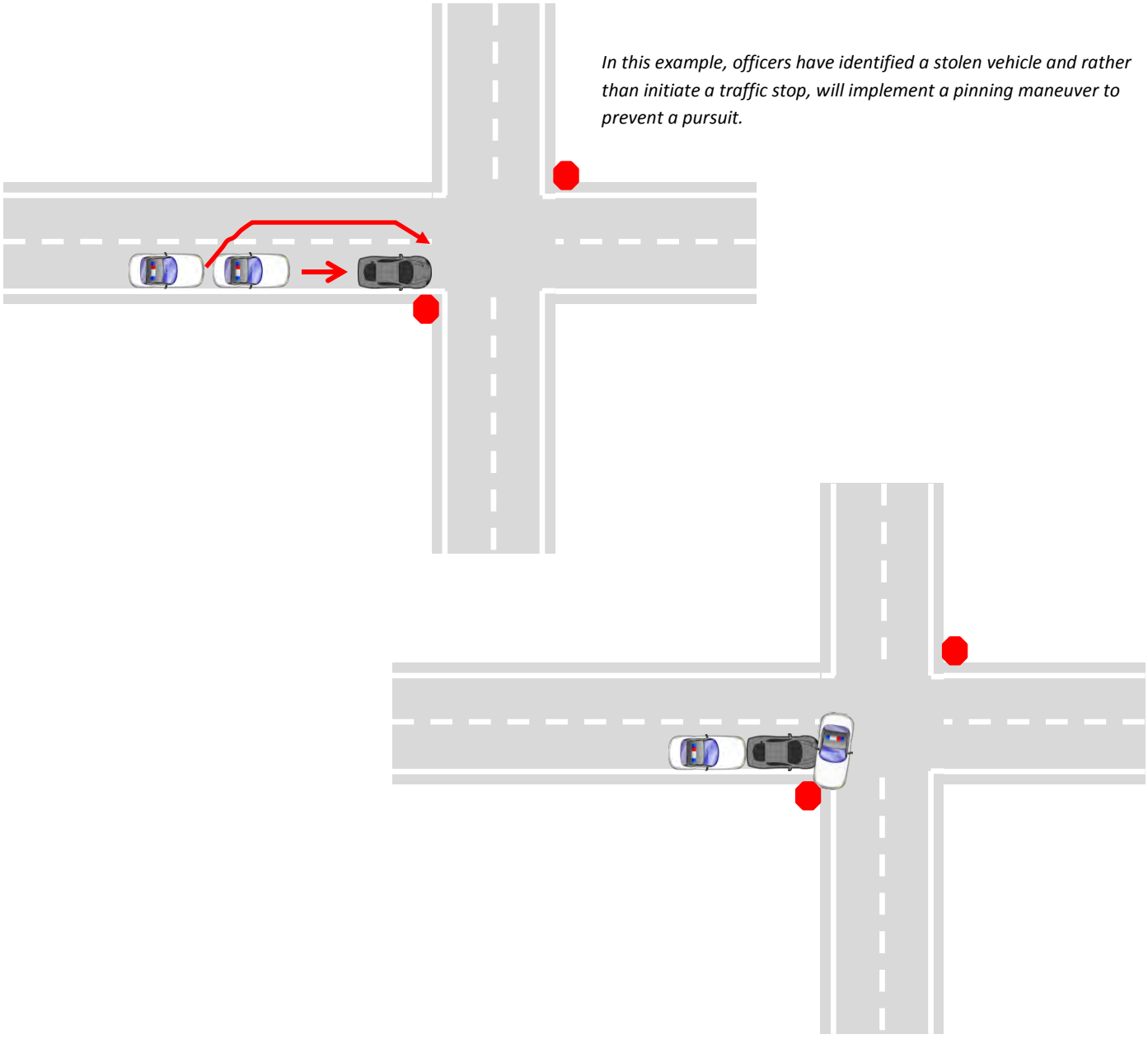
PURSUIT TACTICS

PINNING

This tactic is similar to boxing in that contact between the fleeing vehicle and the police vehicle is inevitable. This tactic is used when a fleeing vehicle is momentarily stopped, whether by circumstance or by other police tactics such as a PIT, it is rapidly applied to prevent any further movement by the fleeing vehicle.

Agencies in many jurisdictions are adopting a version of pinning as a Pursuit Prevention tactic, pinning vehicles from further movement prior to an opportunity to elude. In situations where pursuits often occur (such as stolen vehicles), officers attempt to pin the vehicle prior to actually stopping the vehicle, using the force of the tactic as the method of seizing the vehicle. This tactic may still allow the driver to exit the vehicle and flee on foot, however the risk to the public is greatly enhanced by prevention of a motor vehicle chase.

In this example, officers have identified a stolen vehicle and rather than initiate a traffic stop, will implement a pinning maneuver to prevent a pursuit.



PURSUIT TACTICS

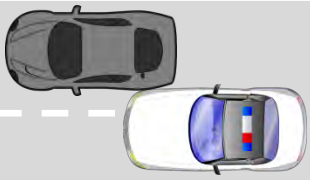
PURSUIT IMMOBILIZATION TECHNIQUE (PIT)

The PIT maneuver is a tactic that is widely accepted in the police profession as a viable method of using vehicular force to stop a fleeing vehicle. This technique is referred to as either PIT or TVI (Tactical Vehicle Intervention) by most policies in Oregon. There are many agencies that do not authorize officers to utilize the technique and agencies that do include PIT or TVI as a tactic provide on-going training to operational personnel.

When a PIT or TVI tactic is chosen and eventually applied to a fleeing vehicle, it is important for all police personnel to understand that the fleeing vehicle is not disabled as a result of the PIT maneuver and the tactic must be immediately followed with high-risk stop or pinning tactics to prevent further movement from the fleeing vehicle.

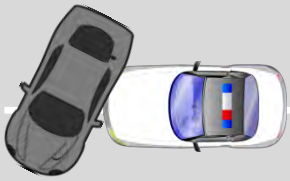
1

The officer has pulled alongside the fleeing vehicle and initiates contact.



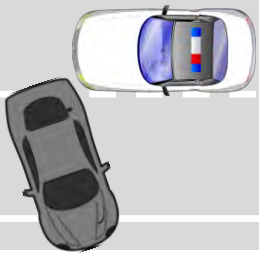
2

The officer "drives through" smoothly, allowing the fleeing vehicle to rotate across the path of the police vehicle.



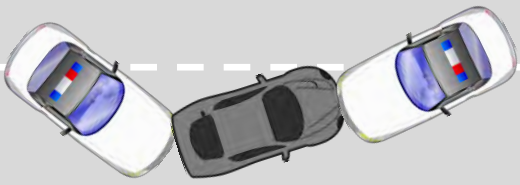
3

As the vehicles break physical contact, the officer (in this case) clears the rotating vehicle and then turns back to assist in pinning the fleeing vehicle from further movement.



4

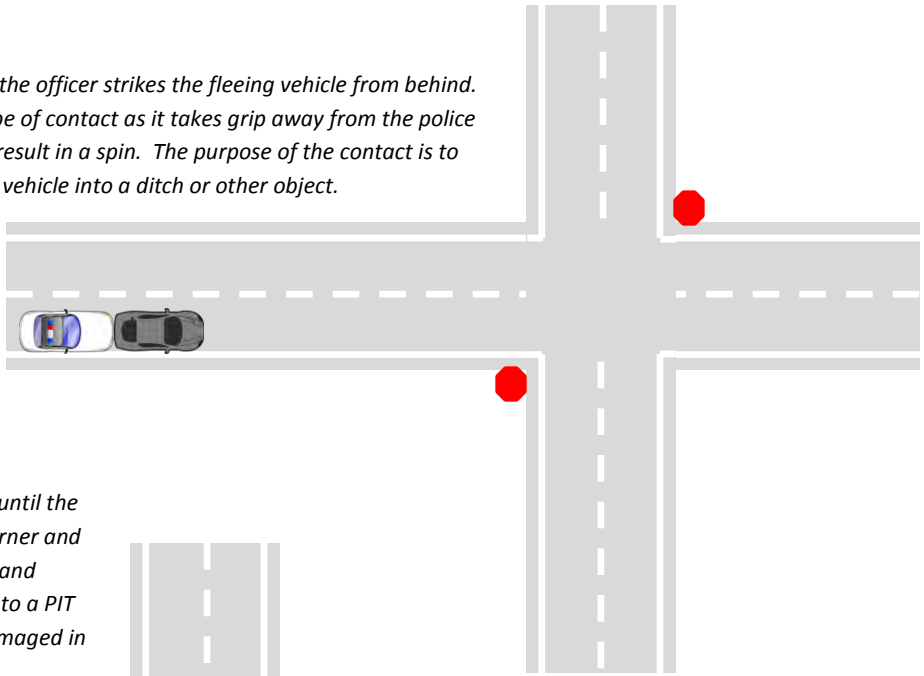
Two police vehicles (the one applying PIT and a support unit) are pinning the fleeing vehicle from moving any further.



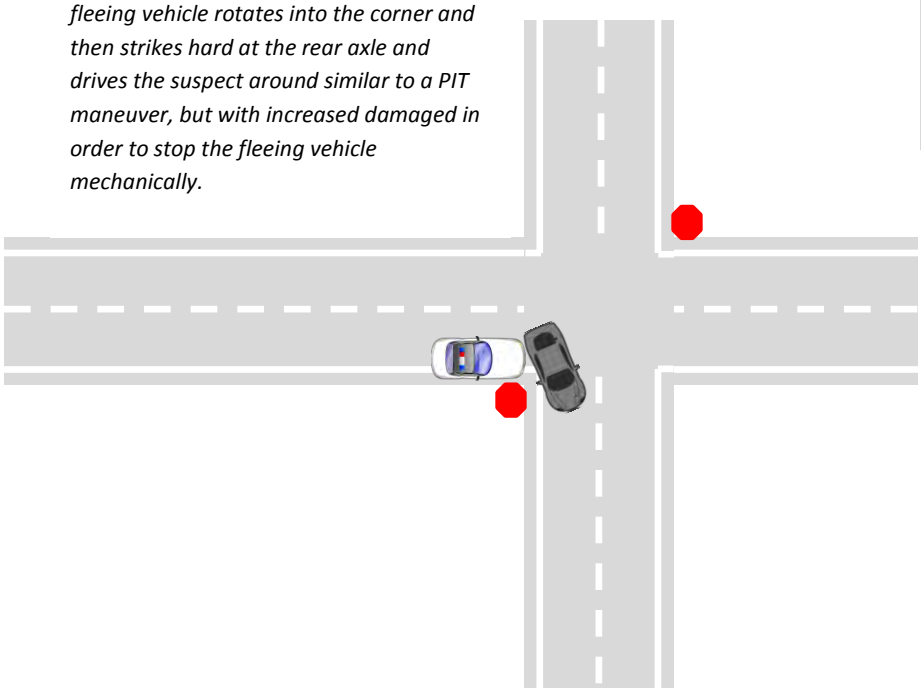
PURSUIT TACTICS

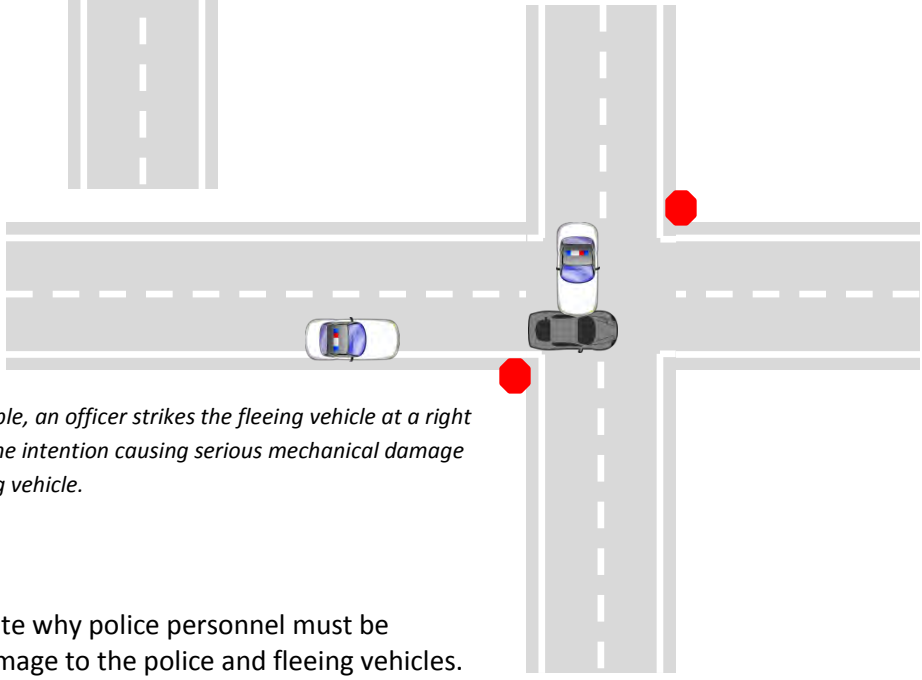
RAMMING

In this example, the officer strikes the fleeing vehicle from behind. This is a risky type of contact as it takes grip away from the police vehicle and can result in a spin. The purpose of the contact is to drive the fleeing vehicle into a ditch or other object.



In this example, the officer waits until the fleeing vehicle rotates into the corner and then strikes hard at the rear axle and drives the suspect around similar to a PIT maneuver, but with increased damaged in order to stop the fleeing vehicle mechanically.





In this example, an officer strikes the fleeing vehicle at a right angle with the intention causing serious mechanical damage to the fleeing vehicle.

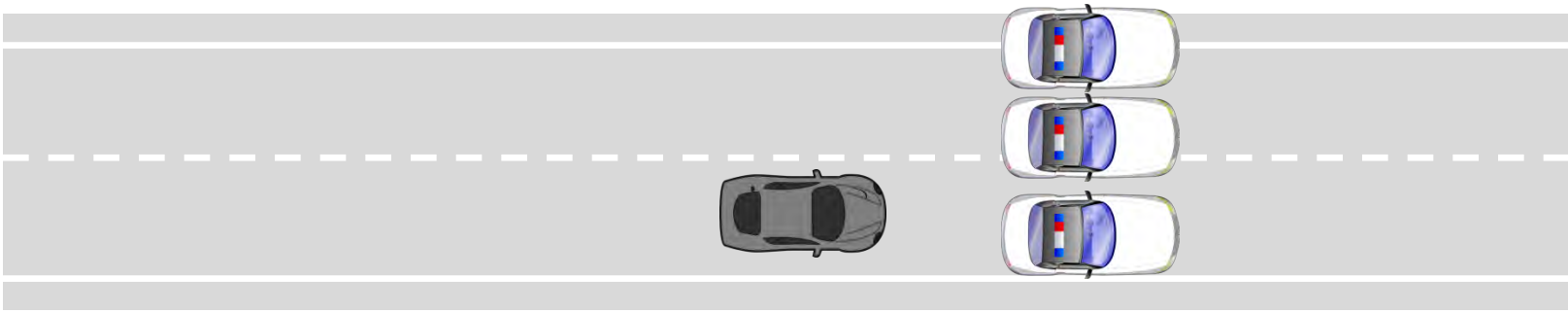
Each of these examples illustrate why police personnel must be willing to accept significant damage to the police and fleeing vehicles.

PURSUIT TACTICS

ROADBLOCKS

Blocking the roadway to seize the occupant(s) of a fleeing vehicle is a tactic that very few departments authorize in policy. These restrictions are mainly in part due to the increased risk of serious physical injury or death occupants may experience if they choose to run into the roadblock rather than stopping prior to impact. Used with careful consideration and positive supervision, roadblocks can be very effective tools to bring a vehicle pursuit to a stop.

One type of roadblock is the "moving" or "rolling" roadblock. This technique involves one or more patrol units getting in the path of the fleeing vehicle and traveling the same direction. These police vehicles establish a controlled speed and keep the fleeing vehicle behind them. This technique exposes the police officers to a significant amount of risk from being struck from behind by the fleeing vehicle. is where one or patrol units get in front of the suspect car and slow down and stay in front of the suspect to force them to a stop.

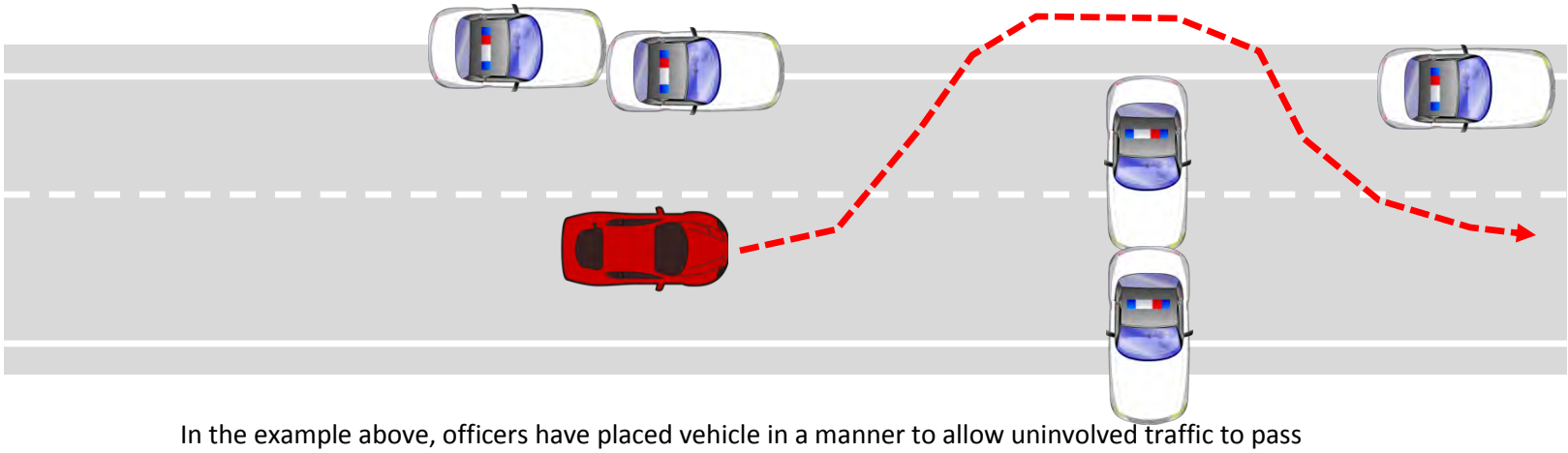


The second roadblock that is available in certain situations is blocking the complete roadway with fixed objects (typically vehicles). This type of roadblock increases the risk of an impact between the blocking vehicles and the fleeing vehicle. Care must be taken to avoid the "Deadman's roadblock" that is the basis for the ***Brower v. Inyo*** Supreme Court Case.

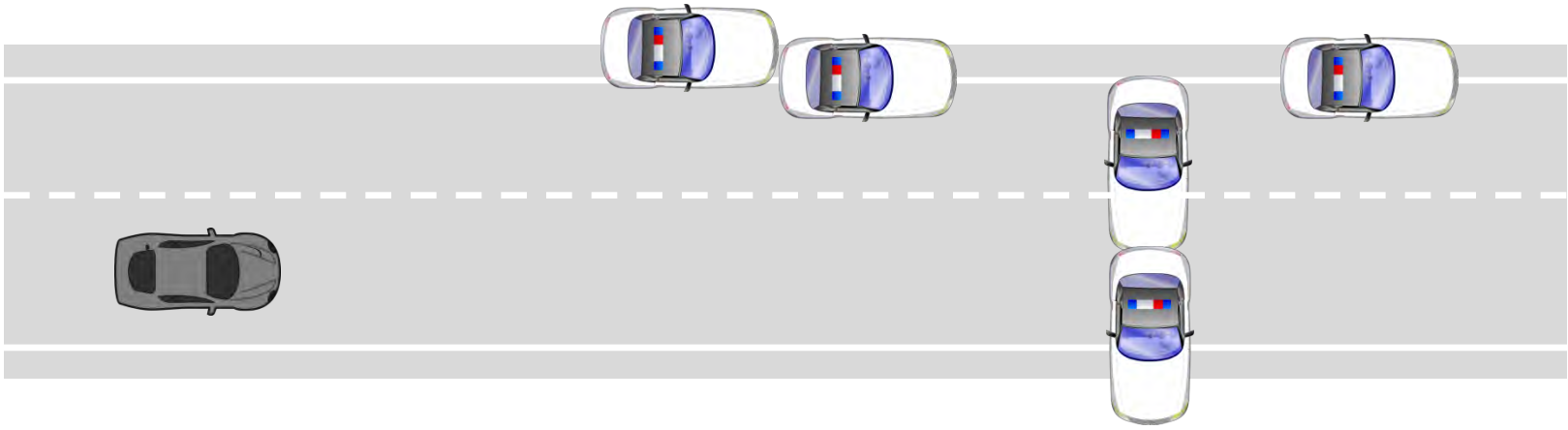
PURSUIT TACTICS

In the case ***Seekamp v. Michaud*** officers set up a roadblock that allowed several hundred cars through before the suspect arrived. The suspect did not take the "escape" route but instead chose to crash into the trucks blocking the freeway. The court held that the roadblock was reasonable and took notice that numerous other drivers had negotiated the blockage before the suspect arrived. The court reaffirmed that a seizure occurs when a person is stopped; "By the very instrumentality set in motion or put in place to achieve that result."

Refer to these cases in the EVO Student Manal for further information regarding the findings of the Courts.



In the example above, officers have placed vehicle in a manner to allow uninvolved traffic to pass through the roadblock prior to the arrival of the fleeing vehicle (red car), and then as the fleeing vehicle arrives, the gap is closed down, leaving a smaller route of travel.



PURSUIT TACTICS

PURSUIT DISCONTINUATION / TERMINATION

Choosing when to initiate a police pursuit is certainly an important task for patrol personnel. Choosing when to disengage or discontinue pursuit activity is an even more critical task for police officers, support personnel, and supervisors.

Pursuits should be discontinued when the totality of objective circumstances known or which reasonably ought to be known to the officer or supervisor during the pursuit indicates that the present risks of continuing the pursuit reasonably appear to outweigh the risks resulting from the suspect(s) escape.

Many of the following factors are considered by agencies in policy to assist in the decision to discontinue a vehicle pursuit. This list is not intended to be used as policy and agencies must carefully weigh the mission of their respective agencies and jurisdictions as policy is reviewed and amended.

- The distance between the pursuing officers and the fleeing vehicle is so great that further pursuit would be futile or require the pursuit to continue for an unreasonable time or distance.
- In the officer's opinion a serious hazard is present that outweighs the need to arrest / identify the fleeing suspect.
- The location of the pursued vehicle is no longer known.
- The police vehicle sustains damage that renders it unsafe for further operation.
- Excessive hazards to pedestrians, bystanders, and uninvolved third parties exist.
- The identity of the suspect becomes known and it does not appear the need for immediate capture is worth the risks associated with further pursuit.
- The officer is unfamiliar with the area and is unable to update a location to other units or dispatchers.
- When directed by a supervisor.

EMERGENCY RESPONSE DRIVING
GENERAL CONSIDERATIONS

An emergency run is simply a pursuit of time, and like a pursuit of an actual vehicle, decisions and tactics should be carefully considered as an emergency run evolves.

Emergency runs are equally as dangerous as pursuits. Historically an emergency run does not receive the publicity (complimentary or adverse) that the pursuits of a vehicle will generate. The physiological effects on the police driver are the same as a vehicle pursuit, and in at least the instance of an emergency response to an "Officer needs Help!" request, often generate even more of the tachycardia symptoms because the nature of the emergency is more personal.

Personnel who drive emergency response vehicles must be trained to continually evaluate the situation when on an emergency run. Officers should consider if the totality of the circumstances warrants initiating or continuing an emergency run or if a response at reduced speeds would be a better choice.

Supervisors and dispatchers must receive training in the appropriate assignment of coded responses for these runs. The responding officer is of no value at the scene if he or she is delayed by a collision while responding to an incident.

When multiple emergency vehicles are responding to an incident, the risks increase dramatically for the second vehicle. Frequently when one emergency vehicle follows another through an intersection, non-involved motorists assume that the way is clear once the first emergency vehicle has passed. These motorists often return to the roadway, directly into the path of the unanticipated second vehicle. Unless the circumstances require emergency vehicles to travel in tandem or otherwise in a convoy, emergency vehicle operators are safer if they use different routes or space themselves out a significant distance from one another.

Inspection procedures should be conducted immediately following involvement in any pursuit, emergency response, or other driving situation involving curb strikes or obvious mechanical failure.

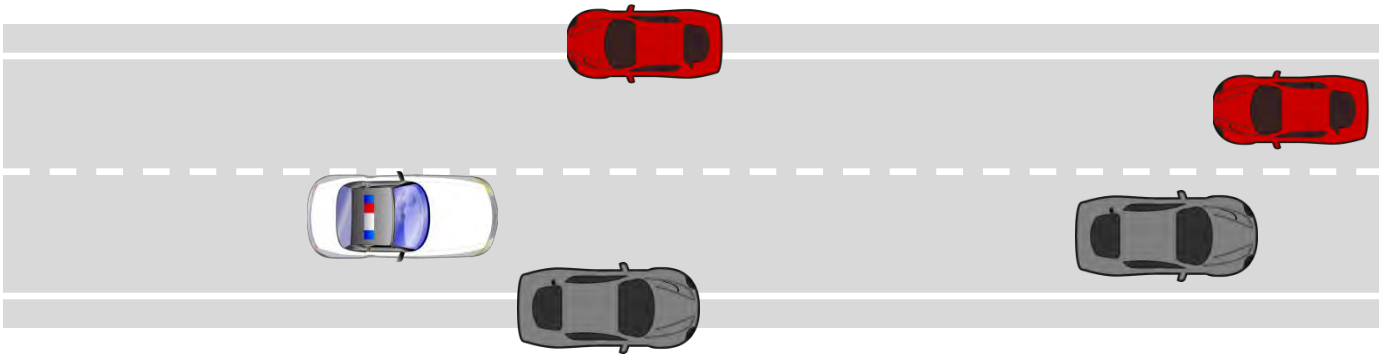
Following are several examples of guidelines that exist in operational policies governing emergency response driving.

- *When responding to emergency calls, red/blue flashing lights and siren are to be used. Refer to ORS 820.300 for legal exemptions.*
- *The exemptions listed under 820.300 do not relieve the officer from operating an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons, nor do they protect such officer from the consequences if they recklessly disregard the safety of others.*
- *Officers shall consider the following factors when determining the viability of emergency response:*
    - *Time of day*
    - *Volume of vehicular traffic*
    - *Density of population*
    - *Weather conditions*
    - *Roadway conditions*
    - *Severity of the reported crime*
    - *Volume of pedestrian traffic*

EMERGENCY RESPONSE DRIVING
DRIVING DECISIONS AND TACTICS

The greatest percentage of law enforcement driving occurs under non-emergency conditions, but there are those situations demanding an emergency response from public safety personnel. The driving skills required for the operation of emergency vehicles in non-emergency situations are no different than those required during emergency driving. The levels of knowledge and behaviors emergency vehicle operators exercise in these non-emergency events form the foundation for the driver in emergency responses.

OFF-SET LEFT LANE POSITION



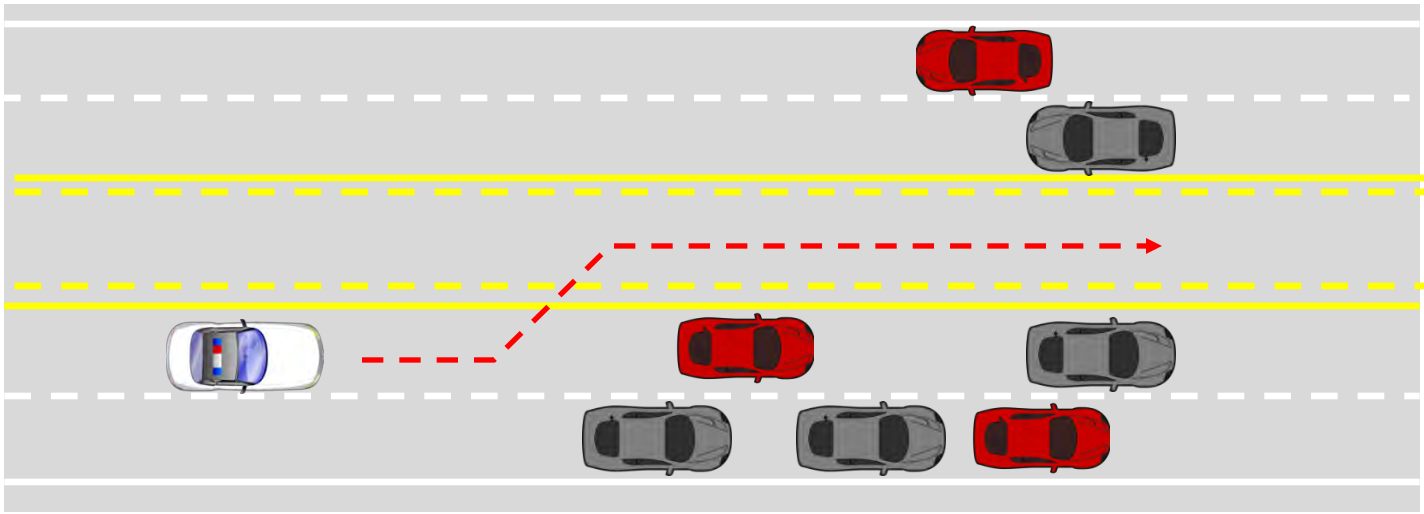
Police vehicles will be overtaking traffic at a significant speed difference. The off-set lane positioning creates the following advantages for police:

- Opportunity for police driver to see past traffic
- Opportunity for oncoming traffic to see approaching officer
- Opportunity for emergency equipment (particularly sound) to penetrate beyond the barrier of traffic immediately in front of the police vehicle
- Tends to cause other vehicles to move to the right
    - Creates more space for officer
    - Encourages officer to pass on the left
    - On-Coming traffic moves right and opens up a larger path for the officer

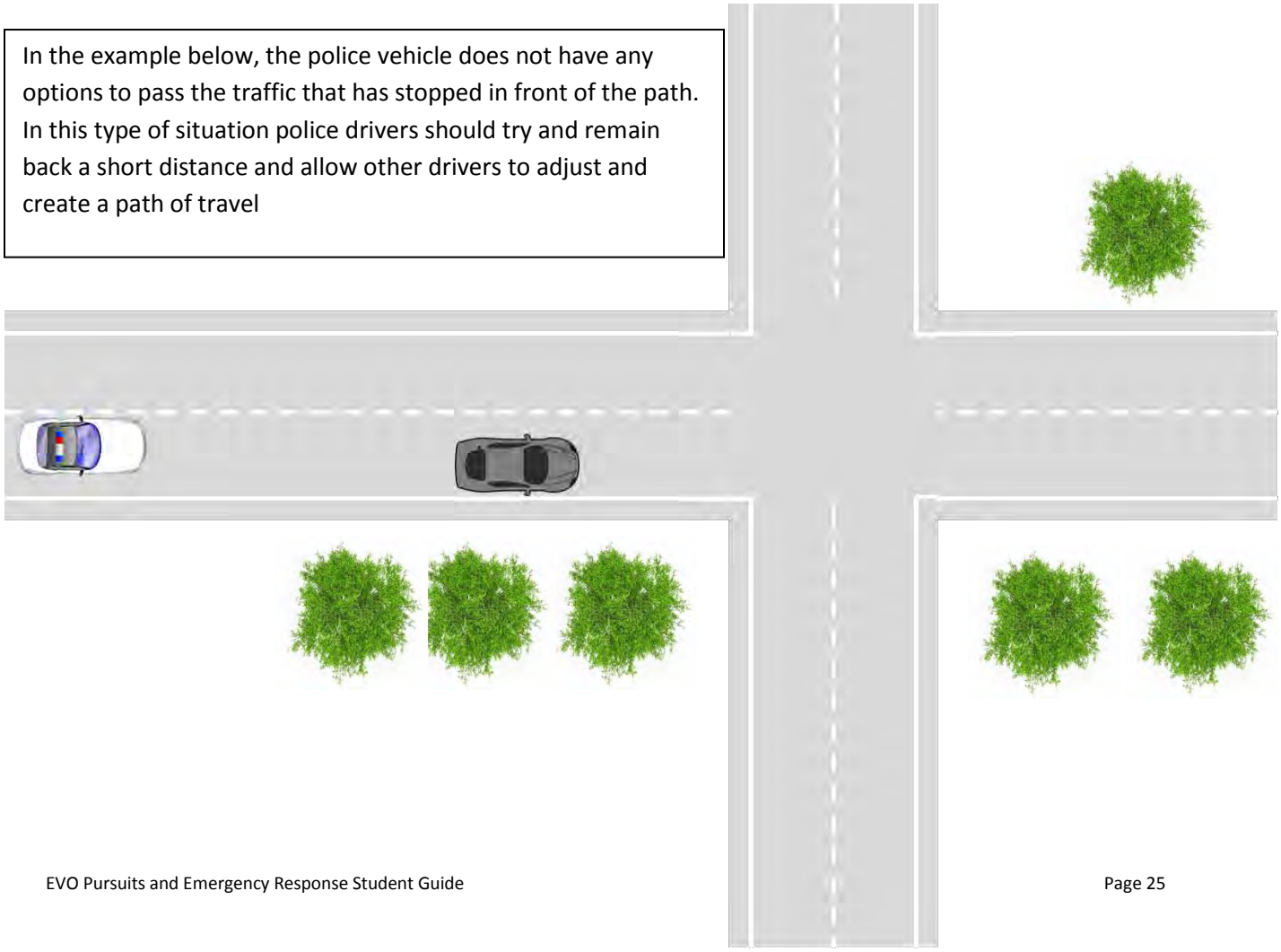
EMERGENCY RESPONSE DRIVING
DRIVING DECISIONS AND TACTICS

MULTIPLE LANE SITUATIONS

In the diagram below, a police vehicle in an emergency condition is approaching several vehicles traveling in the same direction. The police driver should carefully consider the risks of using the center turn lane prior to exercising that option, including does the situation continue to require an emergency response and would using the left turn lane create more risk to the public than discontinuing the emergency response and continuing to the incident with the pace and flow of traffic.



In the example below, the police vehicle does not have any options to pass the traffic that has stopped in front of the path. In this type of situation police drivers should try and remain back a short distance and allow other drivers to adjust and create a path of travel

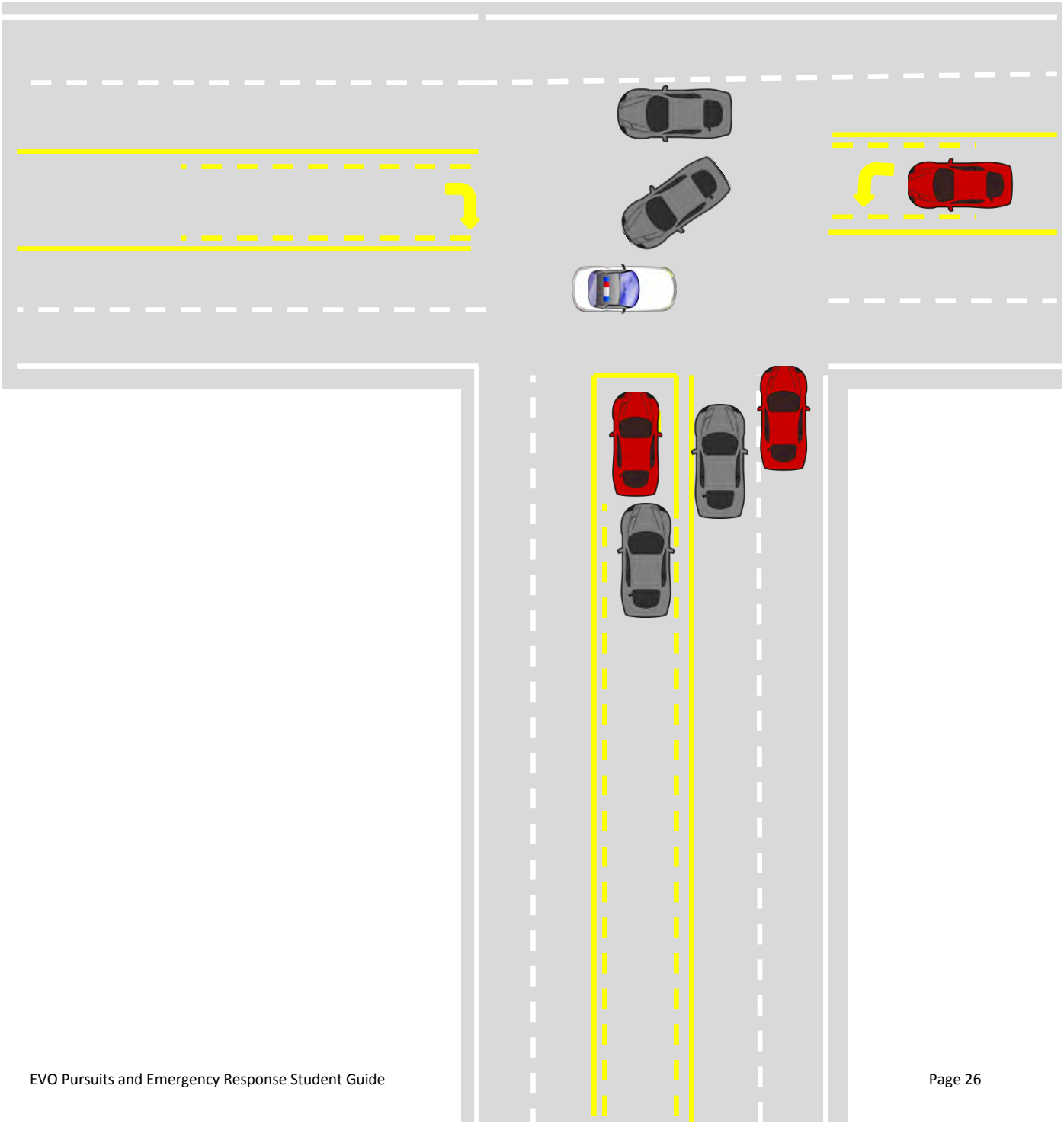


CLEARING INTERSECTIONS

Intersection clearance continues to be a major area of extreme risk for police officers in both emergency response driving and even in non-emergency driving. A simple rule for approaching and entering intersections will increase the successful negotiation of busy intersections.

"Never enter the intersection at a speed greater than you can stop."
(SKIDCAR System Inc.)

Whether the intersection is a simple one with only one lane in each direction, or the intersection has multiple lanes in all directions with turn lanes, the rule applies.



SUMMARY

Pursuits and Emergency responses will be at the same time one of the most dangerous activities a police officer engages in and at the same time, one of the most technical activities. Law enforcement agencies and personnel must understand the emphasis placed on emergency driving by the Courts, the media, and most importantly, the citizens served.

Consider the implications of the diagram below:

Reasonable Decision **Unfortunate Outcome**	**Reasonable Decision** **Positive Outcome**
Poor Decision **Unfortunate Outcome**	**Poor Decision** **Positive Outcome**

There are tragedies that occur when good personnel make reasonable decisions and circumstances continue into an unfortunate outcome. These are difficult for personnel and for agencies to manage, however when policies, procedures, and legitimate tactics are employed by those involved, the public will understand this outcome.

In the lower left quadrant, it comes as no surprise that poor decision-making will more often than not lead to unfortunate outcomes. These situations must be managed with care.

The lower right quadrant is where the largest risk for police agencies, supervisors, and officers lies in wait. When poor decision-making does not create circumstances where a negative outcome is realized, proactive responses by those involved are required in order to avoid future risk. This is often difficult to accomplish because “nothing bad” happened and still the personnel may be held in violation of policies. This is very difficult for agencies to manage, but critical to the overall health of the agency and personnel.

Moving the activity of police in pursuits and emergency responses into the green quadrant is the goal of this manual, training, policy, and continued scrutiny to all of these actions. When operations can consistently reside in the green, the actions of the officers and the agency will be viewed as just in the eyes of the public.

REFERENCE INFORMATION

Item	Source
1	Oregon Revised Statutes, 2015
2	SKIDCAR System Inc. ©; 2016
3	"Final Report of the President's Task Force on 21st Century Policing"; Washington, DC; Office of Community Oriented Policing Services. 2015

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Basic Police Academy

Emotional Intelligence



Emotional Intelligence Parts 1-4

Instructional Goals:

This course is designed to:

1. Enhance a new officer's awareness of emotional intelligence.
2. Develop a new officer's understanding of the application of emotional intelligence in policing.

Learning Outcomes:

Upon completion of instruction, students will be able to:

1. Identify what contributes to emotional intelligence
2. Self-assess ones own emotional intelligence and identify areas for growth
3. Recognize when emotional intelligence is lacking
4. Analyze an interaction and reflect on the level of emotional intelligence demonstrated
5. Articulate what emotional intelligence means in their role as a police officer

Content Outline:

- What is Emotional Intelligence?
- Competencies
- Four Domains:
    - Self-Awareness (Recognition)
    - Self-Management (Regulation)
    - Social Awareness (Recognition)
    - Relationship Management (Regulation)
- The Role of the Brain
- Stress
- Improving Emotional Intelligence

In-Class Activity: EI Self-Assessment

Adapted from Paul Mohapel (paul.mohapel@shaw.ca)

Emotional intelligence (referred to as **EQ**) is your ability to **be aware of, understand,** and **manage your emotions**. Why is EQ important? While intelligence (referred to as IQ) is important, success in life depends more on EQ. Take the assessment below to learn your EQ strengths!

Rank each statement as follows: **0** (*Never*) **1** (*Rarely*) **2** (*Sometimes*) **3** (*Often*) **4** (*Always*)

Emotional Awareness - Total: _____

0 1 2 3 4	My feelings are clear to me at any given moment
0 1 2 3 4	Emotions play an important part in my life
0 1 2 3 4	My moods impact the people around me
0 1 2 3 4	I find it easy to put words to my feelings
0 1 2 3 4	My moods are easily affected by external events
0 1 2 3 4	I can easily sense when I'm going to be angry
0 1 2 3 4	I readily tell others my true feelings
0 1 2 3 4	I find it easy to describe my feelings
0 1 2 3 4	Even when I'm upset, I'm aware of what's happening to me
0 1 2 3 4	I am able to stand apart from my thoughts and feelings and examine them

Emotional Management - Total: _____

0 1 2 3 4	I accept responsibility for my reactions
0 1 2 3 4	I find it easy to make goals and stick with them
0 1 2 3 4	I am an emotionally balanced person
0 1 2 3 4	I am a very patient person
0 1 2 3 4	I can accept critical comments from others without becoming angry
0 1 2 3 4	I maintain my composure, even during stressful times
0 1 2 3 4	If an issue does not affect me directly, I don't let it bother me
0 1 2 3 4	I can restrain myself when I feel anger towards someone
0 1 2 3 4	I control urges to overindulge in things that could damage my well-being
0 1 2 3 4	I direct my energy into creative work or hobbies

Social Emotional Awareness - Total: _____

0 1 2 3 4	I consider the impact of my decisions on other people
0 1 2 3 4	I can easily tell if people around me are becoming annoyed
0 1 2 3 4	I sense it when a person's mood changes
0 1 2 3 4	I am able to be supportive when giving bad news to others
0 1 2 3 4	I am generally able to understand the way other people feel
0 1 2 3 4	My friends can tell me intimate things about themselves
0 1 2 3 4	It genuinely bothers me to see other people suffer
0 1 2 3 4	I usually know when to speak and when to be silent
0 1 2 3 4	I care what happens to other people
0 1 2 3 4	I understand when people's plans change

Relationship Management - Total: _____

0 1 2 3 4	I am able to show affection
0 1 2 3 4	My relationships are safe places for me
0 1 2 3 4	I find it easy to share my deep feelings with others
0 1 2 3 4	I am good at motivating others
0 1 2 3 4	I am a fairly cheerful person
0 1 2 3 4	It is easy for me to make friends
0 1 2 3 4	People tell me I am sociable and fun
0 1 2 3 4	I like helping people
0 1 2 3 4	Others can depend on me
0 1 2 3 4	I am able to talk someone down if they are very upset

My EQ Strengths! Mark your EQ total scores to assess your strengths and areas for improvement.

Domain	Score																				
Emotional Awareness	0	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40
Emotional Management	0	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40
Social Emotional Awareness	0	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40
Relationship Management	0	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40

Measure your effectiveness in each domain by using the following key:

0-24 Area for Enrichment: ***Requires*** attention and development
25-34 Effective Functioning: Consider ***strengthening***
35-40 Enhanced Skills: Use as ***leverage*** to develop weaker areas

Using your EQ strength – for your strongest EQ domain, give an example of how you demonstrate your strength in your daily life or work: _____

_____

_____

Effects of your EQ strength – for your weakest EQ domain, give an example of how this affects you AND others in your daily life or work: _____

_____

_____

Improving your EQ strength – for your weakest EQ domain, what steps can you take to strengthen yourself in this area? How will this benefit you in your daily life or work: _____

_____

_____

Part 1

What is Emotional Intelligence?

Emotional Intelligence is defined as: "The ability to recognize, understand, and deal skillfully with your own emotions and the emotions of others." Sometimes called EQ or EI, emotional intelligence is a term created by researchers, Peter Salavoy and John Mayer but made popular in a book by Daniel Goleman. Emotional intelligence seems to be the "missing link," answering the question- why do people with average IQs outperform those with the highest IQs 70% of the time? Studies indicate that IQ is not the sole source of success.

> Decades of research now point to emotional intelligence as the critical factor that sets star performers apart from the rest of the pack.

Emotional intelligence is distinct from our intellect. There is no known connection between IQ and EI; emotional intelligence cannot be predicted based on how smart a person is or is not. Intelligence is our ability to learn, and it's the same at age 15 as it is at age 50. *Emotional intelligence, on the other hand, is a flexible set of skills that can be acquired and improved with practice.* Although some people are naturally more emotionally intelligent than others, we can develop high emotional intelligence even if we aren't born with it.

> Law enforcement emotional intelligence is defined as the ability of the officer to manage and use their emotions in a positive and constructive way, and manage healthy relationships within the department, community, and other supporting agencies in the criminal justice system.

Emotional intelligence is the "something" in each of us that is a bit intangible. It affects how we manage behavior, navigate social complexities, and make personal decisions that achieve positive results.

Source: Talent Smart http://www.talentsmart.com/about/emotional-intelligence.php

Emotional intelligence is made up of **four core domains** that pair up under **two primary competencies:** personal competence and social competence.

Personal Competence

Is made up of your self-awareness and self-management skills, which focus on you individually.

Personal competence is your ability to stay aware of your emotions and manage your behavior and tendencies.

Social Competence

Is made up of your social awareness and relationship management skills.

Social competence is your ability to understand other people's moods, behavior, and motives to improve the quality of your relationships.

The Four Domains:

1. Self- Awareness
2. Self- Management
3. Social Awareness
4. Relationship Management

The chart below is a tool to help you see how the competencies and four domains work together. Each of the four domains is made up of skills that provide strength in that area.

Personal Competence		Social Competence	
Self Awareness (Recognition)	**Self Management** (Regulation)	**Social Awareness** (Recognition)	**Relationship Management** (Regulation)
Self-Awareness concerns knowing one's internal states, preferences, resources, and intuitions.	Self-Management refers to managing ones' internal states, impulses, and resources.	Social awareness refers to how people handle relationships and awareness of others' feelings, needs, and concerns.	Relationship Management concerns the skill or adeptness at inducing desirable responses in others.
Emotional Awareness: Recognizing one's emotions and their effects. **Accurate Self-Assessment:** Knowing one's strengths and limits. **Self-Confidence:** A strong sense of one's self-worth and capabilities.	**Self-Control:** Keeping disruptive emotions and impulses in check. **Transparency/ Trustworthiness:** Maintaining integrity, acting congruently with one's values. **Conscientiousness:** Careful, vigilant. A desire to do a task well and take obligations to others seriously. **Adaptability:** Flexibility in handling change. **Achievement Orientation:** Striving to improve or meeting a standard of excellence. **Initiative:** Readiness to act on opportunities. **Optimism:** Persistence in pursuing goals despite obstacles and setbacks	**Empathy:** Sensing others' feelings and perspectives and taking an active interest in their concerns. **Organizational Awareness:** Reading a group's emotional currents and power relationships. **Service Orientation:** Anticipating, recognizing, and meeting customers' needs.	**Developing Others:** Sensing others' development needs and bolstering their abilities. **Inspirational Leadership:** Inspiring and guiding individuals and groups. **Change Catalyst:** Initiating or managing change. **Influence:** Wielding effective tactics for persuasion. **Conflict Management:** Negotiating and resolving disagreements. **Teamwork & Collaboration:** Working with others toward shared goals. Creating group synergy in pursuing collective goals.

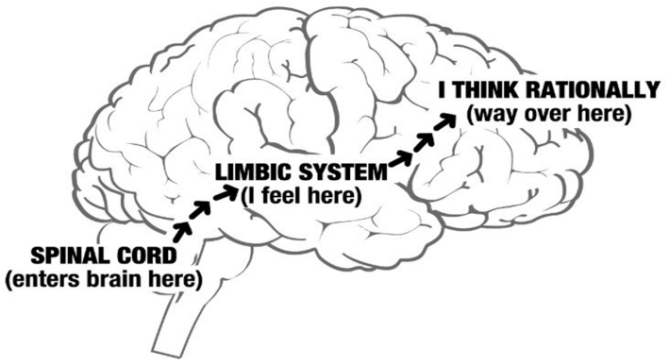
In-Class Activity Notes- EI and Policing

Self-Awareness	Self-Management	Social Awareness	Relationship Management

Part 2

The Role of the Brain

Emotional intelligence requires effective communication between the rational and emotional centers of the brain. Your primary senses (everything you see, hear, smell, touch) enter at the spinal cord and must travel to the front of your brain (the rational center of the brain) before you can think rationally about your experience. However, first, they must travel through the limbic system, the place where emotions are generated (hence the emotional center of the brain). This is why we have an emotional reaction to events before our rational mind can engage.



"Plasticity" is the term neurologists use to describe the brain's ability to change. Your brain grows new connections as you learn new skills. The change is gradual, as your brain cells develop new connections to speed the efficiency of new skills acquired.

Using strategies to increase your emotional intelligence allows the billions of microscopic neurons lining the road between the rational and emotional centers of your brain to branch off small "arms" to reach out to the other cells. A single cell can grow 15,000 connections with its neighbors. This chain reaction of growth ensures it's easier to kick this new behavior into action in the future. Once you train your brain by repeatedly using new EI skills, emotionally intelligent behaviors become habits.

Source: Talent Smart
http://www.talentsmart.com/about/emotional-intelligence.php

In Summary

- A person must have control over his/her emotions to utilize the thinking/rational part of the brain.
- Our brains are more emotional than logical.
- Only you can impact the processes in your brain. We "unlearn" old habits of thought, feeling, and action that are deeply ingrained and integrate new ones.
- Such a process takes motivation, effort, time, support, and sustained practice. Awareness alone cannot make a difference

Officers cannot always control the stressful situations they find themselves in; however, officers can decide how they will react to a stressful event.

Improving Your Emotional Intelligence

Your emotional intelligence is the foundation for critical skills—it impacts most everything you say and do each day. Emotional intelligence is the single most significant predictor of performance in the workplace and the strongest driver of leadership and personal excellence.

There is a difference between learning about emotional intelligence and applying that knowledge to your life. Just because you know you should do something doesn't mean you will (*see Ethics*)—especially when you become overwhelmed by stress, which can override your best intentions. To permanently change behavior in ways that stand up under pressure, you need to learn how to overcome stress in the moment.

In addition to learning to handle stressful situations, the following are some additional means of improving one's EI skills.

Personal Competence		Social Competence	
Self Awareness	Self Management	Social Awareness	Relationship Management
Understand negative thought processes and emotional triggers Recognize the relationship between thoughts, feelings, and actions Learn to interrupt negative thinking Practice the power of Proactivity	Identify limiting beliefs Use goal setting and follow up to demonstrate the power to change destiny Begin with the end in mind / consider possibilities Change leader Self-regulation	Understanding others/empathy Pay attention to body language cues Practice effective communication skills Recognize communication blockers Practice active listening	Learn to be a leader Learn to be a follower Value the contributions of all participants Follow through on commitments Understand conflict Seek consensus Practice the art of listening effectively

Self-Awareness

Self-awareness is a skill that helps us monitor our behavior and better understand our motives and ourselves. Like any other skill, we can develop self-awareness with the right methods combined with consistent practice.



What goes on in our head impacts how we make decisions. Thinking controls actions; therefore, the earlier in the process, we are self-aware, the better. By recognizing our thoughts and emotions, we can adjust our behaviors and decision for better results.

Self-Awareness Improvement Exercises

Self-Reflection	• Practice regular moments of pause and reflection. • Take time each evening to reflect on your behavior for the day.
Psychometric Tests	Personality Tests- Provide insights into the dominant patterns of behavior Examples: • Values in Action (VIA) Strengths Test- 2 options o University of Pennsylvania https://www.authentichappiness.sas.upenn.edu/user/register o Values in Action Institute on Character https://www.viacharacter.org/survey/account/register
Personal Values	Answer the question: What is most important to me? • When you become aware of your values, you can evaluate if you're living by them. • Values are a part of us. They highlight what we stand for. • Values guide our behavior, providing us with a personal code of conduct.
Journaling	• Writing increases your insight into a situation by putting it into perspective and processing the emotions that took place. • Writing provides an opportunity to think about why you felt a certain way, and what may have triggered your reaction. • Regular journaling allows the ability to look back, look at patterns, and identify progress. • Journaling helps you stay focused on your priorities.

Own your flaws & weaknesses	True self-honesty means being willing to see unpleasant attributes in one's behavior and personality. • Pay attention to your emotional reactions toward other people. • Listen! What are people telling you? Demonstrating to you? • At the end of the day, take five or ten minutes to reflect on your interactions with others and your related reactions. • Just like you would be willing to work on physical weaknesses, be willing to work on these.
Draw connections between thoughts-feelings-behaviors	• Think about a behavior you displayed and examine every link. o What was the prompting event? o How did you react to the prompting event? o How did you feel about it? o What emotions were present? o How did your values play a part in your thoughts and emotions? o How did your body react? • Situations do not cause feelings and behaviors. People can choose what to think about various situations. • Inner dialogue or self-talk is what we tell ourselves about situations. This provides a lens for how we see the world- consider the difference between a negative internal dialogue and a positive inner dialogue.
Observe Others	• We are all more alike than we are different. In observing other people, we can often learn a great deal about our behavior.

Gaining Self-Awareness through Others

Effective Feedback	Ask trusted friends • What behaviors do you believe are limiting my potential? • What do you think I'm good at? What are some of my weaknesses? • If you had to describe me to someone, what would you say? • Is there anything you avoid saying to me because you're afraid of how I'll react? If so, what? You can only ask these questions to a trusted confidante and from a place of openness. Ask friends to call you out when you are doing a behavior you already know you want to change. Utilize a formal 360-Feedback Process

In-Class Activity- Personal Values

Accountability	Correctness	Exploration
Accuracy	Courtesy	Expressiveness
Achievement	Creativity	Fairness
Adventurousness	Curiosity	Faith
Altruism	Decisiveness	Family-Orientedness
Ambition	Democraticness	Fidelity
Assertiveness	Dependability	Fitness
Balance	Determination	Fluency
Being the Best	Devoutness	Focus
Belonging	Diligence	Freedom
Boldness	Discipline	Fun
Calmness	Discretion	Generosity
Carefulness	Diversity	Goodness
Challenge	Dynamism	Grace
Cheerfulness	Economy	Growth
Clear-Mindedness	Effectiveness	Happiness
Commitment	Efficiency	Hard Work
Community	Elegance	Health
Compassion	Empathy	Helping Society
Competitiveness	Enjoyment	Holiness
Consistency	Enthusiasm	Honesty
Contentment	Equality	Honor
Continuous Improvement	Excellence	Humility
Contribution	Ethics	Independence
Control	Excitement	
Cooperation	Expertise	

Ingenuity	Piety	Spontaneity
Inner Harmony	Positivity	Stability
Inquisitiveness	Practicality	Strategic
Insightfulness	Preparedness	Strength
Integrity	Professionalism	Structure
Intelligence	Prudence	Success
Intellectual Status	Quality-Orientation	Support
Intuition	Reliability	Teamwork
Joy	Resourcefulness	Temperance
Justice	Restraint	Thankfulness
Leadership	Results-Oriented	Thoroughness
Legacy	Rigor	Thoughtfulness
Love	Security	Timeliness
Loyalty	Self-Actualization	Tolerance
Making a Difference	Self-Control	Traditionalism
Mastery	Selflessness	Trustworthiness
Merit	Self-Reliance	Truth-Seeking
Morality	Sensitivity	Understanding
Obedience	Serenity	Uniqueness
Openness	Service	Unity
Order	Shrewdness	Usefulness
Originality	Simplicity	Vision
Patriotism	Soundness	Vitality
Perfection	Speed	

My Top Personal Values

1.

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

12.

13.

14.

15.

In-Class Activity- The Honest Mirror

People

1.

2.

3.

Questions

1.

2.

3.

Part 3

Self-Management

The competency of self-management has six different skill attributes: Self-control, trustworthiness, conscientiousness, adaptability, achievement orientation, and initiative.

Self-Control (*see Ethics: System 2*)

Self-control is the ability to refrain from knee-jerk reactions in response to emotions. It is the ability to stop and think before acting and to pause and consider the best course of action in the present situation. It involves knowing what is important to you, what isn't, and how that will translate into your actions and behavior.

Studies show that low self-control is significantly related to past police misconduct and the likelihood of future police misconduct.

Anger and frustration are key negative emotions linking stress to misconduct.

Trustworthiness

A trust relationship depends on two things: the trustor's tendency to trust and the trustworthiness of the trustee.



What makes someone trustworthy? The research identifies ten conditions of trustworthiness: availability, competence, consistency, discreetness, fairness, integrity, loyalty, openness, promise fulfillment, and receptivity.

Honesty- the quality or fact of being honest; uprightness and fairness.

Truthfulness, sincerity, or frankness

Integrity- Adherence to moral and ethical principles; soundness of moral character; honesty.

Public trust is linked to citizen's perception that the police treat people equally and respectfully. This topic will be covered more during the Police Legitimacy Procedural Justice class. Still, here it is essential to recognize the role trust plays in policing and its connection to building strong emotional intelligence skills.

If you're a conscientious person, you resist behaviors that could harm your ability or reputation.

<u>Conscientiousness</u>

Conscientiousness is taking responsibility for your performance, and making sure that it matches up to your ability and your values. It implies a desire to do a task well and to take obligations to others seriously. Conscientiousness has two distinct parts:

- Desire for achievement- Common motivators are chances to produce quality work, to demonstrate expertise, and to increase knowledge. When you're "industriously conscientious," you excel in making plans and setting goals. You tenaciously pursue them through setbacks, and you show self-discipline, control, and determination.

- A sense of duty to your team and organization- As an "orderly conscientious" person, you're good at following rules and norms, and at being diligent, reliable, and responsible. You're organized, diplomatic, and punctual. You think before you act, and you care about doing a good job.

Adaptability

If there is one thing that is consistent in life, it is change. Adaptability describes someone who doesn't allow feelings about change to become a source of emotional and performance roadblocks. It is flexible in responding to change.

Adaptability- the quality of being able to adjust to new conditions.

To develop this skill, you will need to be able to identify WHY a change might be causing a negative emotional response for you. Once you understand why you might be resisting the changes that you face, you can choose to handle it properly by addressing the fears or other feelings you have. You will become more adaptable the more that you practice.

Achievement Orientation

Achievement-oriented individuals strive to meet or exceed goals, a standard of excellence. They value feedback and seek ways to do things better. Individual achievement orientation must be balanced, especially with teamwork.

Achievement Orientation- A drive to accomplish one's goals, and to meet or exceed a high standard of success.

Achievement motivation versus failure avoidance motivation exists on a continuum, with most of us falling somewhere in the middle.

Initiative

People who have a high level of initiative are those that look for ways to continually develop themselves: make lifestyle changes, pursue more education, learn new skills, create new habits, etc. They don't blame others or the universe for their problems, they look at their role in their current situation, and they accept responsibility for making any necessary changes.

They also take the initiative in problem-solving and conflict resolution, thus making initiative a highly relevant skill in policing.

Initiative-

The ability to assess and initiate things independently.

The power or opportunity to act or take charge before others do.

Part 4

Social Awareness

Although there are four specific skills under social awareness, we are going to focus on one big one-empathy. What is empathy? And how is it different from sympathy? Both empathy and sympathy are forms of having concern for another person's well-being.

Sympathy	Empathy
Feelings of pity and sorrow for someone else's misfortune. Ex: "I feel sorry for you" *Merriam-Webster Dictionary Definition*	The ability to recognize other's emotions and perspectives (during difficult times), coupled with the ability to imagine what someone else might be thinking or feeling. Ex: "What you are going through must be really hard" https://greatergood.berkeley.edu/topic/empathy/definition
Empathy requires paying attention to another's needs without sacrificing one's own. *https://greatergood.berkeley.edu/article/item/how_to_avoid_the_empathy_trap*	

The concept of empathy has been defined and redefined again and again. It is often described as the ability to step into the shoes of another person. When we aim to understand their feelings and perspectives of another, we can use that understanding to guide our actions. Empathizing with someone does not mean that you must agree with their point of view. *We need to empathize with people whose beliefs we do not share.* Empathizing with others is a route to social tolerance, which will be covered more in the Community Competency series.

Why empathy? Through empathy, we come to understand another's concerns and their reasons for behaving as they do. When people feel understood, they are more likely to share their experiences with us, which makes us more able to determine where they need information and support.

Why is empathy important in policing? Empathy is related to the concept of legitimacy, whether citizens view the police as a legitimate authority. When you respond to the needs and feelings of other people, you gain their trust. Empathy is related to perceptions of police effectiveness.

Empathy and perceptions of empathy help to shape the interactions of police and members of the communities they are assigned to protect. Research on citizen interactions with the police has consistently indicated that the way officers behave determines how they are evaluated by people with whom they interact. Studies specifically show that the police are more likely to be trusted and considered effective at their jobs when they display empathy with the community's concerns.

The Role of Empathy in Crime, Policing, and Justice
Chad Posick, Georgia Southern University

In traffic stop studies regarding citizen expectations, the majority (68%) of respondents stated that it was important that the officer empathizes with their excuse, even if they still end up getting a ticket.

So, what does empathy look/sound like? It is NOT about sharing a relatable experience. It does NOT mean "I've been there," "I know what you are feeling," or even worse, trying to make them feel better by one-upping their troubles "Your brother is an addict, well so is my brother AND my sister." It does not mean that you need to offer a solution to fix their problem, and it does not mean telling them that "things will be better tomorrow."

Empathy DOES mean you demonstrate that you are listening. This can be done by paraphrasing, summarizing, or otherwise conveying understanding. You can do this without even using "I." You might say:

- That must have been hard on you
- It sounds like you are having a difficult time

Try thinking of empathy as a professional interaction, not an emotion.

It is recognizing and acknowledging the presence of a strong feeling such as fear, for example, "that sound like it scared you." Avoid using "I understand" because you really might not understand. Even if you have had a similar experience is it the same? Do you understand how this is affecting this specific person? or do you really only understand how it affected you?

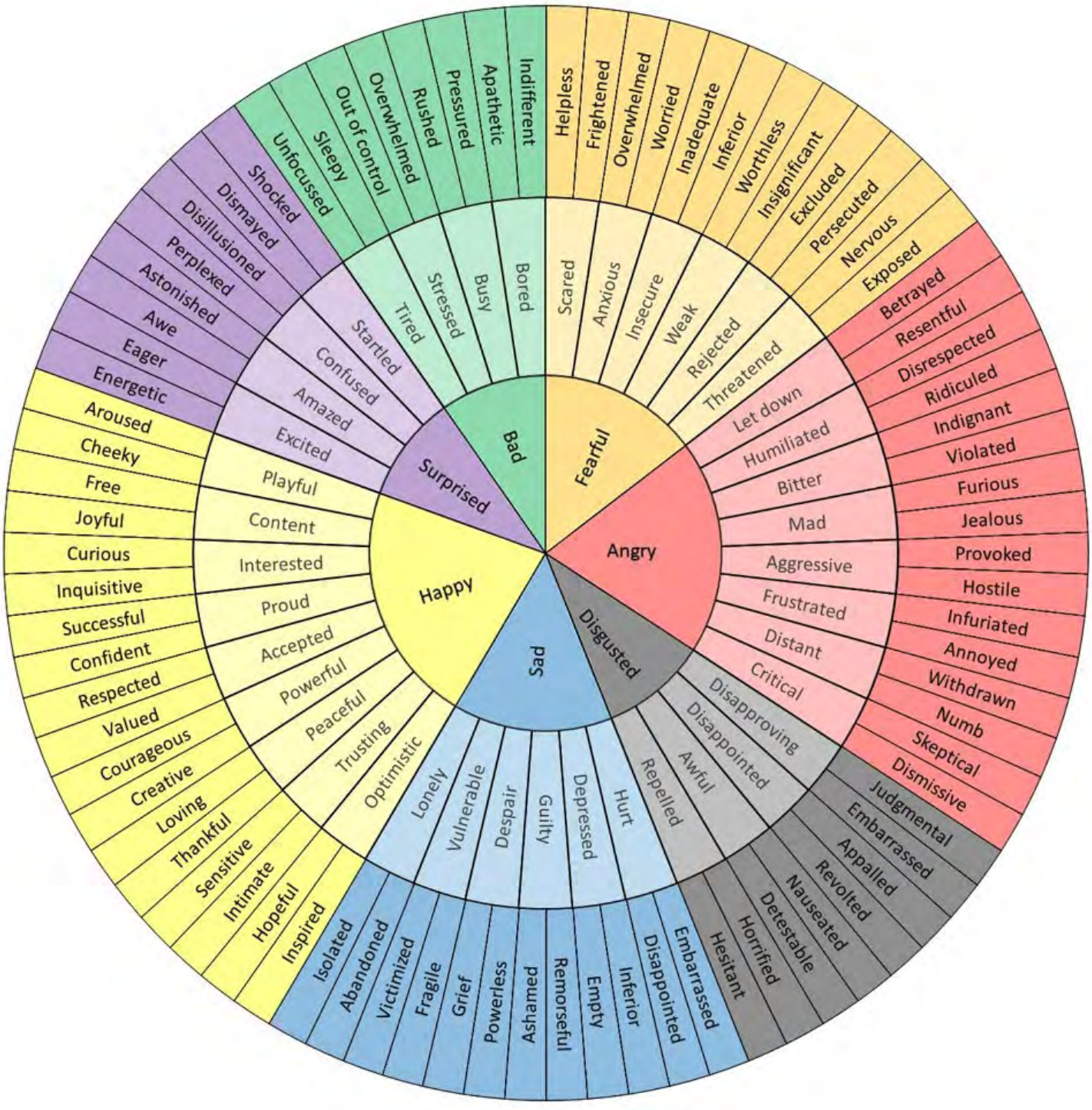
How can we improve our empathy?

- Slow down your encounters when possible
- Set aside your viewpoint and try to see things from the other person's point of view
- Validate the other person's perspective
- Listen more and talk less
- Examine your attitude
- Challenge your preconceptions and prejudices
- Search for commonalities rather than differences

Also consider how the other person is feeling. Try to connect to that emotion. In order to connect with someone else's emotions, you should also expand your feeling vocabulary. The chart below shows common language around emotions and the deeper emotions that may be considered.

Feelings Wheel

It can be difficult to know what we are feeling, let alone what others might be feeling. The image below can help grow your vocabulary and allow for better connection and knowledge of your own feelings, as well as the feelings and potential needs of others.



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Basic Police Academy

Ethics



Ethics Parts 1-3

Instructional Goals:

Introduce students to the concept of ethics and ethical decision making in policing.

Part 1 Ethics and Policing

Learning Outcomes:

1. Describe the role of ethics in policing.
2. Apply the concept of integrity to the Criminal Justice Code of Ethics.
3. Identify the risks of noble cause corruption.
4. Explain the potential consequences of unethical police behavior.

Part 2 Ethical Influences

Learning Outcomes:

1. Describe the role of dual system thinking in ethical decision making.
2. Contrast the philosophies of deontological and utilitarianism ethics as applied to policing.
3. Describe how individual personality traits can influence ethical decision making in policing.
4. Understand the influence of an officer's emotional state on ethical decision making.
5. Describe the role of officer wellness and resiliency in ethical decision making.
6. Explain the role of organizational culture in ethical decision making.

Part 3 Ethical Interventions

Learning Outcomes:

1. Describe the concept of active bystandership as it applies to policing.
2. Understand an officers' legal duty to intervene under the Civil Rights Act and Oregon Revised Statutes.
3. Identify ways officers can apply active bystandership in their organization.
4. Apply peer intervention strategies to a given situation.

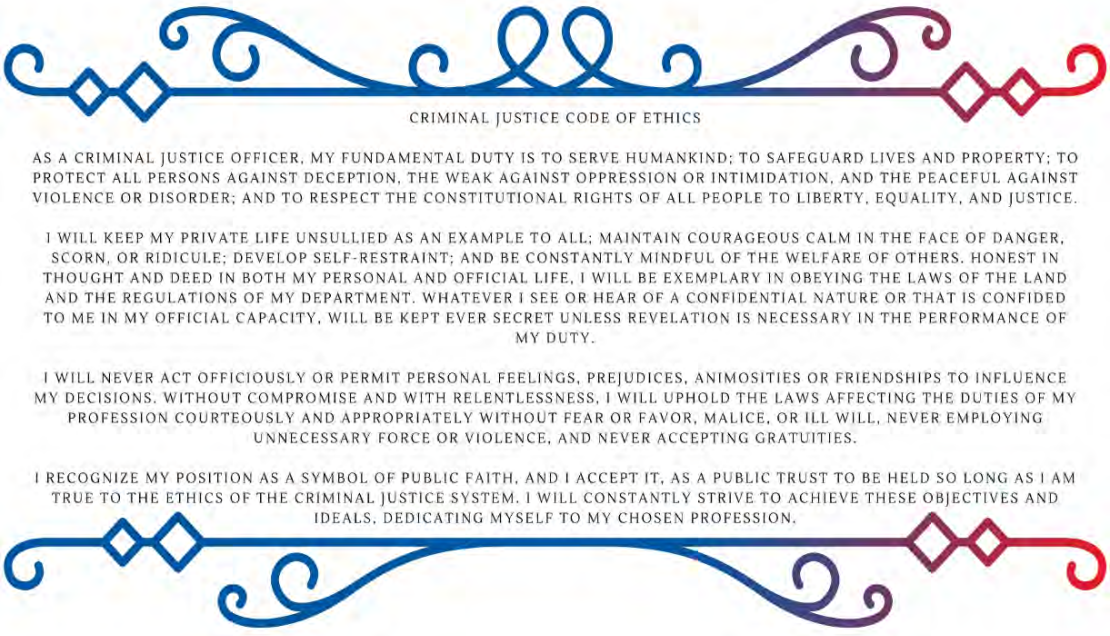
Part 1- Ethics and Policing

Learning Outcomes:

1. Describe the role of ethics in policing.
2. Apply the concept of integrity to the Criminal Justice Code of Ethics.
3. Identify the risks of noble cause corruption.
4. Explain the potential consequences of unethical police behavior.

Introduction

Ethical decision-making is an important part of policing, as officers are often faced with complex and difficult situations that require them to make tough moral choices. It is important for officers to be aware of ethical frameworks and principles as well as the ethical standards and guidelines that apply to their work, such as codes of conduct and departmental policies. By following these principles, standards, and guidelines, officers can help to ensure that their actions are consistent with their ethical obligations. Overall, it is important for police officers to be aware of the ethical dimensions of their work and to make decisions that are consistent with their duties and responsibilities as public servants.



What are Ethics?

The terms *ethics* and *integrity* are often used synonymously; however, they are not the same. Ethics are a system of principles that guide behavior. Consider the Criminal Justice Code of Ethics and the principles included. This Code of Ethics was originally adopted by the International Association of Chiefs of Police in 1957. This was during the Reform Era, a time where policing shifted to become a public service and efforts to increase professionalism began. It makes sense that the Code of Ethics includes the principles of service, protection, respect, and fairness.



In contrast, integrity is adherence to ethical principles. Rather than saying one thing and then doing another, integrity is consistency between beliefs, decisions, and behavior. Integrity is a personality trait that is closely aligned with ethical decision-making.

The Ethics Problem

Each year, over four hundred new Oregon police officers stand before their family, friends, and agencies, raise their right hand, and recite the criminal justice code of ethics at their Basic Police Academy graduation. These new officers have worked hard to get here. They have passed intensive background checks. They have completed a physically and academically rigorous academy. They have sacrificed. These new officers enter the profession with high integrity and noble intentions. Wearing the badge is an honor they have earned.

Also, each year an alarming number of officers will tarnish the badge with allegations of misconduct, dishonesty, misuse of authority, excessive or unnecessary use of force, and unethical investigative practices. A number of officers will be arrested for committing crimes themselves. In Oregon, about twenty officers will have their hard-earned police certifications revoked for these behaviors each year. Each of these professional standard's cases will contribute to eroding public trust.

How does someone go from a proud new officer reciting the code of ethics to decertification? Are these people slipping through cracks in the process? Are departments hiring unethical people? Research shows this is not the case. Studies have found that recruits coming into the police academy have high integrity and enter the profession with noble intentions. However, after just one year on patrol, officers show lower commitment to ethical principles.

Ethical Risks of Police Work

What contributes to the erosion of an officer's ethical principles? Research tells us that the nature of police work is morally challenging. Officers are regularly confronted with moral dilemmas and ambiguity, which can lead to lapses in ethical behavior. These can range from the mundane to egregious.

> *The ethical dilemma faced by many police officers is in adapting the powers they are endowed with by the state to the way in which they carry out the state's justice.*
>
> *- From Police Ethics by Michael Caldero, Jeffrey Dailey, and Brian Withrow*

The Noble Cause

There are a number of factors that can influence the ethical decision-making of police officers, including their personal values, training and education, the culture of their department, and the laws and policies that govern their actions.

The very cause that brings many new officers into the profession can itself be a risk factor for unethical behavior. The noble cause is a moral commitment to make the world a safer place to live.

Noble cause corruption refers to the idea that police officers may sometimes be tempted to engage in unethical behavior in order to achieve what they see as a "noble" or worthy goal, such as reducing crime, protecting the public, or upholding the law. This type of corruption can take many forms, including selectively enforcing laws, lying or exaggerating the facts of a case, or using excessive force.

Noble cause corruption can be a significant issue in policing, as it can erode trust in law enforcement and undermine the rule of law. It can also have serious consequences for the individuals affected by the corrupt behavior, such as wrongful arrests or mistreatment.

To address noble cause corruption, it is important for police departments to establish strong ethical guidelines and a culture of integrity, and to hold officers accountable when they engage in unethical behavior. This might include providing training on ethical decision-making and the importance of upholding the law, as well as implementing systems for reporting and addressing misconduct. It is also important for police officers to be aware of the potential for noble cause corruption and to make a conscious effort to avoid it in their own behavior.

Consequences of Unethical Police Behavior

Unethical police behavior can result in a range of consequences. These can include community mistrust, dismissal of a criminal case, officer discipline, and even the end of an officer's career.

Discipline and Decertification

Oregon's Public Safety Professionals must possess the highest levels of moral fitness and remain above reproach throughout their career. To codify these ethical expectations, Oregon Administrative Rule 259-008-0300 lists circumstances which would lead to an officer losing their police certification.

Mandatory Revocation	Discretionary Revocation *Decided by the DPSST Board*

• A felony conviction
• Any offense involving the unlawful use, possession, delivery or manufacture of a controlled substance, narcotic or dangerous drug, except for criminal dispositions involving use or possession of marijuana which are reviewed as discretionary cases
• A domestic violence conviction
• A bias or hate crime conviction
• Registering as a sex offender
• Being discharged for cause:
  o Obtain false confessions, make false arrests, create or use falsified evidence, deprive a person of their legal rights, compel a person to abstain from doing or to do any act that the person has a legal right to do or not do, gain advantage for a public safety agency or for personal gain
• Discriminating against someone based on perception of person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age, or any protected class
	• Dishonesty
	  o Intentional conduct that includes untruthfulness, dishonesty by admission or omission, deception, misrepresentation, falsification or reckless disregard for the truth
	• Misuse of Authority
	  o Intentional conduct that includes the use or attempted use of one's position or authority as a public safety professional to obtain a benefit, avoid a detriment or harm another
	• Misconduct
	  o Includes conduct that violates criminal laws, conduct that threatens or harms persons, property or the efficient operations of any agency, or discriminatory conduct
	
	Discriminatory conduct includes a pattern of conduct or a single egregious act that evidences knowing and intentional discrimination based on the perception of a person's race, color, religion, sex, sexual orientation, gender identity, national origin, disability, age or any protected class as defined by state or federal law, and would lead an objectively reasonable person to conclude that the public safety professional cannot perform the duties of office in a fair and impartial manner.
	
	Discretionary review includes a number of conditions, including conduct that violates the standards of academy student conduct (OAR 259-012-0010).

Part 2- Ethical Decision Making

Learning Outcomes:

1. Describe the role of dual system thinking in ethical decision making.
2. Contrast the philosophies of deontological and utilitarianism ethics as applied to policing.
3. Describe how the personality trait sensation seeking can influence ethical decision making in policing.
4. Understand the influence of an officers' emotional state on ethical decision making.
5. Describe the role in officer wellness and resiliency in ethical decision making.
6. Explain the role of organizational culture on ethical decision making.

Understanding the process in which individuals engage in ethical decision making and the factors influencing this process is an important part of making ethical decisions. This information can help us understand why we see a lower commitment to ethical principles after an officer has spent some time on the job.

Ethical Decision Making

Officers can improve their ethical decision-making by seeking guidance from ethical frameworks and principles. These frameworks can provide a useful starting point for thinking through the ethical implications of different actions and can help officers to make more informed and reasoned decisions.

Dual Process Thinking

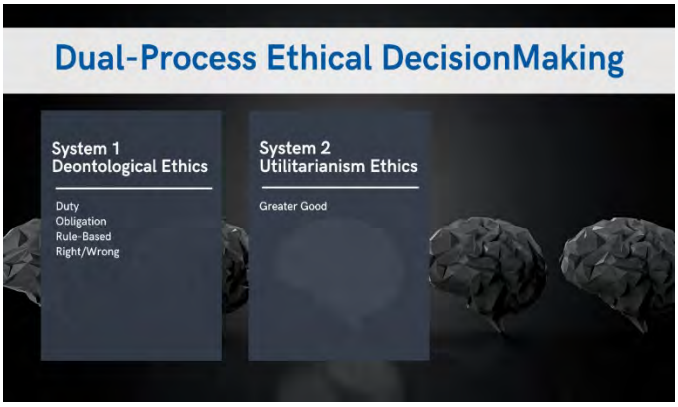
Dual process thinking refers to the idea that there are two distinct ways in which the human brain processes information and makes decisions. These are known as System 1 and System 2 thinking.

Review from Bias:

- System 1 thinking is fast, automatic, and intuitive, and is often used for simple, routine tasks. It relies on mental shortcuts, or heuristics, to make decisions quickly and efficiently.

- System 2 thinking, on the other hand, is slower, more deliberative, and more logical. It is used for more complex tasks that require greater attention and effort.

In the context of ethical decision-making, dual process thinking suggests that people may use both System 1 and System 2 thinking when making ethical choices. For example, they might rely on their intuition and automatic responses (System 1) to make quick decisions in a crisis, but then use more deliberative and logical thinking (System 2) to reflect on the ethical implications of their actions. Overall, dual process thinking can help to explain how people make ethical decisions and how they can be influenced by factors such as emotion, experience, and cognitive biases.



Ethical Frameworks

Officers can improve their ethical decision-making by seeking guidance from ethical frameworks and principles, such as deontological ethics or utilitarianism. Deontological ethics and utilitarianism are two different ethical approaches that attempt to answer the question of how one ought to act. These frameworks can provide a useful starting point for thinking through the ethical implications of different actions and can help officers to make more informed and reasoned decisions.

The System 1 (intuitive) process leans toward deontological ethics, or decisions based on duty, rules, or obligation. This approach views actions as either right or wrong without any regard to contextual features.	The System 2 (deliberative) process results in more utilitarianism ethics approach, or that which produces the greatest good for the greatest number. With this approach, the most important consideration is the consequences or outcome of an action.

Deontological ethics, also known as duty ethics or deontology, is a moral philosophy that holds that the moral value of an action should be based on whether it adheres to a set of rules or duties. Deontologists believe that certain actions are morally right or wrong independent of their consequences, and that people have a moral duty to follow these rules.

In the context of policing, deontological ethics can be a useful framework for guiding officer behavior and decision making. For example, police officers have a duty to protect and serve the public, to

uphold the law, and to respect the rights of individuals. These duties provide a clear set of rules and principles that officers can follow in order to act ethically.

However, deontological ethics can also be challenging to apply in the context of policing, as officers may face situations where it is difficult to determine the specific duties and rules that apply. For example, an officer may be faced with a situation where two of their duties conflict, such as the duty to protect the public versus the duty to respect the rights of individuals. In these cases, officers may need to use their judgment and consider the specific circumstances of the situation in order to make an ethical decision.

Utilitarianism, on the other hand, is an ethical framework that evaluates the rightness or wrongness of an action based on its consequences. According to utilitarianism, the most ethical action is the one that maximizes overall well-being for the greatest number of people. In the context of policing, a utilitarian approach might focus on the overall impact that a particular action or policy has on society. For example, an officer who follows utilitarian principles might make decisions that are intended to reduce crime and promote public safety, even if those decisions might be unpopular or have negative consequences for certain individuals or groups.

One potential criticism of a utilitarian approach to policing is that it might lead to a focus on short-term gains, rather than long-term social welfare. For example, a police officer who follows a utilitarian approach might prioritize reducing crime in the immediate future, even if doing so involves using questionable tactics or violating the rights of individuals.

Overall, utilitarianism can be a useful ethical framework for guiding police actions, but it is important for officers to consider the long-term consequences of their actions and to balance the needs of the community with the rights and interests of individual citizens.

Influences

Our ethical decision-making is influenced by a number of individual and situational factors. These include the traits, biases, and emotions of the individual, and the characteristics of the task and surrounding environment.



Individual Factors

There are many individual factors that influence ethical decision making. These include personality traits, cognitive biases, beliefs, skills, learned behavior, and emotional states. There are numerous examples which can fall under this large category. This section will highlight just a few, including sensation seeking, overconfidence, social proof, moral licensing, and the emotions associated with job frustration. Many of these share similarities with the cognitive biases previously discussed. Consider how each could influence ethical decision making in policing.

Personality traits are characteristics that are stable over time and define an individual's behavior. They can influence how a person makes ethical decisions because they can shape a person's values, attitudes, and beliefs. For example, a person who is conscientious and self-disciplined is more likely to consider the long-term consequences of their actions and make decisions that are consistent with their values. On the other hand, a person who is more impulsive and reckless may be more prone to making unethical decisions in the heat of the moment.

Additionally, some personality traits can make a person more susceptible to ethical lapses. For example, a person who is highly narcissistic may be more likely to prioritize their own self-interest over the well-being of others, leading them to make unethical decisions. A person who is low in empathy may also be more likely to disregard the feelings and needs of others when making decisions.

Sensation Seeking

Sensation seeking is a personality trait that refers to a person's desire for novel and exciting experiences. People who score high in sensation seeking tend to be more impulsive and risk-taking, and they may seek out thrilling activities or engage in risky behaviors. The American Psychological Associations states that high sensation-seeking reaches into every aspect of people's lives, including engagement in risky sports, relationship satisfaction before and during marriage, driving habits, and job choices among others. Despite its association with risky behavior, sensation-seeking is a normal personality trait. Sensation seeking plays a role in bringing people into high-stress occupations such as law enforcement, firefighting and emergency room medicine.

Sensation seeking can influence ethical decision making because people who score high in this trait may be more prone to making impulsive decisions without fully considering the consequences. They may also be more likely to take risks, even if those risks are unethical or illegal. On the other hand, people who score low in sensation seeking tend to be more risk-averse and may be more likely to make decisions that are safer and more predictable. They may be less likely to engage in risky or unethical behaviors.

Overconfidence

Overconfidence is a personality trait that refers to a person's excessive belief in their own abilities or judgment. People who are overconfident may overestimate their own knowledge or skills, leading them to make decisions that are not grounded in reality. This can be particularly problematic in situations where accuracy and attention to detail are important, such as in decision making that involves ethical considerations.

Overconfidence can influence ethical decision making in a number of ways. A person who is overconfident may be more likely to take unnecessary risks, as they may believe that they are more capable of handling challenges than they actually are. They may also be less likely to seek out the advice or perspective of others, as they may believe that they already have all the necessary knowledge or skills to make a good decision. This can lead to a lack of diversity in decision making and can contribute to unethical outcomes. Overconfidence may also negatively influence our moral awareness. People tend to believe they are more ethical than others. They assume they have good character and will do the right thing when an ethical challenge comes up. This can lead to taking ethical issues lightly. It can cause one to stop thinking about the decision or its consequences or overlook if there is an ethical consideration involved. Overly confident people become unwilling to examine their own beliefs and instead generate risky beliefs such as “This doesn’t apply to me” or “You either have ethics, or you don’t”.

Review Bias:

- Overconfidence Bias- The tendency to place too much faith in your own knowledge, abilities, and ideas.
- Confirmation Bias- The tendency to look for information that confirms your existing beliefs and reject data that goes against what you believe.

Confidence is a desirable characteristic, especially in policing. While both under confidence and overconfidence can be problematic, overconfidence is more directly associated with unethical behavior.

Moral Licensing

Moral licensing is a psychological phenomenon that occurs when people allow themselves to engage in unethical behavior because they have previously engaged in good deeds. Essentially, they use their past good behavior as a "license" to behave unethically in the present. This can influence ethical decision making because people may be more likely to make unethical decisions if they feel that they have "earned" the right to do so through their previous good deeds.

For example, if a person has made a number of charitable donations in the past, they may feel that they have "earned" the right to behave unethically in other areas of their life. They may be more likely to make unethical decisions at work, such as taking credit for someone else's ideas or cutting corners on a project. On the other hand, if a person has not engaged in any good deeds recently, they may be more likely to make ethical decisions in order to maintain their sense of morality.

Review Bias:

- Fundamental Attribution Error- The tendency to attribute someone else's behaviors to their moral character but justifying and rationalizing our own behaviors. Others do bad things because they are bad people. We do something because of a situational factor.

Moral licensing is a type of cognitive bias which enables people to behave badly without threatening their self-image of being a good, moral person. The prior good deed provides a "license" that allows one to perform morally questionable behavior later on. The occasional bad thing seems justifiable because we have done so many good things.

Loyalty

Loyalty and ethics are two important values that can sometimes come into conflict with each other. Loyalty refers to a sense of commitment or devotion to a person, group, or cause, while ethics refers to a set of principles or values that guide how a person should behave.

In some situations, loyalty to a person, group, or cause may lead a person to prioritize that loyalty over their ethical values. For example, a person may feel loyal to their employer and therefore be inclined to go along with unethical behavior in order to protect their job or to further the goals of the organization. On the other hand, a person may prioritize their ethical values over loyalty and choose to speak out against unethical behavior, even if it puts their loyalty at risk.

It's necessary to strike a balance between loyalty and ethics in order to make sound, ethical decisions. It's important to be loyal to the people and causes that are important to us, but it's also important to be true to our values and to do what we believe is right, even if it means going against the wishes of those, we are loyal to.

The Fear of Mistakes

It is not always easy for police officers (or anyone for that matter) to know what to do in an ethically ambiguous situation. Sometimes, mistakes will happen. The fear of mistakes is a common fear that can lead to feelings of anxiety, stress, and low self-esteem.

In the context of ethical decision making, fear of mistakes can affect how people approach and make decisions. For example, a person who is afraid of making mistakes may be hesitant to speak up or to voice their concerns about an ethical issue, even if they believe that it is the right thing to do. They may be afraid of being perceived as incompetent or of being punished for their mistake.

It is important to recognize and address the fear of mistakes in order to make ethical decisions effectively. This can involve things like seeking support from others, setting realistic goals, and adopting a growth mindset, which is the belief that mistakes and failures are opportunities to learn and improve. It can also be helpful to focus on the long-term consequences of a decision rather than the fear of making a mistake in the short term.

Emotional States

Emotional states refer to the emotions that a person is experiencing at a given time. Emotions can have a powerful influence on a person's thoughts, behaviors, and decision-making processes. In the context of ethical decision making, emotional states can influence the choices that a person makes. A person who is feeling angry or distressed may be more likely to make decisions that are driven by their emotions, rather than by logical reasoning or a consideration of the long-term consequences. On the other hand, a person who is feeling calm and collected may be more likely to make well-thought-out, ethical decisions.

The International Association of Chiefs of Police (IACP) states job frustration may contribute to the deterioration of police ethics. Sources of job frustration are commonplace in policing, and can arise from the work itself, disillusionment with the criminal justice system, stress on personal relationships, and organizational factors. Frustration leads to cynicism, and anger. These in turn can result in reduced performance, corruption, and even excessive uses of force.

Numerous professional fields including healthcare, business, and legal have all identified the connection between emotional intelligence (EI) and ethical decision making. Recall the personal EI competencies of self-awareness (emotional awareness, accurate self-assessment, and self-confidence) and self-management (self-control, transparency/trustworthiness, conscientiousness, adaptability, achievement orientation, initiative, and optimism).

Research suggests:

- The more skilled a person is in dealing with their emotions, the more likely they are to make ethical decisions.
- People who experience higher levels of negative emotions make less ethical decisions.
- Negative emotions resulting from frustrating work situations can lead to greater rationalization of unethical work behaviors.
- Low self-control is significantly related to police misconduct.
- Anger and frustration are key negative emotions linking stress to misconduct.

Officer Wellness and Resiliency

Wellness and resiliency are related concepts that refer to an individual's physical, mental, and emotional health and their ability to cope with stress and adversity.

Wellness refers to an individual's overall state of health and well-being. It involves maintaining a healthy lifestyle, which includes things like eating a balanced diet, exercising regularly, getting enough sleep, and managing stress. People who are well tend to be more productive, more focused, and more able to make sound decisions.

Resiliency refers to an individual's ability to bounce back from adversity and to cope with challenges and stress. People who are resilient tend to be more flexible and adaptable, and they are better able to handle change and setbacks. They may also be more likely to seek out support and resources when needed.

Both wellness and resiliency can influence ethical decision making because they can affect a person's mental clarity and ability to think critically. People who are well and resilient are more likely to be able to make well-thought-out, ethical decisions because they are able to consider the long-term consequences of their actions and make choices that align with their values. On the other hand, people who are not well or who are not resilient may be more prone to making impulsive or unethical decisions because they are unable to think clearly or cope with stress.

Situational Factors

Situational influences refer to the specific circumstances or conditions that exist at the time a decision is made. These influences can affect how a person thinks, feels, and behaves, and they can influence the choices that a person makes.

For example, a person may be more likely to make an unethical decision if they are under a great deal of pressure to meet a deadline or if they are facing financial or personal problems. On the other hand, a person may be more likely to make an ethical decision if they are in a supportive and positive environment.

Situational influences can also include external factors such as the culture or expectations of an organization or community. For example, if an organization has a strong culture of ethical behavior, its members may be more likely to make ethical decisions. On the other hand, if an organization has a culture that tolerates or even encourages unethical behavior, its members may be more likely to make unethical decisions.

Social Proof

Social proof is a phenomenon that occurs when people look to the behavior of others to determine their own behavior in a given situation. People are more likely to engage in a behavior if they see others around them engaging in that same behavior. Social proof theory says when we are uncertain about what to do, we often follow the crowd. We are especially likely to follow others if we identify with them, see them as knowledgeable (even slightly more so) about a situation, or if there are a number of people who find the idea to be correct. This can influence ethical decision making because people may be more likely to follow the lead of others, even if those others are making unethical decisions.

For example, if an individual is part of a group that is engaging in unethical behavior, such as engaging in insider trading or cheating on a test, the individual may be more likely to go along with the group and participate in the unethical behavior. On the other hand, if the individual is part of a group that is acting ethically, they may be more likely to make ethical decisions themselves.

Review Bias:

- Bandwagon Bias- The tendency to form an opinion or take action because others have already done so.
- In-Group Bias- The tendency to support or believe someone within one's own social group over an outsider.

Organizational Environment

Organizational culture refers to the shared values, beliefs, and practices that shape the behavior of individuals within an organization. In the context of policing, organizational culture can have a significant impact on the ethical behavior of police officers.

A positive organizational culture that emphasizes integrity, professionalism, and respect for the law can help to promote integrity, trust, and accountability, and can encourage officers to act in a way that is consistent with their duties and responsibilities as public servants. On the other hand, a negative organizational culture that tolerates or even rewards unethical behavior can contribute to misconduct and corruption.

Some negative organizational culture may not be readily apparent. Subtle factors could include normalizing unethical behaviors, such as condoning practices which break the rules to catch offenders (noble cause corruption), fostering "us versus them" mindsets, or modeling inappropriate behaviors through training officers. Additionally, research has found quantifying the job can be problematic. Organizations that overemphasize the number of tickets, contacts, arrests, calls responded to, response times, and crime statistics can make it more likely that officers will make unethical decisions.

It is important for law enforcement agencies to actively work to create and maintain a strong ethical culture that promotes integrity and trust, and to hold officers accountable for their actions. There are a number of ways that agencies can work to cultivate a positive organizational culture that supports ethical behavior. These can include:

- Establishing clear expectations and policies for ethical behavior
- Providing training and resources to help officers make ethical decisions
- Encouraging open communication and a sense of transparency within the organization
- Holding officers accountable for their actions and setting a high standard for ethical conduct

Part 3- Ethical Interventions

Learning Outcomes:

1. Describe the concept of active bystandership as it applies to policing.
2. Understand an officers' legal duty to intervene under the Civil Rights Act and Oregon Revised Statutes.
3. Identify ways officers can apply active bystandership in their organization.
4. Apply peer intervention strategies to a given situation.

Parts 1 and 2 of this series examined ethical risks of policing and influences on decision making. One of these influences was the role of organizational culture. This section will focus on the ethical actions of other officers in your environment and your response.

Ethical interventions are actions or strategies that are designed to address ethical problems or concerns. These interventions can be used in a variety of settings, including organizations, communities, and individual relationships. Ethical interventions can take many forms, depending on the specific ethical issue that is being addressed.

Active Bystandership

The unethical actions of officers anywhere affect officers everywhere. Unfortunately, other officers often know about these problematic behaviors and do not speak up. The International Association of Chiefs of Police (IACP) states there are many reasons officers do not intervene when they see or are aware of misconduct, some of these reasons include belief that loyalty means supporting a colleague's actions regardless of whether they are right or wrong, a fear of retaliation and backlash from peers, detriment to one's career, or the desire to not get involved.

Preventing Harm and Saving Careers Through Intervention Training

A visible recent example of a lack of peer intervention in an officer misconduct situation was the murder of George Floyd in Minneapolis, Minnesota, in May 2020. This improper use of restraint led to a man's death, and the failure of other officers to intervene—despite existing Minneapolis Police Department policies requiring intervention and ample time in which to do so—resulted in the removal of five working professionals from a department and a field that are struggling to recruit.

https://cops.usdoj.gov/html/dispatch/09-2021/ABLE_Intervention.html

Active bystandership refers to the idea of taking action when you witness a situation that is harmful or unethical, rather than remaining a passive observer. Ethics play a crucial role in the concept of active bystandership. Bystanders have a moral obligation to take action when they witness wrongdoing and failing to do so can be considered a form of moral complicity.

In the context of policing, active bystandership could involve an officer speaking out or taking action to prevent or intervene in unethical behavior by their colleagues. This can be especially important in situations where there is a power imbalance, such as when an officer is mistreating a member of the public. This might involve reporting the incident to a supervisor or to an independent oversight body, or it might involve directly intervening to stop the wrongdoing.

Duty to Intervene

Police officers have a duty to intervene when they witness another officer engaging in misconduct. This includes instances of excessive force, discrimination, or abuse of authority. This duty to intervene is based on ethical principles, as well as laws and department policies.

Officers have a legal duty to intervene on behalf of a citizen whose rights are being violated. In cases where officers do not intercede with their fellow officers to ensure citizens' rights are being protected, they are liable under the Civil Rights Act of 1871. Section 1983 applies to situations such as unjustifiable arrests, excessive force by a fellow officer, and any constitutional violation by a law enforcement official. If an officer does not act to intervene in a situation where a fellow law enforcement official is engaging in misconduct, they can face serious consequences for themselves and their career.

Oregon also has a Duty to Intervene statute. **ORS 181A.681** specifies a requirement for officers to intervene (when applicable) in another officer's misconduct and requires reporting of misconduct and violations of minimum standards.

Intervene	Report

Requires an officer to intervene to prevent or stop another officer engaged in any act the intervening officers knows or reasonably should know is misconduct
 	
• Unless the intervening officer cannot intervene safely
	Requires an officer who witnesses another officer engaging in misconduct OR a violation of the minimum standards for physical, emotional, intellectual and/or moral fitness for public safety personnel established under ORS 181A.410 to report:
	
	• Report as soon as practicable, but no later than 72 hours after witnessing the misconduct or violation to:
	  • A direct supervisor of the reporting officer;
	  • A person in the reporting officer's chain of command; or
	  • Dept. of Public Safety Standards and Training

Failure to intervene or report as outlined by ORS 181.681 is:

- Grounds for disciplinary action by the employer
- Action by DPSST to suspend or revoke the officer's certification

NOTE: The law also prohibits an employer from retaliating against an officer for intervening or reporting.

Peer Intervention

The IACP states policy alone cannot be effective unless it is backed by an organizational culture where peer intervention is actively encouraged and rewarded. Peer intervention is a type of intervention in which a person's peers, or individuals who are part of the same group or community, work together to address a problem or concern. Peer interventions can be used to address a variety of issues, including ethical problems and concerns.

Peer intervention programs are not unique to law enforcement. Hospitals, airlines, and corporations also have peer intervention training and policies in place to reduce misconduct. Additionally, peer bystander intervention strategies are used to reduce drunk driving, sexual misconduct, and bullying.

The premise of peer intervention is that officers can have a powerful and positive impact on the actions of their fellow officers. An agency culture that supports peer intervention means that officers are empowered to speak up, regardless of rank, to let a colleague know that they are about to make a mistake that could impact the officer, their family, their career, the agency's relationship with the community, and the community itself.

There are a number of ways that police officers can practice active bystandership. For example, they might:

- Speak out against unethical behavior or policies within their department
- Report incidents of misconduct to their supervisor or an internal affairs unit
- Intervene directly to stop an unethical or inappropriate action by a colleague
- Provide support and resources to colleagues who may be struggling with ethical issues

How to Intervene

Upon assessing a situation and recognizing the need for an intervention, you'll determine whether this situation is urgent (e.g., 'do I need to step in right now to stop something bad from happening'?), and then take action so that a problem doesn't occur or to avoid the situation from being worse than it already is.

Taking action in the moment, when needed, is the key to being an active bystander.

- Don't stand back and watch
- Don't wait for misconduct to occur or get worse
- Don’t ignore the symptoms of a problem
- Being vigilant and proactive is the best way to prevent issues from becoming problems.

The IACP provides the following five stages of intervention:



Stage One – See the Problem

While some situations are obvious, others might be more subtle. It is important to know that even the most subtle of behaviors require early intervention to mitigate escalation.

Stage Two – Determine Whether Action Is Required

Some problematic situations might simply require acknowledgement, but many will necessitate intervention. Determining that action is needed is often based on the situation and should be clearly delineated by the agency.

Stage Three – Decide to Take Personal Responsibility to Act

As someone sworn to protect the community, taking on personal responsibility to act is not only expected, but also one of the many duties of the role. Departmental Duty to Intervene policies should also be considered when deciding to act.

Stage Four – Determine How to Intervene

Although intervention actions depend on the specific situation, officers can actively intervene when a colleague is engaging in misconduct by using one or more of the "3 D's":

Distract- Redirect the individual's attention.	Examples: • Redirecting the conversation • Using tactics to de-escalate the situation
Direct- Address the misconduct directly and step in to intervene; depending on the relative rank of the officer engaging in misconduct, this may include giving them direct commands to cease the behavior.	Examples: • Professionally confront peers • Physically step in to stop use-of-force or misconduct • Call out problematic statements • Request a supervisor of greater rank than the officer involved respond to the scene • Give orders to cease behavior (when appropriate)
Delegate- Appoint someone else to take an action.	Examples: • Tell another officer present to help the officer hold the suspect in a better way • Tell another officer present to call for medical back-up if the suspect appears to need medical assistance • Instruct another officer to request that a supervisor of greater rank than the officer involved respond to the scene

How to intervene with a superior:

- Present solutions, not problems: Suggest an alternative way of succeeding.
- Support the department's mission, vision, and professionalism: Connect your concerns back to supporting the department's success. It shows a commitment to the profession and to the community. Have their back: Let them know when something might reflect poorly on them and demonstrate that you are interested in supporting their career as well as your own.

Stage Five – Take Action

Sometimes a situation clearly requires action, and it is your obligation to do so.

Basic Police Academy

Evidence Collection and Forensics



Criminal Investigations: Evidence Collection and Forensics

Instructional Goal:

This course is deigned to introduce a new officer to protocols for collecting and submitting evidence for analysis.

Learning Outcomes:

Upon completion of instruction, student will be able to:

1. Identify types of evidence in a given situation.
2. Identify proper evidence handling and collections procedures.

Content Outline:

Part 1: Introduction to Criminal Investigations (2 hours)

Part 2: Investigative Interviewing (4 hours)

Part 3: Evidence Collection (2 hours)

Part 4: Criminal Investigations Lab (3 hours)

Part 5: Complex Investigations (2 hours)

Part 3 Content Outline:

- Forensic Science
- Types of Evidence
- Evidence Handling and Collection
- Chain of Custody
- Digital Evidence
- Photographs



A crime can only be solved through evidence: a witness, a confession, or physical evidence. A criminal investigation refers to the process of collecting information (or evidence) about a crime in order to:

1. Determine if a crime has been committed
2. Identify the suspect
3. Apprehend the suspect
4. Provide evidence to support a conviction in court

This session focuses on the identification and collection of physical evidence in a criminal investigation.

What is Evidence?

Evidence refers to information or objects that may help you solve your case. Some evidence may be simple to identify and collect. Other evidence may be more complex, hidden, or requiring specialized collection techniques.

Examples of varying types of evidence:

- Photographs/Videos
- Measurements
- Fingerprints
- Blood/Urine/Breath Samples
- Items for comparison
- Digital- Cell Phone/Computer/Etc.

Evidence has multiple purposes in an investigation. It can help to reconstruct the crime, prove an element of the crime, or link the suspect/victim/witness to the crime or crime scene. Additionally, it can exclude a suspect, corroborate, or disprove a statement or involvement, provide investigative leads, or help secure a search warrant.

Evidence and the Purpose of Investigations

In Part 1, you covered criminal investigation failures:

- Wrongful conviction (begins with a wrongful arrest)
- Unsolved crime that should have been solved
- Ignored crime

Taking into consideration the value of evidence in each investigation can help avoid these failures. Consider the value of each of the following:

- A statement from a witness to the crime identifying the suspect
- Security camera footage of the suspect committing the crime
- The suspect's fingerprint is found at the crime scene
- The suspect is found to be in possession of tools that would have been used to commit the crime
- The suspect's DNA is found on the victim

Enough evidence is needed to establish probable cause (more likely than not) to support making an arrest or requesting a search warrant. However, to prevent an investigation failure, or compiling insufficient evidence for a rightful conviction, officers should conduct thorough investigations including seeking a higher standard of evidence.

The Quality of Evidence

There are two general types of evidence, direct and indirect. Direct evidence demonstrates a fact. No inferences or presumptions are needed to draw a conclusion. In contrast, indirect evidence is information that requires inferences to draw a conclusion. Indirect evidence is sometimes referred to as circumstantial evidence and is less valuable in establishing proof, but this does not mean it is without value.

All evidence, including direct evidence, has an error rate: An eyewitness might misidentify a suspect, a person may make a false confession, or a scientific test can produce a false positive. In each investigation, it is necessary to determine not only how strongly the evidence supports the guilt of a suspect, but also the viability of other explanations for the evidence. Additionally, evidence must be evaluated to determine the likelihood that it is true or accurate. Evidence is not more reliable simply

because the investigator wants it to be, and is not less reliable because it is inconsistent with the prevailing investigative theory. These cognitive biases lead to inaccurate evidence evaluation and may result in an investigation failure.

Corroborative Evidence

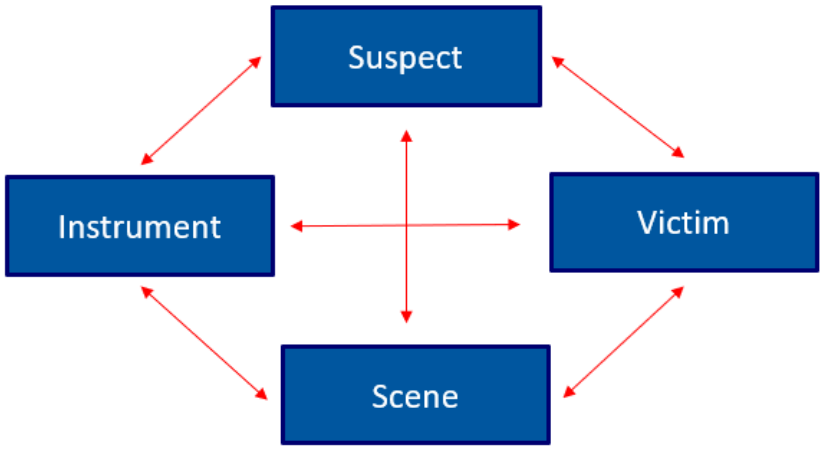
A thorough investigation calls for officers to look beyond the minimum. Corroborative Evidence is evidence that supplements evidence already collected. It supports the meaning, validity, or truthfulness of another piece of evidence. Examples:

- An independent witness provides a statement that corroborates the account given by the victim.
- DNA belonging to the suspect is found on the victim, corroborating the victim's statement.
- The suspect's fingerprints are collected from a burglary scene corroborating a witness statement reporting seeing the suspect running from the scene with stolen items.

Physical Evidence

In addition to statements, another type of evidence is physical evidence. Physical evidence describes the more tangible evidence related to a crime. Note this does not mean the evidence is easily visible. Often physical evidence requires forensic analysis to be useful, for example fingerprints or DNA.

Physical evidence can help officers establish the elements of the crime. Additionally, it can help link two people, places, or objects. This linking is the foundational principle of forensic science. Locard's Exchange Principle states that whenever two objects come into contact there will be an exchange of materials. A suspect can leave evidence at the scene or carry evidence away with them. Examples: DNA, fingerprints, footprints, hair, skin cells, blood, bodily fluids, pieces of clothing, fibers, and more.



There are numerous types of evidence that may be applicable to your investigation. Some types of evidence will require the assistance from the Oregon State Police Forensic Services Division (OSPFSD). See the OSPFSD Physical Evidence manual for detailed information regarding collection, packaging, and submission of specific evidence types.

The complete OSPFSD Physical Evidence Manual can be located here:
https://www.oregon.gov/osp/Docs/PhysicalEvidenceManual.pdf

The following material is from the OSPFSD Physical Evidence manual.

Types of Evidence

- Biological Evidence
  - Processing of physical evidence for biological material (e.g., blood, semen, saliva) and the sampling of Sexual Assault Forensic Evidence (SAFE) kits for DNA analysis.

- Latent Prints
  - The physical and chemical processing of items to develop and preserve friction ridge detail. Friction ridge detail developed is subsequently compared to a person or persons of interest.

- Toxicology
  - Analysis of biological fluids (e.g., urine) for controlled substances, common pharmaceuticals and poisons.

- Firearms & Tool Marks
  - Screening and comparisons of bullets and cartridge cases, firearm functionality, caliber determination of cartridge cases and projectiles, proximity determination tests and restoration of obliterated markings.

  - Tool mark analysis compares marks left during the commission of a crime to test marks from a tool possibly used in the crime.

- Controlled Substances
  - Analysis of physical evidence to determine if a controlled substance is present.

- DNA Analysis
  - Analysis of biological evidence for the presence of DNA.
  - When a DNA profile is developed it can be compared to relevant standards and/or searched in the CODIS database.

- Trace Evidence
  - The screening for and analysis of ignitable liquids, explosives, fibers, glass, paint, hair, footwear and tire impressions, physical match and miscellaneous evidence including but not limited to poisons and inhalants.

Biological Evidence Identification and Collection

Biological fluids such as blood, semen, and saliva are frequently encountered as physical evidence in many types of criminal investigations such as homicides, sexual assaults, assaults, robberies, and burglaries.

Current DNA technology allows for very small amounts of sample to be analyzed. Because of this, inadvertent contamination of the evidence is possible if you do not take proper precautions.

Guard against contamination:

- Wear gloves and, as appropriate, a mask while collecting biological samples.
- Change gloves frequently or anytime your gloves are contaminated with biological material.
- Avoid touching the tips of cotton swabs with your fingers or to other unintended surfaces.
- Avoid talking over swabs, blowing on swabs to make samples dry faster, etc. Consider purchasing individually wrapped sterile swabs.
- Do not touch the water dropper bottle tip to any surface or evidence.
- Clean tools (such as scissors or tweezers) that you might use to collect evidence with a dilute bleach solution or product containing bleach. Alcohol should be used to rinse residual bleach from those items that will come in direct contact with the evidence. Do not use commercial

disinfectant products (such as Clorox wipes) for the purposes of decontamination unless they contain bleach or are designed specifically for laboratory surface decontamination.

- Do not lick envelope seals.

In general, wet or moist biological evidence should be dried and packaged into clean and previously unused paper containers (e.g., envelopes, bags, cardboard boxes). Do not wrap the evidence first in plastic and then inside paper (or vice versa) as these conditions could cause the evidence to degrade. Package each item separately and properly label and seal the container. All evidence containing known biological fluids should be marked with appropriate biohazard labels.

Blood Evidence. Blood evidence is common in violent crimes and property crimes. Bloodstains may appear red, red/brown, tan, gray, or yellowish. Bloodstains may be undetectable to the unaided eye depending upon evidence and stain characteristics. If it is reasonable to transport the stained object, the entire item may be collected and submitted to the laboratory. Be careful to seal all openings of a package since dried blood may flake off of an object. If the stained object is not being transported, collect the blood by swabbing or cutting.

Saliva Evidence. Saliva stains are not usually evident from a visual examination. However, certain types of evidence frequently contain traces of saliva (e.g., cigarette butts, drinking containers, adhesive surfaces of envelopes, chewing gum, bite marks, masks, etc.). If the stained object is transportable, the item may be collected and submitted to the laboratory. If it is not transportable, such as bite marks on a body, collect the saliva stain using the double swab technique.

Semen Evidence. When the perpetrator of a sexual offense is a male, semen stains may be found on the victim as well as on clothing, bedding, rags, upholstery and other objects. Semen stains may appear white, off-white, yellow, tan or colorless and may have a crusted appearance. Semen stains may be undetectable to the unaided eye depending upon evidence and stain characteristics. Consider collecting the suspect's underwear, pants, or other clothing items, as victim DNA could also be transferred to the suspect or the suspect's clothing.

Collection Guidelines:

- Collect all suspected stained material (e.g., bedding, underwear or other clothing, etc.).
- Each item of evidence should be packaged separately and carefully to prevent loss of any trace evidence (e.g., hairs) that may be present.
- Evidence with damp stains should be air dried.
- Consider marking the location of a damp stain by circling it with permanent marker, as it may not be visible once it has dried.
- Clean paper should be spread under the item to catch any debris, which may be dislodged during the drying process. Fold and submit the paper along with the piece of evidence.
- Clean paper should be placed between items hanging next to each other to prevent cross-contamination.
- Package each item separately in paper bags or envelopes, along with any paper used. If the semen stain is on an object that cannot be easily submitted to the laboratory, contact your local laboratory for collection instructions.

Adult and Child Sexual Assault Forensic Evidence (SAFE-A and SAFE-C) Kits. Biological evidence associated with the body of a potential sexual assault victim needs special attention. The victim needs to be transported to a medical facility for a sexual assault examination. This should be done as soon as possible in order to preserve what remains of the biological evidence and to document any physical trauma. Consider having photographs taken of any physical trauma and collecting blood and/or urine for toxicology testing as well. Attending medical personnel should collect the evidence by using the appropriate Sexual Assault Forensic Evidence Kit provided by the Forensic Services Division.

In general, if more than 120 hours has elapsed from the time of the sexual assault to the time of the medical examination, the chances of finding semen evidence in the body of a living victim are greatly diminished, although it may still be possible to detect male DNA. However, it may be prudent to collect a SAFE Kit if you have any doubts or concerns about the timeline. This time range does not apply to deceased victims; it is recommended that you collect a SAFE Kit from deceased victims regardless of the elapsed time. Bathing, showering, and douching by the victim does not necessarily eliminate the possibility of finding semen, saliva, or trace evidence on the body. A SAFE Kit should still be collected under these circumstances. Undergarments, worn by the victim during and/or immediately after the

assault, are also good sources for collecting biological and trace evidence. Package each clothing item separately.

DNA Analysis

Since blood, semen, and saliva originate as liquids, they can quickly coat or penetrate surfaces on which they are deposited and may be difficult to remove once dried. Because no two humans are genetically the same (except for identical twins), these body fluids are unique to the person from which they originate. Performing DNA analysis on these fluids or stains can result in a genetic profile which can then be compared to DNA profiles obtained from reference standards or from other items of evidence. The nature of DNA analysis lends itself to a computerized identification system; thus, DNA profiles from qualifying items of evidence can be compared to the COmbined DNA Index System (CODIS), a database that maintains qualifying DNA profiles from convicted offenders, items of evidence, unidentified human remains, and missing persons.

See the OSPFSD Physical Evidence Manual for a more comprehensive list of types of DNA analysis.

DNA Standards

DNA standards should be obtained from all listed individuals in a case who may have contributed DNA to evidentiary items if those items will be referred for DNA analysis. This includes victim and suspect standards, and, in sexual assault cases, standards from any recent (within 5 days) consensual sexual partner(s). Elimination standards are especially critical when an item of evidence is collected from person who can reasonably be assumed to have left their own DNA behind on an item, such as standards from the wearer of an item of clothing (when a profile foreign to the wearer is the goal of analysis) or standards from the regular driver(s) of a vehicle when submitting swabs from the steering wheel of a stolen vehicle. These standards are compared to the DNA profiles obtained from the evidence to determine inclusions and exclusions. DNA profiles from convicted offenders will not be used in lieu of DNA standards for direct comparison to evidence profiles.

For living individuals, oral swabs (also referred to as buccal swabs) are recommended for routine use as a DNA standard; however, blood samples are also acceptable. Blood standards are preferred as a DNA standard for deceased individuals that are not severely decomposed or have not recently received

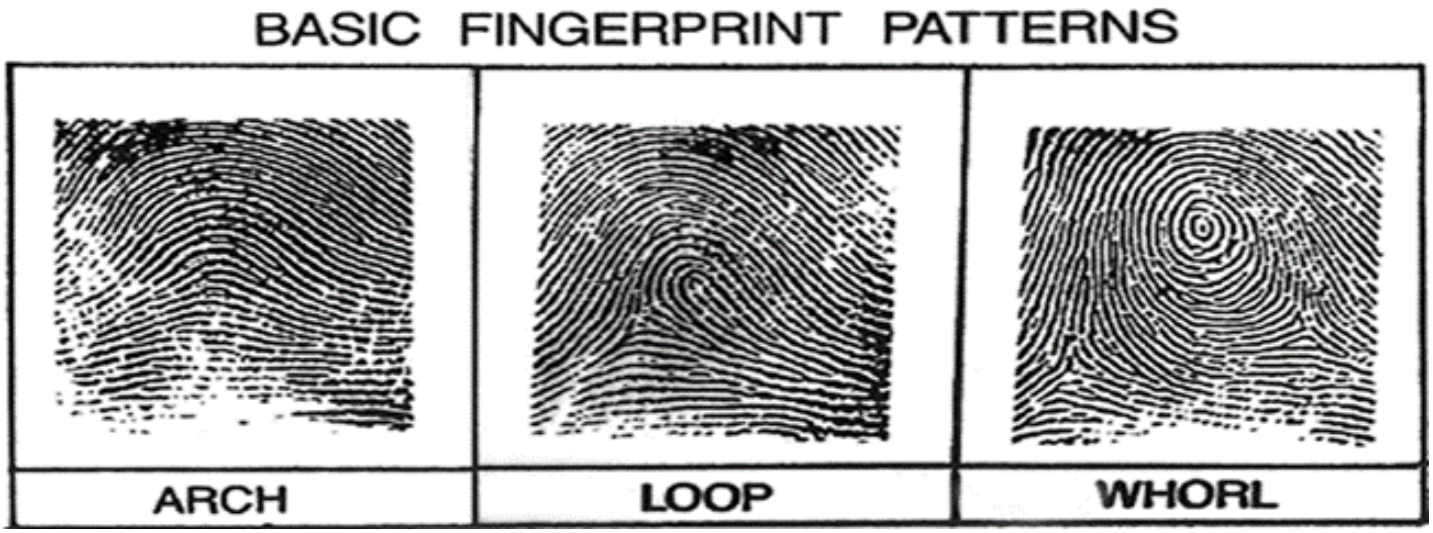
a blood transfusion. For recently transfused decedents, an oral swab standard is an appropriate DNA standard. It is not recommended to swab the bleeding wounds of a living individual for submission as a DNA standard in lieu of collecting oral swabs. Depending on the activity that led to the wounds, this type of sample could yield a mixture of DNA from more than one individual, no longer qualifying the sample for use as a DNA standard.

Collecting Oral Swab Standards

1. Vigorously swab the inside of the mouth until 2-4 swabs are collected. The individual may do this him/herself under your direct supervision.
2. Allow the swabs to air dry thoroughly.
3. Seal in a paper envelope labeled with the individual's name, date, and "Oral Swab Standard." The swabs collected from one individual should be packaged together.

Latent Print Evidence Identification and Collection

On the surface of everyone's feet, toes, hands and fingers are ridges of skin. The ridges consist of lines that form patterns and smaller details known as minutiae. Fingerprints develop in utero and do not change during a persons' lifetime except to become larger. Each fingerprint is unique. Not only will no two people have the same fingerprint but also one person will not have two fingerprints that are the same. Not even identical twins have identical fingerprints.



There are three ways fingerprints may be present at a crime scene:

1. Latent Print- Not readily visible, requires development to make visible
2. Patent Print- Can be seen, does not need additional development
3. Plastic Print- Can be imbedded into a material, can be photographed or cast

Most crime scene evidence has the potential to reveal comparable latent prints. Officers should handle all evidentiary items with caution (i.e. with gloves and minimal contact) to prevent damaging potential evidence.

To Locate Latent Print Evidence, Check:			
All clean, smooth, non-porous surfaces	Points of entry/exit	Items used, handled, moved, or disturbed by suspect	Obvious target areas

Because latent prints are not readily visible, they require some form of development. Depending on the surface type, development may include the use of powder or a chemical process. In most circumstances, smaller items of evidence should be collected and submitted to the Lab for full sequential processing. In these circumstances, no processing should be conducted in the field unless absolutely necessary.

Latent print evidence should be packaged in a way to minimize the movement of the object without being too restrictive to cause wiping/rubbing (this may destroy latent prints present on the object).

Acceptable	Not Acceptable
DO use gloves to pick up items of evidence being careful not to wipe possible latent prints off the surface. DO minimize handling of evidence. DO fasten down large articles to a rigid surface to prevent shifting and contact with other items. DO put latent lift cards in envelopes and mark and seal. DO take complete and legible inked fingerprint and palm print standards of all subjects without SID numbers and/or FBI UCN numbers who may have handled the evidence. DO include full name, date of birth, and SID numbers for all involved persons on the Form 49. DO place evidentiary papers and documents in manila envelopes, seal and submit to the laboratory	DON'T apply powder to obviously greasy, wet or bloody surfaces, or to prints left in dust or soft putty. Please photograph these latent prints or submit the items to the laboratory for processing. DON'T wrap nonporous items in cotton or cloth as they may damage or destroy latent prints. DON'T use "packing peanuts" directly in contact with the evidence. DON'T directly cover evidence to be examined for latent prints with evidence tape.

Latent Print Lifts. Larger objects that cannot be easily transported or packaged may be processed in the field. Processing may be performed by powdering the surface with an appropriately colored fingerprint powder and lifting any visible latent prints. If possible, a photo of the latent print should be acquired prior to lifting. Multiple prints in close proximity should be collected on the same lift, if possible. In some instances, one may need to perform multiple lifts of the same print to obtain the best quality lift. The location, orientation and any other pertinent information (e.g. multiple lifts of the same impression) should be recorded clearly on the back of the lift card. If it is unlikely that the latent print can be lifted, then attempt to collect and package the evidence for submission to the Laboratory.

Submission of Inked Prints for Comparison Purposes

The officer should take inked prints from all persons known to have handled the evidence (elimination prints) to permit comparison with any latent prints located on the submitted evidence. If the individual already has prints on file, their full name, date of birth, and SID number or FBI/UCN number must be listed on the Form 49.

Toxicological Evidence Identification and Collection

During investigations when there is cause to believe that an individual may have been under the influence of alcohol and/or drugs, efforts should be made to obtain blood and/or urine for toxicological analysis.

- Alcohol - In cases where it is necessary to determine the level and effect of alcohol on the individual, blood is the specimen of choice. Urine may be tested for the presence of alcohol, however it is not a legally recognized testing medium for blood alcohol determinations and therefore a percentage of alcohol will not be reported.

- Drugs - In cases where the use of controlled substances or other drugs is in question, urine is the specimen of choice.

Many drugs leave the blood very rapidly and may be difficult or impossible to detect unless the blood is collected expeditiously. Generally, drugs are present in the urine in greater abundance than in blood, and are therefore more readily detected. When there is a question as to which medium is best, collect both blood and urine.

Packaging Blood. Do not place evidence tape or other seals over the stopper of the vial, as the tape can obstruct the information on the vial label, and can interfere with resealing of the tube. Instead, the packaging containing the blood tube(s) should be securely sealed with evidence tape. Care must be taken to maintain proper chain of custody. Blood should be submitted to the laboratory as soon as reasonably possible, and should be refrigerated during any delay in submission. Blood evidence returned to the submitting agency should be stored under refrigeration.

Packaging Urine. If a Drug Recognition Evaluation (DRE) has been completed, include a copy of the DRE face sheet when submitting the evidence to the Laboratory. If drug use is known or if the suspect has offered statements regarding drug use, it is recommended to include that on the request form. Detection of some drugs (see below) requires specialized analytical techniques beyond the routine analysis and it is useful for the analyst to know about those in advance of testing. If you suspect that lorazepam (Ativan), psilocin (mushrooms), or a date rape drug (e.g. GHB, etc.), was used, this should be specifically noted on the Forensic Services Request (Form 49). These drugs may not be detected in a routine toxicology analysis, and notice ensures that specialized detection methods can be utilized if necessary. Urine samples should be collected in the plastic screw-top container provided in the kit. Be sure the lid is tightly secured and label the container with the following information:

- The individual's name (not just initials)
- The date of collection
- The time of collection

Do not place evidence tape over the lid of the container, as this can obstruct the information on the label and interfere with reclosing. Secure the urine cup in the plastic bag provided. It should be noted that urine that leaks into the plastic bag will not be analyzed. The packaging containing the urine specimen should be securely sealed.

Care must be taken to maintain proper chain of custody. Urine should be submitted to the laboratory as soon as reasonably possible, and should be refrigerated during any delay in submission. Urine evidence returned to the submitting agency should be stored in a secure freezer or in a refrigerator if freezer space is limited.

Digital Evidence

Digital evidence is information and data stored on, received or transmitted by an electronic device. It can be found on any piece of technology that processes information, for example computer hard drives, game consoles, mobile phones, smart watches, flash drives, or Secure Digital cards, among many other places. Digital evidence can be obtained when electronic devices are seized and submitted for analysis.

Digital evidence is commonly associated with electronic crime, or e-crime, such as child pornography or credit card fraud. However, digital evidence is used to prosecute all types of crimes, not just e-crime. For example, a suspect's messages or phone might contain critical evidence regarding their intent, their whereabouts at the time of a crime, and their relationship with other suspects.

Examples:

Photos
Videos
Audio Files
Documents
Spreadsheets
Social Media Activity
Search History
Emails
Text Messages
Instant Messages
Cell Phone Records
Location Settings
GPS Tracking
Computer Memory

Investigation Considerations:

- What computers, mobile devices, digital media, or internet accounts do the victims, witnesses, and suspects use? How and where do these individuals access these systems and/or devices?

- Is evidence of the crime also held by a third-party internet, cellular, or remote computing service provider? If so, collection of the information may be subject to the provisions of federal and state statutes pertaining to law enforcement access to records and communications held by these providers. Preserve any records, communications, or subscriber information held by these providers using a preservation order, then consult with legal counsel or your local prosecutor.

Preservation Letters

Many social media companies work with law enforcement and have persons available to contact for assistance. Contact them directly to find out their protocol for submission of a preservation letter to protect evidence that can otherwise be deleted.

- When interviewing/interrogating for crimes involving digital evidence, always obtain passwords and/or security codes for all pieces of digital evidence.

- For computer systems, what is the name of each person who uses the computer? What are each users' account name(s), privileges, passwords, and usage habits?

- If you reasonably believe that the computer is involved in the crime you are investigating, take immediate steps to preserve the evidence.

- Do you have a legal basis to seize this computer (plain view, search warrant, consent, etc.)?

- Do not access any computer files. If the computer is off, leave it off. If it is on, do not start searching through the computer.

Firearms Evidence Identification and Collection

Firearm examinations compare marks or impressions which result when two objects make contact with each other. These resulting impressions are characteristic of the "tool", which is usually the harder of the two objects. When a bullet, which is composed of relatively soft metals, travels through the harder barrel of a firearm the barrel leaves markings on the bullet. These markings are unique and can often be associated with a specific firearm. Fired cartridge cases can also be identified to a firearm in a similar manner.



Image from FBI.gov

Image depicts two test-fired cartridge cases from the same firearm compared side-by-side using a comparison microscope. The marks from each cartridge show significant correspondence.

Some examples of analysis of physical evidence by Firearm Examiners include:

- Determining functionality/operability of a firearm.
- Determining if a firearm has been altered/modified into a machine gun.
- Determining the presence/functionality of a sound suppressor.
- Generating a list of possible firearm(s) based on the class characteristics found on fired bullets and/or cartridge cases.
- Comparison of bullets, cartridge cases, or fired shot shells to determine if they were fired in a particular firearm.
- Serial number restorations.
- Determination of distance from muzzle to target proximity based upon gunshot residues and/or shot patterns.
- Manufacturer and type of ammunition.
- Examinations and conclusions regarding the identification of gunpowder.

Integrated Ballistics Identification System (IBIS). IBIS is a system that captures and compares images of known test-fires and unknown fired cartridge cases. These images are searched against a database. When similarities are observed a notification report will be sent to the agency about the potential for links to other cases within the database.

Collection and Packaging of Firearms Evidence. The primary concerns when packaging firearms are safety and the preservation of the evidence including blood, trace evidence, and latent prints that may be present.

- When submitting loose cartridges, cartridge cases, bullets, fired bullets, waddings, shell, etc., the number of each type needs to be included on the Form 49.
- Never insert anything into the barrel of a firearm.
- Minimize handling because it is possible to recover latent prints from firearms and ammunition.
- Do not remove cartridges from magazines when latent prints will be requested; however, do remove the magazine. Ensure magazines and recovered ammunition are both submitted with the firearm. The submission of ammunition used with the firearm is essential to give accurate results in muzzle-to-target proximity test. When latent prints is not needed, remove the cartridges from the magazine to obtain a count for the Form 49.
- Absent special circumstances, recovered firearms and ammunition components should not be physically marked in any manner. Label the packaging instead.
- Mark the position of the cylinder on both sides of the top strap before opening the cylinder of a revolver and make note of the position of fired and unfired cartridges in the cylinder. This is so the position of the cylinder, as recovered, can be determined after the cylinder is opened.
- Store and transport firearms unloaded and rendered safe. If unable to do so, hand-deliver the firearm to the laboratory and inform lab personnel immediately of the firearm's condition.
- Any evidence with possible blood or body fluids should be air-dried, then packaged in paper bags, envelopes, or cardboard boxes labeled as containing a biohazard. It is preferred that a "BIOHAZARD" label is attached.
- For firearms recovered from bodies of water, submit the firearm in a container that will keep it submerged in the water it was recovered from. Do not dry the firearm out prior to submitting to the lab.

Serial Number Restoration. The obliteration of serial numbers and manufacturer's marks is often done to prevent tracing ownership of articles. The laboratory uses mechanical and chemical processes that may restore the original marking in whole or part. Firearms, bicycles, motorcycles, chainsaws, boats, and cameras are all evidence items where serial numbers have been restored. Package the evidence in a manner that will protect the area where the serial number has been obliterated.

Tool Mark Evidence Collection

Tool marks are impressions or marks produced when a tool comes into contact with an object; the tool is generally the harder of the two objects. Physical contact between a tool and the surface of an object produces marks not only characteristic of the type of tool used, but marks that may be unique to a single tool.

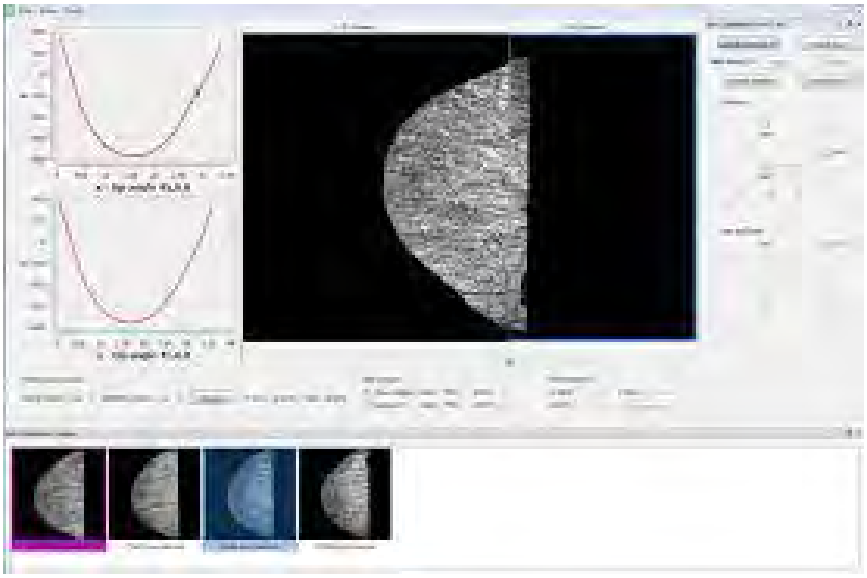


Image from National Crime Justice Reference Service

Image shows a comparison of surfaces from wires that had been severed using by-pass pliers.

In the absence of a suspect tool, tool mark impressions can be examined in an attempt to determine the type of tool(s) that may have produced them. Examples of tools that may be encountered include: hammers, screwdrivers, pry bars, knives, bolt cutters, pliers, tin snips, pipe wrenches, axes, and hatchets.

Do not attempt to determine if a found tool fits in the tool mark. This may alter or obliterate the tool mark and trace evidence may be lost or added.

Collection and Packaging of Tool Mark Evidence. The recovered tool should be carefully packaged to prevent the prying blade or cutting edges from having contact with any other objects that may cause an alteration of the tool. Send the whole object containing the tool marks to the laboratory. If this is not possible, photograph the tool mark, then cut out the area with the tool mark or make a cast of the mark. Information about casting material that is appropriate for tool marks may be obtained by contacting the laboratory. Mark the cast or cut object with appropriate information indicating its orientation such as up/down, inside/outside, and left/right directions. Package the object containing the tool mark in such a manner as to prevent alteration or damage during shipment and storage.

Photographing Evidence

One final method of collecting and documenting evidence is to photograph the evidence. For example, photographs might include capturing damage to property, injuries to a person, as well as images of the overall crime scene.

When photographing, take overall, mid-range, and close-up photos as demonstrated below.

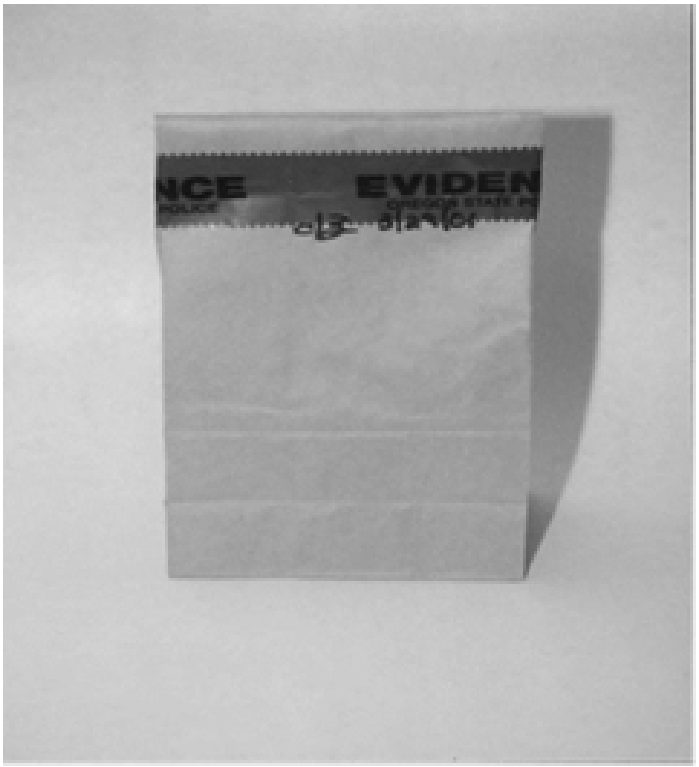
Overall	Mid-Range	Close-Up
Encompass the entire large scene and be overlapping Represent a 360-degree perspective and include a landmark Include identifying marks, such as house number(s) or license plate(s)	Establish the relationships of objects or reference points in the scene.	Might include injuries to persons (bruising, cuts, etc.), fingerprint/footprint/shoeprint /tire track evidence. Carefully place the ruler and camera perpendicular to each other, relative to what you are photographing. Photograph both with and without a measurement scale.
		

General Considerations:

- Never delete a photograph from camera or digital media memory.
- Photograph transient objects, such as bloodstains or latent prints, as soon as possible.
- Move from the exterior to the interior of the crime scene, and from general to specific focus.

Evidence Handling and Collection

It is important that all evidence be collected, handled, and stored in a way that will ensure its integrity.



General Evidence Guidelines:

- Protect yourself and others (personal protective equipment)
- Protect the evidence
- Consider all types of forensic evidence
- Document the chain of custody
- Document the location of evidence recovery with notes, sketches, and/or photographs
- Mark the evidence and/or packaging with a case identifier, description of evidence, initials, and date.
- Evidence seals must be initialed and the initials should cross over the seal in such a way as to provide visual indication of entry into the evidence package.
- Package each item of evidence separately, with the exception of latent lift cards and fingerprint standards.
- Allow wet biological stains to air dry (at your agency).
- Obtain appropriate standards, when needed, for comparison to evidence
- Use packaging that is appropriate for the specific type of evidence, such as paper bags, envelopes, plastic bags (for non-biological evidence), cardboard boxes, metal cans, glass jars, etc.
- Select a sufficiently large package to allow the item to be re-sealed after examination. Conversely, avoid oversized packaging when submitting small quantities of evidence (e.g. residues).

Other Types of Evidence

Refer to the current version of the Oregon State Police Forensic Services Division Physical Evidence Manual for information regarding other types of evidence. A partial list includes:

- Glass Evidence
  - Glass is one of the more important types of physical evidence that is commonly overlooked. Glass is frequently encountered in burglaries and hit and run cases, and glass fragments may be found adhering to garments, hair, embedded in shoe soles, or may be transferred to other property belonging to the victims and suspects.

- Paint Evidence
  - Many crimes, such as burglaries, hit and run vehicle investigations, and others involve forceful activities that can result in the transfer of paint from the original source to another place, person, or object. Paint transfer may also occur if wet paint is applied in the commission of a crime.

- Fiber Evidence
  - Textile fibers can be exchanged between individuals, between individuals and objects and between objects. When fibers are associated with a possible source, such as fabric from the victim, suspect or scene, it can help corroborate case information and/or provide a potential link between items, persons, and/or places.

- Hair Evidence
    - Hair evidence can be obtained from the victim, the suspect, a crime scene, or from other evidence such as clothing. Hair is valuable evidence, particularly in cases where the perpetrator is a stranger to the victim or an environment.

- Impression Evidence
    - Shoe, tire and fabric impressions are routinely present at crime scenes. Examination of these impressions may provide the investigator with valuable leads such as the type, make/model, and approximate size of the footwear or tire. If properly documented and collected, almost every impression left by a shoe or tire has value for forensic comparison to a suspected source. Even when suspect footwear is not available, images of impressions from scenes may be submitted to the laboratory for search in the SICAR (Shoeprint Image Capture and Retrieval) database for make/model determination and comparison to impressions from other scenes. The make/model of tire responsible for a tire impression may also be possible.

- Computer Evidence
    - The Forensic Services Division does not examine this type of evidence. The Federal Bureau of Investigation (FBI) accepts this type of evidence at its regional laboratory in Portland, Oregon. Please refer to the FBI's Northwest Regional Computer Forensics Laboratory website: http://www.nwrcfl.org/.

Trace Evidence Collection

Trace evidence includes items such as Glass, Paint, Fibers, Hair and Impressions. As discussed earlier a standard is needed to compare with evidence samples.

Collection Techniques for Trace Evidence:

Clothing and footwear from victims and suspects:

- Collect and package as soon as possible to avoid loss of trace evidence. Paper packaging is preferred but be sure to tape/seal any gaps in the bag seams.

Larger visible particles from surfaces:

- Use gloved fingers or tweezers

Vehicles and carpets:

- Use a trace collection vacuum to collect debris particles

Suspect hair:

- Comb hair over a clean sheet of butcher paper

Forensic work with trace evidence is about comparison of two samples: a sample that has a known source (the standard) with a sample that has an unknown source. Testing determines if the two samples could have come from the same source.

Evidence	Standard
DNA (body fluids/hair)	DNA standards from victims, suspects
Latent Prints	Latent print standards (10-print card)
Broken Glass	Glass standard from the broken item
Paint Chips/Smears	Paint standards from the damaged painted items
Transferred Fibers	Fiber standards from clothes, carpets, upholstery
Shoe/Tire Impressions	Known shoes or tires

Recommendations for common trace standards:

- A vehicle with three broken windows needs three glass standards, each packaged separately. Each standard should be 20-50 fragments.

- A vehicle with damaged paint on the bumper and fender needs a paint standard from each of these body panels (packaged separately). Each standard should be at least 1x1 inch.

- For fiber standards of clothing, send in the entire garment. For carpeting or upholstery, take cuttings large enough to include all the possible colors/textures.

- For head hair standards, pull 30-50 hairs that include the lengths/colors found in the hairstyle. In some situations, pubic hair standards may be needed as well.

Packaging of trace evidence

Trace evidence, due to its small size, is especially prone to loss or contamination. Be sure there are no openings/gaps through which it can be lost. Avoid adding tape to inner layers of packaging since the evidence may stick to the tape and make retrieval difficult.

Use the double layer system:

Inner Layer:

- Paper folds– no tape, please!
- Envelopes, folded post-its
- Canisters or sharps tubes

Outer Layer:

- Sealed plastic bag (dry items only)
- Sealed paper bag (bio/damp items)
- Sealed manila envelope

Packaging Evidence

Appropriate packaging depends on the type of evidence, the condition of the evidence, and the laboratory examination(s) requested. The Oregon State Police Physical Evidence Manual will provide current methods of packaging.

https://www.oregon.gov/osp/Docs/PhysicalEvidenceManual.pdf

- Paper bags or envelopes- Most biological material and clothing (marijuana, psilocybin mushrooms, blood or semen stained items, condoms, etc.). If unable to air dry prior to packaging, submit to the laboratory as soon as possible and notify them that it is a wet sample.

- Plastic bags or Ziplocs Dry- non-biological material such as powder

- Metal cans, specialized plastic bags, static-proof bags- Arson evidence, Explosives evidence

- Plastic buckets- Samples from clandestine laboratories that are individually packaged in glass vials and set in an absorbent material (e.g. vermiculite, kitty litter, etc.) in the plastic bucket

- Glass or plastic container- Liquid drug samples, syringe contents, samples from clandestine laboratory (glass containers only), miscellaneous trace samples, etc.

- Paper folds and Post-It notes, then placed into a clean envelope- Small pieces of trace evidence, hairs, fibers, minute glass particles, paint chips, residue amounts of powder drugs, etc. Place inside a larger paper envelope. Use of Post-It notes: use either gloved fingers or a tool (e.g., forceps, tweezers, etc.) to collect the trace evidence, place on the adhesive of a post-it note, and then fold the note over on itself and label.

- Cardboard boxes- Firearms, knives, large pieces of plate glass, a piece of flooring with a shoeprint, etc. Offers protection from sharp edges and the depth protects one surface of the evidence from rubbing.

- Sharps tube- Syringes, broken glass

Evidence Seals A proper seal ensures that evidence has not been accessed, altered, compromised, or lost during storage/transportation. Evidence seals must be tamper-evident (e.g., heat seals, tamper-evident adhesive seals, tamper-evident tape, combination of packing tape and tamper-evidence tape, etc.) and span the approximate length of the potential opening. Sealed evidence must be initialed and, when possible, the initials (or equivalent unique identifier) should cross over the seal in such a way as to provide visual indication of entry into the evidence packaging if the seal is broken. Staples and other sealing techniques can be used in addition to the acceptable tamper-evident seal.

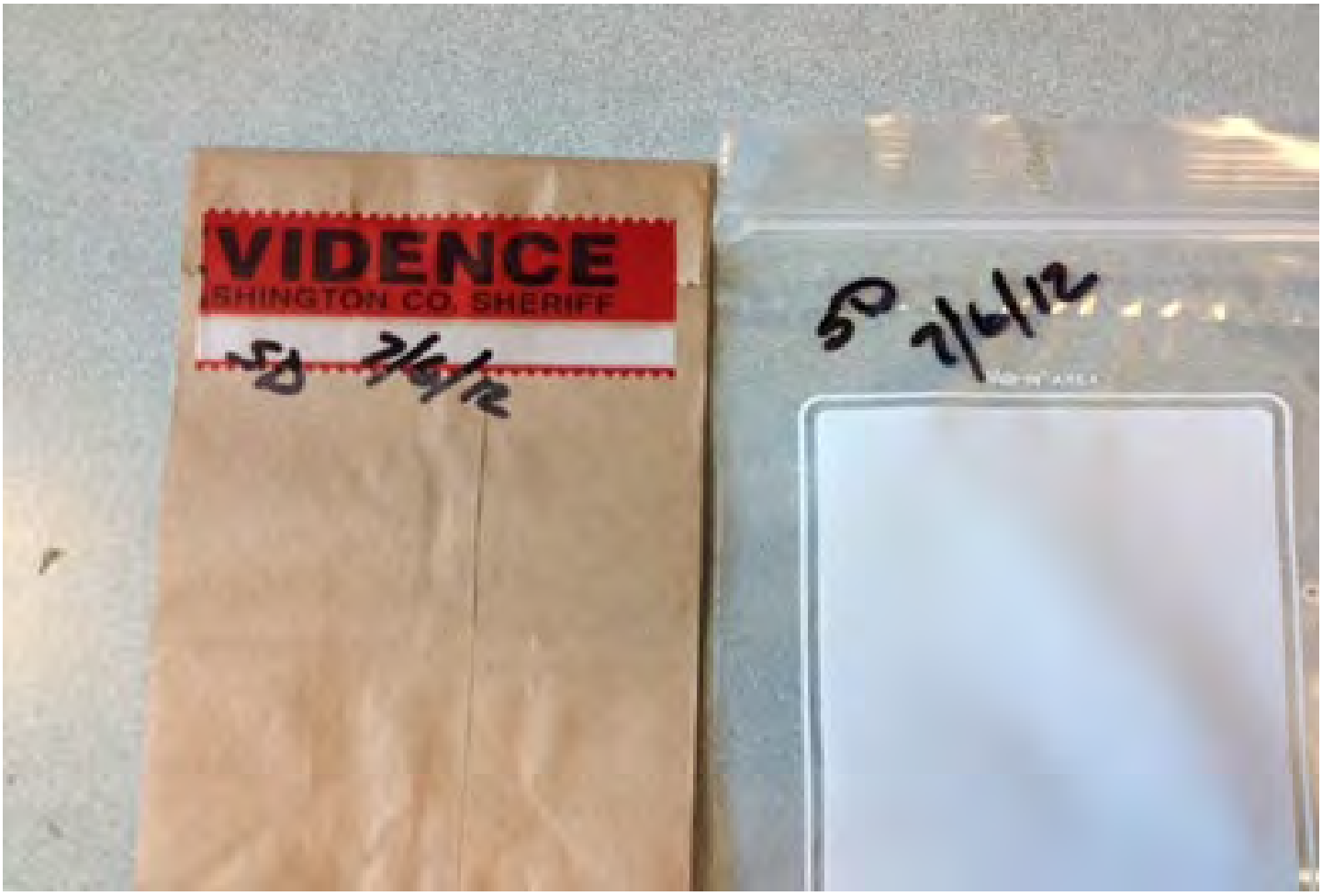


Image from Washington County Sheriff's Office
https://www.co.washington.or.us/sheriff/fightingcrime/criminalinvestigations/evidencemanual

Chain of Custody (COC) The FSD maintains a chain of custody for all evidence from time of receipt at the lab to when it is returned to the agency.

Laboratory Analysis Requests A Forensic Services Request Form (Form 49) or equivalent documents the agency's request for service and must be submitted with the evidence. A single Forensic Services Request Form may document multiple requests for service in any of the disciplines available through the FSD.


Oregon State Police
Forensic Services Request

Rush

The Oregon State Police Forensic Services Division reserves the right to select appropriate methods of analysis based on the type of evidence and information provided.

LAB USE ONLY

Additional requests for service may be generated by the FSD as a result of communication with the submitting agency or DA.

There are different laboratory request forms based on the type of analysis.

- General Request
- Sexual Assault Case
- DRE
- IBIS only request

Fill out all appropriate boxes

Include the police narrative that describes the evidence you are submitting.

- Where was it collected from?
- Which person(s) is it associated with?
- What questions are you trying to answer in your investigation?
- Include information that might be relevant to the trace evidence (victim was found on roadway so has exposure to broken glass, shaved head)
- Do not include information about persons that could bias lab work (driver has history of DUII)

Activity – Evidence Identification

In small groups, what types of evidence, including digital evidence, might you find in the following types of cases? (Scenarios listed below)

Group 1: Harassment

Group 2: Stalking

Group 3: Delivery of a Controlled Substance

Group 4: Domestic Violence

Group 5: Child Abuse

Group 6: Elder Abuse

Have each group share their list, facilitate a discussion to generate numerous examples.

Scenario 1- You respond to an elementary school for a report that a child has disclosed they are being sexually abused at home. The school day is close to ending.

Scenario 2- You respond to a cold burglary. Dispatch advises the homeowners have returned from vacation and found their home has been broken into and items stolen.

Scenario 3- You respond to a domestic disturbance where both individuals are making accusations against the other and both parties have visible injuries. Dispatch advises neighbors have called in concerned about the potential for violence.

Scenario 4- You respond to a grocery store for a report of a shoplifter in custody by the in-store loss prevention staff. Dispatch advises the suspect is cooperative.

Scenario 5- You respond to a home for a welfare check and find the individual deceased in what appears to be a suspicious manner.

Scenario 6- You respond to the hospital for a report of a sexual assault. Dispatch advises the assault is reported to have occurred the night before.

Scenario 7- You respond to the construction site where a new neighborhood is being built for a report of a suspicious vehicle after hours. Dispatch advises the site has been experiencing theft of building supplies.

Scenario 8- You respond to a multi-vehicle crash with injuries. Dispatch advises a caller had reported one of the cars driving fast and weaving in and out of traffic prior to the crash.

Forensic Evidence

Crime Scene Photography, Latent Print Evidence, and Biological Evidence

Introduction

- Matt Eggert
- Forensic Scientist at the OSP Portland Metro Lab since 2006
- Have worked in Field Investigations, Latent Prints, and Biology

OSP Forensic Services Division

- Five Labs: Portland Metro, Springfield, Central Point, Bend, and Pendleton
- Provide forensic services to all law enforcement agencies in Oregon
- Many Disciplines: Controlled Substance Analysis, Toxicology, Biology, DNA, Latent Prints, Trace Evidence, Field Investigations

What I Will Cover – Focus on Property Crime Evidence

1. Crime Scene Photography
2. Latent Print Evidence
3. Biological Evidence

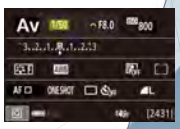
Crime Scene Photography

Exposure and Reciprocity

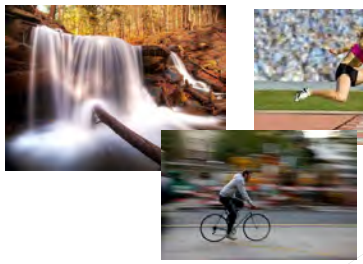
- Exposure is how much light in total is hitting the sensor (and is recorded in the image)
- Reciprocity is how three variables (shutter speed, aperture, and ISO) have reciprocal impacts on exposure

Shutter Speed

- Also known as Exposure Time
- How long the sensor is exposed to light (shutter open)
- Expressed in 1/s (or seconds)
- Implications for motion capture

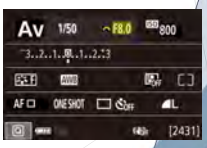


Motion Capture



Aperture

- The size of the opening allowing light to the sensor when the shutter is open (iris)
- Expressed as "f-stop" number
- Implications for depth of field
- Why squinting works!
- "f8 and be there"

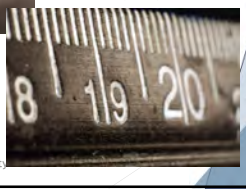


Depth of Field



ISO 100, f/1.8, @ 1/25th sec.

ISO 100, f/22, for 4 sec.



Sensitivity (ISO)

- Also known as "film speed"
- Electronic equivalent to the film grain size
- Measured in increments of 100 (arbitrary units)
- Makes the sensor more sensitive to light (amplifies the signal)
- Can create electronic "noise" at very high ISO settings

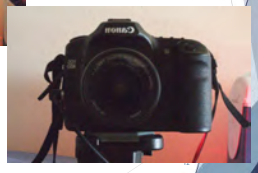


High ISO Noise



Captured Without Noise Reduction Filter

Captured With Noise Reduction Filter



Shot Composition

- Try to exclude people and hands as much as possible
- Use a sequence from overall to midrange to close up
- Don't jump from one close up to another without including a landmark or an orienting midrange shot
- If relationships between items are important, capture them from various perspectives

Shot Composition Continued

- Take your time and use the tools available to get the shot you need. It is worth spending a little more time on the front end as there will likely not be another opportunity for proper documentation.
- **Use the screen on the back of the camera to verify that you got the shot you think you got but don't delete images!**
- Fill the frame with, and center the important elements of the shot (especially with close up shots)
- When a scale is present, it should not be the focus of the image
- Rule of Thirds

Latent Print Photography Best Practices

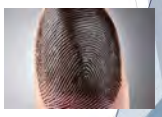
- A marker should be present in the image
- Capture the relationships between the prints
- Capture the location and orientation of the prints
- Turn off the flash
- Use a flashlight, if necessary

Latent Prints

Anatomy of a Fingerprint: Three Components

- Friction Ridge Skin
- Matrix
- Surface






Recognizing Potential LP Evidence

- The smoothness of the surface is the most important consideration
- The smoother the surface, the better it will record the pattern of the skin
- Surface can be porous or non-porous
- Surfaces conducive for LP examination: glass, vehicle exteriors, smooth metal, smooth plastic, paper, tape

To Dust or To Collect?

- How practical is collection?
- We have many tools we can use in the laboratory
- Dusting and lifting works well on smooth non-porous surfaces with fresh prints
- The nature of the crime

Powder Choice

- Regular black powder is effective on most surface types
- Magnetic powder can be more effective on plastics and slightly textured surfaces
- Do not use magnetic powder on ferrous metal
- Bichromatic powder works well on a combination of light and dark surfaces
- White or silver powder can work well on dark surfaces but use a transparent lift card (acetate sheet), NOT a black lift card

Dusting Tips

- Shake the brush after applying powder to it to avoid over powdering
- Use just the tips of the brush to contact the surface
- If using magnetic powder, only the powder (not the wand) should touch the surface
- As a print starts to emerge, brush along the ridges, not across them
- Make sure the lift card and lift tape are sufficiently large to accommodate the entire print
- Photograph the impression prior to lifting to record the relative location and orientation
- Wear gloves!
- If you are not wearing gloves (you should be!) and you leave a print of your own on the lift, X it out or otherwise indicate that you created it.

Collection Tips

- Package in an appropriately sized container
- Package to minimize contact between the evidence and the inside of the container
- Handle the item as little as necessary
- Handle the item by the textured areas (with clean gloves for DNA)
- Mark the container appropriately
- If it is a firearm, make sure it is safe and unloaded and mark the container as such
- Place a tamper-evident seal on the container and initial and date it
- Wear gloves!!

Submission of Fingerprint Standards

- If a subject has an SID or FBI number, they will have fingerprint standards which are available to the analyst
- Those standards are not always adequate
- If you have an opportunity to collect additional standards, please do so: the more standards that are available, the less likely a poor standard will be the reason why a definitive conclusion is not reached
- If a subject does not have an SID or FBI number, please collect at least a set of fingers (if not palms as well)

Collection of Fingerprint Standards

- Ink on an actual ten print card is best
- Rolled impressions are best, but only if they are clear
- The more of the skin you can record, the better
- Incomplete but clear is better than complete but unclear
- In a pinch, your LP kit can be used to collect standards

Biological Evidence (DNA)

High Throughput Property Crime (HTPC) Program

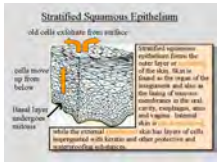
Requirements for participation in HTPC Program

- Participating agencies must:
  - Undergo HTPC training by OSP staff
  - Utilize the required materials
  - Follow the submission requirements
  - No parallel work in other forensic disciplines at OSP
  - Agree to the evidence and packaging being consumed and discarded by the lab (no return of evidence)

Requirements for participation

- Each case must:
  - include only one evidentiary sample at a time
  - include all necessary elimination standards
    - These don't count towards the one item limit
  - If case question is not answered, you may submit one additional evidentiary swab (total of two evidentiary samples, per case)
- This does not mean that you can't (shouldn't) collect additional samples and retain them on your own. They could be submitted for additional analysis (e.g. latents)

Epithelial Cells





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28

DNA Swab Categories

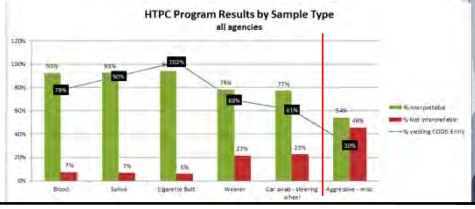
- Body Fluid / Nucleated Cells (blood, saliva, semen, vaginal fluid)
- Wearer Swabs
- Aggressive Handling Swabs
- Touch DNA Swabs

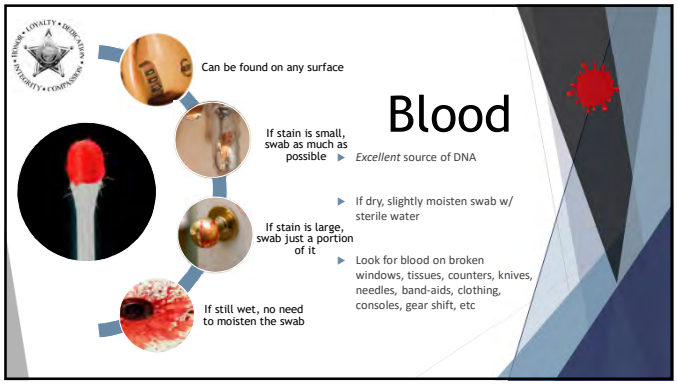
"Premier Public Safety Services"

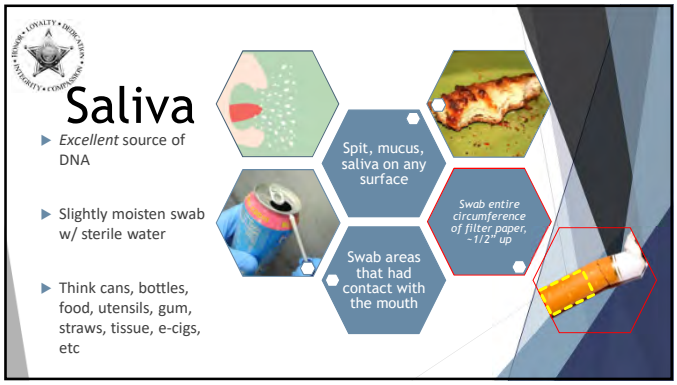
29

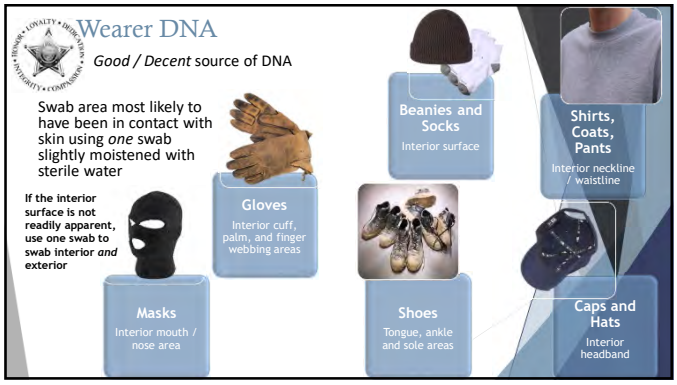
Evidentiary samples

- Only swabs from the following types of evidence will be accepted:
  - Blood, saliva, wearer, steering wheels




Blood
Can be found on any surface
If stain is small, swab as much as possible
If stain is large, swab just a portion of it
If still wet, no need to moisten the swab
Excellent source of DNA
If dry, slightly moisten swab w/ sterile water
Look for blood on broken windows, tissues, counters, knives, needles, band-aids, clothing, consoles, gear shift, etc


Saliva
Excellent source of DNA
Slightly moisten swab w/ sterile water
Think cans, bottles, food, utensils, gum, straws, tissue, e-cigs, etc
Spit, mucus, saliva on any surface
Swab entire circumference of filter paper, ~1/2" up
Swab areas that had contact with the mouth


Wearer DNA
Good / Decent source of DNA
Swab area most likely to have been in contact with skin using one swab slightly moistened with sterile water
If the interior surface is not readily apparent, use one swab to swab interior and exterior
Masks
Interior mouth / nose area
Gloves
Interior cuff, palm, and finger webbing areas
Beanies and Socks
Interior surface
Shirts, Coats, Pants
Interior neckline / waistline
Shoes
Tongue, ankle and sole areas
Caps and Hats
Interior headband

Steering wheel swabs



One swab (slightly moistened w/ sterile water) of the entire steering wheel (& ***manual*** gear shift, if present…)

Do not swab: door handles, light/radio/wiper controls, e-brake, latches, seat belts, etc.

Must submit elimination standards from the owner/regular driver(s) of the vehicle

What you'll need



We'll talk about how to ***order*** supplies later!



6 ½" x 9 ½" Envelope

Sterile Gloves and Mask





Bode SecurSwab 2

Required!

Sterile Water

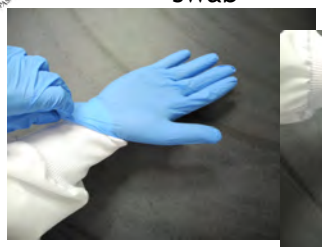


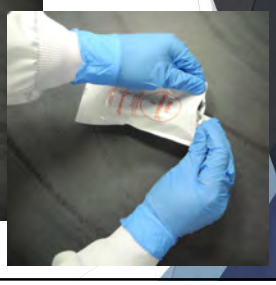




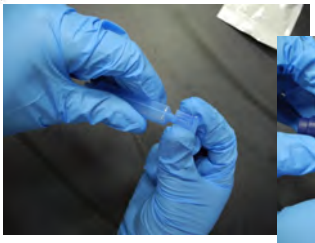
How to:

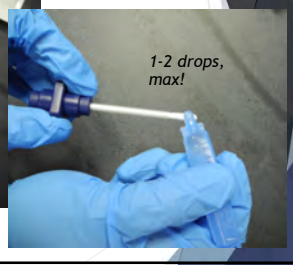
Put on PPE & open swab





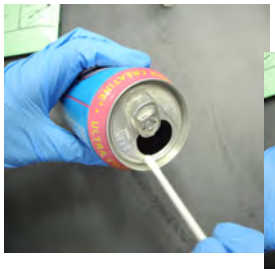
How to: *Lightly* moisten swab





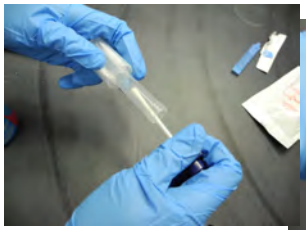
How to:

Swab using *firm* pressure





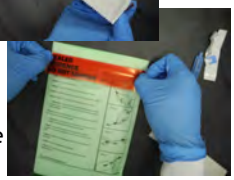
How to: Reassemble & package





How to:





Seal & label, ensure to initial/date seal



Trash! Do not repackage

Preservation swabs

- If the item swabbed cannot be collected or retained by your evidence control unit, a second swab should be collected from the item for preservation purposes.
  - These should not be sent to the lab
  - Does not need to be a Bode swab
  - Boxes on F49 for you to mark as "Y" or "N" to indicate whether or not a preservation swab was collected



Elimination/ Reference Swabs are **Required** for:

Vehicle owner(s) and/or regular driver(s)

Victim(s), if unsure if the item is theirs

Other **mentioned** person(s) who may have handled or otherwise deposited DNA on the item

You, if there is concern your DNA was deposited on item



Utilize one sterile swab and swab the interior cheeks with firm pressure, air dry ~1 minute, package separately, and submit at the same time as the evidence *(does not need to be a Bode swab)*

Comparison standards

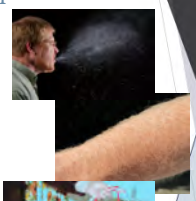
- If there is ANY question who an item belongs to, you ***must*** collect and submit elimination standards
  - Owner/regular driver of a car = required
- Do you have a suspect? Please submit a standard
  - Streamlines analysis and results get to you quicker
- Can be regular cotton tipped wooden stick swab

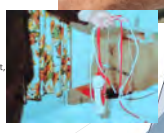
Comparison Standards

- Elimination standards from you
  - If you are concerned that you have contaminated an item, include a standard from yourself for elimination purposes
  - These are not stored or searched, they are simply for comparison/elimination purposes so your DNA on a piece of evidence doesn't end up being put into CODIS

Contamination Prevention

- You are a rich source of DNA
- Saliva is probably the greatest risk
- A study from 2005 showed that contamination was observed up to 44" away from the speaker when they spoke for 30 seconds.
- Do not talk over evidence or in the crime scene without a mask
- Handle evidence as little as possible
- Package evidence as soon as possible.
- Wear gloves!!!
- Don't touch anything other than dropper/swab after you put on gloves (pen, cell phone, radio, whatever)
- Avoid touching water dropper to swabs
- Be aware of those unconscious things we all do, but don't always realize when we're doing them
  - Scratch your head, touch your nose, rest hands on belt/vest, etc
- (And don't lick envelope seals)





"To Provide Premier Public Safety Services"

Latents or DNA?

- Generally cannot do both on the same surface
- Usually determined in the lab by a scientist for person crimes
- The lab will not perform DNA analysis on aggressive handling evidence from property crimes (with some exceptions)
- The lab will not perform DNA analysis on evidence that has been dusted for prints (due to contamination issues)
- Surface dependent: smooth vs. textured
- Also dependent on the nature of the touch and/or the relationship of the evidence to the crime

Trace Evidence

Kris Gates, Senior Forensic Scientist
Oregon State Police, Portland Lab, Trace Unit

1

Let Science Work for You!

- The OSP Trace Unit (in the Portland Laboratory) analyzes trace evidence from every agency in the state.
- We exist to assist agencies in their investigations– everything from criminal mischief cases to burglaries to homicides.
- Trace Evidence can corroborate DNA/ Latents findings & witness statements.
- We depend on officers in the field to recognize, collect, and properly package trace evidence so we can do our work.



2

TRACE EVIDENCE TYPES

- **Arson***
- **Fibers**
- **Glass**
- **Hair**
- **Paint**
- **Physical Fits**
- **Make/Model/Year**

*specialized investigators

- **Miscellaneous**
  (poisons, tapes/ adhesives, pepper spray, glitter, inhalants, & pretty much anything that doesn't fit elsewhere in the forensic lab)

3

How can Trace Evidence help an investigation?

In the context of a crime or crash, trace evidence can support the theory that two "objects" were in contact, or that a person was in a particular setting. These "objects" may be any combination of persons, their clothing, vehicles, bikes, guardrails, tools, safes, signage, buildings, and the surroundings. *Every contact leaves a Trace.*

Biological materials: DNA, Hair (with DNA), Body Fluids, Latent Prints– these can answer **WHO**

Physical materials: Glass, Paint, Fibers, Broken pieces, Chemical residues– these can address **WHAT HAPPENED and WHEN questions**.

4

TRACE EVIDENCE ANALYSIS

Forensic analysis of trace evidence such as glass, paint, hair, and fibers often involves the COMPARISON of a KNOWN sample (the standard you collect) with a QUESTIONED sample.

QUESTIONED specks of paint on the clothing & shoes of the person who did the painting.

If paint associated with the property damage is found on the gloves discarded near the scene, the gloves are now CODIS-eligible for DNA searching.





Paint collected from the **KNOWN** wall is the STANDARD. Be sure to collect some of each color present.

5

TRACE ANALYSIS: Q&K

During forensic lab analysis, we ask:

- **Could the questioned sample (Q) have come from the known source (K) item? Can we detect any differences between them?**
- If we cannot detect differences, the questioned sample and the known sample could have the same source.
- This is an *ASSOCIATION,* a link between the samples.
- Fibers, paints, and glasses are mass-produced items, so no one-to-one link is established (except for DNA from hair), but often enough physical evidence to 1) get further search warrants, 2) reach a plea deal, or 3) convince a jury.

6

At the Crime Scene:
Think about what may have been left behind during commission of the crime.

Did the suspect leave evidence at the scene?

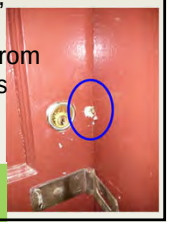
- Fibers from suspect's garments?
- Hairs from suspect?
- Paint from tools or vehicles?
- Impressions from shoes or tires?
- Latent Prints?
- DNA Evidence?

7

At the Crime Scene:
Collect Known Standards.

Look for potential sources of trace evidence that should be collected NOW to serve as future standards for comparison:

- Broken Glass– windows, mirrors, bottles
- Damaged Paint– vehicles, buildings, safes, filing cabinets
- Fibers that could have transferred from items such as carpets and garments
- Hair/DNA standards from victims
- LP standards from victims



Think about what evidence you have *NOW* and what you may find *LATER* to compare it with. You usually only have ONE CHANCE at the crime scene to do this collection of standards.

8

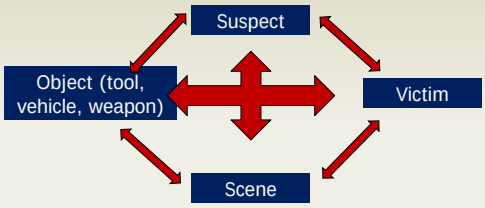
After the Crime Scene:
Later, once a suspect is developed:

Is there trace evidence on the suspect or in their environment that can be compared to the standards from the crime scene? Can we make a link?

- Broken Glass on their clothing/hair, inside car, residence?
- Paint transfer/chips on vehicles, tools, clothing?
- Fibers from crime scene on suspect's garments?
- Hairs/DNA from victims on suspect clothing, inside car, residence?
- Of course, get their LP standard now too.

9

Physical Evidence: Establishing links depends on having a known sample to compare with the questioned samples

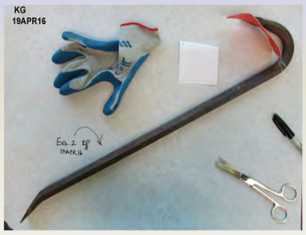


With DNA & LP, comparison may start with database standards. With trace evidence, officers must provide the known standards for comparison.

10

Trace: Missed Opportunity

- Blue car vandalized: Crowbar seized from suspect's possession. Blue vehicle paint located on crowbar. No car paint standard submitted from damaged blue vehicle for comparison.
- Limited significance of findings. Low value.



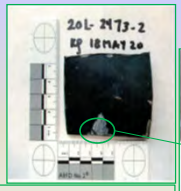
Note: Processing for latent prints can destroy trace evidence. Send to the lab so we can proceed in the order that will maximize testing and useful findings.



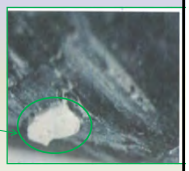
Is this probative w/o a link to the crime?

11

Case Example: Questioned White Paint on Vehicle compared to Known Mailbox Paint







Cutting from suspect vehicle with white smear and ~1mm adhering white paint chip

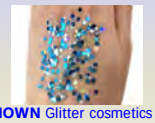




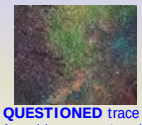
Mangled mailbox w/ paint damage & loss. **Two pedestrians struck prior to mailbox.** No vehicle paint was observed/found on mailbox

12

TRACE MISCELLANEOUS ANALYSIS



KNOWN Glitter cosmetics worn by assault victim



QUESTIONED trace glitter found in suspect's vehicle

Comparing two samples to see if they could share a common source:

- inked writing to pens
- metal shavings to homemade silencers
- plastic bags to rolls of bags
- feathers in a vest to feathers on a bullet
- scrap of tape on victim to duct tape roll
- pepper spray or Bank Pack dye on suspect clothing compared to canister of protection spray or dye pack example provided by the agency





13

PHYSICAL FIT (MATCH)



A physical fit is made when the contours of broken pieces sufficiently unique and fit together so that it is clear to the examiner that both pieces were originally one object.

All broken pieces from the scene should be collected– you never know what will be found later that might fit together with it! This is the strongest conclusion from physical evidence.



First: Loose pieces collected at crime scene.



Later, part taken from suspect vehicle.

Multiple physical fits made between loose pieces from scene and part taken from vehicle



14

What is a Make/Model/Year Search?

- We most commonly do this type of request for vehicles: From an OEM paint chip or broken part left at the scene, we may be able to determine what kind of vehicle it could have originated from.
- The MMY list will include vehicle makes/models and year ranges: *Toyota Camry 2009-2011.* **MMY** lists vary in length depending on many factors.
- May be of use in obtaining a search warrant or to corroborate witness statements.





15

Crime Scene Scenario: Hit & Run Fatality

- What types of transfer might occur?
- What should be collected at the scene?
- What can be compared later once a suspect vehicle is located?

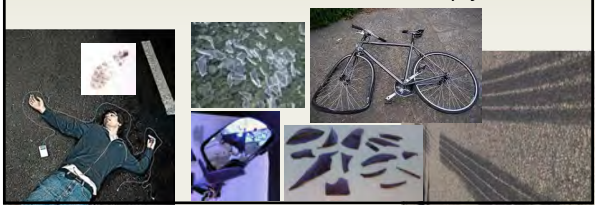



16

Hit & Run Fatality

Questioned Samples at the scene: **Q** paint from vehicle (chips/smears) on ground, bike or victim, **Q** broken glass from vehicle on ground or victim **Q** tire impressions on ground or victim, and **Q** broken auto parts on the ground

Known Standards at the Scene: **K** bike paint standard, **K** victim's garments at hospital/autopsy for fibers standards, and **K** hair/DNA/LP standards from victim at autopsy

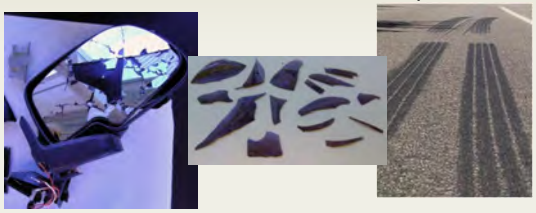


17

Hit & Run Fatality

Potential investigatory leads from Questioned samples to narrow down suspect vehicle type:

- **Paint** chips can provide lists of Make/Model/Years of possible source vehicles
- **Tire Impressions**
- **Manufacturer Codes** on broken auto parts

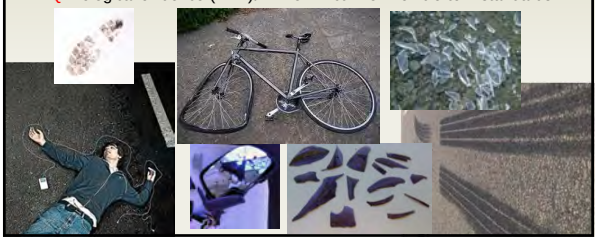


18

Hit & Run Fatality

Once a suspect vehicle is located:

- Q Broken auto part(s) compared to K vehicle for physical fit
- Q Glass comparison (to K standards from vehicle)
- Q Tire impression comparison to K tires
- Q Paint comparison(s) of transfers between victim/bike to K paints from vehicle and bike
- Q Fibers on vehicle from K victim's clothing
- Q Biological evidence (DNA)/LP from victim on vehicle to K standards



19

COLLECTION OF TRACE STANDARDS

A separate standard is needed for each possible source item. A vehicle with three broken windows needs three glass standards, each packaged separately. Each standard should be 20-50 fragments.



A vehicle with damaged paint on the bumper and fender needs a paint standard from each of these body panels (packaged separately). Each standard should be at least 1x1 inch and include ALL paint layers by scraping all the way down to the substrate.



For fiber standards of clothing, send in the entire garment. For carpeting or upholstery, take cuttings large enough to include all the possible colors/textures.

For head hair standards, pull 30-50 hairs that include all the lengths/colors found in the hairstyle.

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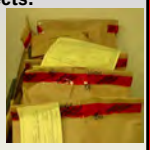
COLLECTION TECHNIQUES FOR QUESTIONED EVIDENCE

Clothing and footwear from victims and suspects: Collect and package as soon as possible to avoid loss of trace evidence. Paper packaging is preferred but be sure to tape/seal any gaps in the bag seams.



Use **gloved fingers or tweezers** to collect larger, visible particles from surfaces. Put on a post-it then over-package in envelope or bag.

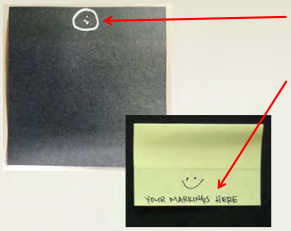
Use a **trace collection vacuum** in vehicles or carpets as needed for the lab to screen debris for particles of interest under the microscope.

To collect glass fragments, **Comb hair** over a clean sheet of butcher paper and fold into a paper-fold for submission inside an envelope or bag.

21

PACKAGING OF SMALL TRACE EVIDENCE

- We love Post-its for packaging of trace particles. They prevent loss but do not contaminate evidence. Do not use any other types of tape.



Put the small particles onto the post-it adhesive, circle it with a Sharpie so we know where to look, and then fold it partly over to protect the particles.
Label the lower portion with an evidence description (and/or agency item number.
You can put multiple particles on one post-it. Light colored notes are good for dark colored particles; darker or black notes work well for light or transparent particles such as glass.

22

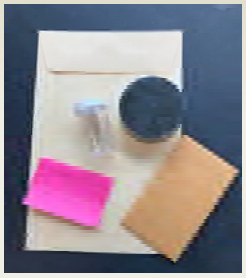
PACKAGING OF TRACE EVIDENCE

Trace evidence, due to its small size, is especially prone to loss or contamination. Be sure there are no openings/gaps through which it can be lost. Avoid adding tape to inner layers of packaging since the evidence may stick to the tape and make retrieval difficult.

USE THE DOUBLE LAYER SYSTEM:

INNER LAYER:
- Paper folds– no tape, please!
- Envelopes, folded post-its
- Canisters or sharps tubes

OUTER LAYER:
- Sealed plastic bag (dry items only)
- Sealed paper bag (bio/damp items)
- Sealed manila envelope



23

Trace Evidence Vacuum Filter

Any vacuum can be used with a hose attachment and a specialized trace collection filter. The filter prevents the evidence from going into the vacuum itself and instead traps it in a clean, sealed filter that is submitted to the lab for screening.



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Newsletter with live links for suppliers here:
https://digital.osl.state.or.us/islandora/object/osl%3A794828

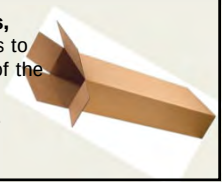
25

PHYSICAL FIT & MMY EVIDENCE

- Protect items from further breakage or damage.



- Be sure to label the evidence with details about the known and questioned items. Be specific: "driver headlight assembly from suspect vehicle", "fresh chips of paint collected from road near impact".
- **Send in ALL the recovered pieces, even without codes**. This allows us to re-assemble to get an overall sense of the construction and design features to narrow down possible source vehicle.



- Include VINs for known vehicles.

26

What paperwork do you need to submit to the lab?

Fill out the F49 (Request for Services Form) and choose the relevant request type.

Include the police narrative that describes the evidence you are submitting.



- Where was it collected from?
- Which person(s) is it associated with?
- What questions are you trying to answer in your investigation?
- Include information that might be relevant to the trace evidence (victim was found on roadway, so exposure to broken glass, shaved head)
- *Do not include information about persons that could bias our work (driver has history of DUII)*

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TRACE EVIDENCE REMINDERS:

Physical evidence such as glass, paint, or fibers cannot *individualize* a source to the exclusion of all others, but it can establish a link between a person/object in question and an event that was violent enough to cause breakage of glass. In some of these events, biological evidence is not transferred or not probative.

Lab analysis is only as good as the evidence collection by the agency. Collect standards even if you don't know they will be needed; collect questioned glass even if you don't have a standard yet.

Think about multiple possible associations: Glass + Paint + Fiber associations? Is it a coincidence? Think about how multiple types of physical evidence can contribute to the overall investigation and paint a picture for a jury.

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OSP TRACE EVIDENCE UNIT

If in doubt, call/email us!

- Glass/Paint/Misc/Arson: Kris Gates
  971-673-8244 kgates@osp.oregon.gov
- Fibers/Hairs: ask for Celeste Grover
  971-673-8245 cgrover@osp.oregon.gov
- Trace/Latent Print Unit Supervisor Devon Sommer:
  971-673-8303 dsommer@osp.oregon.gov

Need a refresher? Consult our online Physical Evidence Manual:

https://www.oregon.gov/osp/Docs/PhysicalEvidenceManual.pdf

29

FIREARMS

Student Resource Material

"The purpose of firearms training is to prepare an officer to use firearms in a fight against an adversary, in what usually begins as a spontaneous attack initiated by the adversary. Our firearms program is not about shooting; it is about fighting. When the concept of fighting is taken out of firearms training, we have forgotten the purpose of our training."

Lou Chiodo

Our Mission

Our firearms program will prepare you to save lives—yours and others'. You are training to protect human life.

Instructional Goals:

1. Introduce a new police officer to the use, limitations, and techniques of the service handgun.
2. Develop a new police officer's ability to effectively use firearms to defend themselves, a partner, or a third party against a deadly force encounter.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Explain critical firearms safety rules.
2. Achieve a passing score on the qualification.
3. Demonstrate safe and proficient firearm handling skills.
4. Identify the parts of a handgun.
5. Describe best practices for the essential processes of operating a handgun.
6. Differentiate the principles of target focused and sighted aiming.
7. Explain the importance of trigger finger discipline.
8. Demonstrate the steps required for loading, unloading, and reloading a handgun.
9. Demonstrate how to clear common handgun malfunctions.
10. Explain the difference between cover and concealment.
11. Demonstrate how to correctly use cover.
12. Distinguish the uses of weapon-mounted and handheld lights.

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SAFETY

During all firearms training, safety is our primary concern. There is never a justification for disregarding safety at any time. Breach of safety protocols may result in your removal from the firearms training program.

We use two rules for firearms safety. They are applicable in all training venues, and your operational use of firearms.

1. Know where the muzzle is pointed; the direction must be appropriate, intentional, and legal.

2. Keep your finger off the trigger until you are on target and have decided to press it.

You are expected to know, understand, and adhere to these rules. They apply to all firearms, all sim and laser pistols, all molded plastic guns. They are expanded upon below and will be reviewed during every range session. If you have any questions, do not hesitate to ask.

Ignorance is not a defense. Safety is non-negotiable.

Rule 1

1. Know where the muzzle is pointed; the direction must be appropriate, intentional, and legal.

The guidance on muzzle direction is associated with the dictionary definition for each word.

Appropriate—suitable or proper in the circumstance
Intentional—done on purpose; deliberate
Legal—permitted by law

Appropriate Muzzle Direction

During range training, appropriate directions are easy to find. Predominantly when on a range, the area we point the gun toward is purposefully designed to be shot at. It is called "The Berm." Targets will always be positioned in front of this area. The berm will be clearly identified to you on the range.

The range is a very structured training environment. Your coaches will be helping define appropriate directions for you as we work on ready positions and movement techniques that do not allow you to use the berm as the direction for your muzzle. This will allow you to explore muzzle management beyond just drawing and shooting things that are directly in front of you. When you are training in other venues that aren't as linear as a live fire range, you will have other factors to consider. Without a berm and an agreed upon target location you will have even more decisions to make. The terrain of a city street, or the interior areas of a building will require more critical thought regarding your surroundings than a range will induce.

Most of your career will be in a non-training realm. That is where the concept of an appropriate direction for your muzzle becomes crucial to identify. If the handgun is out of the holster, and you are not presently pointing it at a target, or a subject, you choose where it is pointed. That direction selection will be situationally dependent. A guideline for finding an appropriate place to point the muzzle would be a direction where, if the weapon were to be fired, the bullet leaving the muzzle would cause no injury and the least amount of damage to property possible. Once those parameters are met and sustained, tactical considerations may also come into play. What's the most advantageous gun position based on the task(s) to be achieved?

Intentional Muzzle Direction

Always and *never* regarding muzzle orientation are easy when you are practicing shooting on a training range. You are not going to work on a range. You are training to work in the public domain, and you will need to be able to safely handle a gun in that environment. If the gun is in your hands, you must know where you are pointing it. You must intend to point it there. You need to be a critical thinker, capable of adapting to the environment you are in. Up, down, left, and right might all be the correct answer at some point in time. Equally, each one of those directions may be the wrong answer if your circumstances change.

Legal Muzzle Direction

Pointing a gun is a use of force. You must be able to justify your legal decision about when and where to point a gun. Your DPSST use of force training will prepare you with the knowledge to be able to make and articulate this decision.

Rule 2

2. Keep your finger off the trigger until you are on target and have decided to press it.

Off the trigger means outside the trigger guard in an "indexed" position, high against the frame of the handgun. Do not rest your finger on the trigger guard. Do not let your finger hover in mid-air. The trigger finger is to remain firmly pressed against the frame of the handgun from the time it is picked up, until it is put down; until the muzzle is pointed at your chosen target, and you have decided to press the trigger (see Figure 1).



Figure 1 *Trigger finger is "indexed" and pressed high against the frame.*



Figure 2 *Finger is not visible through the trigger guard.*

The trigger finger must remain high enough so that from the opposite side of the pistol, it is not at all visible through the trigger guard (see Figure 2).

Safety Equipment

You are required to bring certain safety equipment to the range each day:

- Ballistic body armor
- Eye protection
- A brimmed hat

You will also need hearing protection each day. You may bring your own hearing protection if you choose, it simply must be able to connect to a 3.5mm cord. We also have hearing protection you may use.



3.5mm cord

When loading, unloading, or shooting, ear and eye protection is always required. Your hearing can be permanently damaged by exposure to gun fire. Your eyes are irreplaceable. Hot gasses and projectiles do not mix well with eyeballs. Be sure that your eye protection sits snug to your head to stop anything from getting in behind your glasses. The purpose of wearing a hat with a brim is to decrease the risk of anything getting behind protective glasses.

Hearing and eyesight protection is often referred to simply as “Eyes & Ears.” When you hear an instructor on a range say, “Eyes & Ears” that is a direction to wear them—things are about to get very loud!

AMMUNITION

All ammunition used at the DPSST is lead free and will be provided for you.
Never bring ammunition into the range building.

Ammunition has come a long way since the early days of firing rocks propelled by gunpowder. Today, modern ammunition is called a "cartridge" or a "round." You will often hear people refer to ammunition as simply "bullets;" this is not the correct terminology. As you are about to discover, the bullet is just one component of the cartridge. There are four components to the cartridge in all:

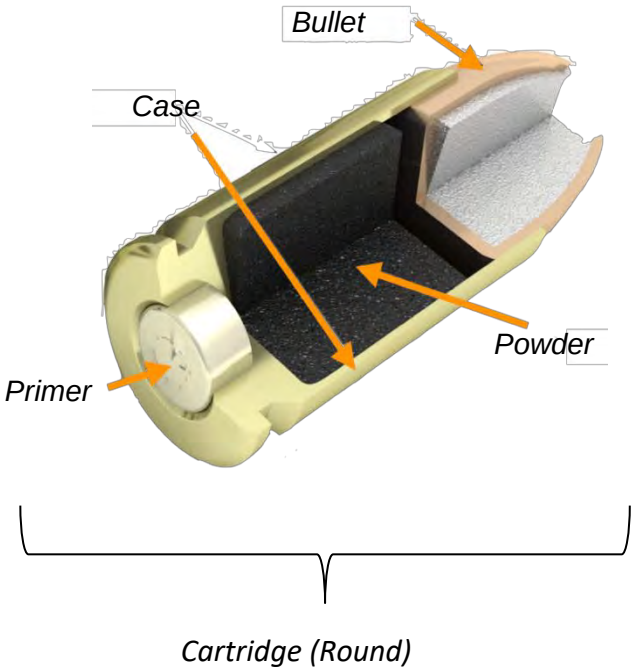
Primer

The primer is a pressure sensitive compound which creates a spark when it's struck. That spark ignites the powder.

Powder

The powder is contained in the center of the cartridge above the primer and below the bullet. In modern cartridges, it is smokeless, fast burning nitrocellulose or a combination of nitrocellulose and nitroglycerin. The burning rate of the powder is very consistent; this allows for reliable performance and accuracy from the ammunition.

Figure 3 *Components of a Cartridge*



Bullet

This is the projectile that is ultimately launched from the muzzle of the gun. There are various designs, each specific to the purpose of the cartridge. Their weight is measured in "grains," and this will be part of the cartridge description designated on the packaging.

Case

The case, or casing, is an open-topped cylinder which contains all the components of a cartridge. It is most often made of brass, but other metals can be used for casings.

PISTOL NOMENCLATURE

The striker fired semi-automatic pistol is by far the most common duty gun used. It is shown in the image here. If your duty pistol differs from this design, our firearms instructors have a significant knowledge base and can assist you with identifying all its features. Your owner's manual will also have this information included.

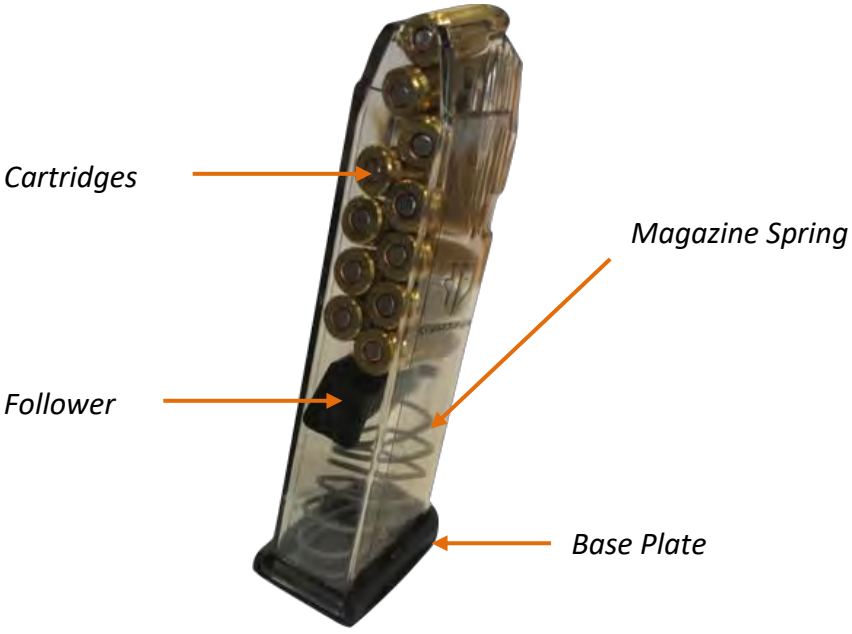
Figure 4 *Left Side of Pistol*



Figure 5 *Right Side of Pistol*



Figure 6 *Magazine*



CARE AND CLEANING

In this section, we will explain the basic procedures for pistol cleaning and maintenance. This includes disassembling the pistol, cleaning the parts, reassembling it, and performing a function check. Be sure to adhere to the following safety rules regarding cleaning:

- Before any maintenance or cleaning procedure begins, be absolutely, unequivocally certain that your pistol is unloaded.
- Then, check again before you start cleaning.
- Wear gloves for all cleaning tasks.
- Wear eye protection for all cleaning tasks.

The primary reason for proper firearms cleaning and maintenance is reliability of gun performance. Any care, cleaning, or maintenance beyond the field strip and cleaning method discussed in this section must be completed by a certified armorer.

A semi-automatic pistol should be cleaned:

- When new
- After training (before returning to duty)
- Monthly
- As necessary (For example, following exposure to dust, mud, sand, water.)

Each pistol manufacturer will specify cleaning guidelines in the owner's manual for their pistol. You must read and comply with these specific instructions to maintain reliable operation of the pistol and comply with warranty requirements. Due to the variety of pistols carried, we will cover the specific processes for disassembly and reassembly in a separate, hands-on lesson on cleaning. In this manual, we provide the general guidelines for basic cleaning technique. This does not replace the manufacturer's directions.

Prepare for Cleaning or Maintenance: Disassembly

When the pistol is taken apart for routine maintenance or cleaning, the level to which it should be disassembled is called a "field strip" (see Figure 7).

A duty handgun normally requires no tools to disassemble to this level. More specific care and maintenance will require disassembly beyond this stage. That work is to be completed only by certified armorers.

Figure 7 *A Field Strip*



Cleaning

During the course of the cleaning process take the time to visibly inspect the condition of the pistol and its component parts. Pay particular attention to the:

- Safety devices
- Magazine
- Frame
- Slide
- Barrel
- Sights

Clean all visible areas of the pistol using patches, rags, or cleaning cloths. When the cleaning material used remains clean and is no longer removing dirt and residue, the pistol is clean! Stubborn deposits can be brushed and cleaning solutions applied to break down residue.

Lubrication is to be used sparingly and only in areas specified by the manufacturer. Any area showing metal on metal wear should be lubricated. *(If you are unsure, consult an armorer.)* Do not lubricate firing pins, magazines, or magazine wells.

Reassembly and Function Checks

Again, the specific process for reassembly will be covered in your practical lesson on cleaning.

Upon reassembling the pistol, it must be "function checked" prior to being put back into use.
Function checks are completed by testing the following components with an UNLOADED handgun intentionally pointed in an appropriate and legal direction:

- Recoil Spring—Rack the slide and release it several times and verify that it functions as expected. (Racking the slide means completely pulling it to the rear and then releasing it.)
- Slide and Trigger—Apply pressure to the rear of the slide with the non-dominant hand while simultaneously pressing the trigger and attempt to push the slide to the front of the gun. (This verifies the slide is secure and that the trigger has reset correctly.)
- Safety—If the pistol has an external safety lever, move it to "safe" and press the trigger; the trigger should not operate. Now, disengage the safety lever and press the trigger. This time it should operate normally.
- Striker Safety—If the pistol has a safety built into the trigger, apply pressure to the trigger without applying pressure to the safety. The trigger should not move.

ESSENTIALS

The operation of a firearm has some consistent foundational principles. They are sometimes referred to as "the fundamentals." We will refer to them as "essentials," because they are exactly that! Shooting a handgun is simple; it's just not that easy. Competence in the essential areas of grip, trigger and aiming will translate directly to the combative speed and accuracy you will be striving to achieve. Each essential area is covered in detail here.

Grip

Your ability to control the gun depends heavily on grip. The grip is the sole contact point between the shooter and the gun. Therefore, it is the primary control mechanism. Proper application of the grip will allow you to manage recoil as effectively as possible.

Elements of Proper Grip (see Figures 8 and 9)

- Your dominant hand needs to be as high on the backstrap of the grip as possible. *(The "back strap" refers to the rear part of the pistol grip.)*
- Your dominant hand fingers should be wrapped around the front of the pistol grip, the middle finger indexed against the bottom of the trigger guard.
- Your non-dominant hand's fingers should overlay your dominant hand's fingers with your dominant forefinger indexed on the bottom of the trigger guard.

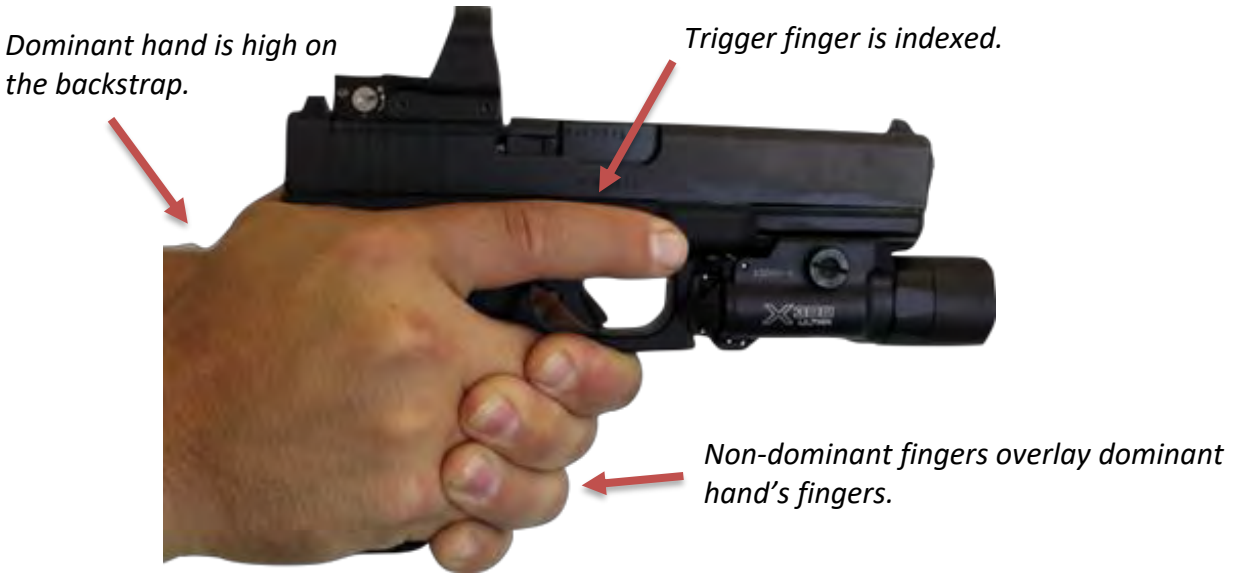
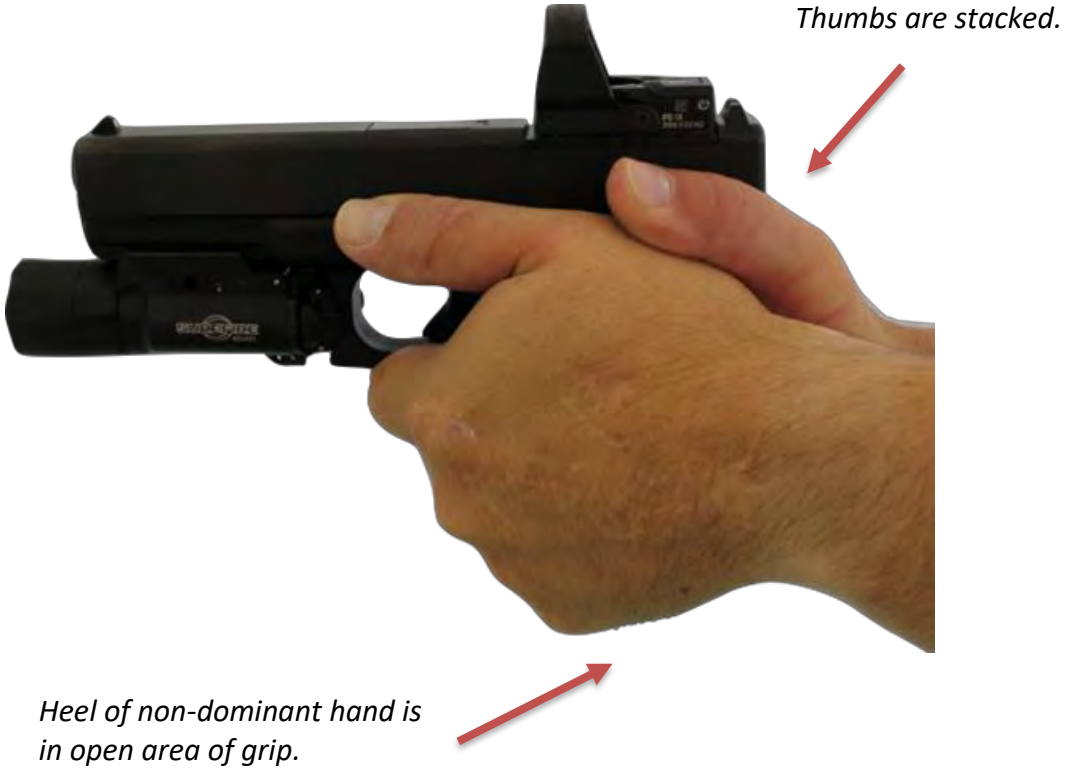


Figure 8 *Elements of a Proper Grip, Side 1*

- Place the heel of your non-dominant hand in the open area of the grip as high as possible on the frame.
- Stack both thumbs one above (not inside) the other.
- Pressure, hold the gun firmly with the dominant hand and firmer with the non-dominant hand.
- Your elbows do not need to be locked. Each shooter needs to establish what is comfortable for them. Your shoulders can be rolled forward to help absorb recoil. The position of your elbow joints (pointed out to your sides or directly down toward the floor) will change where pressure is applied on the pistol. The higher we apply pressure on the pistol the more we control it.

Figure 9 *Elements of a Proper Grip, Side 2*



Trigger

The trigger must be moved from its starting position straight to the rear until the gun fires. This movement to the rear must be done without the trigger finger causing the gun to be directed off target. The trigger needs to move straight back.

The more efficient the grip is, the less likely you will be to inadvertently move the gun while pressing the trigger. You will typically place the center of the pad of your index finger on the center of the trigger *(*see Figure 10, below*).* The ability to achieve this suggested contact point will vary depending on hand and gun sizes. This is not a "must" for positioning, this is simply a likely touch point when the gun is correctly sized to the shooter's hands.

Figure 10 *Using the Trigger*



Pad of index finger and trigger are centered on one another.

Aiming

There are two general methods for aiming a pistol:

- Target Focused
- Sight Use

Distance and context will help you determine which method of aiming is appropriate in your situation. Both variants offer distinct advantages.

Target Focused

This method of aiming is achieved by looking at a spot on the target with both eyes open, bringing the gun up so it is parallel to your line of sight. This requires focusing your eyes on the target or subject vs. having a hard focus on the front sight. This method of aiming and shooting allows a balance of speed and accuracy. You should primarily use this method when the target is close, large, and unobstructed. This allows you a better opportunity to take in the subject's movement, recognize patterns of behavior, and measure escalation or de-escalation cues.

Sight Use

Sights are used primarily to assist with aligning the muzzle of the pistol accurately with the intended target. Additionally, sight use is subdivided into two types: iron sights and pistol mounted optics. The limitations and advantages of your sighting system(s) will be explored during live fire training.
The sights are there for good reason. Whether your pistol is equipped with an iron sight or an optic, when the opportunity to use sights presents itself, you should do so!



"Iron" sights



Pistol optic

Iron Sights

When using your handgun for a shot aided by an iron sight, consider the following. The front sight should be the clearest object you have in your line of vision. The target and rear sight should be blurry and out of focus. Closing your non-dominant eye partially or completely can assist with focusing on the front sight for this type of sight use. However, closing one eye trades off the advantage of depth perception and peripheral vision for easier front sight focus. Ultimately, you should strive to shoot with both eyes open, even when using sights. This will require significant, purposeful practice.

Sight Alignment and Sight Picture

There are two factors to attend to when using pistol sights: sight alignment and sight picture. Sight alignment refers to the process of aligning the front and rear sight with your dominant eye. Sight picture is applying the alignment of the sights and your eye to the target area that needs to be shot.

Front Sight Centered



Front & Rear Sights Level



Figure 11 *Sight Alignment*

Figure 11 shows ideal images of what sight alignment should look like. The sights will never be completely still. We must accept that movement will always be occurring, due to the natural movements and micromovements of our body. Acceptably aligned sights are all we can achieve. There is no "perfect sight picture." Accept the wobble in the sights and move the trigger straight back without disrupting the gun's position.

Figure 12 shows ideal images of what sight picture should look like. Remember, the sights will never be completely still. Once we line up the front and rear sight (alignment), then we must transfer and maintain that alignment over what we want to shoot. When the aligned sights are placed over our target we now have a sight picture

The front sight is the clearest object, and the target is blurry.

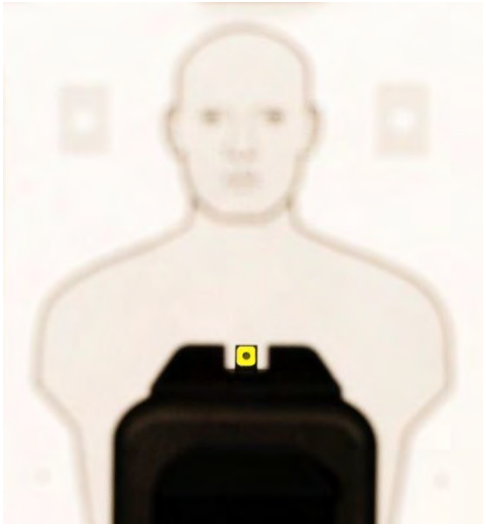


Figure 12 *Sight Picture*

Pistol Mounted Optics

Pistol mounted optics are becoming more prevalent in law enforcement. Just as with fixed iron sights, the optic allows the muzzle of the pistol to be more accurately aligned with the intended target. When the opportunity to use an optic to aim presents itself, you should do so!

When you are using a pistol mounted optic, keep the following best practices in mind:

- Unlike when using iron sights, when you are aiming your handgun aided by an optic, the target should be the clearest object you have in your line of vision.
- The dot or reticle should cover the intended target.
- Both eyes should remain open. Focus vision and attention on the target. Do not be tempted to focus on the optic. If you cannot immediately see the optic when you present the pistol, transition to sight use. If the optic has failed, the sights will be your default back up. If the pistol was simply misaligned, as you align the sights, the optic will come into view.

The target is the clearest object.

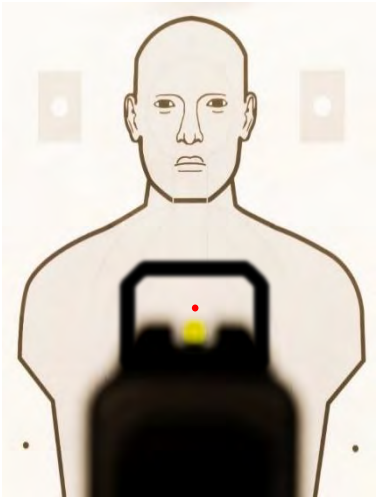


Figure 13 *Sight Picture with Pistol Optic*

ANCILLARY PROCESSES

For the pistol to operate and continue to do so, there are a number of simple administrative processes we must understand. Stance, drawing, loading, unloading, and reloading, are all necessary to "running the gun." Stance can also influence our success but being able to stand a particular way is not something we can guarantee in a dynamic lifesaving event.

Dry Fire

All of these skills can and should be practiced regularly using inert training rounds. Inert training rounds allow you to mechanically manipulate the pistol without firing any projectiles. This type of training is referred to as "dry fire." Using dry fire training with intentional goals has tremendous value for building and improving your firearms skills.

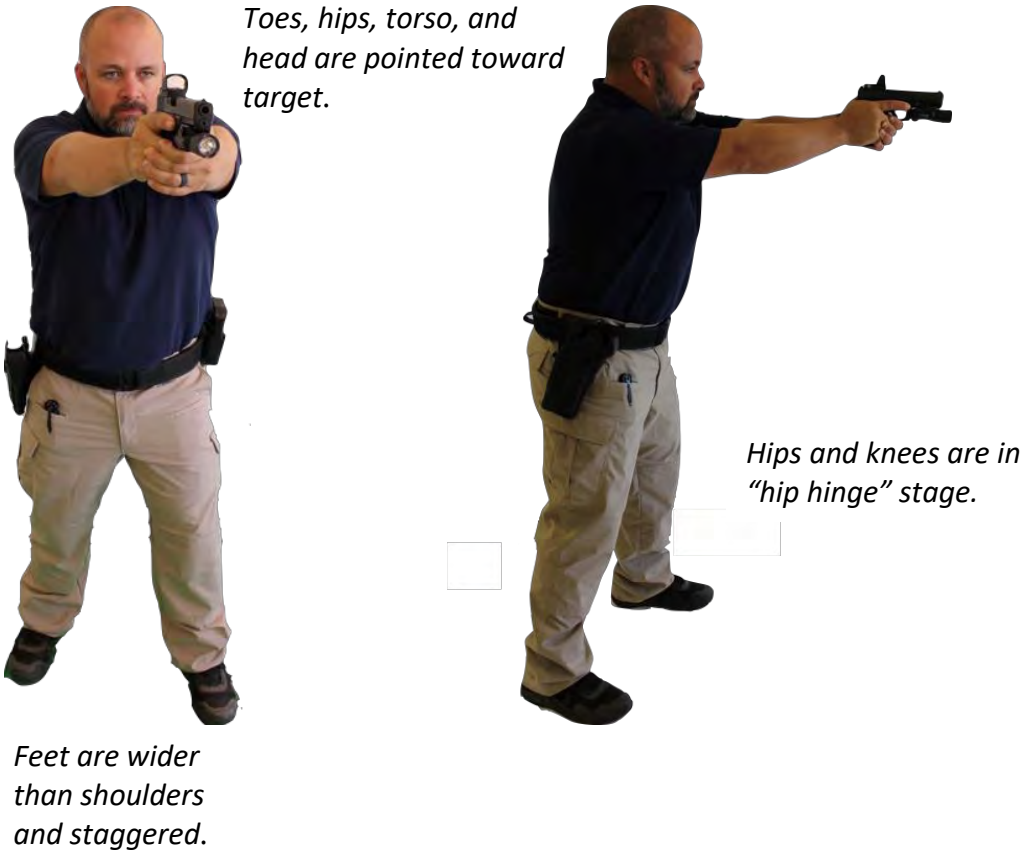
Dry fire training must always be conducted in adherence with the rules of firearm safety. There must be absolutely no live ammunition in the area that you are training in. Conduct thorough inspections of the firearm and any magazines in your possession prior to dry fire practice

Stance

Stance is a balanced base from which to shoot. A solid stance is a convenience, it is not an integral part of shooting effectively. In the dynamic real world, you may not be able to use a stable, static stance. For this reason, we will explore many "unconventional" shooting positions during our practical training.

When we do have the opportunity to use a great stance, we absolutely should! An ideal stance can be described as the shooter directing their toes, hips, torso, and head toward the target; feet wider than shoulder width apart and staggered. It should closely resemble the fighting stance used in defensive tactics. The kind of flex in the hips and knees is just like the first stage of the "hip hinge" taught in PT class. The goal of the stance is to allow balance, stability and mobility. It should feel generally athletic as opposed to rigid.

Figure 14 *Proper Stance*



Drawing

The draw will be broken down into four numbered stages to assist with learning the process:

1. Grip and break
2. Lift and level
3. Join
4. Press out

It won't be done in this fragmented fashion for too long. This is the building block approach to what will be one continuous, fluid motion. The draw from a holster will always be done with purpose. That purpose is to get the gun on target as efficiently as possible. There are numerous good reasons to get the gun out of the holster quickly, so that is how we train.

When it comes to re-holstering, there are far fewer reasons to do so in a hurry. There will never be a reason to rush the re-holstering process during the DPSST basic firearms training program. The re-holster will be carried out at a much slower pace than the draw. It should always be a deliberate, controlled action, because re-holstering is where many accidents happen, both in training environments and real-world use when the pistol is unintentionally fired. Inattention to trigger finger discipline at this point has resulted in people injuring themselves or others.

The importance of trigger finger discipline cannot be overstated when manipulating a firearm in and out of the holster.

If you ever feel resistance when re-holstering, stop immediately! Check that the holster has not become obstructed with clothing or some other item. Do not force the gun past an obstruction.

Now let's break down the steps in the draw.

1. Grip & Break

Your grip will be established when you first put your hand on the pistol, while it is holstered. The web between your thumb and forefinger will be pushed as high as possible onto the back strap of the pistol grip. Don't progress the draw until you have successfully acquired your grip. Retention devices should be released at the same time, or prior to establishing your grip, depending on your holster design. The trigger finger will be indexed on the outside of the holster and remain in that orientation throughout the draw process. Move your non-dominant hand to the centerline of your torso.



Hand is as high as possible on grip.

2. Lift & Level

Once you've correctly established your grip, pull the pistol upward, clear of the holster. As soon as the muzzle is clear of the holster, rotate and level the pistol toward the target.



Your non-dominant hand remains against your torso. Your trigger finger remains indexed against the frame of the pistol.

Keep non-dominant hand on your torso.

Pistol is level toward target.

**If specific circumstances present themselves, it is possible to shoot the pistol from this position. However, this is not the default option.*

3. *Join*

Your non-dominant hand will now come off your torso to complete the grip. Be sure that your non-dominant hand does not get ahead of the muzzle as the grip is formed.



Join two hands in a proper grip.

**If specific circumstances present themselves, it is possible to shoot the pistol from this position. However, this is not the default option.*

4. Press Out

The final step of the draw is to extend the pistol toward the target with a two-handed grip. The trigger finger remains indexed against the frame until the pistol is on target and you have made the decision to shoot.

Not every draw will result in shots being fired. Drawing and shooting are two separate processes. Each requires a different level of justification.



Extend pistol towards Target.

Loading

We will now turn to the process of loading your pistol. This section will cover the initial load and we will cover reloading and unloading in further sections. Assume you are starting the process with an unloaded, holstered pistol and full magazines located in all carriers or magazine pouches.

We can use the initial load of the pistol as an opportunity to practice some of the same movement required for a reload. Use a magazine from your primary carrier / pouch for the initial load. If you have more pistol magazines than pouches to begin with, the additional magazine should be stored in a pocket or pouch for the initial stages of the load. It can be moved to the magazine carrier once the load is complete. Use a magazine from your primary carrier or pouch for the initial load.



Remove the Pistol

Remove your pistol from its holster in order to complete the loading process. Whenever we draw, we do so with purpose; each time we draw we have a training opportunity. Good repetitions of all our mechanical skills will increase our level of proficiency. So, draw it like you mean it!

Aim at an appropriate target. Then, bring the pistol back in toward the center line of your torso. Keeping your arms slightly bent while bringing the pistol closer to the center of your body will increase the stability and efficiency of this process.

For some people, placing their elbow against their torso will create a tactile reference to make this process easier to repeat consistently.

Access the Magazine

Use your non-dominant hand to break from the grip and access a magazine from your carrier or pouch. Use your finger to "index" the magazine. *(This assists with aligning it to the magazine well of the pistol.)*



Use your finger to index the magazine in its carrier or pouch.

Insert the Magazine and Pull the Slide

Insert the magazine into your pistol. (To check that the magazine has seated securely, tug on the base plate. If the magazine comes out of the pistol, reinsert it firmly and repeat this check.)

Pull the slide back and release to load the first round.



Tug down on magazine's base plate to make sure it is secure.

Now, use your non-dominant hand to pull the slide to the rear as far as possible and then release it forward. This action will take the top round from the magazine and push it into the chamber to load the pistol. (*Be certain to release your grip on the slide when it is pulled fully to the rear. Do not try to guide it forward, since this can disrupt the process and cause a failure to load.)*

The additional magazine should now be placed in the magazine carrier or pouch.

Unloading

Now we will describe the process of unloading the pistol. Assume you are starting with a loaded, holstered pistol and magazines located in all carriers or magazine pouches.

Remove the Pistol

Remove your pistol from its holster in order to carry out the unloading process. Whenever we draw, we do so with purpose; each time we draw we have a training opportunity. Good repetitions of our mechanical skills will increase our level of proficiency. So, draw it like you mean it!



Aim at an appropriate target. Then, bring the pistol back in toward the center line of your torso. Keeping your arms slightly bent while bringing the pistol closer to the center of your body will increase the stability and efficiency of this process.



Use non-dominant hand to press magazine release.

Remove the Magazine

Release your non-dominant hand from the grip and position it beneath the loaded magazine, taking hold of the base plate. Press the magazine release. The loaded magazine will now drop free from the pistol. That magazine should be stored in a pocket or pouch.

Expel the Live Round

Rack the pistol slide once, pulling it completely to the rear and then releasing it. As this is completed, a live round should be expelled from the chamber; do not try to retain that round. Let it fall. It can be recovered later. Once you have racked and released the pistol slide, locked it to the rear. If another round is expelled from the pistol as you lock the slide to the rear, you have forgotten step one and there is still a magazine inserted! You must begin again.

Visually Inspect for Ammunition

Once the slide is locked to the rear, visually and physically inspect the chamber and the magazine well for ammunition as shown here:

The chamber



The magazine well



When you have completed these steps and you are absolutely certain that there is no ammunition present in the pistol, release the slide. You may now holster the unloaded pistol.

Reloading

Pistol reloads can be categorized in two ways:

- Reload—The gun is empty, and you MUST reload it. The dynamic and overwhelming nature of lethal force encounters may lead to a continuous need to fire your pistol without a break. This skill is one that you should practice often.

- Optional Reload—The gun has a partially depleted magazine and you WANT to reload it. If the situation provides the opportunity to safely reload when you want to, then do so. A fully charged magazine in the pistol is better than a partially depleted one. However, the circumstances in which this is possible are uncommon. This technique is far more likely to be used as a range training aid than as an operational tactic. Real-life deadly force encounters rarely come with time-out opportunities for optional reloading.

Both the reload and the optional reload techniques have a use. We must understand the processes for when and how to complete both.

Reload

If a reload is required, it means every round from the gun has been fired, and there is an urgent need to get the gun loaded and operational. This is a crucial skill therefore it should be practiced often.

During normal functioning of the semi-automatic pistol, when the last round from a magazine is fired the slide will lock to the rear. This provides a visual and physical indication that the pistol is now empty. If you want to fire more rounds, you need to reload.



The slide will automatically lock to the rear after the last round is fired.

There are a number of reasons why the slide may not lock to the rear as intended. These include

- defective magazine,
- defective pistol, or
- incorrect alignment of your grip.

These malfunctions may cause you to press the trigger and simply hear a click. If that is the case, you should perform a *malfunction clearance* to diagnose the problem and carry out the reload as normal. The immediate action drills are covered in the next section on malfunctions.

There are five steps to the reload. With practice, the first three can be done simultaneously to increase efficiency.

1. Finger off trigger
2. Press magazine release
3. Non-dominant hand accesses new magazine
4. Insert new magazine
5. Release slide

Once the pistol is reloaded, reassess whether additional shots are required.

1. Finger off Trigger

Throughout the reload process, your trigger finger must remain in index against the frame.



Index your trigger finger.

2. Press Magazine Release

This is ideally done with the hand used to hold the gun. For right-handed shooters, the thumb is the first choice; for left-handed shooters, without an ambidextrous magazine release button, the middle finger is preferential.



Right-handed shooters will use their thumb to press the magazine release.



Left-handed shooters without an ambidextrous magazine release will use their middle finger.

3. Non-Dominant Hand Accesses New Magazine

Use your non-dominant hand to break from the grip and access a magazine from the carrier or pouch. Use your finger to index the magazine. (This assists with aligning it to the magazine well of the pistol.)



Use your non-dominant hand to index and remove a new magazine.



4. Insert New Magazine

It is far more efficient to bring the pistol closer to your torso and into the centerline of your body during the reload. Insert the magazine firmly, finishing the process with the palm of your non-dominant hand.



Note that the naturally comfortable, angled alignment of the wrist in this position orients the magazine well toward the magazine you are about to insert.

5. Release Slide

Two methods are acceptable for releasing the slide:

1. Physically pull the slide to the rear, then release it. *(Two grip options are pictured below.)*
2. Press the slide stop lever down to release the slide.

Try both; choose the one that you prefer and make that your primary choice. Trying to use both interchangeably can lead to overthinking a simple process and slowing it down unnecessarily.





Optional Reload

Completing an optional reload means that you have fired a number of rounds and you don't immediately need further rounds based on the circumstances, so you want to take the opportunity to bring your pistol back to full capacity. Swapping the magazine that is partially used in the pistol with a full one from your pouch or carrier will return your pistol to maximum capacity should you need to use it again.

There are five steps to the optional reload with retention.

1. Finger off trigger
2. Non-dominant hand accesses new magazine & brings it toward the pistol
3. Press magazine release
4. Swap inserted magazine with new magazine
5. Stow used magazine

1. Finger off Trigger

Throughout the reload process, your trigger finger must remain indexed against the frame.



2. Non-Dominant Hand Accesses New Magazine & Brings it Toward the Pistol

Using your finger to index the magazine will result in a more efficient execution of the insertion. Access the magazine from your rearmost pouch.



Use your non-dominant hand to index and access the magazine from the rearmost pouch.

3. Press Magazine Release

This is ideally done with the hand used to hold the gun. For right-handed shooters, the thumb is the first choice; for left-handed shooters, without an ambidextrous magazine release button, the middle finger is preferential.



Right-handed shooters will use their thumb to press the magazine release.



Left-handed shooters will use their middle finger to press the magazine release.

4. Swap Inserted Magazine with New Magazine



Use your non-dominant hand to remove the partially empty magazine and insert the full magazine.



5. Stow Used Magazine

Where to stow partially used magazines after removing them from the gun is an important consideration. You don't want to mix partially used and unused magazines. That confusion could lead you to unintentionally load a partially used magazine instead of a full one.

To help eliminate this confusion, you should acquire the magazine for this optional reload from the rearmost magazine pouch, where our "last magazine" is stored. The partially used magazine is then returned to that same, rearmost pouch. If we do need it, we will find it consistently where magazines are sourced for reloads. Placing it in the rearmost pouch will ensure that it will be the last magazine that we access.

Placing the partially used magazine in your beltline, pocket, or other area not routinely used is not a good idea. You will have an available magazine pouch, so use it! When you are under stress and trying to use your final magazine, it should be where you have trained to retrieve it hundreds to thousands of times.

MALFUNCTION IDENTIFICATION AND CLEARANCE

Semi-automatic pistol malfunctions are not common occurrences, and almost all can be fixed very simply. In this section, we will identify the most common reasons for malfunction and how to clear or resolve them. The causes can be categorized broadly into the following categories:

- Ammunition Malfunctions
  - Misfire
  - Hang fire
  - Squib load
- Mechanical Malfunctions
  - Failure to eject
  - Failure to extract

Ammunition Malfunctions

Both the misfire and the will feel the same to you as the shooter. The trigger press will not feel unusual, but you will only hear the click of the trigger mechanism; the gun will not fire as expected.

Misfire

The firing pin strikes the back of the cartridge, but the primer does not ignite the powder. The cartridge does not fire. There is no bang! This can be caused by a fault with the primer, the powder contained in the casing, or both.

Hang Fire

The firing pin strikes the back of the cartridge and there is no immediate result. After a short delay, the cartridge will fire as normal. The initial delay could be misunderstood as being a misfire. The delay may be momentary but sometimes can last several seconds.

The solution for both malfunctions is the same. If the gun goes click instead of bang, you have a significant problem. There is a compelling reason why you pressed the trigger. The immediate action is to index your trigger finger, then:



1. Tap the base of the magazine with your non-dominant hand to make sure that it is correctly seated.



Incorrectly seated magazines are a common error following a poorly executed reload. A misaligned grip may also have caused you to press the magazine release while shooting.

2. Rack the slide to eject a possibly defective cartridge and load the next one.





Either one of these grips is appropriate for the slide manipulation.

3. Re-Assess the situation. Are shots still required? Something may have changed since you discovered the malfunction. Does your finger need to go back on the trigger?

Squib Load

A squib load error occurs when the firing pin strikes the back of the cartridge and the primer does spark and ignite the powder. However, there is insufficient pressure generated to force the bullet all the way out of the barrel. You will feel greatly reduced recoil. There will be a very different and much quieter sound compared to the usual "bang" associated with firing the gun. The bullet will be stuck in the barrel and the weapon MUST NOT be fired until this obstruction is cleared. That kind of assessment will have to be completed by an armorer. The pistol is of no use to you until then.

If you are using quality factory manufactured ammunition, this is a very rare event.

Mechanical Malfunctions

Failure to Eject

This can occur when your pistol has been fired and the spent casing has been extracted from the chamber but has not been thrown clear of the ejection port. The slide comes forward and the casing becomes stuck. The pistol will not fire due to the obstruction. This malfunction is often referred to as a "stove pipe" due to the appearance of the protruding casing.



Stovepipe appearance of stuck, protruding casing.

The solution is the same as an ammunition malfunction clearance. Index your trigger finger and then:

Tap → Rack → Re-Assess

Failure to Extract

This can occur due to a faulty magazine or when the pistol has been fired but the spent casing has not been extracted from the chamber. The slide travels backward and another cartridge is pushed toward the chamber from the top of the magazine. Since the chamber is blocked by the casing that didn't extract, the slide will be stuck in the rear position. The solution to this malfunction is different, it is an adaption of an unload and a reload. The trigger finger is still indexed, then immediately:

Strip → Rack → Reload → Re-Assess

1. Strip the magazine out of the pistol. Pressing the magazine release alone will not allow the magazine to fall as it normally would. The magazine will be held in place by the pressure of the recoil spring pushing the slide forward. The magazine will need to be pulled forcibly from the pistol while the magazine release is pressed.



2. Rack the slide to eject the spent casing. It may take multiple attempts if the casing is stuck or the extractor is damaged. Only when the casing is ejected should you move to the next step.

3. Reload the pistol. The previous two actions will have left you holding a completely unloaded pistol. Insert a magazine (preferably a different one to that removed) and rack the slide.

4. Reassess the situation. Are shots still required? Something may have changed since you last pressed the trigger.

COVER AND CONCEALMENT

The following table highlights the differences between cover and concealment and provides some examples of each.

Table 1 *Cover and Concealment*

Cover	Concealment
Provides some degree of protection from bullets, edged weapons, and blunt force trauma. Nothing is truly bulletproof. All cover is ballistically consumable, just at different rates.	Allows you to hide and/or disguise your location but offers no protection once your location is known.
Examples: • Ballistic vest/shield • Substantial Tree • Dirt Mound • Stone Wall • Concrete Traffic Barricade • Some Parts of a Vehicle	Examples: • Darkness • Drywall • Fencing • Garden Shed • Vehicle Doors • Shrubbery

These lists are not exhaustive. There may be other items which fall into either category.

Whenever possible, we should use cover. Concealment may be better than nothing at all if disguising our location provides an advantage. Mere concealment is less advantageous for us if we are being shot at. Hiding behind something that is not cover has little value once if bullets are penetrating it.

It is good practice to routinely identify your nearest point of cover as a matter of course as you go about your daily business. Taking the time to identify cover in advance will certainly allow you to use it more quickly if your circumstances suddenly require it. When using cover there are some simple techniques we can apply to make sure we are maximizing its protective potential.

Put Some Distance Between You and Cover

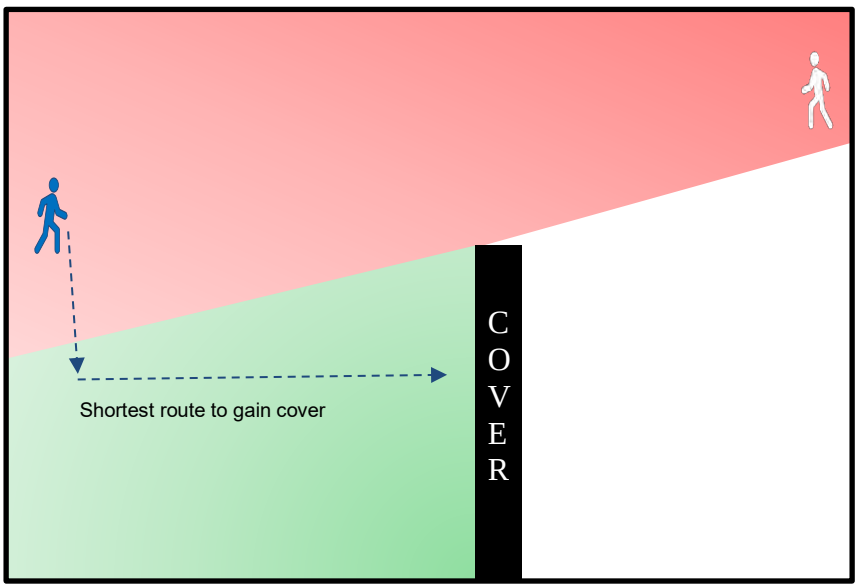
Standing off from cover a short distance allows better use of angles for engagement, keeps your peripheral vison open, and protects you from debris if rounds begin to impact and degrade your cover position. Resist the natural urge to be close to cover.



Put a little distance between you and your cover.

Use Shortest Path to Cover

Cover has a potentially infinite shadow of protection, no matter how far you are behind it. If there is cover directly between your position and a threat, an "L" movement can be the fastest way to take advantage of cover even at distance.



REDUCED LIGHT

Reduced light can mean no light, or low light. The pistol can be operated effectively in reduced light environments in conjunction with a handheld flashlight, or a weapon-mounted light. It is highly recommended to have both in your possession, in good working order, always. Even a day shift can require a flashlight at a moment's notice, and we must always be able to see and identify a threat before shooting.

As far as equipment selection goes, the brightest, longest running quality light is the guiding principal. A minimum of two handheld lights are recommended, in addition to a light mounted on every firearm.

Weapon-mounted Light

If pointing a firearm is justifiable, then using the weapon-mounted light is preferential. A weapon-mounted light allows a traditional two-handed grip. Use of a two-handed grip will increase speed and accuracy during what will certainly be challenging circumstances. Remember, the weapon-mounted light is only the best choice for those circumstances in which you are lawfully justified to point a gun. Anything you point the weapon-mounted light toward will also has a firearm pointed at it. In other words, you cannot use and point the weapon-mounted light at something without also pointing your pistol at it.

When operating the weapon-mounted light under ideal circumstances, the switch will be operated with the thumb of the non-dominant hand.

Ideally, you should use the thumb of your non-dominant hand to activate the light.



The trigger finger can be used to turn the weapon-mounted light on and off if the gun is being operated single handed, but this is a contingency, not a default.



Use your trigger finger to operate the weapon-mounted light only if you cannot use the thumb of your non-dominant hand.

Handheld Flashlight

More often than not, you will need a light before you realize you need to use a firearm or can justify pointing a firearm, so you will need to reach for your handheld flashlight Using a handheld light in conjunction with a pistol is more difficult though.

There are a multitude of techniques for using a handheld flashlight; by far the most versatile is the "ice pick grip." This is the primary technique recommended.

Using the Ice Pick Grip





When using a flashlight in conjunction with cover, it is best to have the flashlight directed outside of cover to avoid backlighting yourself.

Using a Light While Moving

Light on or off while moving? The answer to that, as with so many questions in this subject matter, is, it depends. If you have visual contact with a subject and quite correctly do not want to give it up, or if you are actively searching, then absolutely keep the light on.

Although turning the light off may provide you with some concealment and moving in the dark may sound tactical, once you trip over something, you are no longer concealed and far from tactical. If there is a good reason in any particular circumstance to have a light on or off, then that's your answer to the question. There is no "always" or "never" answer for that question.

Pointing Your Light at People

Give consideration to who you point your light at. Your colleagues will not thank you for impeding their precious night vision with direct exposure from your light. Shining your flashlight in the eyes of a compliant person may cause an immediate change in demeanor and desire to cooperate with you. Light discipline is a tactic, use it wisely.

Basic Police Academy

Fitness and Nutrition



OREGON
DEPARTMENT OF PUBLIC SAFETY
STANDARDS AND TRAINING
THE UNION

Fitness and Nutrition 1

Instructional Goals:

This course is designed to:

1. Develop a new officer's awareness of the correlation between fitness and quality of life.
2. Reinforce the importance of nutrition in both occupational and lifestyle wellness.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify breathing techniques to improve performance.
2. Assess the nutritional value of food through reading the nutrition facts label.
3. Recognize and assess the benefits and pitfalls of various diet plans.
4. Identify the nutritional and timing needs of macronutrients for the body.
5. Create a nutrition journal and submit a report to instructors.

Content Outline:

- Breathing for Performance
- Nutrition
- Out-of-Class Assignment
- Fitness
- Basic Health Introduction

Breathing for Performance

Breathing through the nose

1. 90% or greater of all breathing should be through the nose
2. Breathing should be deep through the diaphragm, not shallow into the chest
   a. Fewer breaths increase red blood cell production, activating the EPO hormone, synthesizing hemoglobin needed for oxygen transportation.
   b. Blood cells should have an oxygen saturation rate of approximately 95-99%
   c. Higher carbon dioxide levels promote the release of oxygen from cells to muscles (increase in production of hemoglobin).
3. Training to not over-breathe
   a. By slowing the rate of breaths taken per minute, greater stores of carbon dioxide will be produced, increasing the release of oxygen from red blood cells.
   b. You can train breathing by focusing on key points when not physically exerting oneself (i.e....sitting, non-physical work tasks, breathing focused exercises).
      i. Slow consistent inhale through the nose into the abdomen via the diaphragm.
      ii. Short pause
      iii. Exhale through the nose
      iv. Short breath-hold upon exhale
      v. Repeat
   c. You should see/feel expansion and contraction in the abdomen rather than rise and fall in the chest.

Establishing proper breathing

1. Breathing depth drill
   a. From the sitting position:
      i. One hand on chest, one hand on the abdomen
      ii. Feel expansion/contraction of abdomen vs. rise/fall of the chest
      iii. Use 2-1-2-2 breathing count:
      Inhale for two seconds, pause for one second, exhale for two seconds, hold for two seconds
   b. From standing position
      i. Repeat steps from a supine position

2. Abdomen expansion progression (Superman Pose)
   a. From sitting position
      i. Hands-on lower 1/3 of the rib cage
      ii. Feel ribs expand during inhale, hold, contract during exhale
      iii. Use 2-1-2-3 breathing count:
      Inhale for two seconds, pause for one second, exhale for two seconds, hold for three seconds
   b. From standing position
      i. Repeat steps from double-kneeling position
      i. Keeping hands on lower 1/3 of ribs, begin quick breath sequence
      ii. Use 1-1-1-1 breathing count:
      Inhale for one second, pause for one second, exhale for one second, hold for one second
      iii. Progress to no pause inhale-exhale breathing

BOLT (Body Oxygen Level Test)

1. Measuring your BOLT score
    a. Take a normal breath in through your nose and allow a normal breath out through your nose.
    b. Hold your nose with your fingers to prevent air from entering your lungs.
    c. Time the number of seconds until you feel the first definite desire to breathe, or the first stresses of your body urging you to breathe. These sensations may include the need to swallow or constriction of the airways. You may also feel the first involuntary contraction of your breathing muscles in your abdomen or throat as your body gives the message to resume breathing. *(Note that BOLT is not a measurement of how long you can hold your breath but simply the time it takes for your body to react to a lack of air.)*
    d. Release your nose, stop the timer and breathe in through your nose. Your inhalation at the end of the breath-hold should be calm.
    e. Your score is the time on the timer (from when you stopped it).
    f. Resume normal breathing.

Source: Measure BOLT - Oxygen Advantage. https://oxygenadvantage.com/measure-bolt/

Building Nitric Oxide through Nasal Breathing

1. Nasal breathing leads to a build-up of nitric oxide.

Nitric oxide is released from the nasal cavity into the lower airways and blood vessels.

a. Nitric oxide promotes vasodilation in airways and blood vessels, improving oxygen transfer and blood flow.
b. Nitric oxide is the key component in pre-workout supplements. You now have a natural pre-workout!

Nose Unblocking Exercise

1. Take a small, silent breath in through your nose and a small, silent breath out through your nose.
2. Pinch your nose with your fingers to hold your breath.
3. Walk as many paces as possible with your breath held. Try to build up a medium to strong air shortage, without overdoing it.
4. When you resume breathing, do so only through your nose. Try to calm your breathing immediately.
5. After resuming your breathing, your first breath will probably be bigger than normal. Make sure that you calm your breathing as soon as possible by suppressing your second and third breaths.
6. You should be able to recover normal breathing within 2 to 3 breaths. If your breathing is erratic or heavier than usual, you have held your breath for too long.
7. Wait 1 or 2 minutes before repeating the breath-hold.
8. To prepare yourself for the more extended breath holds, go easy for the first few repetitions, increasing your paces each time.

Repeat for a total of 6 breath holds, creating a fairly strong need for air.

Source: The Oxygen Advantage by Patrick McKeown – The Rabbit Hole. https://blas.com/the-oxygen-advantage/

Nutrition

Macronutrients

Fats – 9 cal/g	Proteins – 4 cal/g	Carbohydrates – 4 cal/g	Alcohol – 7 cal/g
Sources: Animal by-products, oils, fried foods, nuts, processed foods	Sources: Meats, cheeses, eggs, legumes (beans), supplements	Complex Carbohydrate Sources: Fruits, vegetables, whole-grain bread, whole-grain pasta Simple Carbohydrate Sources: Rice, simple sugars, processed foods	

Saturated fat

- Source– Mainly animal products
- It can create a raise in low-density lipoprotein levels (bad cholesterol). However, LDL's created by saturated fat tend to be large and fluffy (not small and hard) leaving no tie to heart disease
- Increased risk of Type II diabetes due to potential insulin intolerance
- Switching to polyunsaturated fats will aid in avoiding weight gain

What are macronutrients used for?

- Carbohydrates– Energy source for the body
- Protein– Repair tool for damaged soft tissue
- Fats– Energy, heat and organ insulation, regulates fat-soluble vitamins

Timing

- Protein Timing
- The body most receptive to protein 0-45 minutes following exertion
- Second most receptive time is just before a fasting period
- Protein should be consumed throughout the day, 25-30 grams at a time

Macronutrient Intake After Exertion

- The ideal ratio of carbohydrate to protein intake after physical exertion is 3 to 1
- A 2 to 1 ratio is good
- Should be at a minimum 1 to 1 ratio
- The liquid form will be absorbed the most rapidly but is not essential
- Both the energy accretion and depletion stages are at work post-exertion.
- Both carbohydrate and protein lend to the accretion stage, but only carbohydrate blocks the depletion stage

Meal Timing

- Is breakfast the most important meal of the day?
    - Breakfast is needed to bring down cortisol levels. Cortisol levels are at the highest they will be all day when coming out of the fasting period. Cortisol is the hormone that reacts with the liver to produce cholesterol.
- Should you eat 4-6 smaller meals throughout the day or three big meals?
    - Research indicates that it is entirely dependent on the individual.

Eating Healthier

- Complex carbohydrates should comprise the bulk of the diet
- Proteins intake should be 10-35% of your diet, depending on factors such as age, health, and activity level. Depending on these factors, you should aim for about 0.5-1 gram of protein/1 lb of body weight.
- 5-8 cups of fruits and vegetables/day
- 80/20 Rule

What is the 80/20 Rule?

Supplements

Food Preparation

How to Shop	Preparing Food for Shift Work
Make a list before you go shopping	Make meals and snacks ahead of time
Read labels on the foods that you are buying	Package food as best you can (Tupperware)
Shop the outside of the store	Keep healthy snacks available and with you
Avoid pre-packaged foods as much as you can	

Out-of-Class Assignment: 10-Day Nutrition Journal

- Track all of the calories you consume for ten consecutive days in a food journal.
  - Include all food and drink.

- Determine the caloric value of each food/drink item consumed.

- Upon conclusion of the food journal, submit a brief paper including:
  - Daily caloric intake
  - A summary of the quality of your diet during this journaling period
  - Any significant changes you determine need to be made
  - A one-time calculation of their Basal Metabolic Rate (BMR) and daily caloric needs (DNC) using the Harris-Benedict Equation.

Turn the paper into the Health and Fitness Instructor.

[Additional Fitness Information on Next Pages]

* ADDITIONAL INFORMATION *

Fitness

Aerobic– with oxygen	Anaerobic– depleting a muscle or muscle group's oxygen supply

Training Heart Rate Zone

- Calculate max heart rate (220-age)
- Calculate the training heart rate zone (60-85%)
- RPE (Rate of perceived exertion)

Calculate Your Max Heart Rate Here:	**Calculate Your Training Heart Rate Zone Here:**

Measures of Body Composition

Weight	BMI	Percent Body Fat
Not a true measure of body composition or overall health. Skinny Fat– Person's body appears to be lean but in reality is not over fat by appearance only	Calculated from a person's weight and height: Weight (pounds) /((height(inches) * Height (inches)) * 703 = BMI This method does not discern between muscle and fat, only mass.	Methods to obtain percent body fat: Skinfold Caliper- Measure of fat in skin and tissues. Varies greatly depending on who administers the test. Underwater Weighing (Hydro densitometry) - Immersion of the body into a water tank and measuring the amount of displaced water. Body Average Density Measurement- Measuring the girth in specific areas to determine body fat. Areas measured are the upper arm, forearm, abdomen, hips, thigh, and calf. Bioelectrical Impedance Measurement- Passing an electrical current through the body and measuring the amount of impedance (how long it takes to pass through tissue). Fat-free = faster Fatty = slower Dual Energy X-Ray Absorptiometry- Identifies specific fat deposits, similar to bone density measurement.

4 Components of Fitness:

1) Flexibility
2) Cardiovascular Endurance
3) Muscular Endurance
4) Muscular Strength

Calculate Your BMI Here:

Frequency, intensity, and time for daily and weekly workouts

- Frequency– How often you exercise
- Intensity– How hard you train
- Time– How long your training session lasts
- Daily vs. Weekly FIT goals
    - Daily goals are generally more strength, cardiovascular or short-term endurance-related
    - Weekly goals are distance or quantitative related

Strength vs. Power vs. Endurance

- Strength– High weight, low rep, low speed, extended recovery period
- Power– Combination of speed and strength. Blending weight and repetition to gain maximum benefit in both areas
- Endurance– Low weight, high rep, increased intensity, shorter recovery period

Training Modalities

Weight Training/Strength Training	Interval Training	Yoga/Pilates/Barre
Typically in a gym or weight room setting Adding resistance to movement to incrementally increase the resistance (amount of weight that can be moved)	Circuit Training • Performing a specific rotation of exercises, in order, for either a specified number of repetitions or amount of time Tabata Training • 20 seconds of exercise followed by 10 seconds of rest • Each set is 4 minutes of total time • Can be 1 exercise or combination of exercises HIIT Training (High-Intensity Interval Training) • Warm-up, high-intensity exercise separated by medium intensity exercise, cool down CrossFit Speed/Agility Training • Must combine movements to improve strength, power, stability, and flexibility.	Yoga • Uniting the mind, body, and spirit • Creating balance through developing strength and flexibility Pilates • Developing core strength to support the spine and back • Six Pilates Principles: Centering, Control, Flow, Breath, Precision, Concentration Barre • Combination of Pilates, yoga, and ballet • Lengthening muscles as well as strengthening them

Basic Health Introduction

Two primary health problems faced by public safety officials:

Cardiovascular Disease (CVD)	Back Problems
▪ CVD affects the heart and circulatory system ▪ Reduce effects by proper nutrition and a regular fitness program	▪ Use proper lifting techniques ▪ Proper adjustment/alignment of duty belt to lessen pressure on the lower back ▪ Increase flexibility in the hamstrings; build strength through the core and abdominal muscles

Factors influencing health:

1. Heredity
   - Traits inherited from the family that may lead to future health problems
   - Highest risk diseases that can be hereditary: Cancer, Diabetes, CVD and Asthma (World Health Organization, 2016)

2. Lifestyle
   - Most influential factors: Excessive use of alcohol, tobacco use, high-risk activities, and your environment

Controllable risk factors:

Physical inactivity	High blood pressure
Smoking/tobacco use	High blood cholesterol
Excessive consumption of alcohol	Stress
Obesity	

Effects of tobacco and alcohol on the body:

Lung/liver disease	Cancer	CVD
Tobacco Smokers are 12-13 times more likely to die from COPD (Chronic Obstructive Pulmonary Disease) than non-smokers.	Tobacco Cigarette smoking causes most cases of lung cancer. If no one smoked, 1 of every three deaths cancer deaths in the U.S. would not happen.	Tobacco Smoking increases the risk of CVD by 2-4 times.
Alcohol Cirrhosis of the liver (irreversible scarring/blocks the flow of blood), alcoholic hepatitis	Alcohol The leading cause of mouth, throat, esophagus, stomach, and liver cancer.	Alcohol It can cause irregular heartbeat, stroke, and high blood pressure (CDC 2010, 2013, 2014) (NIAAA 2014).

Fitness and Nutrition Part 2

Please read the following article and be prepared to discuss in class.

Hydrate Right

Reviewed by Taylor Wolfram, MS, RDN, LDN

Published May 3, 2018

Proper hydration is one of the most important aspects of healthy physical activity. Drinking the right amount of fluids before, during and after physical activity is vital to providing your body the fluids it needs to perform properly. Sports dietitians assist athletes by developing individualized hydration plans that enhance performance in training and competition while minimizing risks for dehydration, over-hydration and heat illness and injury.

Hydration Goal

The overall goal is to minimize dehydration without over-drinking. Adequate hydration varies among individuals. Practical ways to monitor hydration are:

- *Urine color*. The color of the first morning's urine void after awaking is an overall indicator of hydration status. Straw or lemonade colored urine is a sign of appropriate hydration. Dark colored urine, the color of apple juice, indicates dehydration. Bright urine often is produced soon after consuming vitamin supplements.

- *Sweat loss*. Change in body weight before and after exercise is used to estimate sweat loss. Since an athlete's sweat loss during exercise is an indicator of hydration status, athletes are advised to follow customized fluid replacement plans that consider thirst, urine color, fluid intake, sweat loss and body weight changes that occur during exercise.

Minimize Dehydration

Dehydration can occur in virtually every physical activity scenario. It doesn't have to be hot. You don't have to have visible perspiration. You can become dehydrated in the water, at a pool or lake, or skiing on a winter day.

Dehydration results when athletes fail to adequately replace fluid lost through sweating. Since dehydration that exceeds 2 percent body weight loss harms exercise performance, athletes are advised to begin exercise well hydrated, minimize dehydration during exercise and replace fluid losses after exercise.

Be alert for conditions that increase your fluid loss through sweat.

- *Air Temperature:* The higher the temperature, the greater your sweat losses.
- *Intensity:* The harder you work out, the more you perspire.
- *Body Size and Gender:* Larger people sweat more. Men generally sweat more than women.
- *Duration:* The longer the workout, the more fluid loss.
- *Fitness:* Well-trained athletes perspire more than less fit people. Why? Athletes cool their bodies through sweat more efficiently than most people because their bodies are used to the extra stress. Thus, fluid needs are higher for highly trained athletes than for less fit individuals.

Remember swimmers sweat, too. Like any athletic activity, when you swim, your body temperature rises and your body sweats to keep from overheating. You may not notice because you are in the water, but you can become dehydrated. Swimmers, from competitive athletes to families splashing around, need to drink fluids before, during and after swimming, even if you don't feel thirsty.

Warning Signs

Know the signs of dehydration. Early signs are:

- Thirst
- Flushed skin
- Premature fatigue
- Increased body temperature
- Faster breathing and pulse rate
- Increased perception of effort
- Decreased exercise capacity

Later signs include:

- Dizziness
- Increased weakness
- Labored breathing with exercise

Fluid Replacement

Replace fluids during exercise to promote adequate hydration. Drink water rather than pouring it over your head. Drinking is the only way to rehydrate and cool your body from the inside out. Sports drinks are more appropriate than water for athletes engaged in moderate- to high-intensity exercise that lasts an hour or longer. Rehydrate after exercise by drinking enough fluid to replace fluid losses during exercise.

Reviewed March 2018

Basic Police Academy
History of Policing



History of Policing

Instructional Goal:

This course is designed to develop a new officer's understanding of the evolution of American policing and what that means for law enforcement professionals today.

Learning Outcome:

Upon completion of instruction, the student will be able to:

1. Explain how the history of law enforcement in America has an impact on the perception of police today.

Content Outline:

The Early Days of American Law Enforcement
- Watch
- Constables
- Sheriffs

The Development of Modern Policing
- Peel's Principles
- Political Era
- Reform Era
- Community Policing Era
  - Problem-Oriented Policing
  - Evidence-Based Policing

Acknowledging the Impacts of History

A Brief History of Slavery and the
- Origins of American Policing
- Policing in the Civil Rights Era to Today

History of Communities of Color in Oregon
- The History of Social Justice in Oregon

The Impact of History on Communities
- Generational Trauma
- Cultural Mistrust

The Early Days of American Law Enforcement

Source: The National Law Enforcement Museum

The early policing system in the United States was modeled after the English structure, which incorporated the watch, constables, and sheriffs in a community-based police organization.

Initially run by a combination of obligatory and voluntary participation, the 17th-century watch typically reported fires, maintained order in the streets, raised the "hue and cry" (pursuing suspected criminals with loud cries to raise the alarm), and captured and arrested lawbreakers. Constables had similar tasks, which included maintaining health and sanitation and bringing suspects and witnesses to court—frequently for such conduct as working on the Sabbath, cursing in public places, and failing to pen animals properly.

In the more rural, sparsely populated areas of the Colonies, the sheriff was the primary law enforcement figure. Appointed by the governor, sheriffs' duties included serving legal documents such as writs, appearing in court, and collecting taxes. In many cases, the sheriff was paid a fixed amount for each task he performed, some, for example, receiving payment based on the amount of taxes they collected. Occasionally, these tasks proved dangerous. The first known American peace officer to be killed in the line of duty was Columbia County (N.Y.) Sheriff Cornelius Hogeboom, who was shot on October 22, 1791, as he attempted to serve a writ of ejectment.

In the 1700s, more people settled in towns, and more shops and businesses were built, which meant more work for the watch. Seaports bustling with sailors and overseas trading ships boosted the merchant class economy but also caused unprecedented social problems that affected law enforcement. Taverns were built to entertain sailors in port cities, and public drunkenness, brawls, and prostitution became more frequent. As police work became increasingly time-consuming and difficult, fewer men volunteered for the watch, and many evaded their mandatory duties.

In 1749, Philadelphia restructured the watch in an attempt to solve these problems; a tax paid the watch, all male citizens were no longer obligated to work when summoned, and only men interested in the paid job applied.

Even with positive developments like these, the Colonial law enforcement system still required drastic change. During the Industrial Revolution of the early 19th century, the number of factories, buildings, and people surged substantially. The overall boom in industrial growth and overcrowding brought more crime, riots, public health issues, race and socio-economic divisions, and general disorder.

The solution? A new and improved law enforcement system implemented first by England in 1829: a stronger, more centralized, preventive police force designed to deter crime from happening, rather than to react once it had occurred.

The Influence of the British Model on Modern Policing

To a large extent, policing in London became the model for policing in America. In 1822, British home secretary Sir Robert Peel criticized the state of policing in London. Some years later, he was responsible for the passage of the Metropolitan Police Act creating the world's first large-scale organized police force in the city of London.

Sir Robert Peel was among the first to envision a broader role for officers than just crime-fighting. Peel emphasized the prevention of crime. He also felt that uniforms were necessary because they would make officers stand out in a crowd and thus discourage crime. Officers were assigned to regular foot-patrol areas, charged with the task of preventing and suppressing crime in their designated geographic regions. Patrol beats enabled the police officers to get to know their assigned neighborhood and for residents to become familiar with members of the local police department.

Beyond that, Peel identified a series of principles that he said ought to characterize any police force. *Note- There are several versions of Peel's Principles, some listing 12 principles and some listing 9. There is also no documentation that Peel wrote the principles of policing that have been attributed to him.*

"Peel's (9) Principles of Policing"

1) The basic mission for which the police exist is to prevent crime and disorder.

2) The ability of the police to perform their duties is dependent upon public approval of police actions.

3) Police must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and maintain the respect of the public.

4) The degree of cooperation of the public that can be secured diminishes proportionately to the necessity of the use of physical force

5) Police seek and preserve public favor not by catering to public opinion but by constantly demonstrating absolute impartial service to the law.

6) Police use physical force to the extent necessary to secure observance of the law or to restore order only when the exercise of persuasion, advice, and warning is found to be insufficient.

7) Police, at all times, should maintain a relationship with the public that gives reality to the historical tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the interests of community welfare and existence.

8) Police should always direct their action strictly toward their functions and never appear to usurp the powers of the judiciary.

9) The test of police efficiency is the absence of crime and disorder, not the visible evidence of police action in dealing with it.

The Development of Modern Policing

In the United States, policing developed in a fashion similar to the British experience. Most major U.S. cities had established municipal police departments by the Civil War. Initially, the police were used to control specific populations such as slaves or recent immigrants (more on this in Part 2). They also provided many community services, such as maintaining health and sanitation, regulating commerce, and controlling vices.

There are three commonly acknowledged eras of modern policing:

- The Political Era
- The Reform Era
- The Community Policing Era

The Political Era, which is generally associated with a time before the 20th century, refers to a period when the policing was under the control of politicians and focused on serving the politically powerful.

This era was marked by corrupt behavior on the part of the police, including police brutality. The police ruled largely by physical coercion. Controlling industrial and race riots became the central focus of many urban police departments. "Shoot first, ask questions later" was widely seen as the primary operating mode of law enforcement, especially on the western frontier. Corruption was widespread. Laws limiting drinking, gambling, and sex provided ample opportunity for the criminal element to provide much-desired products and services. Such illegal activities could only thrive, of course, with support from local law enforcement. The payoffs to officers who protected criminals were significant. Many Americans did not trust the police who were seen as in the pockets of big-city political machines.

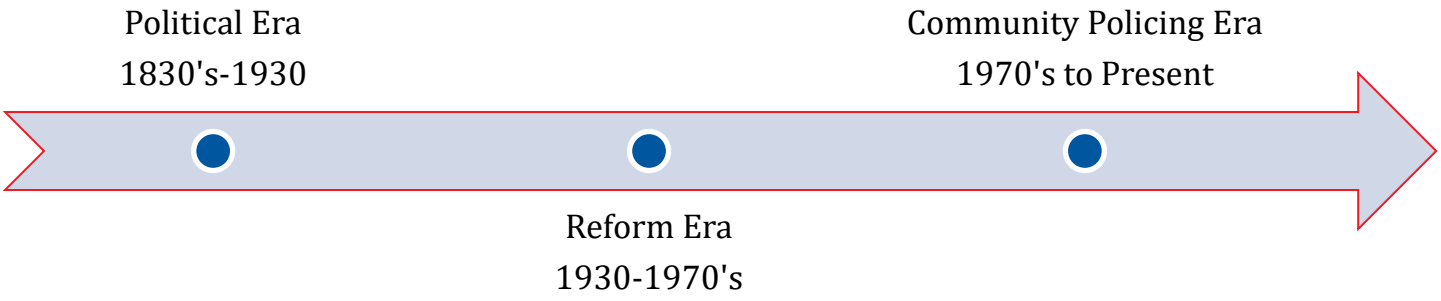
Political Era	Reform Era
• Police focused on serving the politically powerful • Politicians hired their supporters as police • Regulate criminal activity rather than control it • Heavily involved in providing essential services for those in need • Came about because of a need for social order and security in a rapidly changing society	• Police gained pride in their profession • Law enforcement focused on "traditional" crime-fighting and the capture of criminals • Crackdown on organized crime • Progressive policing policy led by August Vollmer and O.W. Wilson • Came about because citizens called for reform and the removal of politics from policing

Modernization of the American police force began during **the Reform Era** when police administrators implemented strategies and technology.

August Vollmer, the first police chief of Berkeley, California, and perhaps the foremost presence in America's police reform movement, argued that policing should be regarded as a public service as a profession focused on improving society. Vollmer argued that the police had "far greater obligations than the mere apprehending and prosecution of lawbreakers." The police, he claimed, should try to prevent crime by working with families, schools, and other influential institutions. He called for organizational reforms in police agencies, elevated standards of recruitment and retention, and the adoption of modern management techniques, imposing greater accountability on police management. Written policies and procedures were adopted to define and structure the police role within the community.

The automobile, telephone, and radio allowed police to respond to calls for services quickly and efficiently. At the same time, this resulted in police officers no longer walking beats nor getting to know the neighborhood's residents.

Vollmer's reforms were consistent with a reform mentality intended to move policing toward professional stature. It was hoped that policing would become a civil service profession divorced from politics.



When the social unrest of the 1960s led to urban riots, assassinations, and increased gang violence, police/community relations suffered. Some people viewed the police as an occupying force. Police brutality often led to civil disorder, and some members of the public saw the police at the forefront of maintaining the status quo of an unjust and discriminatory society.

The Community Policing Era brought back the emphasis on the police/citizen relationship. It stresses a service delivery element to police work. Traditional police functions such as patrol, investigations, and the like remain, but many police agencies have changed their mission statements to reflect a new way of thinking.

Another factor established in this era was that research began to reveal that the police could not reduce crime by their efforts alone. A series of studies regarding police effectiveness in the 1970s (the Kansas City Patrol Experiment, the Rand Investigation Experiment, and the Rapid Response Studies) told police that nothing they were doing was working to fight crime. These studies resulted in an increased interest in how to involve citizens in crime problems/solutions and increased experimentation for preventing crime.

The Community Policing Era has seen a plethora of strategies centered on this idea of police effectiveness.

In 1979, Herman Goldstein developed and advanced the concept of **Problem-Oriented Policing**, which encouraged police to begin thinking differently about their purpose. His idea was that policing should fundamentally be about changing the conditions that give rise to recurring crime problems and should not merely be about responding to incidents as they occur or trying to forestall them through preventive patrols. Note, Problem-Oriented Policing (POP) is not separate or competing with Community Policing. It is a strategy designed to be used within the Community Policing philosophy.

In 1998, Lawrence Sherman drew connections between evidence-based medicine and policing. This strategy, **Evidence-Based Policing (EBP)**, asserted that "police practices should be based on scientific evidence about what works best." Law enforcement agencies should somehow use research knowledge to help guide strategic and tactical decisions.

Evidence-Based Policing-

Research, evaluation, analysis and scientific processes should have a "seat at the table" in law enforcement decision making about tactics, strategies, and policies.

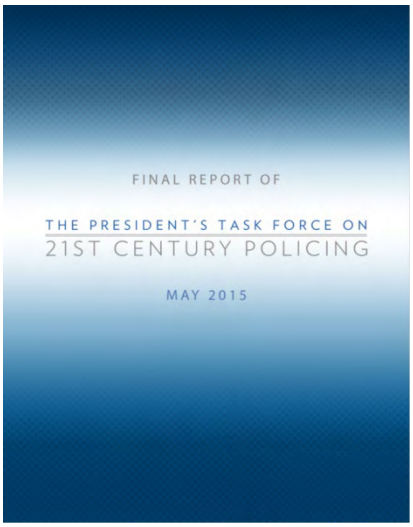
Evidence-Based Policing
Translating Research into Practice
Cynthia Lum and Christopher S. Koper
2017

EBP can involve many types of activities, including:

- Rigorous evaluation methods should be used to examine the effectiveness of a police training program, a patrol deployment approach, or an investigative strategy.
- Crime analysis should guide the deployment of resources to crime hot spots.
- Training officers on what is known about effective police practices regarding crime control, police/community relations, reducing disparity and bias, dealing with disorder, etc.

Example: Aligning patrol deployment with the research knowledge about shift lengths. Research shows that ten-hour shifts lead to less officer fatigue and better performance.

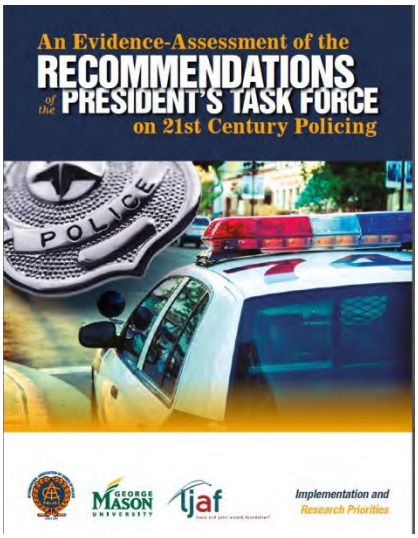
The push for science-driven policing has continued to grow with the Smart Policing Initiative and groups such as the Center for Evidence-Based Crime Policy, The Police Foundation, The American Society of Evidence-Based Policing, and even the Center for Policing Excellence here at DPSST among others.



Throughout the Academy, you will discuss The President's Task Force on 21st Century Policing, which identifies best practices and offers recommendations on how policing practices can promote effective crime reduction while building public trust.

The Task Force presented recommendations to law enforcement agencies to strengthen policing categorized under six pillars:

- Pillar 1: Building Trust and Legitimacy
- Pillar 2: Policy and Oversight
- Pillar 3: Technology and Social Media
- Pillar 4: Community Policing and Crime Reduction
- Pillar 5: Training and Education
- Pillar 6: Officer Wellness and Safety

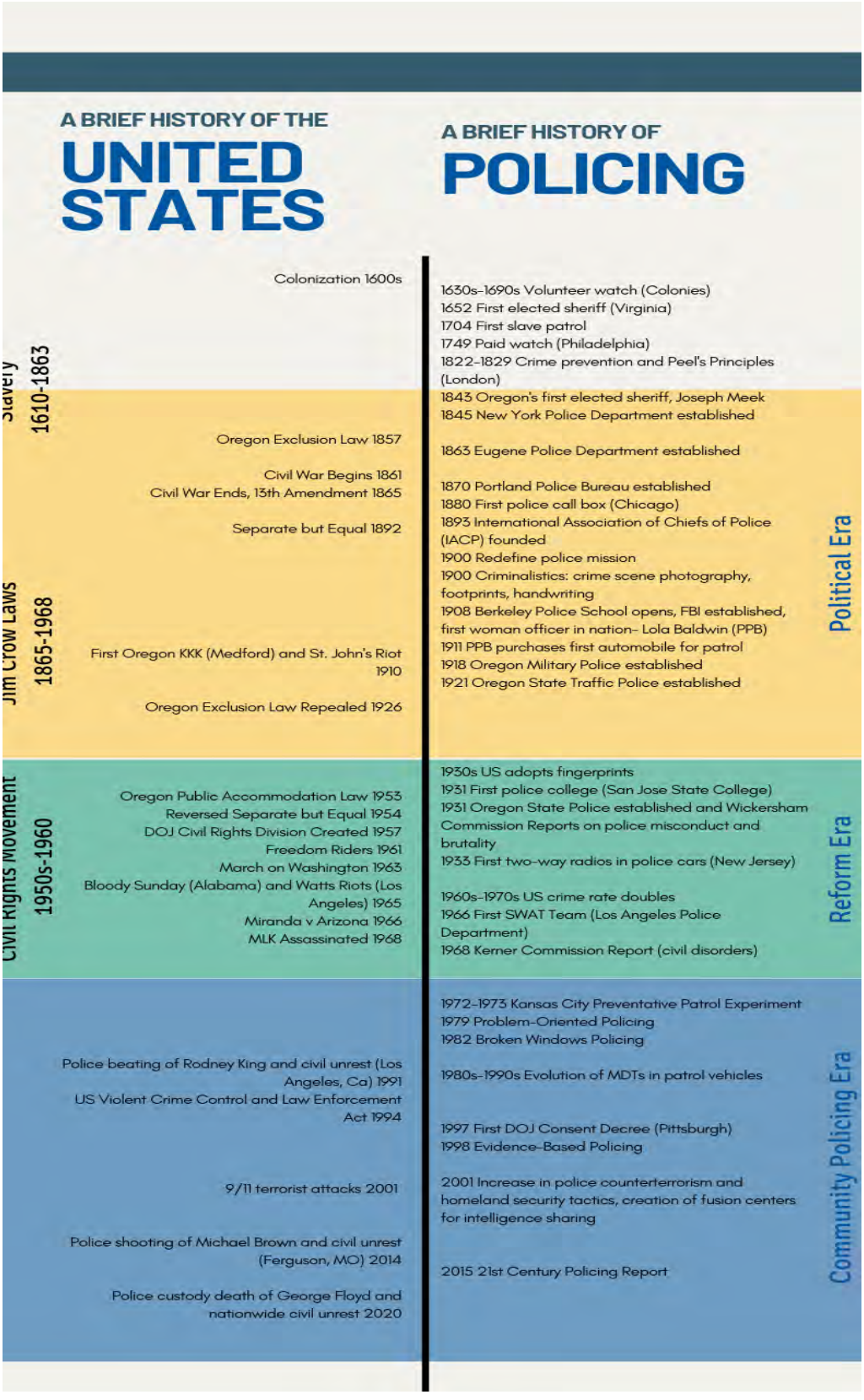


A follow-up report, An Evidence-Assessment of the Recommendations of the President's Task Force on 21st Century Policing, relates what we know from research about those recommendations and what more needs to be learned through police-research partnerships to advance them.

Community Policing Era

- Police departments work to identify and serve the needs of their communities.
- Partnerships between the police and the community
- Police focus on quality-of-life
- Came about because of a realization that police cannot do it all on their own and effective community partnerships can help prevent and solve crimes
- Increased experimentation for preventing crime
- Move to a science-based approach (Evidence-Based Policing), using research to inform decisions

Acknowledging the Impacts of History



Understanding the history of policing as well as the social, political, and economic factors that shaped police institutions can serve to benefit officers in their efforts to build trust with communities of color. In Emotional Intelligence, you have discussed the importance of empathy, sensing others' feelings and perspectives, and taking an active interest in their concerns. As was covered in Part 1, the policing profession was built upon political power, corruption, and oppression. Some communities experienced (and still do) the adverse effects of policing more than others. Those experiences impact the police/community relationship today, and an empathetic response is necessary.

Reform efforts have brought the policing profession a long way, but as in all professions, we must always strive to be better. So, what can be done now to build better relationships with communities? Tips for engaging diverse communities will be covered later, but first, we must start by acknowledging the injustices in our history. To truly acknowledge history means to become educated and to be conscientious, not to minimize the experiences of others.

To help us explore these issues, following are two articles exploring different time periods and geographic regions.

- The first article is A Brief History of Slavery and the Origins of American Policing, written by Victor Kappeler. Dr. Kappeler is the Dean of the School of Justice Studies at Eastern Kentucky University and a policing scholar.
- The second article is The History of Social Justice in Oregon from the Oregon Social Justice Documentation Project. The Oregon Social Justice Project consists of a collection of individual research projects conducted by students at Oregon State University.

A Brief History of Slavery and the Origins of American Policing- Written by Victor E. Kappeler, Ph.D.

Source: A Brief History of Slavery and the Origins of American....
https://plsonline.eku.edu/insidelook/brief-history-slavery-and-origins-american-policing

The birth and development of the American police can be traced to a multitude of historical, legal, and political-economic conditions. The institution of slavery and the control of minorities, however, were two of the more formidable historic features of American society shaping early policing. Slave patrols and Night Watches, which later became modern police departments, were both designed to control the behaviors of minorities. For example, New England settlers appointed Indian Constables to police Native Americans (National Constable Association, 1995), the St. Louis police were founded to protect residents from Native Americans in that frontier city, and many southern police departments began as slave patrols. In 1704, the colony of Carolina developed the nation's first slave patrol. Slave patrols helped to maintain the economic order and to assist the wealthy landowners in recovering and punishing slaves who essentially were considered property.

Policing was not the only social institution enmeshed in slavery. Slavery was fully institutionalized in the American economic and legal order, with laws being enacted at both the state and national divisions of government. Slavery and the abuse of people of color, was not merely a southern affair, as many have been taught to believe. A legally sanctioned law enforcement system existed in America before the Civil War for the express purpose of controlling the slave population and protecting the interests of slave owners.

Before the American Civil War, Abraham Lincoln and other leaders of the anti-slavery Republican Party sought not to abolish slavery but merely to stop its extension into new territories and states in the American West. This policy was unacceptable to most Southern politicians, who believed that the growth of free states would turn the U.S. power structure irrevocably against them. In November 1860, Lincoln's election as president signaled the secession of seven Southern states and the formation of the Confederate States of America. Shortly after his inauguration in 1861, the Civil War began.

As the war dragged on, the Republican-dominated federal government began to realize the strategic advantages of emancipation: The liberation of slaves would weaken the Confederacy by depriving it of a major portion of its labor force, which would in turn strengthen the Union by producing an influx of manpower.

In 1862, Congress annulled the fugitive slave laws, prohibited slavery in the U.S. territories, and authorized Lincoln to employ freed slaves in the army.

On January 1, 1863, President Lincoln formally issued the Emancipation Proclamation. For most white Americans, the Civil War was a war for the Union. But for black Americans, it was a battle for freedom.

As the Confederacy staggered toward defeat, Lincoln realized that the Emancipation Proclamation, a war measure, might have little constitutional authority once the war was over. The Republican Party subsequently introduced the 13th Amendment into Congress

In 1865 (246 years after the first shipload of captive Africans landed at Jamestown, Virginia, and were bought as slaves) the 13th Amendment is formally adopted into the U.S. Constitution, ensuring that *"Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."*

History.com

Because of its tradition of slavery, which rested on the racist rationalization that Blacks were sub-human, America had a long and shameful history of mistreating people of color, long after the end of the Civil War.

As soon as the war ended, many whites organized to oppose black freedom. Using terrorism and the courts, they forced African Americans away from voting booths and other public places.

Jim Crow laws were a collection of state and local statutes that legalized racial segregation. Named after an insulting song lyric regarding African Americans, the laws—which existed for about 100 years, from the post-Civil War era until 1968—were meant to return Southern states to an antebellum class structure by marginalizing black Americans. Black communities and individuals that attempted to defy Jim Crow laws often met with violence and death.

Black codes were strict laws detailing when, where and how freed slaves could work, and for how much compensation. The codes appeared throughout the South as a legal way to put black citizens into indentured servitude, to take voting rights away, to control where they lived and how they traveled and to seize children for labor purposes.

The legal system was stacked against black citizens, with ex-Confederate soldiers working as police and judges, making it difficult for African Americans to win court cases and ensuring they became victim to the black codes.

These codes worked in conjunction with labor camps for the incarcerated, where prisoners were treated as slaves. Black offenders typically received longer sentences than their white equals, and because of the grueling work, often did not live out their entire sentence.

The turn of the century saw states across the south ratcheting up Jim Crow laws, affecting every section of daily life. Segregated waiting rooms in professional offices were required, as well as water fountains, restrooms, building entrances, elevators, cemeteries, even amusement-park cashier windows. Laws forbade African Americans from living in white neighborhoods. Segregation was enforced for public pools, phone booths, hospitals, asylums, jails and residential homes for the elderly and handicapped. Some states required separate textbooks black and white students. Marriage and cohabitation between whites and blacks was strictly forbidden in most southern states. It was not uncommon to see signs posted at town and city limits warning African Americans that they were not welcome there.

Smithsonian Museum of American History, History.com

Violence was on the rise, making danger a regular aspect of black lives. Black schools were vandalized and destroyed, and bands of violent whites attacked black citizens in the night. These were sometimes gruesome incidents where the victims were tortured and mutilated before being murdered. Families were attacked and forced off their land all across the South.

The most ruthless organization of the Jim Crow era, the Ku Klux Klan, was born in this setting in 1865 in Pulaski, Tennessee, as a private club for Confederate veterans. The KKK grew into a secret society terrorizing black communities and seeping through white southern culture, with members at the highest levels of government and in the lowest echelons of criminal back alleys**.**

Source: Jim Crow Laws: Definition, Facts & Timeline - HISTORY.
https://www.history.com/topics/early-20th-century-us/jim-crow-laws

Finally, in 1871 Congress passed the Ku Klux Klan Act, which prohibited state actors from violating the Civil Rights of all citizens in part because of law enforcements' involvement with the infamous group. This legislation, however, did not stem the tide of racial or ethnic abuse that persisted well into the 1960s.

Source: A Brief History of Slavery and the Origins of American....
https://plsonline.eku.edu/insidelook/brief-history-slavery-and-origins-american-policing

On June 7, 1892, Homer Plessy walked into the Press Street Depot in New Orleans, bought a first-class ticket to Covington, and boarded the train. As the train pulled away from the station, the conductor asked Plessy if he was a “colored man.” Plessy said he was and the conductor told him to move to the coloured car. Homer Plessy refused. “I am an American citizen,” he told the trainman. “I have paid for a first-class ticket, and intend to ride to Covington in the first-class car.” The conductor stopped the train, and Detective Christopher Cain boarded the car, arrested Plessy, and forcibly dragged him off the train with the help of a few other passengers. After a night in jail, Plessy appeared in criminal court to answer charges of violating the Separate Car Act.

In 1954, the Supreme Court reversed the “Separate but Equal” ruling which declared segregation in public schools unconstitutional, and, by extension, that ruling was applied to other public facilities. In the years following, subsequent decisions struck down similar kinds of Jim Crow legislation.

Policing in the Civil Rights Era to Today- Same or Different?

Do a Google image search for "policing in the civil rights era." What are the prevalent images? What other search terms come up?

Aggressive dispersion tactics, such as police dogs and fire hoses, against individuals in peaceful protests and sit-ins, were the most widely publicized examples of police brutality in that era. But it was the pervasive violent policing in communities of color that built distrust at a local, everyday level.

Source: The Long, Painful History of Police ... - Smithsonian.
https://www.smithsonianmag.com/smithsonian-institution/long-painful-history-police-brutality-in-the-us-180964098/

The post-World War II era saw an increase in civil rights activities in the black community, with a focus on ensuring that black citizens were able to vote. This ushered in a decades-long effort in the civil rights movement resulting in the removal of Jim Crow laws.

In 1948 President Harry Truman ordered integration in the military, and in 1954, the Supreme Court ruled that educational segregation was unconstitutional. In 1964, President Lyndon B. Johnson signed the Civil Rights Act, which legally ended discrimination and segregation that had been institutionalized by Jim Crow laws. And in 1965, the Voting Rights Act ended efforts to keep minorities from voting. The Fair Housing Act of 1968, which ended discrimination in renting and selling homes, followed.

Jim Crow laws were technically off the books, though that has not always guaranteed full integration or adherence to anti-racism laws throughout the United States.

An unprecedented number of demonstrations swept the country in the first half of 1963. Civil rights organizations demanded the right to vote, full access to jobs and education, and an end to segregated public accommodations. These demands met with strong resistance and violence from local governments. Justice Department records list more than 978 demonstrations in 109 cities, with over 2,000 arrests and four deaths.

The passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 were turning points in the struggle for civil rights. Together the two bills outlawed segregated public facilities and prohibited discriminatory practices in employment and voting.

Smithsonian National Museum of American History

Source: Jim Crow Laws: Definition, Facts & Timeline - HISTORY.
https://www.history.com/topics/early-20th-century-us/jim-crow-laws

Black newspapers reported incidents of police brutality throughout the early and mid-20th century, and the popularization of radio storytelling spread those stories even further. In 1991, following the beating of cab driver Rodney King, video footage vividly told the story of police brutality on television to a much wider audience. The police officers, who were acquitted of the crime, had hit King more than 50 times with their batons.

Source: https://www.smithsonianmag.com/smithsonian-institution/long-painful-history-police-brutality-in-the-us-180964098/#v6YXgq5obUoTZ5I9.99

Here we are, decades later, having the same dialogue about the same issues. The only difference is that today we have the immediacy of information; 24-hour news cycles, live streaming, social media, etc. When an incident occurs, it is everywhere quickly.

History of Communities of Color in Oregon

Often it is easy for us to dismiss this history; "it was a long time ago," "it happened in the South," "Oregon is a progressive state," etc. Although not all of the discrimination and oppression directed at communities of color in Oregon was a direct result of law enforcement, understanding the bigger picture is essential to acknowledge injustices. It should be considered when working to bridge the gap today.

The West coast is not immune from a history of bigotry and oppression. The earliest settlers arrived under the nineteenth-century banner of Manifest Destiny, which asserted that white Americans had the right and obligation to expand across the continent and impose their rule. Although Indians had lived and thrived here for thousands of years, white settlers viewed the region as unoccupied wilderness. The government forcibly removed them from their traditional homelands and confined them to reservations, distributing their lands.

St. Johns Riot 1910

East Indian workers immigrated to Oregon to work in lumber mills in the early 20th century. They were targets of violence from workers who resented the “tide of turbans”. Police reportedly stood by as a mob of white mill workers brutally attacked “the Hindu’s”

Oregon had laws in place that served to oppress and discriminate against blacks, Chinese, Native Americans, and other minority communities. Oregon enforced Jim Crow segregation laws until the 1953 Public Accommodation Law, which prohibited the denial of service to black people and other people of color.

Oregon had an active KKK, with the first Klansmen sworn in in Medford in 1921. By 1923 there were 35,000 Oregon members. Members were elected to political positions and served in law enforcement.

Just as it was seen around the country, here, there were allegations of police brutality, over-policing and under-protecting people of color.

The History of Social Justice in Oregon- From the Oregon Social Justice Documentation Project

Source: The Oregon Black Laws - Oregon Social Justice | Home.
http://blogs.oregonstate.edu/oregonsocialjustice/oregon-black-laws/

In the summer of 1844, a bill was introduced "to prevent slavery." This bill would exclude all African Americans from the territory altogether, under the guise of respecting the status of Oregon as a free state. This was the founding of the Exclusion law or what became known as one of the Black Laws of Oregon. In November 1857, when Oregonians were preparing for statehood by creating their state Constitution, ninety percent of voters approved the Exclusion law. The exclusion law stipulated that "no free negro or mulatto, not residing in this state at the time of the adoption of this Constitution, shall come, reside, or be within this State, or hold any real estate, or make any contracts, or maintain any suit therein." The Exclusion law remained in the state constitution until 1926 when it was finally repealed.

> "No free negro or mulatto… shall ever come, reside, or be within this state, or hold any real estate, or make any contracts, or sustain any suit therein"
>
> Oregon Constitution
> 1857

A lot of discrimination that African Americans faced in Oregon (as in other parts of the country) was based on racist social conventions, customs, or traditions that pass from person to person and generation to generation. This type of discrimination that is not ground in legal precedence, but rather the culmination of racist attitudes in whites and a lack of power for African Americans.

This racism and lack of power meant that African Americans would be restricted to specific neighborhoods by restrictive zoning practices (redlining). Real estate agencies, as well as individual landlords, also often refused to sell or rent to African Americans. Home improvement in African American neighborhoods was made nearly impossible when most local banks refused to give loans to African American homeowners. The African American community saw this as a detriment to their ability to integrate into the city as a whole. African American people were socially barred from many aspects of ordinary life that the white people could do easily.

Another form of discrimination was Sundown Laws. These laws refer to the town ordinances that numerous cities across the country recognized that communicated that African Americans and sometimes other minorities such as Latinos and Asians were not to be in the city limits when the sun had set. Like housing discrimination, there was not always a law on the books, but that did not necessarily soften the force of the discrimination. Oregon alone has 24 towns that are either suspected or confirmed Sundown Towns.

Later you will learn more about the impact of this history on communities, especially communities of color. In Community Competency, you will talk about concepts such as cultural mistrust and historical and generational trauma and what that means for you as an officer.

Cultural Mistrust	Historical Trauma
Cultural mistrust is an attitudinal response to historical and personal oppression in which people of color do not trust Whites in institutional, personal and social contexts (Terrell & Terrell, 1981).	Multigenerational trauma experienced by a specific cultural group. Historical trauma can be experienced by "anyone living in families at one time marked by severe levels of trauma, poverty, dislocation, war, etc., and who are still suffering as a result." (Cutler, n.d.)

Additional Online Resources

Looking Back to Move Forward: Timeline of Oregon and US Racial, Immigration and Education History
https://www.portlandoregon.gov/civic/article/516558

Oregon Secretary of State's Office: Web Exhibits and Projects
https://sos.oregon.gov/archives/Pages/exhibits.aspx

Oregon Historical Society: The Oregon Encyclopedia
https: //www.oregonencyclopedia.org/

Sources and Resources

A Brief History of Slavery and the Origins of American Policing by Victor E. Kappeler, Eastern Kentucky University

Being Smart on Crime with Evidence-Based Policing (March 2012) from Jim Bueermann, National Institute of Justice, Journal 269

Future Trends in Policing (2014) from the Police Executive Research Forum (PERF) and the COPS Office

Ignoring the Past: Coverage of Slavery and Slave Patrols in Criminal Justice Texts. K. B. Turner, David Giacopassi & Margaret Vandiver. Journal of Criminal Justice Education Vol. 17, Iss. 1, 2006

Origins and Evolution of American Policing
https://www.pearsonhighered.com/assets/samplechapter/0/1/3/3/0133028313.pdf

Sir Robert Peel's Nine Principles of Policing. Source: J. L. Lyman, "The Metropolitan Police Act of 1829: An analysis of certain events influencing the passage and character of the Metropolitan Police Act in England," Journal of Criminal Law, Criminology, and Police Science, vol. 55, no. 1 (March 1964): 141–54.

The Early Days of American Law Enforcement – From the National Law Enforcement Museum

The History of Modern Policing- From the USDOJ: Office of Community Oriented Policing

White Policing of Black Populations: A History of Race and Social Control in America by Homer Hawkins and Richard Thomas

Basic Police Academy

Human Trafficking



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Human Trafficking

Instructional Goal:

This course is designed to...

Introduce a new police officer to types of human trafficking and the different approaches to investigations

Learning Outcomes:

Upon completion of instruction, student will be able to:

1. Identify investigation considerations for various types of human trafficking cases
2. Identify different approaches to human trafficking investigations

Content Outline:

- Intersection of violence
- Labor trafficking
- Sex trafficking
- Dynamics of trafficking

Indicators

Labor Trafficking

- Living at their place of employment
- Not in control or possession of their documents
- Owe money to an employer or recruiter and/or not being paid what they are promised or are owed.
- Living and working in isolated conditions, largely cut off from interaction with others or support systems.
- Appear to be monitored by another person when talking or interacting with others.
- Are living in dangerous, overcrowded, or inhumane conditions provided by an employer.
- Are being threatened by their boss with deportation or other harm.
- Are working in dangerous conditions, without proper safety gear, training, adequate breaks, and other protections.

Sex Trafficking

- They disclose that they were reluctant to engage in selling sex but feel scared or unable to leave.
- They have a pimp or manager in the sex trade.
- They want to stop participating in selling or trading sex but feel scared or unable to leave.
- Family connections to sex trafficking
- Using the internet for posting sexually explicit material.
- Minor with multiple occasions of running away from home/placement.
- Minor that is multi-system involved. (Child Welfare, Juvenile Justice, OYA)
- A minor self-reporting *"consensual"* participation in a sexual act in exchange for shelter, transportation, drugs, alcohol, money or other item(s) of value.

Sex & Labor Trafficking

- Required to provide sexual service to people they work with or for.
- Pay for basic needs, documentation, transportation with sexual services.
- Unexplained injuries or unaddressed medical issues
- Social interaction and schedule seem to be controlled by someone else
- References traveling job opportunities, including modeling, singing and/or dancing in a music group, sales crews.
- Forced criminality – being forced to commit crimes such as theft, assault, fraud etc. by their traffickers
- References traveling to other cities or state or lacks knowledge of travel plans, destinations, or current location.

Oregon ORS' for Human Trafficking

- **ORS 163.266: Trafficking in persons**- A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and:
  - The person knows that the other person will be subjected to involuntary servitude
  - The person knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act; or
  - The person knows or recklessly disregards the fact that the other person is under 18 years of age and will be used in a commercial sex act.

- **ORS 163.413: Purchasing Sex with a Minor**- A person commits the crime of purchasing sex with a minor if the person pays, or offers or agrees to pay, a fee to engage in sexual intercourse or sexual contact with a minor, a police officer posing as a minor or an agent of a police officer posing as a minor.

- **ORS 163.537: Buying or selling a person under 18 years of age**- A person commits the crime of buying or selling a person under 18 years of age if the person buys, sells, barters, trades or offers to buy or sell the legal or physical custody of a person under 18 years of age.

- **ORS 163.670: Using a child in display of sexually explicit conduct**- A person commits the crime of using a child in a display of sexually explicit conduct if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording.

- **ORS 163.684, 163.686, 163.687: Encouraging child sexual abuse-** A person commits the crime of encouraging child sexual abuse
  - Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance or sells a visual recording of sexually explicit conduct involving a child or knowingly possesses, accesses or views such a visual recording with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it; or
  - Knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, a visual recording of sexually explicit conduct involving a child; and
  - Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse.

- **ORS 167.008: Commercial Sexual Solicitation**- A person commits the crime of commercial sexual solicitation if the person pays, or offers or agrees to pay, a fee to engage in sexual conduct or sexual contact.

- **ORS 167.017: Compelling Prostitution-** A person commits the crime of compelling prostitution if the person knowingly:
  - Uses force or intimidation to compel another to engage in prostitution or attempted prostitution;
  - Induces or causes a person under 18 years of age to engage in prostitution;
  - Aids or facilitates the commission of prostitution or attempted prostitution by a person under 18 years of age; or
  - Induces or causes the spouse, child or stepchild of the person to engage in prostitution.

- **ORS 167.057: Luring a minor**- A person commits the crime of luring a minor if the person furnishes to, or uses with, a minor, a police officer posing as a minor or an agent of a police officer posing as a minor, a visual representation or explicit verbal description or narrative account of sexual conduct for the purpose of inducing the minor or purported minor to engage in sexual conduct.

- **ORS 167.830: Employment of minors in a place of public entertainment**- any person operating or conducting a place of public amusement or entertainment, who employs or allows a child under the age of 18 years to conduct or assist in conducting any public dance, including but not limited to dancing by the child as a public performance, or to assist in or furnish music for public dancing, commits a Class D violation.

Oregon ORS for Labor Trafficking

ORS 163.263, 163.264: Subjecting another person to involuntary servitude- A person commits the crime of subjecting another person to involuntary servitude if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:

- Abusing or threatening to abuse the law or legal process;
- Destroying, concealing, removing, confiscating or possessing an actual or purported passport or immigration document or another actual or purported government identification document of a person;
- Threatening to report a person to a government agency for the purpose of arrest or deportation;
- Threatening to collect an unlawful debt; or
- Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing.

Federal Human Trafficking Statute

The Trafficking Victims Protection Act (TVPA) of 2000 is the first comprehensive federal law to address trafficking in persons. The law provides a three-pronged approach that includes prevention, protection, and prosecution.

- **Sex trafficking** is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purposes of a commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age (22 USC § 7102).

- **Labor trafficking** is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery, (22 USC § 7102).

- **Involuntary Servitude**-a condition of servitude induced by means of any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or the abuse or threatened abuse of the legal process (22 U.S.C. 7102)

- **Debt Bondage**-the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined (22 U.S.C. 7102)

- **Coercion**- threats of serious harm to or physical restraint against any person; any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or the abuse or threatened abuse of the legal process (22 U.S.C. 7102)

- **Commercial Sexual Act**-The term "commercial sex act" means any sex act on account of which anything of value is given to or received by any person (22 U.S.C. 7102)

Sources and/or Resources

Task Forces

https://www.doj.state.or.us/crime-victims/victims-resources/other-resources/exploitation-and-sex-trafficking/

- Linn/Benton Anti Trafficking Coalition*
- Clackamas County Sex Trafficking Multidisciplinary Team (MDT)
- Deschutes County Commercial Sexual Exploitation of Children (CSEC) Response Team
- Douglas County CSEC Response Team
- Jackson County Coalition Against Sex Trafficking
- Klamath County Trafficking Task Force
- Lane County CSEC MDT
- Lincoln County*
- Tri-County against Trafficking Task Force "TCATT"*
- Marion County Human Trafficking Task Force
- Mid-Columbia Human Trafficking Task Force (Wasco)
- Mid-Columbia Human Trafficking Task Force (Gilliam)
- Mid-Columbia Human Trafficking Task Force (Sherman)
- Mid-Columbia Human Trafficking Task Force (Hood River)
- Mid-Columbia Human Trafficking Task Force (Wheeler)
- Multnomah County Sex Trafficking Collaborative
- Washington County Human Trafficking Task Force

Intoxilyzer 8000

BASIC POLICE



Intoxilyzer 8000

Pride
Honor
Dedication
Loyalty

Oregon State Police
Forensic Services Division

1

Intoxilyzer 8000

Curriculum Overview

- Criminal DUII and Implied Consent Laws
- Implied Consent Procedures and Documentation
- Intoxilyzer 8000 Operation
- Blood and Urine Collection Procedures
- DMV Hearings
- Review Questions
- Final Exam and Practical Exercises

2

Criminal DUII and Implied Consent Laws

3

Criminal DUII Laws

DUII is generally a Class A misdemeanor

It becomes a class C felony if the subject has 2 prior convictions for DUII in the prior 10 years in any jurisdiction

ORS 813.010 and 813.011

4

Criminal Sanctions for DUII Conviction

1st offense – minimum of $1,000.00
2nd offense – minimum of $1,500.00
3rd offense – minimum of $2,000.00
- (if no prison term imposed)

If the BAC is ≥ 0.15 – minimum fine is $2000.00

5

What is Diversion?

An agreement between the defendant and the Court in which the State will forego prosecution and sentencing of the subject for one year in exchange for the defendant's agreement to plead guilty to the DUII and complete certain requirements.

- If completed – DUII is dismissed
- If not – They are convicted and sentenced

6

Diversion Eligibility

- Can't be a DUII crash resulting in death or physical injury to *another* person
- In the past 15 years:
  - No pending or prior convictions for DUII
  - No current or prior diversion
  - No pending or prior convictions for murder, manslaughter, criminally negligent homicide or assault (from operation of a vehicle)

7

What YOU Need to Know

A person may ask you to explain "Diversion";

- Do not give advice to a subject about whether or not to take "Diversion";
- Be sure to document injuries of others if any and notify the prosecutor so that an objection to diversion can be made (if applicable)

8

Implied Consent Law

What is "Implied Consent"?

Under Oregon Implied Consent law, anyone who drives a motor vehicle on a premises open to the public in Oregon has given their consent to take a breath, blood or urine test when arrested for DUII and asked to do so or else his/her license is subject to suspension.

9

Who is Subject?

Is an unlicensed driver arrested for DUII subject to the Implied Consent law?

YES

10

Who is Subject?

- Implied Consent only applies to arrested persons
- Arrests are based on impairment
- No impairment, no legal arrest
- No legal arrest, no legal breath/blood/urine test

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Implied Consent Failure

What constitutes a failure of a chemical test under implied consent?

Non-commercial --	≥0.08%
Commercial --	≥0.04%
Minor --	>0.00%

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Offenses and Consequences

Non-Commercial driver	Failure	Refusal
1st Offense	90 days	1 year
2nd Offense	1 year	3 years
Commercial driver		
1st Offense	1 year	3 years
Hazmat	3 years	5 years
2nd Offense	Lifetime (20 years)	Lifetime (20 years)

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Implied Consent Law

A non-commercial vehicle driver is arrested for her 2nd DUII and submits a breath sample of 0.15% BAC.

How long will she be suspended?

1 year

If she'd refused the test?

3 years

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Consecutive Suspensions

Refusal of a urine test carries the same suspension length as refusal of breath or blood test and is consecutive to any other suspension.

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Implied Consent Law

A driver is injured in a motor vehicle crash and is receiving care at a medical facility. He is arrested for his first DUII and refuses to take the blood test. He also refuses a urine test.

How long will his suspension period be?

1 year for each refusal (assuming no prior suspensions) for a total of 2 years.

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Criminal vs. Administrative Law

Implied Consent Suspension = A driver arrested for DUII with a BAC ≥ 0.08%

Criminal Conviction = An officer's observations of impairment and/or evidence of BAC is the best combination

<u>Document existence of "impairment" in conjunction with BAC</u>

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Criminal vs. Administrative Law

Minors

For an adult to be arrested for the crime of DUII, an officer needs probable cause to believe that the person is impaired.

- The BAC may be over or under a 0.08%

What is the requirement for a minor?

The SAME

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Criminal vs. Administrative Law

Minors

What is "Zero Tolerance"?

- Do NOT arrest a minor for DUII unless they are impaired.
- Under Implied Consent Law, any amount of alcohol = suspension ***if a minor is arrested for DUII.***

Only applies to minors under 21 years old

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Right to Counsel / Communicate

Right to counsel - Criminal Law

A person has a right under Article 1 of the Oregon State Constitution when arrested for DUII to have an opportunity to speak to an attorney when requested.

Right to communicate – IC Law

A person has a right under the Oregon Implied Consent law to have a reasonable opportunity to communicate with anyone regarding the decision to take a test.

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Criminal vs. Administrative Law

Implied Consent

- Right to communicate with counsel or others
- No right to privacy – but give privacy!
- Must give defendant "REASONABLE OPPORTUNITY" to communicate

Criminal

- Right to counsel (Article I §11)
- Right to speak privately prior to breath test
- Must give "REASONABLE OPPORTUNITY" to consult with counsel

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Criminal vs. Administrative Law

If the suspect does NOT ask to talk to counsel or others continue with breath test.

If the suspect asks to make phone call to anyone, including an attorney (Not Invoking!), read the ICCR Rights and Consequences 1A and 1B and the Notice of Private Consultation (back of the Rohrs card) before providing the person a telephone.

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Criminal vs. Administrative Law

If the suspect invokes, to include refusing to answer questions, stating he/she does not want to talk to you, or requesting an attorney (Invoking!), you should DISCONTINUE FSTs, asking questions, and Implied Consent, and (assuming you have PC) get a breath/blood/urine warrant.

State v. Shevyakov

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Implied Consent Procedures and Documentation

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Complete Forms Correctly

In 2019 DMV received 11,922 Implied Consent Combined Reports.

95% (11,376) of those forms were processed

- 546 were rejected
  - 66% boxes incorrectly marked
  - 18% incorrect date of arrest
  - 14% received untimely
  - 2% no signature

Approximately 23% of arrested motorists requested an Implied Consent hearing to challenge the proposed suspension.

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Documentation

Documentation you may need to successfully complete the DMV Implied Consent process.

- Implied Consent Combined Report
  - Basis for Suspension/Length of Suspension
  - Implied Consent Rights and Consequences (ICRC)
  - Temporary Driving Permit
- CMV Addendum
- Blood Test Failure
- Form 49

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Implied Consent Process

1. **Print a Checklist**
2. **Start Observation Period**
3. **Fill Out Top of ICCR First Page**
4. **Read ICRC**
5. **Conduct Test(s)**
6. **Mark Basis for Suspension**
7. **Complete ICCR First Page**
8. **Issue Citations**
9. **Issue Temporary Permit**

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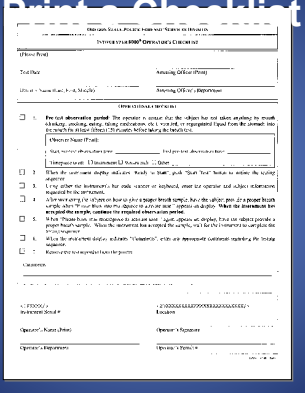
1. Print a Checklist (F2)



28

2. Start Observation Period

- Must be conducted on all subjects prior to breath test – MOST IMPORTANT STEP!
- Starts **AT LEAST** 15 minutes prior to pressing the green start button and **continues through to end of 2nd sample**
- Check mouth, ask them to lift tongue
- Not allowed to take anything by mouth, vomit, or regurgitate.

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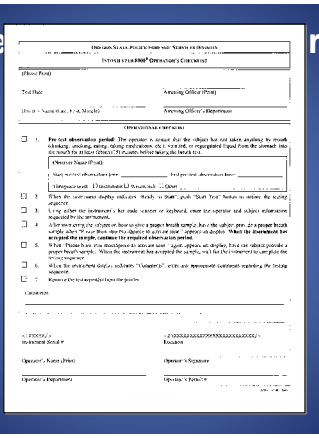
Documen[illegible]riod on



30

Observation Period

State v. Barletta (2003):
- Officer allowed subject to go to restroom
- NOT A GOOD OBSERVATION PERIOD

State v. Balderson (1996):
- Officer within 3' of subject entire time.
- GOOD OBSERVATION PERIOD

State v. Snuggerud (1998):
- coughing and blowing nose does not violate requirement

State v. Goddard (1987):
- no requirement to rinse mouth before the test

"Premier Public Safety Services" 31

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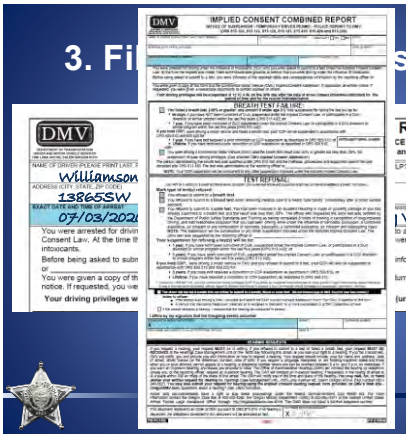
3. Fi st Page



"Premier Public Safety Services" 32

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Implied Consent Law

Length of suspension for refusal is substantially longer than a failure

Inform subject of the LIKELY length of suspension for refusing vs. failing.

"Premier Public Safety Services" 34

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Using a Recorded ICRC

Reading the ICRC is the preferred method.

You may choose to use your agency's recorded ICRC within agency policy IF:

- You are wearing a mask; OR,
- Your suspect is belligerent/interrupting you; AND,
- You stay in the room the entire time the recording is playing.
- Put a copy of the recording in the case file

"Premier Public Safety Services" 35

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What If…

Subject requests an attorney or a phone call to ask if they should give breath or blood

1. Read ICRC Sections IA and IB. Don't ask the question after IA.
2. Read the Notice of Private Consultation (back of Rohrs card)
3. AFTER their phone call, Ask the question after 1B "Will you provide physical cooperation and submit to a breath test" or "…blood test"

"Premier Public Safety Services" 36

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What If…

After reading Section IA, the subject asks, "What if I Refuse?"

1. Read Section IB
2. Ask the question after 1B "Will you provide physical cooperation and submit to a breath test" or "…blood test"
3. Suspension only happens AFTER you read 1B, ask the question, and subject STILL refuses

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What If…

The subject asks to read along with you – or they ask to see the ICCR

1. Have a photo copy of Section IA and Section IB (separately) available for subject to look at
2. Or (not as good) fold the ICRC in half so only IA shows

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5. Conduct Test(s)

Intoxilyzer 8000 operation will be covered in the next session

Blood and Urine Collection procedures will be covered in a later session

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6. Mark Basis for Suspension

Failure – Mark ONE box only

Refusal – Mark ALL BOXES THAT APPLY

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Basis for Suspension

The ICCR must state the proper basis for the license suspension.

- DMV lacks jurisdiction to impose a proposed suspension where the officer mistakenly marks the wrong box. *Coulter v. DMV*, 168 Or App 442 (2000).
- If form not completed correctly (i.e., wrong basis for the suspension is marked), suspension is invalid.

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Implied Consent Failure

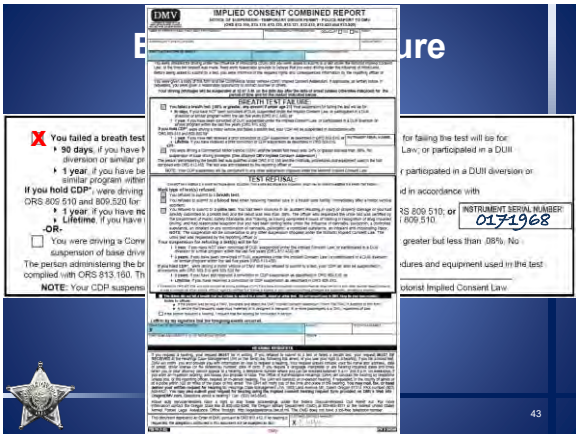
Breath:

Non-commercial --	≥ 0.08%
Commercial --	≥ 0.04%
Minor –	> 0.00%

Blood: Same as breath, but reported after results are received from OSP Forensic Lab

Urine: A driver cannot fail a urine test

42



43

Breath Test Refusal

A refusal is saying no, or "anything substantially short of unqualified assent to take a chemical test", including:

- Evading the officer's request;
- Intentionally stalling or delaying;
- Feigning an inability to provide a breath sample;
- Failing to seal lips around the mouthpiece and not directing breath into the breath tube; and/or
- Failing to blow as many times as necessary to complete the test.

Caldeira v. MVD, 181 Or App 168, 171 (2002)

44

44

Breath Test Refusal

- The Officer declares a refusal, not the instrument.
- Do not wait the full three minutes to declare a refusal – the instrument will show "No Sample Given" Gilliam v. ODOT, 178 Or App 267 (2001)
- Be prepared to articulate ***how*** this was a refusal.
- A physical incapacity or inability to take the test can be a defense in a refusal case.
  - The person must prove physical incapacity
  - The officer may offer evidence to the contrary, *i.e.*, why the officer believed the person was capable of providing a valid breath sample.

45

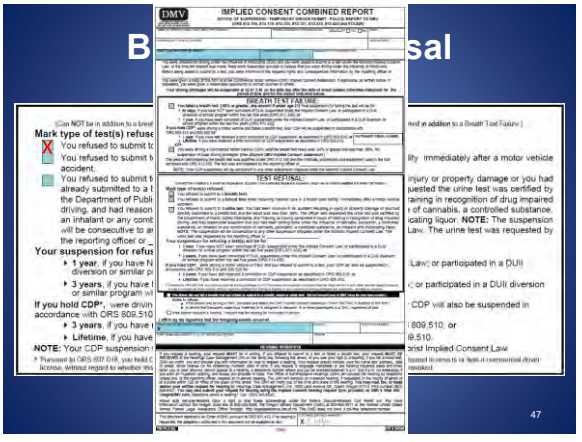
Breath Test Refusal

Subject is not cooperating with breath test:

1. Re-instruct. If still refusing:
2. Abort test using "A" key
3. Maintain observation of subject
4. Read Section IB
5. Ask the question after IB, "Will you provide physical cooperation and submit to a breath test" or "…blood test"
6. Re-start the test
7. Suspend for refusal if subject does not complete the test

"Premier Public Safety Services" 46

46



47

Blood Test Refusal at Hospital

TEST REFUSAL:

(Can NOT be in addition to a breath test failure above. Exception: Only a urine test refusal and suspension length may be marked in addition to a Breath Test Failure.)

Mark type of test(s) refused:

- ☐ You refused to submit to a **breath test**.
- ☒ You refused to submit to a **blood test** when receiving medical care in a health care facility immediately after a motor vehicle accident.
- ☐ You refused to submit to a **urine test**. You had been involved in an accident resulting in injury or property damage or you had already submitted to a breath test and the result was less than .08%. The officer who requested the urine test was certified by the Department of Public Safety Standards and Training as having completed 8 hours of training in recognition of drug impaired driving, and had reasonable suspicion that you had been driving while under the influence of cannabis, psilocybin, a controlled substance, an inhalant or any combination of cannabis, psilocybin, a controlled substance, an inhalant and intoxicating liquor. **NOTE:** The suspension will be consecutive to any other suspension imposed under the Motorist Implied Consent Law. The urine test was requested by the reporting officer or _____.

Your suspension for refusing a test(s) will be for:

- **1 year**, if you have NOT been convicted of DUII; suspended under the Implied Consent Law; or participated in a DUII diversion or similar program within the last five years [ORS 813.430]; **or**
- **3 years**, if you have been convicted of DUII, suspended under the Implied Consent Law; or participated in a DUII diversion or similar program within the last five years [ORS 813.430].

If you hold CDP*, were driving a motor vehicle or CMV and you refused to submit to a test, your CDP will also be suspended in accordance with ORS 809.510 and 809.520 for:

- **3 years**, if you have **not** received a conviction or CDP suspension as described in ORS 809.510; **or**
- **Lifetime**, if you have received a conviction or CDP suspension as described in ORS 809.510.

* Pursuant to ORS 807.016, you hold commercial driving privileges (CDP) if you have an unexpired commercial learner driver permit, or your most recently issued license is or was a commercial driver license, without regard to whether that license is expired or your commercial driving privileges are suspended, cancelled or revoked.

48

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When Can You Request Urine?

If a subject refuses to provide a breath sample AND you have reasonable suspicion the subject is impaired by drugs, can you request urine under Implied Consent?

Only if the subject was involved in a crash.

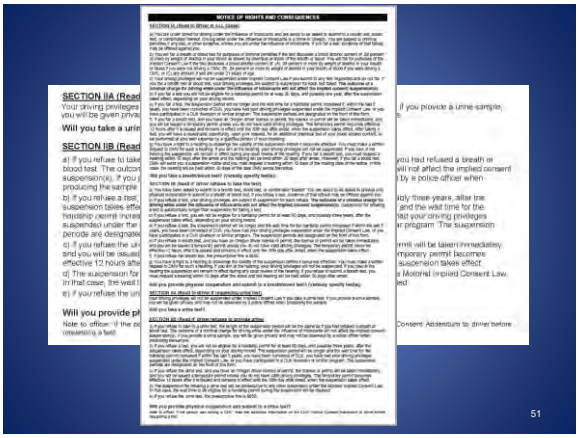
49

When Can You Request Urine?

If a subject not involved in a crash provides a breath sample AND you have reasonable suspicion the subject is impaired by drugs, can you request urine under Implied Consent?

Only if the BAC was below .08

50



51

Urine Refusal

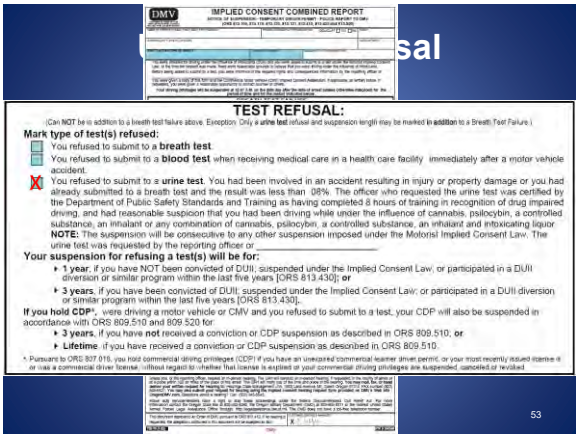
What constitutes refusal of a urine test?

A refusal "need not be explicit, and a person who does not provide a urine sample within a reasonable amount of time has refused to submit to the urine test". Case-specific.

Possible Defenses:

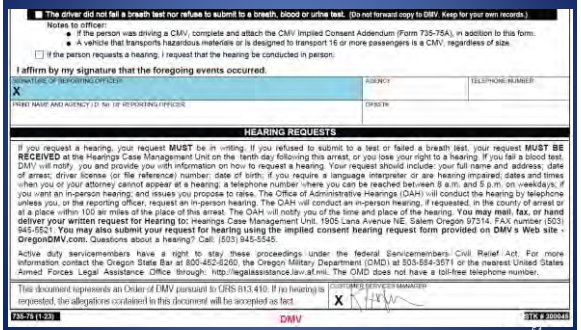
- A doctor's letter showing the person has a medical condition that makes it impossible for the person to provide a urine sample.
- May assert a denial of privacy in producing the sample. Eillicot v. MVD (2018)

52



53

7. Complete ICCR First Page



54

8. Issue Citations

- **Cite for DUII separately**
  - DUII – [substance]
  - [substance] = Alcohol, Inhalant, Controlled Substance, Cannabis, Psilocybin or any combination of these
- **Cite for other crimes**
- **Cite for violations**
  - Separate Citation from the DUII citation
- **Cite for refusing breath or urine tests**
  - Fine for refusing a breath and/or urine test
  - ORS 813.095 (does NOT apply to blood)

55

9. Issue Temporary Permit

When do you issue a temporary permit?

<u>ONLY</u> if you seize a valid ODL or Oregon permit <u>AND</u> the D07 says driver is eligible.

- Grants the same privileges as their license
- Valid for 30 days
- Becomes effective12 hours after issue
- No fee
- Return license to DMV with paperwork

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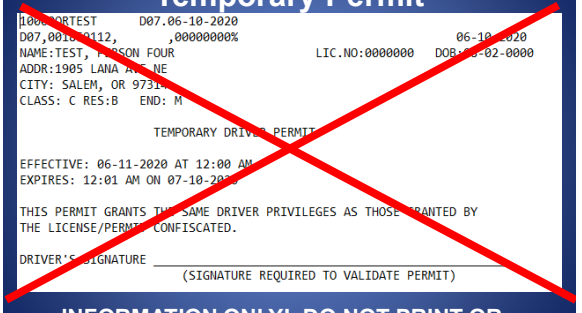
D07- Driver Eligible for Temporary Permit



10000ORTEST D07.06-10-2020
D07,001859112, ,00000000% 06-10-2020
NAME:TEST, PERSON FOUR LIC.NO:0000000 DOB:08-02-0000
ADDR:1905 LANA AVE NE
CITY: SALEM, OR 97314
CLASS: C RES:B END: M

TEMPORARY DRIVER PERMIT

EFFECTIVE: 06-11-2020 AT 12:00 AM
EXPIRES: 12:01 AM ON 07-10-2020

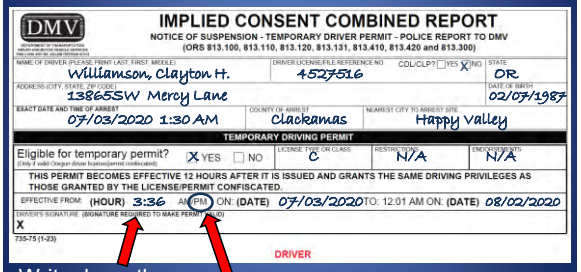
THIS PERMIT GRANTS THE SAME DRIVER PRIVILEGES AS THOSE GRANTED BY
THE LICENSE/PERMIT CONFISCATED.

DRIVER'S SIGNATURE _____
(SIGNATURE REQUIRED TO VALIDATE PERMIT)

INFORMATION ONLY! <u>DO NOT</u> PRINT OR ISSUE THIS TO THE DRIVER!

57

Temporary Permit



DMV

IMPLIED CONSENT COMBINED REPORT

NOTICE OF SUSPENSION - TEMPORARY DRIVER PERMIT - POLICE REPORT TO DMV
(ORS 813.100, 813.110, 813.120, 813.131, 813.410, 813.420 and 813.300)

NAME OF DRIVER (PLEASE PRINT LAST, FIRST, MIDDLE): Williamson, Clayton H.
DRIVER LICENSE/I.D. REFERENCE NO: 4527516
CDL/CLP? ☐ YES ☒ NO
STATE: OR
ADDRESS (CITY, STATE, ZIP CODE): 13865SW Mercy Lane
DATE OF BIRTH: 02/07/1987
EXACT DATE AND TIME OF ARREST: 07/03/2020 1:30 AM
COUNTY OF ARREST: Clackamas
NEAREST CITY TO ARREST SITE: Happy Valley

TEMPORARY DRIVING PERMIT

Eligible for temporary permit? ☒ YES ☐ NO
(Only if valid Oregon driver license/permit confiscated)
LICENSE TYPE OR CLASS: C
RESTRICTIONS: N/A
ENDORSEMENTS: N/A

THIS PERMIT BECOMES EFFECTIVE 12 HOURS AFTER IT IS ISSUED AND GRANTS THE SAME DRIVING PRIVILEGES AS THOSE GRANTED BY THE LICENSE/PERMIT CONFISCATED.

EFFECTIVE FROM: (HOUR) 3:36 AM/PM ON: (DATE) 07/03/2020 TO: 12:01 AM ON: (DATE) 08/02/2020

DRIVER'S SIGNATURE (SIGNATURE REQUIRED TO MAKE PERMIT VALID)
X

735-75 (1-23)

DRIVER

Write down the CURRENT TIME

+12 HOURS

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D07- Driver <u>NOT</u> Eligible for Temporary Permit



10000ORTEST D07.06-10-2020
D07,001859112, ,00000000% 06-10-2020
NAME:TEST, PERSON FOUR LIC.NO:0000000 DOB:08-02-0000
ADDR:1905 LANA AVE NE
CITY: SALEM, OR 97314

NOT ELIGIBLE FOR DRIVER PERMIT
(OREGON PRIVILEGE IS CURRENTLY EXPIRED, CANCELLED, SUSPENDED, OR REVOKED OR DRIVER HAS NO OREGON LICENSE)

Do not issue Temporary Permit – remove permit from ICCR before giving Driver Copy to Driver

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Other Forms You May Need

- CMV Addendum
- OSP Form 49 - Forensic Services Request
- Report of Implied Consent Blood Test Failure

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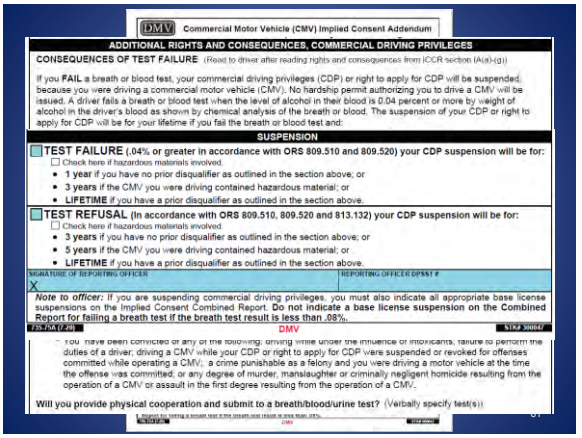
DMV Commercial Motor Vehicle (CMV) Implied Consent Addendum

ADDITIONAL RIGHTS AND CONSEQUENCES, COMMERCIAL DRIVING PRIVILEGES

CONSEQUENCES OF TEST FAILURE (Read to driver after reading rights and consequences from ICCR section (A)(a)-(g))

If you FAIL a breath or blood test, your commercial driving privileges (CDP) or right to apply for CDP will be suspended, because you were driving a commercial motor vehicle (CMV). No hardship permit authorizing you to drive a CMV will be issued. A driver fails a breath or blood test when the level of alcohol in their blood is 0.04 percent or more by weight of alcohol in the driver's blood as shown by chemical analysis of the breath or blood. The suspension of your CDP or right to apply for CDP will be for your lifetime if you fail the breath or blood test and:

SUSPENSION

TEST FAILURE (.04% or greater in accordance with ORS 809.510 and 809.520) your CDP suspension will be for:
- Check here if hazardous materials involved.
- 1 year if you have no prior disqualifier as outlined in the section above; or
- 3 years if the CMV you were driving contained hazardous material; or
- LIFETIME if you have a prior disqualifier as outlined in the section above.

TEST REFUSAL (In accordance with ORS 809.510, 809.520 and 813.132) your CDP suspension will be for:
- Check here if hazardous materials involved.
- 3 years if you have no prior disqualifier as outlined in the section above; or
- 5 years if the CMV you were driving contained hazardous material; or
- LIFETIME if you have a prior disqualifier as outlined in the section above.

SIGNATURE OF REPORTING OFFICER | REPORTING OFFICER DPSST #

Note to officer: If you are suspending commercial driving privileges, you must also indicate all appropriate base license suspensions on the Implied Consent Combined Report. Do not indicate a base license suspension on the Combined Report for failing a breath test if the breath test result is less than .08%.

DMV

You have been convicted of any of the following: driving while under the influence of intoxicants, failure to perform the duties of a driver, driving a CMV while your CDP or right to apply for CDP were suspended or revoked for offenses committed while operating a CMV; a crime punishable as a felony and you were driving a motor vehicle at the time the offense was committed; or any degree of murder, manslaughter or criminally negligent homicide resulting from the operation of a CMV or assault in the first degree resulting from the operation of a CMV.

Will you provide physical cooperation and submit to a breath/blood/urine test? (Verbally specify test/s))

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Commercial Vehicles

A driver is operating a commercial motor vehicle and is arrested (1st DUII). He refuses the breath test.

Will his license and/or CDP (Commercial Driving Privileges) be suspended under Implied Consent?

YES

The same driver was operating his personal vehicle and has a BAC of 0.06%

Will his license and/or CDP be suspended under Implied Consent?

NO

"Premier Public Safety Services"

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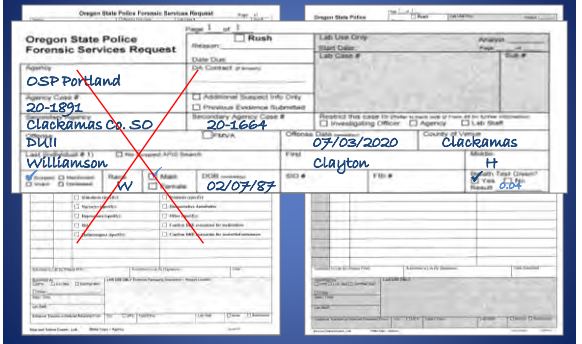
DRE Form 49 Form 49


Oregon State Police Forensic Services Request

OSP Portland
20-1891
Clackamas Co. SO
DUII
Williamson
W
02/07/87
20-1664
07/03/2020
Clayton
Clackamas
H
0.04

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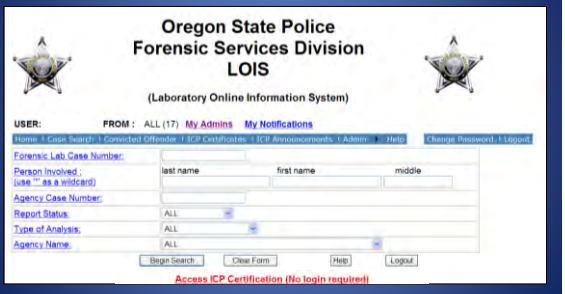
LOIS
Laboratory Online Information System


Oregon State Police
Forensic Services Division
LOIS
(Laboratory Online Information System)

USER: FROM : ALL (17) My Admins My Notifications

Home | Case Search | Convicted Offender | ICP Certificates | ICP Announcements | Admin | Help | Change Password | Logout

Forensic Lab Case Number:
Person Involved : (use * as a wildcard) last name first name middle
Agency Case Number:
Report Status: ALL
Type of Analysis: ALL
Agency Name: ALL

Begin Search Clear Form Help Logout

Access ICP Certification (No login required)

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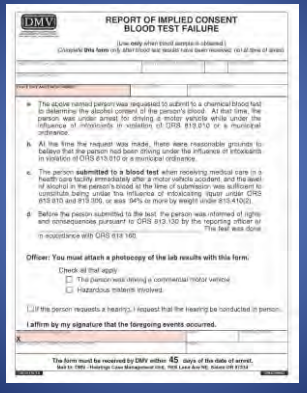
REPORT OF IMPLIED CONSENT BLOOD TEST FAILURE


DMV

REPORT OF IMPLIED CONSENT BLOOD TEST FAILURE

a. The above named person was requested to submit to a chemical blood test to determine the alcohol content of the person's blood. At that time, the person was under arrest for driving a motor vehicle while under the influence of intoxicants in violation of ORS 813.010 or a municipal ordinance.

b. At the time the request was made, there were reasonable grounds to believe that the person had been driving under the influence of intoxicants in violation of ORS 813.010 or a municipal ordinance.

c. The person submitted to a blood test while receiving medical care in a health care facility immediately after a motor vehicle accident, and the level of alcohol in the person's blood at the time of submission was sufficient to constitute being under the influence of intoxicating liquor under ORS 813.010 and 813.300, or was .04% or more by weight under 813.410(2).

d. Before the person submitted to the test, the person was informed of rights and consequences pursuant to ORS 813.130 by the reporting officer at _____. The test was done in accordance with ORS 813.160.

Officer: You must attach a photocopy of the lab results with this form.

Check all that apply:
☐ The person was driving a commercial motor vehicle
☐ Hazardous materials involved.

☐ If the person requests a hearing, I request that the hearing be conducted in person.

I affirm by my signature that the foregoing events occurred.

X

The form must be received by DMV within 45 days of the date of arrest.

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Timely Documentation

Within how many days does an officer have to submit paperwork to DMV?

10 Calendar Days for Breath
45 Calendar Days for Blood

"Premier Public Safety Services"

66

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Documentation

Is there an instance where you would not use the Implied Consent process?

YES

- If someone other than the suspect is seriously injured or killed
- Not required to take test under IC (Not in a motorized vehicle)
- Suspect invokes under Miranda

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Submitting Paperwork

Should you always send paperwork to DMV concerning a DUII?

NO

- If the person passes the breath test (<0.08% or <0.04 for commercial or =.00 for a minor) and does not refuse any test
- The person is unconscious

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Operation of the Intoxilyzer 8000

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Operation of the Intoxilyzer 8000

"Operator" versus a "Technician"

When you leave this class you will be a trained Operator, but not a Technician

Operate the Intoxilyzer 8000 as instructed

Training is provided by OSP

- OSP also tests and certifies the instruments at intervals of not more than 90 days either onsite or remotely.

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Operation of the Intoxilyzer 8000

Where is the Intoxilyzer 8000 Student Manual?

There is NO "Student Manual"

Operator's Guides located on-site

A copy of the Intoxilyzer 8000 Operator's Guide is available online

https://www.oregon.gov/osp/Docs/8000_oper_guide_090806.pdf

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Operation of the Intoxilyzer 8000

Operator's Permit

Permit holder must complete the test

PIN - DO NOT FORGET

- **DO NOT** use another operator's permit – it will invalidate your test

Valid approx. 4-6 weeks after class

Expire every even numbered year

If lost contact OSP Implied Consent for replacement

- Operator's can still run test – manual entry

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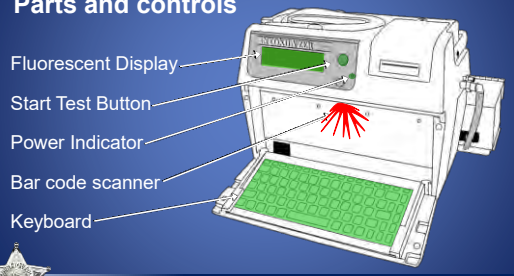
Operation of the Intoxilyzer 8000

Parts and controls



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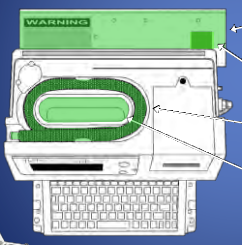
Operation of the Intoxilyzer 8000

Parts and controls



Locked Dry Gas Cabinet

Regulator/Pressure view port

Heated Breath Tube

Mouthpiece Storage

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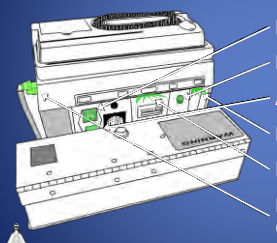
Operation of the Intoxilyzer 8000

Parts and controls



Main AC Power Switch

Battery Power Switch

AC Power Cord

Modem Line Connection

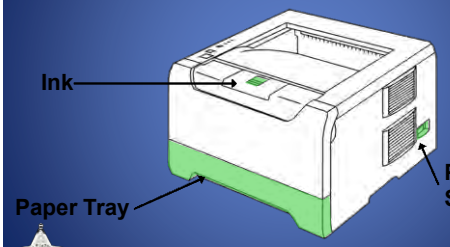
External Printer Connection

External Dry Gas Standard Connection

75

Operation of the Intoxilyzer 8000

If it won't print, check:



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Test Reports

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Operation of the Intoxilyzer 8000

Complete Reports

3 types of Completed test reports

- A numerical result (e.g."0.12% BAC")
- "Refused"
- "Interferent Detected"

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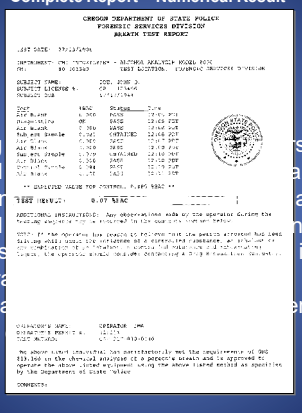
Complete Report – Numerical Result


OREGON DEPARTMENT OF STATE POLICE
FORENSIC SERVICES DIVISION
BREATH TEST REPORT

Note:

Getting rst and
second a "rising"
or "fallin are
caused n
process in lung
tempera
significa ered,
among

79

Complete Report – Test Refused

Operator terminated the testing sequence because the subject refused to continue

- "R" key – only during the 3 minute breath sample period
- "Start Test" button – only during the 3 minute breath sample period
  - –Pressing at any other time in the testing sequence will give you a "Sequence aborted" test report

Refusal report is not required to document a refusal (but should be done)

80

Complete Report – Test Refused

If the suspect initially refuses then changes their mind and requests to take the test consider the following:

- Do you have reason to believe they will take the test based on their conduct?
- Has a refusal been registered on the Intoxilyzer?
- Has the refusal paperwork been completed?

An officer may give a suspect the opportunity to reconsider but is not required to do so

State v. Kirsch, 215 Or App 67 (2007)

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Complete Report – Interfering Substance Detected

Substance other than alcohol (e.g., acetone, toluene, etc.) was detected in the breath sample.

- **<u>Discontinue Implied Consent process.</u>**
  - The test is complete and should <u>NOT</u> be restarted
  - Ask about medical conditions or chemical exposure
  - Consider requesting blood

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Incomplete Reports

"Test Result" section will contain

- An exception message
- An "Additional Comments" clarification message
  - "Invalid Test"
  - "Invalid Sample"
- A "Suggested Corrective Action"

Do not throw any Test Report away

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Incomplete Reports Exception Messages

Instrument monitors its internal systems during testing sequence.

- Notifies operator of conditions that might affect results of test.
- Only reports test results when no exceptions have occurred.

Suggested Corrective Action Statements

- Intended to provide operator with a course of action
- Neither required or necessary

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Incomplete Test Report
No Sample Given

"Invalid Test - No Sample Given"

- Subject did not blow hard enough to activate the audible tone.

Test is not complete and should be restarted.

- Re-instruct the subject
- New mouthpiece – restart test
  - "F6" auto populate – If test needs to be restarted
- This may be a refusal – if so, read ICCR IB, ask for physical cooperation and restart the test

85

Incomplete Test Report
Residual Alcohol Present

"*Invalid Sample - Residual Alcohol Present"

- Residual Alcohol was detected in the subject's mouth.
  - Recent consumption of alcohol or vomited/regurgitated

Test is not complete and should be restarted

- Check subject's mouth
- **Conduct another pre-test observation period**
- New mouthpiece – restart test

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Incomplete Test Report
Sequence Aborted

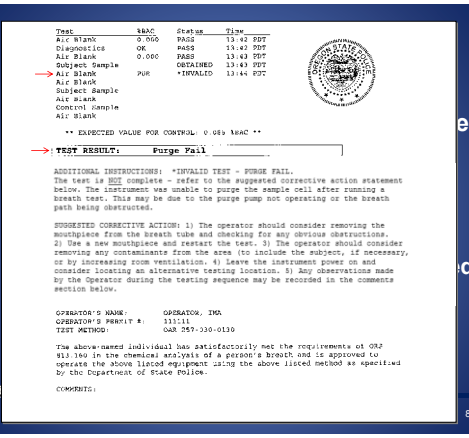
The operator aborted the testing sequence

- **"A" key**
  - only during the 3 minute breath sample period.
- **"Start Test" button**
  - If pressed before the "Review Data" section – no test report will be printed and no record of the test is kept
  - If pressed during the 3 minute breath sample period – a "Refusal" test report will print

Test is not complete and should be restarted.

- "F6" to auto populate last information entered

87



Test | BAC | Status | Time
Air Blank | 0.000 | PASS | 13:42 PDT
Diagnostics | OK | PASS | 13:42 PDT
Air Blank | 0.000 | PASS | 13:43 PDT
Subject Sample | | OBTAINED | 13:43 PDT
Air Blank | PUR | *INVALID | 13:44 PDT
Air Blank
Subject Sample
Air Blank
Control Sample
Air Blank

** EXPECTED VALUE FOR CONTROL: 0.085 %BAC **

TEST RESULT: Purge Fail

ADDITIONAL INSTRUCTIONS: *INVALID TEST - PURGE FAIL.
The test is NOT complete - refer to the suggested corrective action statement below. The instrument was unable to purge the sample cell after running a breath test. This may be due to the purge pump not operating or the breath path being obstructed.

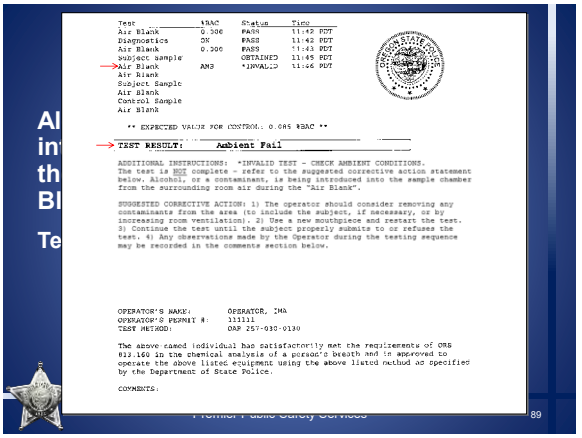
SUGGESTED CORRECTIVE ACTION: 1) The operator should consider removing the mouthpiece from the breath tube and checking for any obvious obstructions. 2) Use a new mouthpiece and restart the test. 3) The operator should consider removing any contaminants from the area (to include the subject, if necessary, or by increasing room ventilation). 4) Leave the instrument power on and consider locating an alternative testing location. 5) Any observations made by the Operator during the testing sequence may be recorded in the comments section below.

OPERATOR'S NAME: OPERATOR, IMA
OPERATOR'S PERMIT #: 111111
TEST METHOD: OAR 257-030-0130

The above-named individual has satisfactorily met the requirements of ORS 813.160 in the chemical analysis of a person's breath and is approved to operate the above listed equipment using the above listed method as specified by the Department of State Police.

COMMENTS:

88



Test | BAC | Status | Time
Air Blank | 0.000 | PASS | 11:42 PDT
Diagnostics | OK | PASS | 11:42 PDT
Air Blank | 0.000 | PASS | 11:43 PDT
Subject Sample | | OBTAINED | 11:45 PDT
Air Blank | ANB | *INVALID | 11:46 PDT
Air Blank
Subject Sample
Air Blank
Control Sample
Air Blank

** EXPECTED VALUE FOR CONTROL: 0.085 %BAC **

TEST RESULT: Ambient Fail

ADDITIONAL INSTRUCTIONS: *INVALID TEST - CHECK AMBIENT CONDITIONS.
The test is NOT complete - refer to the suggested corrective action statement below. Alcohol, or a contaminant, is being introduced into the sample chamber from the surrounding room air during the "Air Blank".

SUGGESTED CORRECTIVE ACTION: 1) The operator should consider removing any contaminants from the area (to include the subject, if necessary, or by increasing room ventilation). 2) Use a new mouthpiece and restart the test. 3) Continue the test until the subject properly submits to or refuses the test. 4) Any observations made by the Operator during the testing sequence may be recorded in the comments section below.

OPERATOR'S NAME: OPERATOR, IMA
OPERATOR'S PERMIT #: 111111
TEST METHOD: OAR 257-030-0130

The above named individual has satisfactorily met the requirements of ORS 813.160 in the chemical analysis of a person's breath and is approved to operate the above listed equipment using the above listed method as specified by the Department of State Police.

COMMENTS:

89

Incomplete Test Report
RFI Detected

Radio or cell phone transmission is detected.

Test is not complete and should be restarted.

- Remove or turn off cell phone/radio
- New mouthpiece – restart test
  - "F6" auto populate – If test needs to be restarted
- Out of Service

90

Incomplete Test Report Sample Correlation Failure

Subject did not provide two similar breath samples

Test is not complete and should be restarted.

- Check subject's mouth
- **Conduct another pre-test observation period**
- Re-instruct the subject
- New mouthpiece – restart test
  - "F6" auto populate – If test needs to be restarted



91

Incomplete Test Report Range Exceeded

Test result was higher than 0.60% BAC.

Test is not complete and can be restarted.

- Check subject's mouth
- Conduct another pre-test observation period
- New mouthpiece – restart test
- "F6" auto populate – If test needs to be restarted
- Consider calling EMS and gathering evidence for criminal case



92

Incomplete Test Report Improper Sample

Subject blew into the instrument at the improper time.

Test is not complete and should be restarted.

- Re-instruct the subject
- New mouthpiece – restart test
  - "F6" auto populate – If test needs to be restarted

How to Avoid

- **Maintain control of the breath tube!** Do not let the subject provide a sample until the proper time in the test sequence.



93

Incomplete Test Report Deficient Sample

Subject did not blow long enough with sufficient force to provide a proper sample.

Test is not complete and should be restarted.

- Re-instruct the subject
- New mouthpiece – restart test
  - "F6" auto populate – If test needs to be restarted
- Exception: subject may be physically incapable of providing a proper sample (no suspension)



94

Incomplete Test Report

Some Other Invalid Test Reports

- Unstable Signal
- Diagnostic Fail
- Control Out of Tolerance

Follow the Suggested Corrective Action



95

Reprinting a Test Report

Test Reports can be reprinted by the operator until memory is downloaded.

- "F4" – do NOT press Start first
- Scan permit or "Enter" and manually enter permit #
- Enter PIN
- Select test report ("Page up" and "Page down" keys)
- Enter # of copies wanted

Reprinted Test Reports are identical to the original and can be used in addition to and/or in place of the original.

- Once memory has been downloaded contact OSP Implied Consent Unit.



96

Operation of the Intoxilyzer 8000

Jail Release Test:

- **NOT A PRETEST for a DUII Case!!**
- Establishes the presence of alcohol on the breath
- Available for use by jail/corrections personnel – No permit required
- Does not count toward permit renewal

97

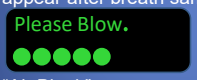
Conducting a Jail Release Test

- Observation period is recommended
- Press "Start test button"
- "Jail Release (Y/N)"
- "Ready in 00:XX" (30 seconds or less)
- "Air Blank"
  (purge sample chamber and breath path)
- "Please blow into mouthpiece to activate tone."
- Read directions to subject
  (located on the front of the instrument.)
- Have subject provide sample.

98

Conducting a Jail Release Test

- Audible tone and "Please Blow" message on display
- "period" after "Please Blow". The period will appear after breath sample requirements are met.



- "Air Blank"
  (purge the sample chamber and breath path)
- Print test report
  – "F12" reprint the last jail release test

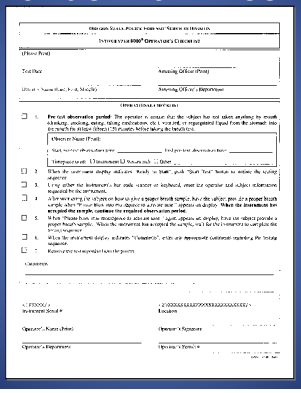
99

Conducting a Breath Test

- Check instrument (power and time)
  - Incorrect time will not affect test. Report to OSP
- Print Operator's Checklist "F2"
- Conduct Pre-test observation period
- "Start Test" Button
- Select test method – "Jail release (Y/N)"

100

Continue with Checklist



101

Conducting a Breath Test

- Scan Operator's Permit or Press "Enter" and Manually Enter Operator's Permit Information
- Enter PIN
- Scanning the Subject's Driver's License/ID or Press "Enter" and Manually Enter the Driver's License/ID
- Review Data (Y/N)

102

Conducting a Breath Test

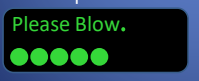
- "Ready in 00:XX" (30 seconds or less)
- "Air Blank"
  (purge sample chamber/breath path)
- "Diagnostics" (check components and operational standards)
- "Air Blank"
  (purge sample chamber/breath path)
- Read directions to subject
  (front of instrument.)
- "Please blow into mouthpiece to activate tone"

103

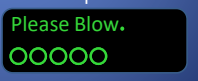
Conducting a Breath Test

- Breath Sample period
- "Air Blank" (purge sample chamber/breath path)
- Two-minute Continued Observation Period
- NOT "required" to change mouthpieces
- "Air Blank" (purge sample chamber/breath path)
- Breath Sample period

Sample one



Sample two



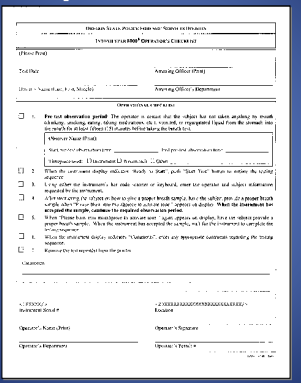
104

Conducting a Breath Test

- "Air Blank" (purge sample chamber/breath path)
- "Control Sample" (control test on external ethanol breath standard)
- "Air Blank" (purge sample chamber/breath path)
- Comments
- Printing of Test Report (3 copies)
- Reprint Test (Y/N)

105

Complete Checklist



106

Other Types of Messages

- Tank Pressure Low Change Standard Soon
  - Continue test and notify agency
- No Permit Found
- Incorrect PIN
- Permit Expired
- Clearance Exceeded

107

Operation of the Intoxilyzer 8000

Out-of-service

- Determine exception message from test report
- Contact OSP regional dispatch
- Leave on (unless dangerous)
- Place a placard on the instrument
- **Notify host agency/dispatch**
- Locate an alternative testing location and restart test.

108

Blood and Urine Collection Procedures

109

Collection Procedures

Blood Collection

To request blood under Implied Consent, subject must be under arrest and receiving treatment at a medical care facility for injuries resulting from the crash.

If the suspect is at the hospital not due to a crash, blood collection is not authorized under Implied Consent, but may be collected with consent, exigency or warrant for criminal case.

110

Collection Procedures

- If someone other than the suspect is seriously injured or killed DO NOT READ OR USE IMPLIED CONSENT
- If a person is unconscious DO NOT READ Implied Consent Rights and Consequences
- Must be performed by a licensed physician or person acting under the direction or control of a licensed physician
- Hospital must notify officer of blood results if BAC is .08+ or drugs in blood (ORS 676.260)

111

Blood Collection Procedures

- Do not use alcohol swabs
- Do not collect from same arm as IV
- Use grey or purple stopper tubes (NOT RED!)
  - Note expiration dates
- Collect at least two 5ml tubes of blood
- Observe the blood draw
- You or hospital mark the container with the suspects information including name and time of collection

112

Blood Collection Procedures

- Do not put tape on tube or cover suspect's name or time of collection
- Place in evidence bag and attach evidence tape
  - Be sure to put sample in the larger pouch
- Place evidence bag into box. Apply evidence tape to seal the box. Initial and date the seal.
- Complete laboratory's FORM 49 (Toxicology)
  - Remember: the OSP Forensic Lab only tests blood for alcohol – not drugs
- Do not freeze

113

Urine Collection Procedures

- Officer must complete the 8 hour DID training.
- Officer has reasonable suspicion of an intoxicant other than or in addition to alcohol.
- Suspect is under arrest for DUII and either
  - Breath test result is < 0.08%
  - Involved in a crash resulting in injury or property damage.
- Suspect must be given privacy

114

Urine Collection Procedures

- Universal precautions: wear gloves.
- Inspect facilities: remove cleaning bottles.
- Flush toilet prior to use
- Ask suspect remove bulky clothes and wash hands.
- Remove contents from collection box and complete information on cup's label.
  - ─ Suspects name ─ Officers name ─ Date ─ Time
- Place label on side of urine cup
- Provide privacy

115

Urine Collection Procedures

- **Collection of specimen**
  - Collect at least 30 ml of urine
  - Secure lid and Note temperature on strip
  - Place in evidence bag and attach evidence tape.
- **Place bag in box, apply security seal, initial and date seal.**
- **Complete laboratory's FORM 49**
- **Remember:**
  - OSP Lab tests urine for drugs – not alcohol

116

Implied Consent Law

Does the suspect have the right to request an independent test?

YES

- **After** taking requested test
- Using a qualified person of their choosing
- At their own expense

Officer must provide them a reasonable opportunity to do so

117

DMV Hearings

118

Implied Consent Law

Does the suspect have the right to appeal a license suspension?

Yes

The request must be received by 5:00 pm on the tenth (calendar) day following the arrest for the refusal of a test or the failure of a breath test. If the suspect failed a blood test they have till the tenth day following the date DMV sent the notice of suspension.

- The initial 30 day suspension cannot be appealed -

119

Common Reasons for Disaffirms

About 19% of suspensions are disaffirmed

Over half of disaffirms are due to the failure of the police officer to appear. The rest are:

- Procedural inaccuracies including incomplete or inaccurate police documents; breath test not administered as required; etc.
- Untimely or no documents received by DMV from police

120

In Person vs. Telephone Hearings

- **The petitioner OR the reporting officer may request an in person hearing**
- **If neither requests, a telephone hearing is scheduled.**

Telephonic Hearing

- OAH will issue a subpoena to the reporting officer requesting the officer make the written DUII report available to OAH three days prior to the hearing.
- OAH will provide a copy of the officer's report to the petitioner.

121

Implied Consent Law

DMV may reschedule the hearing if the officer is unable to appear due to illness, vacation, or "Official Duty conflicts"

- Community caretaking
- Court
- Hazardous or impeding travel conditions
- Participation in employer approved training
- Physical incapacity
- Service in the US Armed Forces, military reserves, National Guard or the organized militia

Can only be done once

122

Scope of Hearing

Statutory requirements listed in ORS 813.410(6):

(a) the person was under arrest for DUII
(b) the officer had reasonable grounds to believe the person was DUII;
(c) the person refused or failed the test;
(d) if applicable, evidence the person was driving a CMV;
(e) the person was informed of rights and consequences;
(f) the person was given written notice of the DMV's intent to suspend his or her license;
(g) the person administering the test was qualified;
(h) the procedures and equipment used in the test complied with the law.

123

Officer's Role in the Hearing

Any officer actively involved in the investigation may:

- Present evidence
- Cross examine witnesses
- Argue applicability and meaning of rules and statutes
- Argue admissibility of evidence
- Argue proper hearing procedures

An officer should notify the ALJ if they want to do any of the above

ORS 813.412

124

Officers' Reports

- Bring your report to the hearing
- Bring the report of any other officer involved in the stop, arrest or processing of the petitioner
- You may offer reports into evidence
- The petitioner can object to the report on relevancy and hearsay grounds; BUT,
- Hearsay (including reports) is admissible in DMV hearings
- If warrantless home entry involved, just the report is not enough. Make sure the officer that entered the home is present at the hearing.

125

Stop and Arrest

The validity of the stop and arrest fall within the scope of the hearing. Pooler v. MVD, 306 Or 47 (1988)

- Establish the reason for stop/initial contact
  - Traffic violation
  - Reasonable suspicion of a crime (must be more than odor)
  - Other
- ALJ may not infer the officer's reason for making the stop from other facts in the record
- If you are not the stopping officer, bring in stopping officer's report to testify about stop

126

Field Sobriety Tests

If field sobriety tests were conducted and helped form the basis for the arrest:

- Establish that the tests were administered based on consent and/or probable cause and exigent circumstances.
  - Consent alone is a sufficient basis to conduct FSTs
  - If PC exists early on, articulate factors to establish PC
  - If both were present, articulate both

The conditions and circumstances of the testing – review Session VIII of the SFST manual!

127

The ALJ Will Also Need:

Copy of ICRC Recording (if used)

Results of Blood and/or Urine Tests

- Available from LOIS

Copy of Intoxilyzer Certification

- Also available on LOIS
- Ask ALJ to leave hearing open to get this form if DMV does not send it to the administrative hearing office prior to DMV hearing (this should happen)

128

Outside the Scope of the Hearing

Challenges to BAC result: Challenges to the accuracy of a breath test result are beyond the scope of an Implied Consent hearing. Owens v. MVD

Blood warrants: A blood sample obtained after a refusal is outside the scope of the hearing.

Witnesses: Officers may make a motion for defense witnesses to be excluded from room

129

Notice

Explain how you provided the person with written notice of the DMV's intent to suspend

- Did you personally hand it to the person
- Place it in the person's pocket OR
- Place it in a secured property bag with the person's other personal effects.

ORS 813.410(6)(f) and 813.100(3)(b)

130

DMV Hearings

- A DMV suspension does not necessarily lead to DUII conviction
- A decision not to suspend under Implied Consent does not necessarily lead to DUII acquittal.
- In a criminal trial you may be cross-examined using the transcript of the DMV hearing, but your prosecutor must get notice first.

131

Review

132

Review

What would you do if the subject gave the 1st breath sample but not the 2nd?

This may be a Refusal

- Read ICCR IB and ask for physical cooperation
  - If they subsequently provide a completed test, no refusal
  - If they do not provide a completed test, press the "Start Test" or the "R" button to indicate the refusal

133

Review

What has happened if the instrument displays "Improper Sample" and prints "*Invalid Test – Improper Sample" on the report?

The subject has blown into the instrument at an improper time during the testing sequence.

How should it be corrected?

Refer to the "Suggested Corrective Action" statement

134

Review

If the instrument displays "RFI Detected", what would the "Suggested Corrective Action" statement recommend doing?

Remove any Radio Frequency transmission source from the vicinity of the instrument or turn transmission source off and restart test (phone/radio).

135

Review

If the instrument displays "Interfering Substance Detected" is this a complete or incomplete test?

Complete

What would the "Suggested Corrective Action" statement recommend doing?

- Discontinue the Implied Consent process
  - Ask about diabetes, fasting, and solvent exposure.
  - Consider EMS assistance if needed.
- Consider requesting a voluntary blood sample or apply for a warrant.
- Record any observations made

136

Review

During the three minute sampling period your subject did not blow with sufficient force to activate the audible tone, what message will be on the display?

"No Sample Given"

137

Review

Under Implied Consent what would you do if your suspect has one of the following?

	Implied consent combined report	Temporary permit	Seize license
Out of State License			
Temporary Permit			
Hardship Permit			
No driver's license			
Learners permit			

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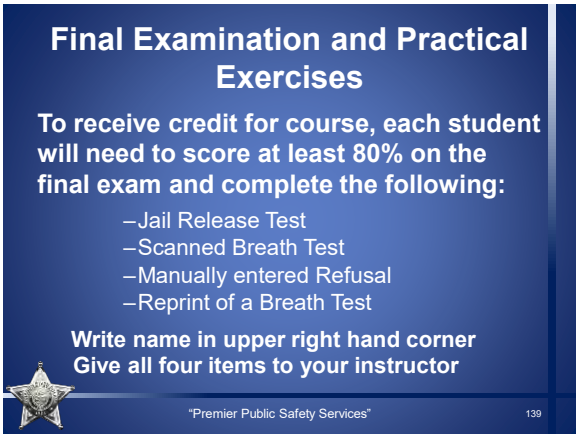

Final Examination and Practical Exercises
To receive credit for course, each student will need to score at least 80% on the final exam and complete the following:
–Jail Release Test
–Scanned Breath Test
–Manually entered Refusal
–Reprint of a Breath Test
Write name in upper right hand corner
Give all four items to your instructor
"Premier Public Safety Services"
139

139

Basic Police Academy

Introduction to Complex Criminal Investigations



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Criminal Investigations: Introduction to Complex Criminal Investigations

Instructional Goal:

This course is designed to introduce a new officer to complex criminal investigations and crime scene procedures.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate safe crime scene practices.
2. Identify practices to protect crime scenes.
3. Identify constitutional eyewitness identification practices.

Content Outline:

Part 1: Introduction to Criminal Investigations (2 hours)

Part 2: Investigative Interviewing (4 hours)

Part 3: Evidence Collection (2 hours)

Part 4: Criminal Investigations Lab (3 hours)

Part 5: Complex Investigations (2 hours)

Complex Investigations

Scenario
You have been dispatched to conduct a welfare check at the residence of an elderly female. You arrive at the residence, and through the window, you see a body lying on the floor. After gaining entry, the victim appears deceased based on the severity of the injuries. You quickly determine you are now at the scene of a homicide.

There will be circumstances where you will respond to and even investigate complex cases as a patrol officer. The initial responding officer has control of the scene until relieved by a supervisor or the assigned investigator.

In addition to applying the general investigation procedures you have been covering, there are some special considerations in complex and specialty cases. While this course will not prepare you to be a major crimes detective, it will prepare you for the initial response for any complex cases for which you may respond.

The first responder on the scene has several important tasks.

- Priority 1- Safety of those involved, both officer and the public.
- Priority 2- Render aid to victims or others.
- Priority 3- Secure the scene
- Priority 4- Begin documentation

Responding Officer Responsibilities

Priority 1- Safety

The safety and physical well-being of officers and other individuals in and around the crime scene is the initial responding officer's top priority. Numerous safety considerations must be attended to, for example:

- Is there/could there be a dangerous suspect on the scene?
- Has the suspect fled? Are others at risk of being victimized?
- Are there hazards in the environment?

Officers should promptly yet cautiously approach and enter the scene with these safety considerations in mind. During this initial approach and entry, the officer should make some additional observations, for example:

- What persons or vehicles are in the area?
- What is potential evidence?

Priority 2- Render Aid

After controlling any dangerous situations or persons, the responding officer's next priority is to assess the need for and provide medical attention to any injured persons. Making this more complex is the importance of assessing and render aid while also minimizing contamination of the scene. Consider establishing a defined route in and out of the scene to help minimize contamination.

Officer Tasks:

- Assess the victim(s) for signs of life and medical needs.
- Provide immediate medical attention.
- Call for medics.

Begin controlling entry to the scene. Try to limit access to the crime scene to only essential medical personnel. However, if it restricts or limits care to the victim, do not limit this access. Using the defined route, guide medics to the victim. To help minimize contamination, point out potential physical evidence and ask them to minimize contact with it.

Priority 3- Secure the scene

Once the scene is safe, and aid is rendered, the next priority is defining the boundaries and securing the scene.

When taping off a scene, it's a good idea to make it larger than you think it needs to be.

Define Boundaries

Defining and controlling boundaries provide a means for protecting and securing the crime scene. Colored crime scene tape is the most commonly used way to keep people out of the scene.

Source: Crime Scene Response for the Patrol Officer - Patrol ....
https://www.policemag.com/339486/crime-scene-response-for-the-patrol-officer

It is up to the officer/investigator to determine the size of the perimeter. Establish boundaries beyond the initial scope of the crime scene. Boundaries can be reduced in size if necessary but cannot be expanded. Establish boundaries by starting at the focal point and extending outward to include:

- Where the crime occurred.
- Potential points and paths of exit and entry of involved persons.
- Places where the victim and evidence may have been moved.

Control Entry

Controlling and limiting the number of persons who enter the crime scene is an important function of the initial responding officer. Controlling and limiting persons on the scene helps prevent individuals from altering or destroying physical evidence. Once boundaries have been established, the officer should document the entry/exit of all people entering and leaving the scene.

The officer should identify all individuals at the scene, such as:

- Suspects- Secure and separate.
- Witnesses- Secure and separate.
- Bystanders- Determine whether they are a witness. If so, treat as above. If not, remove them from the scene.
- Victims/family/friends- Control while showing compassion.

Protect and Preserve Evidence

In addition to protecting evidence from damage by persons on scene, securing the scene means taking steps to preserve and protect evidence that may be lost or compromised by other means, for example, from the elements (rain, snow, wind), footsteps, tire tracks, sprinklers, etc.

Consider taking some photographs early and calling for specific resources (canopies, etc.) to capture this evidence.

Priority 4- Documentation

All activities conducted and observations made at the crime scene must be documented as soon as possible to preserve information.

Actions include your own actions and the movement of persons or items by medical personnel.

Observations include your observations of the crime scene, including the location of persons and items within the crime scene and the appearance and condition of the scene upon your arrival. Document:

- Evidence of criminal activity
- Forced entry or lack thereof
- Evidence of a struggle
- Evidence of ransacking
- Evidence suggesting missing items
- Evidence or injury, such as blood on floor or surfaces

Observations for Indoor Scenes	
Entry/Exit	Are doors open or closed? Are doors locked or unlocked? What types of locks are on doors? Are the doors bolted from inside? Is there any evidence of forced entry? Who has keys or a passkey, and are all keys accounted for?
Windows	Are the windows open or closed? Are the windows locked or unlocked? What types of locks are on the windows? Are there screens on the windows? Are the screens in place? Is there any evidence of forced entry? What window covering (e.g., curtains, blinds, and shades) are in place, and what are their positions? Continuity aspects of windows and screens (e.g., the presence or absence of cobwebs or dirt on the sill)
Kitchen and Dining Room	Is there food preparation indicating recent eating before, during, or after the crime? Are there indications of cleanup after a meal? Does food preparation indicate multiple parties present at the scene? Is the oven on, and if so, what is the status of the food within (raw, undercooked, overcooked, burnt)? Are there dated or spoiled foodstuffs in the pantry or refrigerator?
Environmental Controls	What is the temperature in the room? What is the thermostat setting? If there is a program mode, how far into the cycle is it? Is the thermostat on a timer, and what are the settings?
Laundry and Utility Areas	Are appliances running or warm (to include washer/dryer)? Is there clothing in the washer or dryer, wet or damp? If the suspect's clothes were believed to be laundered, consider the lint trap as evidence.

Lighting (in each room and outside)	Are the lights on or off? Are the lights working?
Telephones and Cellular Phones	Is there any record of incoming and outgoing calls? Attempt to determine those calls. Are there any voice mail messages? Is there an off-site answering service? What does it take to ascertain those messages? Can mapping of cellular towers indicate the location of where a call was made? Are there text messages? Ensure a charger is included with the mobile phone.
Mail	What is the date on any outgoing mail? Are there any time-dated receipts? What is the date of mail outside the home or in the box? What is the date of mail brought in or opened?
Wastebaskets and Ashtrays	Check and document the contents of wastebaskets and trashcans if appropriate. Check ashtrays. If there are indications of multiple parties being present, consider collecting cigarette butts for DNA analysis.
Bath and Toilet Areas	Are there damp or bloodstained towels or washcloths? Is there evidence of recent bathing or washing activity (e.g., wet tubs, towels)? If the victim is a single female living alone, is the toilet seat raised? Is there evidence of suspect cleanup? What drugs or medicines are in medicine cabinets? What are the dates on prescription medication and the number of tablets missing?
Calendars and Planners	What are the entries on any calendars for the period before and contemporaneous to the crime? What are the diary or day planner entries for the period before and contemporaneous to the crime?
Computers and Internet	When was the victim last on the computer? Is there computer activity after the suspected time of the crime? Is there email, chat, or telephone activity near the time of the crime?

Observations for Outdoor Scenes	
Environmental Conditions	What is the temperature? What is the humidity? Is there ongoing precipitation or evidence of recent precipitation? What are the past temperatures, precipitation, and humidity covering the time since the crime? Is it daylight, nighttime, or evening? What time was sunrise or sunset (if applicable)? What are the moon phase and cloud cover? What is the ambient lighting? Consider streetlights, porch lights, and even city sky glow.
Immediate Area	Is there evidence of a struggle? Are there footwear impressions, scuff marks, or tire marks? Is there any video coverage of the area? Consider ATMs, surrounding store video, and traffic surveillance systems. Is there evidence discarded in nearby trash receptacles?
Extended Area	What are the likely paths of travel to and from the scene? Is there evidence discarded in trash receptacles, ditches, underpasses, etc.? Is there any video coverage of avenues of approach to the area? Are there nearby convenience stores or gas stations that might have video coverage and trash receptacles that could be searched for evidence?

Observations for Motor Vehicle Scenes	
Exterior	Are there signs of damage, particularly signs of recent damage, to include indications of collision, bullet holes, etc.? If the vehicle was suspected of being involved in a personal injury, do the mirrors, bumpers, grill, or undercarriage have possible human hairs, fibers, blood, etc., present? Are there areas likely handled/touched by suspects that need to be protected for possible latent fingerprint detection/touch DNA recovery? Record VIN, plate number, and any other identifying feature of the vehicle, to include the make, model, color, and distinguishing features. For pickups, record the contents of the bed. Observe tires, rims, and wheel well areas for possible mud, dirt, etc., that would indicate the presence of materials that might be needed for subsequent alibi comparisons. Is there a need for later towing and raising the vehicle to search for evidence of the crime deposited on the undercarriage?
Interior	Is blood or other evidence of personal injury present? Are tools present that might have been used in the crime? Are items present (mail, written messages, other objects with names on them) that would indicate the identity of passengers/drivers of the vehicle? Are items missing from any separate but related scene present in the vehicle? Are there items in the trunk that are related to the crime or that help identify persons?

Table Source: Crime Scene Investigation Procedural Guide by Michael Maloney and Donald Housman

The Responding Officer as Investigator

Depending on your agency, you may find yourself responsible for the investigation beyond the initial response. Under these circumstances, you will have additional tasks and considerations, for example:

- Initial assessment- Is there a crime? What is it?
- Consider search and seizure issues- Is consent to search needed? Is a search warrant needed?
- Is there a suspect? Is there a need for an immediate arrest? Do you have probable cause? Have you given the Miranda warning?
- Is a command post necessary? What resources are needed to set this up?
- Do you need to assign officers to canvass the area, locate and obtain statements from witnesses, or search for the suspect?
- Do you need to assign officers to search for an additional crime scene?
- Do you need to call the medical examiner? (Note- you will have a later class on death investigations)

Identifying the Suspect

You will arrive to conduct your investigation in some circumstances, and the suspect will be gone, either having left prior to your arrival or due to a cold case. Under these circumstances, utilizing a police lineup can help identify who your suspect is. Additionally, eyewitness identification is extremely compelling evidence at trial. The reliability of such testimony is extremely important, and officers should take due diligence in evaluating the use of a lineup. Oregon has a model policy regarding eyewitness identification procedures.

Eyewitness Identification Procedures – Oregon's Model Policy

Source: Oregon's Model Policy, adopted by the Eyewitness Identification Work Group. See Attachment A for the complete policy.

When a photo lineup is used for suspect identification, a blind or blinded sequential presentation should be made. Consequently, those procedures which appear in the Model Policy are designed primarily for blind or blinded sequential presentations. However, identification procedures are still evolving for children and those challenged by mental illness. Therefore, the Model Policy leaves room for presentations other than blind or blinded sequential presentations. If another method of identification is used, the reasons for using that method **shall** be documented.

Simultaneous or "Six Pack" Photo Lineup

A presentation at the same time of photographs arrayed together, either manually constructed or computer generated.

Get a thorough description of the subject from the eyewitness before attempting to construct a simultaneous photo lineup.

Standards:

- Use a minimum of six photos; face only, not full-body photos
- Same sex, race, age (approximate) of the suspect
- Record how quickly the eyewitness identifies the suspect
- Ask only if the eyewitness recognizes anyone. Do not indicate that the suspect is included.
- Accept the answer. You do not need certainty.
- Note the eyewitness's statement verbatim.
- If the eyewitness cannot ID the suspect, do not indicate to them which one it was.
- All other directions in the Model Policy, including the admonitions, shall be followed.

Attachment A: Eyewitness Identification- Oregon's Model Policy

PURPOSE

The purpose of this policy is to provide procedures for obtaining objective results when preparing and conducting lineups and showups.

POLICY

It is the policy of this agency that eyewitness identifications be conducted in a manner most likely to assess witnesses' true and reliable recollections and in compliance with state and federal constitutional requirements.

DEFINITIONS

- Blind Presentation – The presenter does not know who the suspect is. Also known as double-blind presentation.
- Blinded Presentation – The equivalent of a blind presentation; conducted when the presenter knows who the suspect is. Also known as functionally equivalent presentation.
- Confidence Statement – A witness's statement about their selection and confidence that their selection is the suspect; taken immediately after a pick has been made.
- Photo Lineup – A presentation of photographs of persons.
- Presenter – The officer presenting a lineup.
- Showup – A presentation of a live person in the field that is close in time and proximity to the incident under investigation.
- Sequential – A presentation of photographs one at a time, retrieving one photo before presenting another.
- Simultaneous – A presentation at the same time of photographs arrayed together, either manually constructed or computer-generated.

DOCUMENTATION

A. Instructions to witnesses shall be read from the *Eyewitness Identification* form, which shall also include the witnesses' affirmation of their confidence statements.
B. In addition to documentation in the incident report(s) and *Eyewitness Identification* forms, presenters should record their presentations when it is reasonable and practicable.
C. Lineups, forms, and recordings shall be treated as evidence, with copies of the lineups and forms included in the case file, whether or not the witnesses made identifications.
D. If a photo lineup is developed electronically, the lineup shall be printed for documentation.
E. See also Post-Presentation Interview and Documentation.

WITNESSES WITH LIMITED ENGLISH PROFICIENCY

Suppose a witness to a criminal offense does not fluently speak the English language or otherwise has difficulty communicating (e.g., hard of hearing). In that case, officers should make reasonable efforts to arrange for an interpreter before proceeding with eyewitness identification.

Before the interpreter is permitted to discuss any matter with the witness, the investigating officer should explain the process that will be utilized to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

PHOTO LINEUP

When a photo lineup is used for suspect identification, a blind or blinded sequential presentation should be made; consequently, the procedures that appear below are designed primarily for blind or blinded sequential presentations. If another photo lineup method is used – including a simultaneous presentation or a sequential presentation that is not blind or blinded – the reason(s) for using that method shall be documented.

DEVELOPMENT OF A PHOTO LINEUP

A. Officers should obtain a thorough suspect description from each witness before developing a photo lineup. (Note that variant witness descriptions may require the presentation of different photo lineups to different witnesses.)
B. A photo lineup shall consist of no fewer than six photographs, including one of the suspect.
C. All photos should be similarly sized, and none should be easily distinguished from the others.
    1. Filler photographs (not of a suspect) should generally fit the witness's description of the suspect. Because all photographs possess both common and variable features, the common features should be those that match the witness's description, whereas the remaining (i.e., nonrecalled or undescribed) features may vary.
    2. When there is a limited or insufficient suspect description or when the suspect description differs significantly from the suspect's available photograph(s), the filler photographs should resemble the suspect photograph, not the description.
D. The photos shall be numbered and shall be loose or in individual folders.
E. When conducting a single lineup for multiple witnesses, the photographs should be renumbered for each witness.

PRESENTATION OF PHOTO LINEUP

A. Instructions to Witnesses

    Before a presentation, the presenter shall read the witness instructions from the *Eyewitness Identification* form, ensuring and documenting that the witness understands the instructions.

B. Blind Presentation
    1. In a blind presentation, the identity of the suspect is not known to the presenter.
    2. The presenter shall present the photos to the witness sequentially, with one photo replacing another so that no two are presented at the same time.
    3. The presenter shall present each photo to the witness, even if the witness identifies a previous photo as the suspect.
    4. If the witness asks to see one or more photos during the same presentation again, the presenter may conduct the same presentation a second time but must present all of the photos using the same method.

C. Blinded Presentation

If the presenter knows who the suspect is, an extra measure should be taken to prevent the presenter from knowing which photo is being shown to the witness.

1. The photos shall be placed in identical folders, with the folders shuffled and numbered. Each photo shall be presented such that only the witness can see the photo; the presenter is thus "blinded" to the process and cannot be suggestive.
2. The presentation shall continue as in B.2 above.

D. Post-Presentation Interview and Documentation

1. Following the presentation of a photo lineup, the presenter should avoid any words or actions that might identify the suspect or hinder further investigation.
2. If the witness picks a photo, the presenter shall ask the witness to describe why the photo was selected and to describe the confidence he or she has in the selection. The presenter should obtain a *description* of that confidence, not just a scaled assessment (e.g., not "90% sure" or "six out of ten"). The witness' responses to the questions – commonly referred to together as a "confidence statement" – shall be carefully documented on the *Eyewitness Identification* form, and later, more completely in the report.
3. The presenter shall ask the witness to affirm the confidence statement on the *Eyewitness Identification* form.

DUPLICATION OF PRESENTATIONS

Presentations separated by time but involving the same suspect are discouraged. It is recommended that a suspect not be presented for identification more than once in any form. If this does occur, the reason(s) why a subsequent presentation was made shall be documented.

SHOWUPS

Photo lineups are preferable to showups; however, some circumstances require the prompt display of a suspect to a witness. Showups should be conducted as follows:

A. Consider if a photo lineup can be conducted instead.
B. Obtain a thorough description of the suspect from each witness prior to the showup.
C. Ensure all officers avoid suggestive words or conduct while preparing for the presentation.
D. If possible, avoid unnecessarily tarnishing the suspect by, for example, presenting a suspect in handcuffs or from the backseat of a patrol car.
E. Transport the witness, not the suspect.
F. Separate witnesses to avoid communication between them.
G. Read the instructions from the *Eyewitness Identification* form, ensuring and documenting that the witness understands the instructions.
H. Document the witness's statement on the *Eyewitness Identification* form.
I. When possible, record the presentation.

TRAINING

All sworn personnel shall receive training on this policy and the presentation of lineups and showups.

EYEWITNESS IDENTIFICATION FORM
PHOTO LINEUP

Case Number:_____
Presenter Name: _____
Date & Time of Presentation:_____
Witness Name: _____

INSTRUCTIONS (READ BY OFFICER TO WITNESS)

In a moment I'm going to show you some photographs. A photograph of the person who committed the crime may or may not be among them. You will be shown all of the photographs, and you may take your time looking at them.

If you see the person who committed the crime, pick that photograph. If not, don't pick any photograph.

If you pick a photograph, I'm going to ask you to explain why you picked that photograph and describe how confident you are.

Do you understand these instructions? _____

WITNESS STATEMENT (WRITTEN BY OFFICER)

Witness picked photograph number: _____

_____

_____

_____

I, _____, affirm that

- I read or was read the instructions above,
- I understood the instructions, and
- The statement written by the officer accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked if any.

_____
Signature of Witness

EYEWITNESS IDENTIFICATION FORM
SHOWUP

Case Number:_____
Presenter Name: _____
Date & Time of Presentation:_____
Witness Name: _____

INSTRUCTIONS (READ BY OFFICER TO WITNESS)

In a moment, a person is going to be shown to you. Just because the person is being shown to you or because police officers are standing nearby does not mean the person committed the crime or any other crime.

If you tell me you recognize the person as the person who committed the crime, I'm going to ask you to explain why you recognize him or her as the same person and describe how confident you are.

Do you understand these instructions? _____

WITNESS STATEMENT (WRITTEN BY OFFICER)

Witness picked photograph number: _____

_____
_____
_____
_____

I, _____, affirm that

- I read or was read the instructions above,
- I understood the instructions, and
- The statement written by the officer accurately reflects what I said.

_____
Signature of Witness

Basic Police Academy

Introduction to Criminal Investigations



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Introduction to Criminal Investigations

Instructional Goal:

This course is designed to introduce a new officer to the general principles of conducting a criminal investigation.

Learning Outcomes:

Upon completion of instruction, student will be able to:

1. Articulate the duties of a responding officer in a criminal investigation.

Series Outline:

Part 1: Introduction to Criminal Investigations (2 hours)

Part 2: Investigative Interviewing (4 hours)

Part 3: Evidence Collection and Forensics (2 hours)

Part 4: Criminal Investigations Lab (3 hours)

Part 5: Introduction to Complex Criminal Investigations (2 hours)

Content Outline:

- Criminal Investigation Basics
- Role of Responding Officer

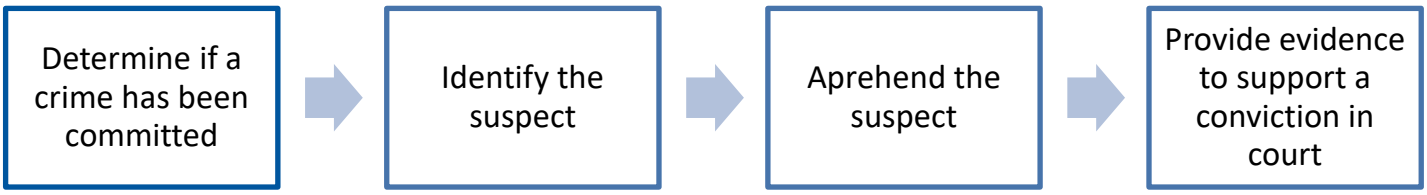
Introduction to Criminal Investigations

Criminal investigations are among the cornerstone roles and responsibilities of law enforcement. As described in *The New Detective* (Eck & Rossmo, 2019), while it is often assumed that investigations are the responsibility of detectives, most crimes are solved 1) by members of the public, 2) by patrol officers, and then 3) by detectives. This makes sense if you consider it from a numbers perspective, there are far more public members than patrol officers and there are more patrol officers than detectives. However, it also makes sense if you consider the broad scope of criminal investigations. Most crimes are cleared by an on-scene arrest or identification of suspects by victims, witnesses, or forensic evidence. In contrast, detectives spend more time working complex cases.

What is a Criminal Investigation?

What comes to mind when you hear the term *criminal investigation*? Do you think of crime scene tape and forensic evidence? Do you picture suspect interrogations and photo line ups? Do you picture this being the responsibility of a detective unit? While all of these could be part of a criminal investigation, the reality is often criminal investigations are much less complex. Officers conduct investigations to varying degrees on a daily basis.

A crime can only be solved through evidence: a witness, a confession, or physical evidence. A criminal investigation refers to the process of collecting information (or evidence) about a crime in order to:



Consider the following investigation scenarios:

Scenario 1- You respond to an elementary school for a report that a child has disclosed they are being sexually abused at home. The school day is close to ending.

Scenario 2- You respond to a cold burglary. Dispatch advises the homeowners have returned from vacation and found their home has been broken into and items stolen.

Scenario 3- You respond to a domestic disturbance where both individuals are making accusations against the other and both parties have visible injuries. Dispatch advises neighbors have called in concerned about the potential for violence.

Scenario 4- You respond to a grocery store for a report of a shoplifter in custody by the in-store loss prevention staff. Dispatch advises the suspect is cooperative.

Scenario 5- You respond to a home for a welfare check and find the individual deceased in what appears to be a suspicious manner.

Scenario 6- You respond to the hospital for a report of a sexual assault. Dispatch advises the assault is reported to have occurred the night before.

Scenario 7- You respond to the construction site where a new neighborhood is being built for a report of a suspicious vehicle after hours. Dispatch advises the site has been experiencing theft of building supplies.

Scenario 8- You respond to a multi-vehicle crash with injuries. Dispatch advises a caller had reported one of the cars driving fast and weaving in and out of traffic prior to the crash.

Purpose of Investigations

Although criminal investigations seek resolutions to individual crimes, they also serve the larger purpose of promoting justice and reducing crime. To accomplish this, a criminal investigation must be a search for the truth and not simply an effort to close a case.

Criminal investigation failures include:

- Wrongful conviction (begins with a wrongful arrest)
- Unsolved crime that should have been solved
- Ignored crime

Some factors which lead to criminal investigation failure include poor decision-making, flawed or rushed judgement, confirmation bias, tunnel vision, and groupthink among others.

Investigation Basics

Criminal investigations consist of numerous moving parts and a successful investigation depends on the ability and efforts of the officer to think critically and be a problem solver. Although there is not a one-size-fits-all checklist to conducting an investigation, there are important concepts, rules, legal parameters, and processes which matter and can be applied in various circumstances.

What is the Role of the Responding Officer?

Your role may vary depending on your agency; do you have a specialized crime team to call in or are you it? Even in large jurisdictions, chances are if you are the first member responding at the scene of a crime, you are in charge. So what is the role of the responding (and often also the investigating) officer?



Prepare

You have been dispatched to a call. While your first priority is to arrive safely, what things might you start considering in preparation for your arrival?

- First consider, what is the call? What is the level of urgency? What might be happening at the scene when you arrive?
- Are you familiar with the location? Where will you park? Plan to park a short distance away. Start to think through your approach to the location.
- What resources may you need? Do you need a cover officer? How/where should they approach?
- Start thinking through elements of the crime(s) (mental state + conduct).

Intentionally
Knowingly
Recklessly
Criminal Negligence

- Next, who will you be talking to? Start to mentally prepare for the interview(s) of the involved persons. Who are, or might be, the witnesses? Who is the victim? Is there already a suspect? Are there bystanders? What factors could impact information gathering? Have parties experienced trauma? Are parties injured? What accommodations might be necessary, for example will you need a language interpreter or a forensic interviewer?

Manage the Scene

Once you arrive, approach the scene cautiously. Make some initial observations (look, listen, smell) to assess the scene and ensure officer safety before proceeding. Be aware of any persons or vehicles in the vicinity that may be related to the crime. Are there any persons/vehicles leaving the area?

If you have other units arriving, safely direct any additional responding units into the area. Make a plan with the cover officer, including who will interview which party.

Using an assertive communication style, provide clear and concise directions to all parties on scene. Separate the parties (victims, witnesses, suspects).

Gather Information

Once the parties have been separated and the scene is under control, contact the complainant (*note: this could be the victim*) and begin gathering information.

Conduct the interview(s) and obtain statements. *Note: you will cover specifics about interviews in a later criminal investigations class*. Who needs to be interviewed?

- Complainant
- Victim
- Witnesses
- Suspect (be mindful of Miranda and when it applies)

During the interviews, obtain the personal information (name, DOB, address, phone number) of involved persons. Check names and DOBs with dispatch for outstanding warrants/DMV record. Once parties have been interviewed, discuss and compare information with the cover officer. Did information align? Conflict?

Prior to leaving the scene, make sure you have all of the information you need. Do you need to ask follow up or clarification questions? Do you have all relevant personal information?

Notebooks

When do you need to get your notebook out?

Remember what was covered in Report Writing? What should you be documenting?

Collect Evidence

In some investigations there will be physical evidence to collect. *Note- you will cover specifics about evidence collection in a later criminal investigations class.*

Initially, consider the following:

- Is there visible physical evidence?
- Might there be physical evidence that is hidden or invisible without enhancement?
- Do you need to take photos?
- What might need to be done to protect and preserve the evidence?

Decision-Making

Eventually you will need to make some decisions. For example:

- Is there a crime?
    - What is the crime(s)?
- Do you need to make an arrest?
    - Who/which party should be arrested?
    - Is it a mandatory arrest crime?
    - Do the circumstances require physical custody or is citation in lieu of custody an option? What circumstances would encourage you to choose one over the other?
- What are the next steps?

Basic Police Academy

Introduction to the Justice System



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Introduction to the Justice System

Instructional Goal:

This course is designed to develop a new officer's understanding of the criminal justice system, general criminal code concepts, and application.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Locate and differentiate between criminal code offenses
2. Articulate sources of law
3. Analyze a situation to identify the appropriate criminal code application to the circumstances
4. Identify elements of a crime in a given situation.

Content Outline:

- Sources of Law & Court Systems
- The Components of the Justice System
- Stages of the Justice System
- Oregon Revised Statutes
- Criminal Liability

Preamble: We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Sources of Law & Court Systems

- Federal Constitution
- U.S. Congress
- Federal Courts
- Oregon Constitution
- Oregon Legislature
- Oregon Courts

Federal Constitution

The United States Constitution, enacted in 1791, is the supreme law of the United States of America on issues of federal law. The U.S. constitution also supersedes state constitutions and laws in areas of federal jurisdiction. The U.S. Constitution delineates the national frame of government. The first three articles entrench the doctrine of separation of powers by dividing the federal government into three branches:

Legislative (Congress)	Executive (President)	Judicial (Supreme Court)

Over the years, the States ratified twenty-seven amendments to the Constitution. The first ten amendments are commonly referred to as the Bill of Rights. The Bill of Rights was drafted to provide greater constitutional protection for individual liberties. The Bill of Rights was a limit on federal government power. The protections of the Bill of Rights were later expanded to state governments through the Fourteenth Amendment. The U.S. Constitution guarantees a minimum level of protection for the liberties of all citizens of the United States.

In-Class Activity

Identify the U.S. and Oregon Constitutional provisions that protect these rights:

	U.S Constitution Amendment Choices 1-10	**Oregon Constitution** Article I Choices Sections 1 – 30
Freedom of speech and press		
Freedom of religious opinion		
Right to remain silent		
Right to counsel		
Right to bear arms		
Right to a speedy trial by an impartial jury		
Protection from self-incrimination		
Protection from double-jeopardy		
Protection against unreasonable search and seizures		
Protection from cruel and unusual punishments		

U.S. Congress

Congress is a source of federal law. It enacts legislation, which, unless vetoed, is signed into law by the President. Laws promulgated by Congress are published in the United States Code. Generally, federal laws must relate to a federal issue (e.g., interstate commerce or federal budgets).

Federal Courts

U.S. Supreme Court

This is the highest federal court. It is comprised of nine justices selected by the President and confirmed by the U.S. Senate, to serve a lifetime appointment. The Supreme Court has original jurisdiction (trial powers) over very few cases (e.g., lawsuits between states or cases involving ambassadors). The court has appellate jurisdiction on cases that involve an issue of federal law (e.g., U.S. Constitutional issues or federal codes). This court has the discretion to determine which cases to hear on appeal. Parties file a writ of certiorari with the court to request review of a decision by the Federal Appellate Courts or the highest state courts regarding an issue of federal law. If four of the nine justices agree to hear the case, certiorari will be granted. The court generally receives over 7,000 requests, but only accepts approximately 100-150 cases a year.

Most Supreme Court cases concerning criminal justice deal with procedural law issues *(Miranda, Terry v. Ohio, and Tennessee v. Garner)*

Opinions by the U.S. Supreme Court are binding on all courts in the United States as it relates to the issue of federal law decided. However, the U.S. Supreme Court cannot overturn a decision of a State Supreme Court on an issue that interprets the State Constitution so long as that decision does not violate the protections of the U.S. Constitution.

U.S. Courts of Appeals

The federal appellate courts are divided into thirteen circuits. Oregon and the western U.S. are in the 9th Circuit. In most cases, a three-judge panel of the U.S. Courts of Appeals hears challenges to Federal District Court decisions within their assigned circuit. If the U.S. Supreme Court has not ruled on a matter, the opinion of the Court of Appeals is binding on the district courts within the circuit. For example, an issue relating to a probable cause and exigency exception to the warrant requirement of the 4th Amendment from the 9th Circuit is binding on the federal district court in Oregon, but only persuasive authority for the federal district court in Texas.



Federal District Courts

The Federal District Courts are trial courts in the federal system. This means if a party raises a federal issue of law, the district court has jurisdiction to hear the case. For example, a person who believes an Oregon Police officer violated his civil rights under 42 U.S.C. § 1983, could file a case in Oregon District Court. If the officer was found liable by the trier of fact, the officer could file a notice of appeal with the 9th Circuit. Federal district court judges occasionally publish opinions on their rulings. While those opinions are not binding on state trial courts, they may provide persuasive authority.

Oregon Constitution

In 1859, the people of the state enacted the Oregon Constitution. Since that time, the Legislature, or the people through the initiative process, has amended the Constitution numerous times. The Oregon Constitution is quite expansive, with 46 sections, which include sections similar to the federal constitution. For example, Article I is the Oregon Bill of Rights. This portion provides protections against unreasonable searches or seizures in section 9, as well as the prohibition on double-jeopardy and protections against compulsory self-incrimination in section 12. In many crucial areas, the Oregon Constitution has been interpreted by the Oregon appellate courts to provide a greater level of protection for individual liberties than the U.S. Constitution. Therefore, Oregon courts generally apply principles of the Oregon Constitution rather than Federal constitutional principles when making legal decisions.

Oregon Legislature

When the Oregon Legislature passes a bill, it is presented to the governor for signature. Unless the governor vetoes the bill, it is signed into law. Oregon laws are published in the Oregon Revised Statutes (ORS). The legislature meets every year, with a longer session in odd-numbered years. In general, Oregon laws apply to people in the geographical boundaries of Oregon.

Oregon Courts

Oregon Supreme Court

The Oregon Supreme Court is composed of seven justices elected by nonpartisan statewide ballot to serve six-year terms. Justices elected to the Supreme Court must be United States citizens, members of the Oregon State Bar, and an Oregon resident for at least three years. The court has its offices and courtroom in the Supreme Court Building just east of the Oregon State Capital in Salem. The members of the court elect one of their members to serve as chief justice for a six-year term.

The Supreme Court was established by Amended Article VII of the Oregon Constitution. It is primarily a court of review; that is, it reviews the decisions of the Court of Appeals in selected cases. The Supreme Court decides which cases to review, usually selecting those with significant legal issues calling for interpretation of laws or legal principles affecting many citizens and institutions of society. Cases are accepted for review on the vote of three justices. When the Supreme Court decides not to review a case, the Court of Appeals' decision becomes final. In addition to its review function, the Supreme Court hears direct appeals in death penalty cases and tax court cases. It may accept original jurisdiction in mandamus, quo warranto, and habeas corpus proceedings. Decisions of the court are published in the Oregon Reports (OR).

Administrative Authority – The chief justice is the administrative head of the judicial department and, as such, exercises administrative authority over and supervises the appellate, circuit, and tax courts. The chief justice makes rules and issues orders to carry out necessary duties and requires appropriate reports from judges and other officers and employees of the courts. As head of the judicial department, the chief justice appoints the chief judge of the Court of Appeals and the presiding judges of all local courts from the judges elected to those courts in the state. The chief justice is also charged with supervising a statewide plan for budgeting, accounting, and fiscal management of the judicial department.

Oregon Court of Appeals

The Court of Appeals is a thirteen-judge court. Judges, elected on a statewide, nonpartisan basis for six-year terms, must be United States citizens, members of the Oregon State Bar, and qualified electors of their county of residence. The chief justice of the Supreme Court appoints a chief judge from among the judges of the Court of Appeals.

Court of Appeals judges have their offices in the Justice Building in Salem and usually hear cases in the courtroom of the Supreme Court Building. The court ordinarily sits in panels of three judges. The Supreme Court has the authority to appoint a Supreme Court judge, a circuit court judge, or a tax court judge to serve as a judge pro tempore of the Court of Appeals.

Jurisdiction – The Court of Appeals has jurisdiction of all civil and criminal appeals, except death penalty cases and appeals from the Tax Court, and for review of most state administrative agency actions. The Court of Appeals must take a case that is appealed to it from the lower courts. However, the court does not need to issue a written opinion of the decision. The Court of Appeals' opinions are published in the Oregon Appellate Reports (Or App).

Circuit Courts

The Circuit Court routinely handles the following matters:

Offenses	Civil Cases	Appeals
Crimes (Misdemeanor or Felony)	Domestic Relations	Municipal Court re-trials
Violations (traffic, wildlife, etc.)	Probate Matters	Justice Court re-trials
Juvenile Delinquency	Real Property	
	Personal Injury	
	Juvenile Dependency	

The circuit courts are the state trial courts of general jurisdiction. This means they create the record – facts and legal rulings - that the appellate courts review for legal errors. The circuit courts have juvenile, probate, adoptions, guardianship, and conservatorship jurisdiction in all counties except Gilliam, Grant, Harney, Malheur, Morrow, Sherman, and Wheeler, where the county court exercises juvenile jurisdiction. However, the circuit court has exclusive jurisdiction over the termination of parental rights proceedings.

Circuit Court judges are elected on a non-partisan ballot for a term of six years. They must be citizens of the United States, members of the Oregon State Bar, residents of Oregon for at least three years, and residents of their judicial district at least one-year (except Multnomah County judges, who may reside within ten miles of the county). The circuit judges are grouped in twenty-six geographical areas called judicial districts.

To expedite judicial business, the chief justice of the Supreme Court may assign any circuit judge to sit in any judicial district in the state, and the chief justice may appoint members of the Oregon State Bar as circuit judges pro tempore.

County Courts

At one time, county courts existed in all thirty-six Oregon counties. The title "county judge" is retained in some counties as the title of the chair of the board of county commissioners. There is no requirement that county judges be members of the bar.

Where a county judge's judicial function still exists, it is limited to juvenile and probate matters. It occupies only a portion of the judge's time, which is primarily devoted to non-judicial administrative responsibilities as a member of the county board.

Only seven counties now have county judges who retain any judicial authority: Gilliam, Sherman, and Wheeler (juvenile and probate jurisdiction); Grant, Harney, and Malheur (probate only); and Morrow (juvenile only).

Justice Court

A justice of the peace holds justice Court within the district for which he or she is elected. The county commissioners have the power to establish justice court district boundaries. The justice of the peace is a remnant of territorial days when each precinct of the state was entitled to a justice court. Thirty justice courts currently administer justice in nineteen counties.

Justice courts have jurisdiction within their county concurrent with the circuit court in all criminal prosecutions except for felony trials. The usual types of cases adjudicated by justice courts are criminal misdemeanors, including misdemeanor traffic crimes, other minor traffic violations, and boating, wildlife, and liquor violations occurring in their counties. Actions at law in justice courts are conducted using the mode of proceeding and rules of evidence similar to those used in the circuit courts.

The justice court has small claims/civil jurisdiction nonexclusive where the money or damages claimed do not exceed $7,500, except in actions involving title to real property, false imprisonment, libel, slander, or malicious prosecution. Justices of the Peace also perform weddings at no charge if performed at their offices during regular business hours.

If a justice court is not a court of record, as is usually the case, its appeals go to the Circuit Court. An appeal to the Circuit Court means the case is again presented to the trier of fact for a decision so that a record can be made. If the justice court is a court of record, its appeals go to the Court of Appeals.

A justice of the peace must be a citizen of the United States, a resident of Oregon for three years, and a resident of the justice court district for one year before becoming a nonpartisan candidate for election to that office. If the justice court is a court of record, the justice of the peace must also be a member of the Oregon State Bar.

Municipal Court

Most incorporated cities in Oregon have a municipal court. Municipal courts have jurisdiction over violations of the city's municipal ordinances and concurrent jurisdiction with circuit courts over criminal cases occurring within the city limits or on city-owned or controlled property. Municipal courts have no jurisdiction over felonies. The usual types of cases adjudicated by municipal courts are criminal misdemeanors, including misdemeanor traffic crimes, other minor traffic violations; certain minor liquor and drug violations; parking violations; and municipal code violations such as animal and fire violations. Municipal judges can perform weddings within their jurisdiction. Although municipal courts are not usually courts of record, the procedures in such courts are controlled to a large extent by state statute. If a municipal court is not a court of record, appeals go to the Circuit Court like justice courts. If it is a court of record, its appeals go to the Court of Appeals.

The city council appoints municipal judges in most instances except for a few judges who are elected by the city's voters. The qualifications of a municipal judge are determined by the city council or the city charter. A municipal judge need not be an attorney unless the municipal court is a court of record.

Specialty Courts

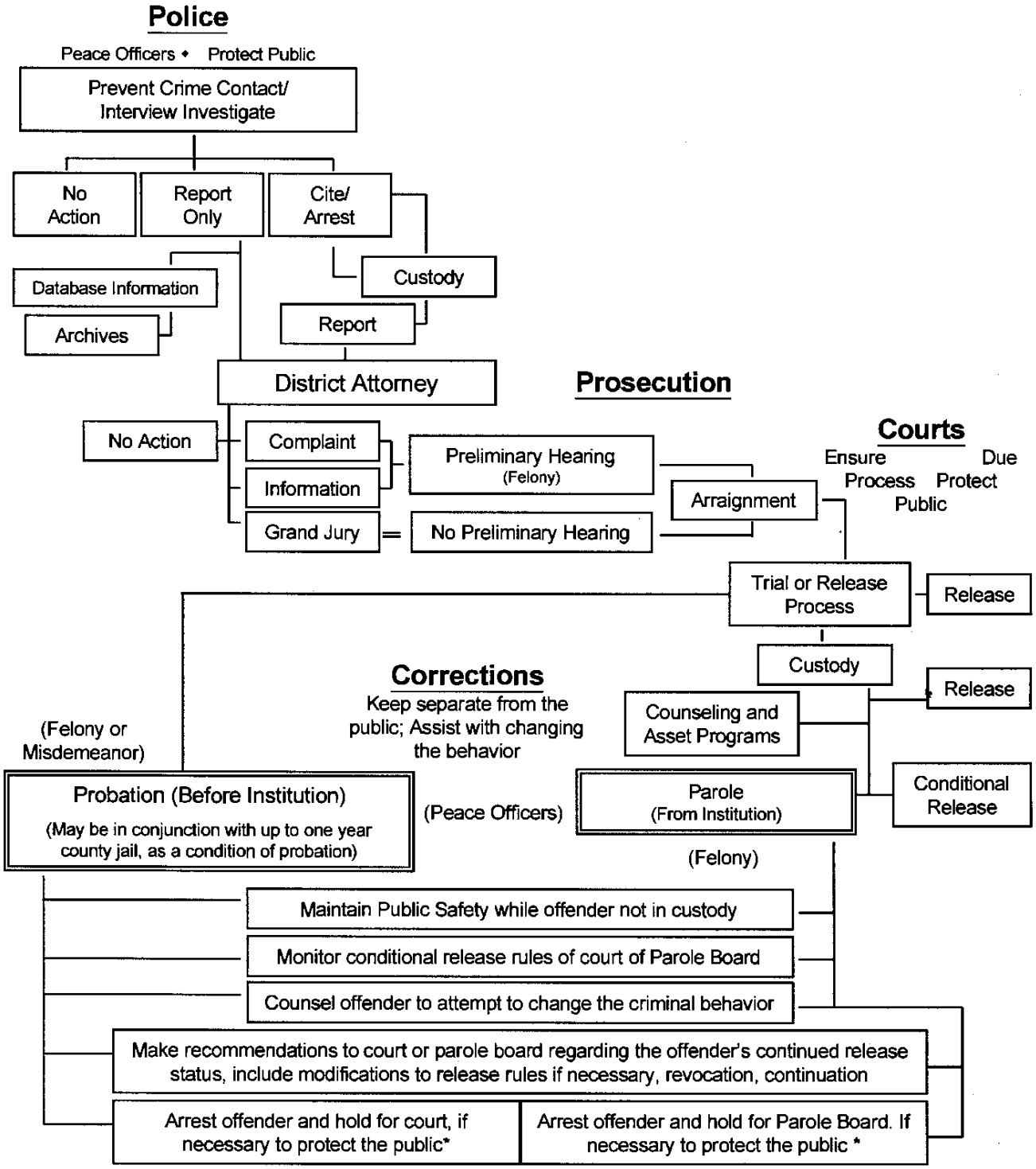
In Oregon, depending on the jurisdiction, you may come across a variety of specialty courts. These are treatment courts designed to be problem-solving courts operating under a special model to provide court-directed supervision and treatment to non-violent individuals with substance abuse or mental health issues underlying their criminal behavior.

Treatment courts serve a targeted population, rely on consistent judicial interaction throughout the program, and require collaboration amongst a multi-disciplinary team made up of judicial, treatment, supervision, legal, and other parties.

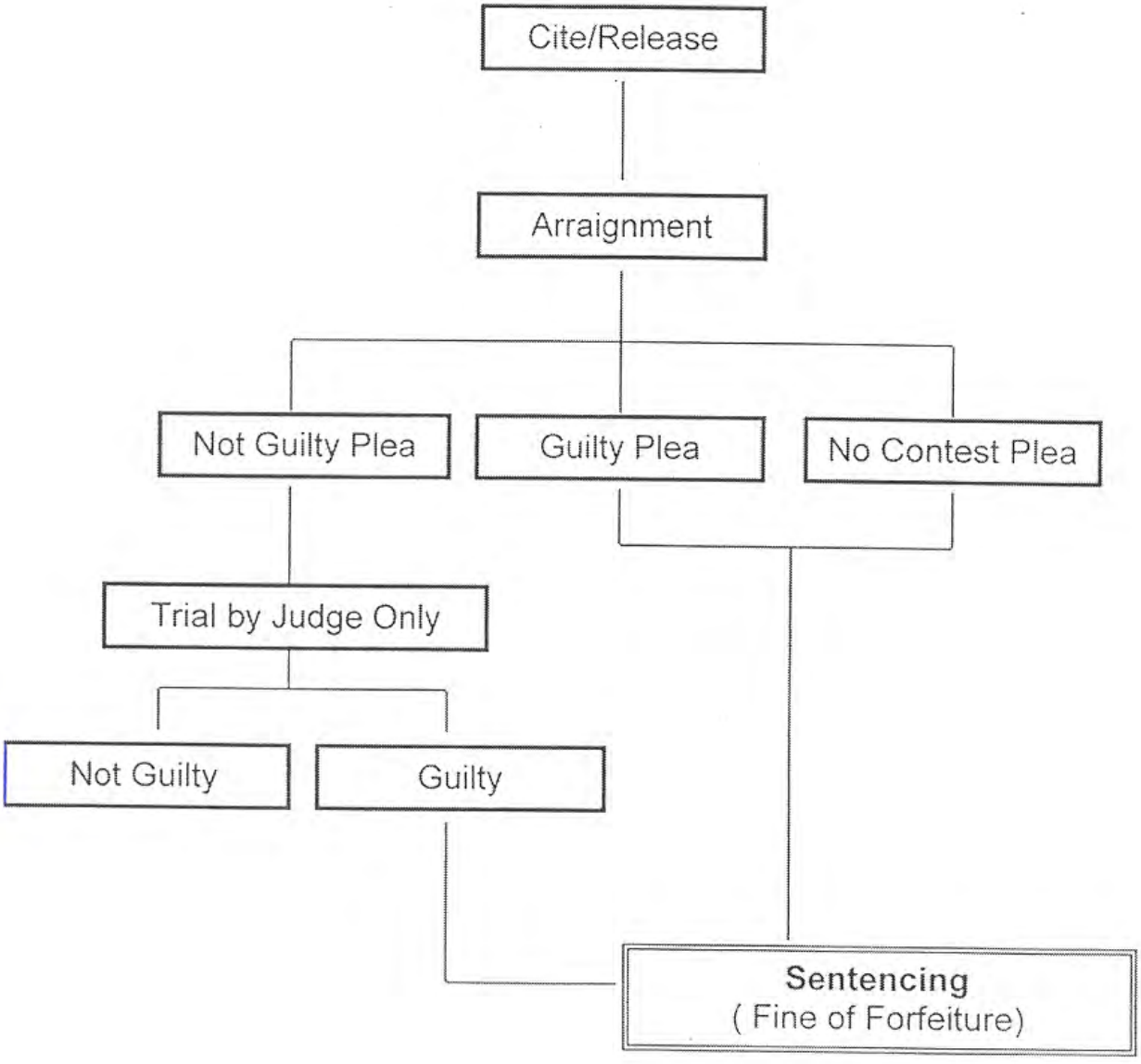
Examples of specialty courts in Oregon include Adult Drug Court, Family Drug Court, Mental Health Court, DUII Court, Juvenile Drug Court, and Veterans Court.

Interrelation of the Components of the Oregon Criminal Justice System

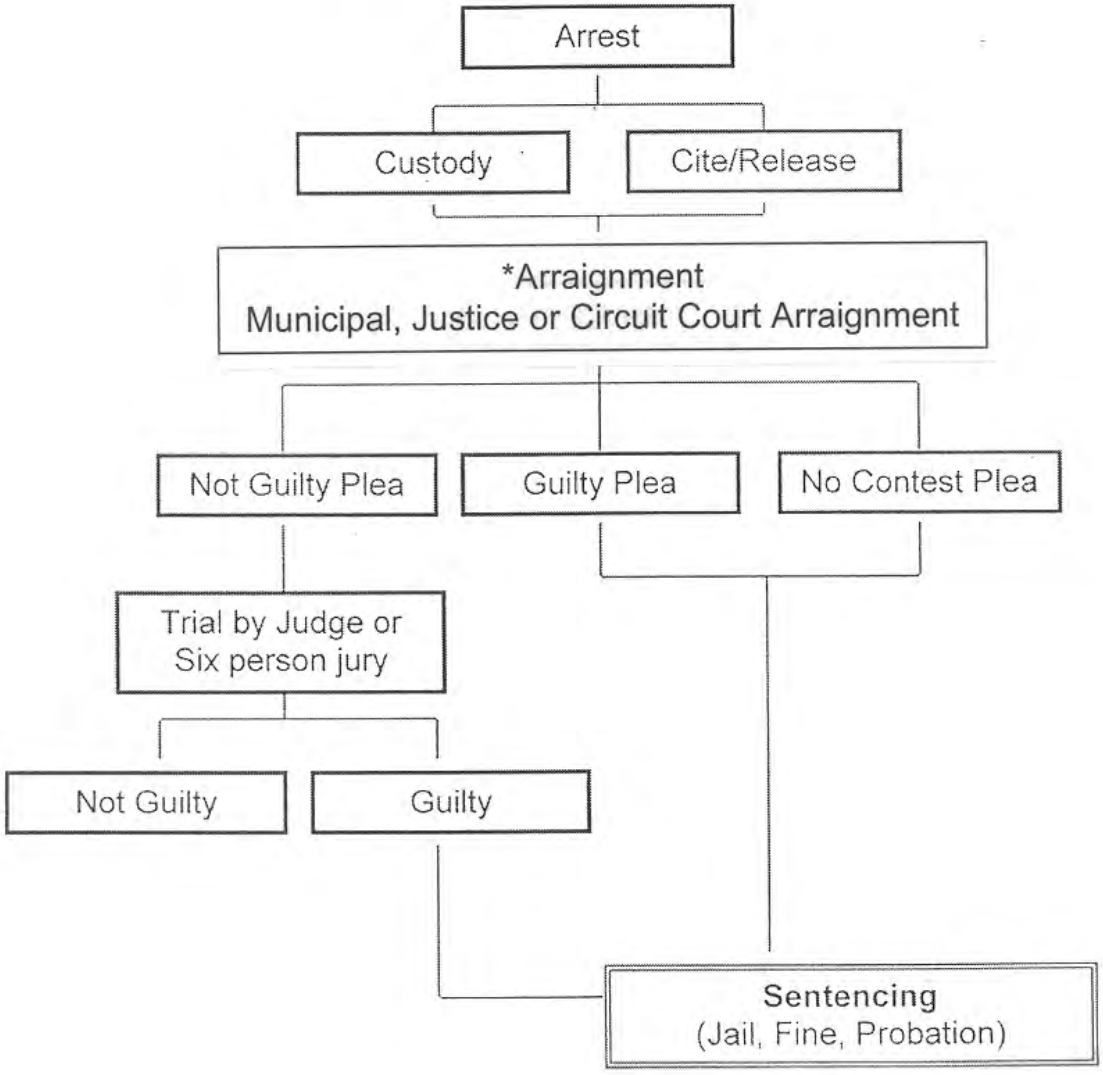
Police ◆ Prosecution ◆ Courts ◆ Corrections



Critical Stages of a Violation or Traffic Violation through Oregon's Justice System



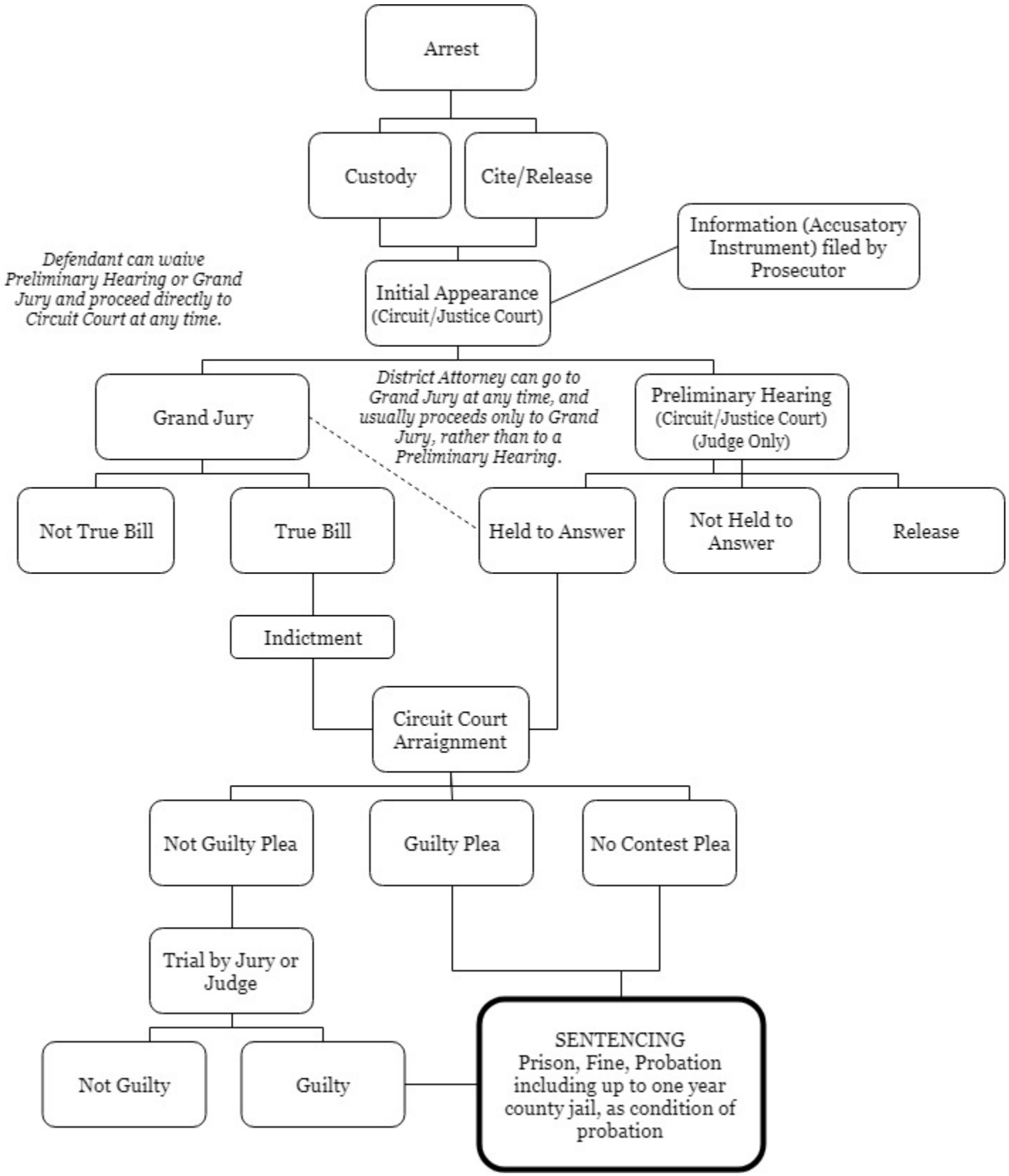
Critical Stages of a Misdemeanor Prosecution through Oregon's Justice System



*Arraignment is the reading of the accusatory instrument to the defendant, causing delivery to him/her of a copy thereof and endorsements thereon, including the list of witnesses endorsed on it or appended thereto if the accusatory instrument is an indictment, asking the defendant how he/she pleads to the charge(s). ORS 135.020

NOTE: Municipal and Justice Courts may hear only misdemeanors as assigned by Circuit Court.

Critical Stages of a Felony Prosecution through Oregon's Justice System



Oregon Revised Statutes and the Criminal Code Book

The Oregon Revised Statutes (ORS) are divided into several volumes containing the statutory law for Oregon in numerous chapters within each volume. An additional four volumes contain an alphabetical index, annotation, and comparative section tables. Each chapter covers a different topic area of the law in Oregon. For example, Chapter 132 is titled "Grand Jury and Indictments." Within Chapter 132, you will find subtopics related to Grand Jury proceedings. Each subsection has a number assigned to it for quick reference, e.g., ORS 132.005. This subsection within Chapter 132 covers the definitions of terms used within that chapter. Each ORS chapter begins with a list of the topic headings for each subsection contained within the chapter. The ORS is updated after the State Legislature meets and enacts laws.

The Criminal Code Book (Criminal Code of Oregon) is updated and published by the Legislative Counsel Committee every two years. It is compiled from several chapters of the ORS and is only a small portion of all laws. It is designed for the criminal justice practitioner as a quick reference source.

The Criminal Code Book includes:

- Arrest and related procedures
- Search and Seizure (including warrants)
- Offenses and sentencing
- Sex offender reporting
- Juvenile code/Oregon Youth Authority
- Alcoholic liquors
- Controlled substances
- Parts of the Oregon Constitution

The Criminal Code Book also contains an alphabetical topical index in the back of the book, making it easier to find the ORS citation number associated with a particular topic. The index also contains a "Words and Phrases" listing. For example, you can alphabetically locate the term "peace officer" in the "Words and Phrases" index to find the ORS number.

Criminal Liability

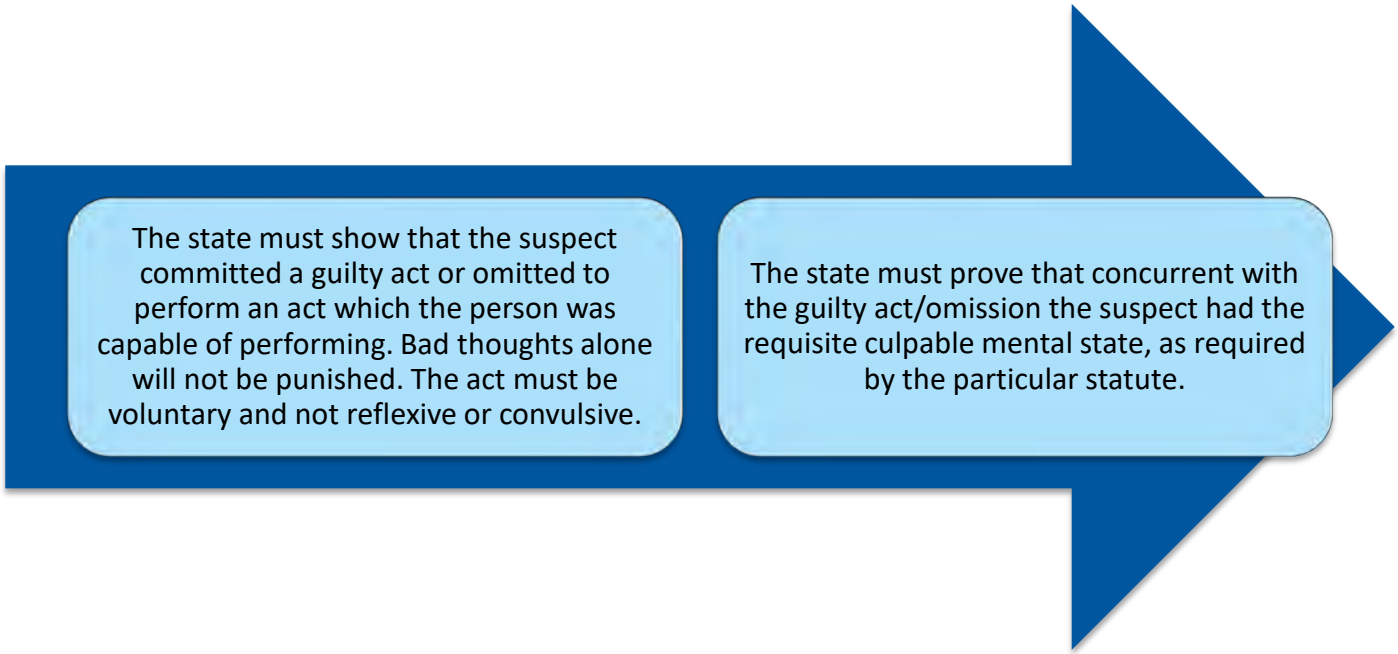
In upcoming classes, you will focus on legal definitions related to specific crimes, as well as some techniques to investigate offenses. This section will focus on the basics to help you understand the terminology and core concepts of criminal law. These concepts will include identifying elements of crimes and discussing sentencing principles.

Elements of a Crime

To make a lawful arrest, you must have probable cause that the arrested person committed a crime. All crimes have elements that establish the offense. In general, most crimes (except for some traffic offenses like DUII) have two components: a mental state (*mens rea*) and conduct (*actus reas*). The culpability of the mental state and egregiousness of the conduct generally correlates with the severity of the level of punishment.

Requirements for Criminal Culpability (ORS 161.095)

To have criminal liability in Oregon, the state must establish two preliminary elements:



Culpable mental states (ORS 161.085 (6))

Intentionally ORS 161.085 (7)	Knowingly ORS 161.085 (8)	Recklessly ORS 161.085 (9)	Criminal Negligence ORS 161.085 (10)
• Means that a person acts with a conscious objective to cause the result or to engage in the conduct so described.	• Means that a person acts with an awareness that the conduct of the person is of a nature so described or that a circumstance so described exists.	• Means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists.	• Means that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists.

Recklessly under circumstances manifesting extreme indifference to the value of human life – This phrase is used in the assault and manslaughter statutes. Oregon courts have held this additional language does not create an additional culpable mental state. Instead, "it imputes a heightened degree of blameworthiness to the defendant's conduct by reference to the attendant circumstances." State v. Cook, 163 Or. App. 578, (1999). The statute does not define the language, but case law has made clear that it refers to a "state of mind where an individual cares little about the risk of death of a human being." State v. Forrester, 203 Or. App.15 (2005).

Example:
163.160 Assault in the fourth degree.
(1) A person commits the crime of assault in the fourth degree if the person:
(a) Intentionally, knowingly or recklessly causes physical injury to another.

For this statute, we can see that to make an arrest; you must believe that the suspect:

1. (Mental State) Acted intentionally, knowingly, or recklessly; and
2. (Conduct) Caused another person's physical injury.

Intoxication as a defense (ORS 161.125)

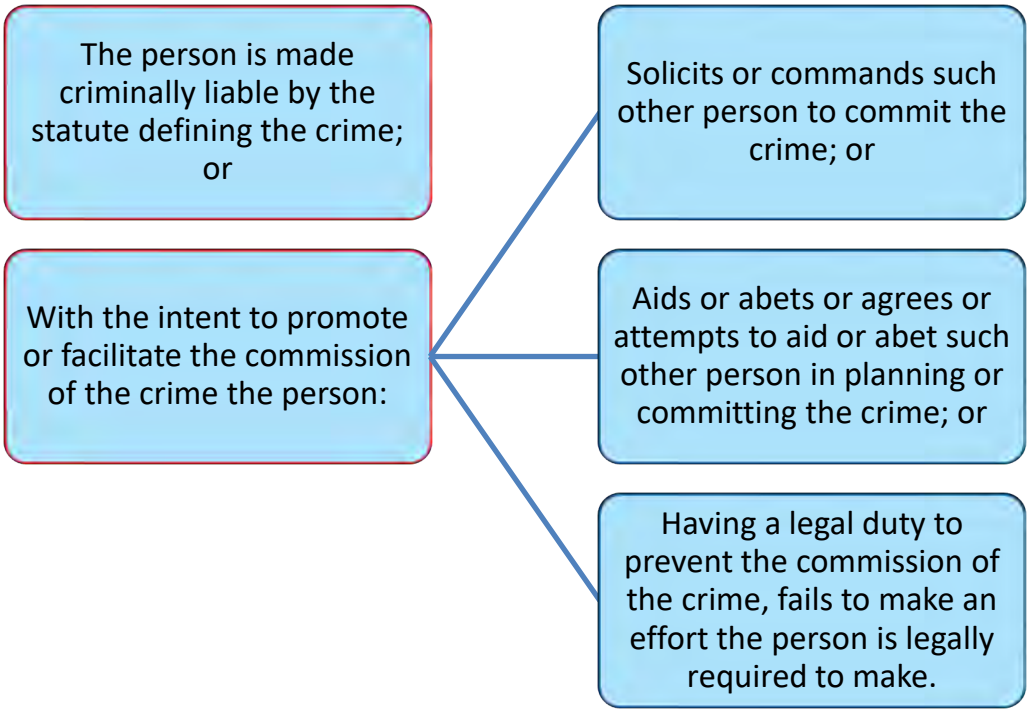
The use of drugs, dependence, or voluntary intoxication shall not constitute a defense to a criminal charge.

However, in any prosecution, the defendant may offer evidence he used drugs, was dependent on drugs, or was intoxicated whenever relevant to negate an element of the crime charged. If the mental state alleged is "recklessness," and the defendant was "unaware of a risk..." due to his use of drugs, voluntary intoxication, etc. such unawareness is immaterial.

In short, this means that a person who is intoxicated when the person commits a reckless act, that person is still culpable for the crime. However, a person who is so intoxicated that the person does not know what they are doing cannot be held responsible for a criminal act that requires the mental state of a knowing or intentional act. In practice, this defense is often disproved by evidence of the officer's interactions with the suspect at the time of the investigation. Therefore, it is essential to ensure thorough documentation of the suspect's behavior during the investigation related to mental and physical signs of impairment.

Parties to Crime (ORS 161.150 – 161.155)

A person is guilty of a crime if committed by a person's own conduct or by the conduct of another for which a person is criminally liable or both. A person is criminally liable for the conduct of another person constituting a crime if:



Inchoate Crimes

Attempt (ORS 161.405)	Solicitation (ORS 161.435)	Conspiracy (ORS 161.450)
A person is guilty of an attempt to commit a crime when the person intentionally engages in conduct which constitutes a substantial step toward commission of the crime.	A person commits the crime of solicitation if with the intent of causing another to engage in specific conduct constituting a crime punishable as a felony or as a Class A misdemeanor or an attempt to commit such felony or Class A misdemeanor the person commands or solicits such other person to engage in that conduct.	A person is guilty of criminal conspiracy if, with the intent that conduct constituting a crime punishable as a felony or a Class A misdemeanor be performed, the person agrees with one or more persons to engage in or cause the performance of such conduct.



Theft in the second degree

A person commits the crime of theft in the second degree if:	To analyze this statute, we also need to know the definition of theft: 164.015 Theft described.	Therefore, to arrest theft II, you must believe the suspect:
		Mental State:
		Conduct:

Sentencing

There are maximum penalties that can be imposed upon conviction of most offenses.

Violations	Crimes	
	Misdemeanor	Felony
Violations defined (ORS 153.008) Maximum fines for violations: Class A = $2000 Class B = $1000 Class C = $500 Class D = $250 Traffic violations defined (ORS 801.557) Classification Maximum fines for traffic violations Class A = $2000 Class B = $1000 Class C = $500 Class D = $250 Presumptive (formerly "base") fines for violations Class A = $435 Class B = $260 Class C = $160 Class D = $110	The misdemeanor classification and the maximum penalties for each (ORS 161.615 - .635) Class A misdemeanor – 1 year jail, $6,250 fine Class B misdemeanor – 6 months jail, $2,500 fine Class C misdemeanor – 30 days in jail, $1,250 fine The minimum fine for misdemeanors, unless a specific minimum fine is provided by law, is $100	The felony classifications and the maximum penalties for each (ORS 161.605 - .625) Class A felony – 20 years imprisonment, $375,000 fine Class B felony – 10 years imprisonment, $250,000 fine Class C felony – 5 years imprisonment, $125,000 fine The minimum fine for felonies, unless a specific minimum fine is provided by law, is $200

Violations and Misdemeanors

When a person is convicted of one of these offenses, the judge can sentence the person anywhere within the penalty range. For example, on a class A misdemeanor, the person could be sentenced from only a $100 fine, up to a $6,250 fine and 364 days in jail.

Felony crimes

Unlike violations and misdemeanors, felony sentencing is much more complicated. This topic is one in which many criminal law attorneys also have difficulty. Therefore, this section will simply provide some basics to guide your understanding of the issues. This is intended to help your overall knowledge of the criminal justice system, as well as to give a little insight into prosecutorial decisions.

While the statutory maximums described above are accurate, most felony sentences are determined by the presumptive sentence according to the sentencing guidelines grid:

The Oregon Sentencing Guidelines Grid

Crime Seriousness	A	B	C	D	E	F	G	H	I	Prob Term	Max Depart	PPS
11	225-269	196-224	178-194	164-177	149-163	135-148	129-134	122-128	120-121	5 Years		3 Years
10	121-130	116-120	111-115	91-110	81-90	71-80	66-70	61-65	58-60			
9	66-72	61-65	56-60	51-55	46-50	41-45	39-40	37-38	34-36			
8	41-45	35-40	29-34	27-28	25-26	23-24	21-22	19-20	16-18	3 Years	18 Mos.	
7	31-36	25-30	21-24	19-20	16-18	180 90	180 90	180 90	180 90			
6	25-30	19-24	15-18	13-14	10-12	180 90	180 90	180 90	180 90			2 Years
5	15-16	13-14	11-12	9-10	6-8	180 90	120 60	120 60	120 60	2 Years	12 Mos.	
4	10-11	8-9	120 60	120 60	120 60	120 60	120 60	120 60	120 60			
3	120 60	120 60	120 60	120 60	120 60	120 60	90 30	90 30	90 30		6 Mos.	1 Year
2	90 30	90 30	90 30	90 30	90 30	90 30	90 30	90 30	90 30	1 ½ Years		
1	90 30	90 30	90 30	90 30	90 30	90 30	90 30	90 30	90 30			

The presumptive grid block for any felony conviction is the intersection where the crime seriousness ranking and the criminal history classification meet. Grid blocks in the shaded area represent the range of presumptive imprisonment and post-prison supervision (PPS). Non-shaded grid blocks are presumptive sentences of probation (Prob. Term) with local custodial sanctions in days (upper number) and maximum jail days without a departure (lower number).

In grid blocks 4-C and 4-D, for offenders sentenced under 2011 Oregon Laws ch 598 (SB 395), the upper number of sanction units shall be 180, and the lower number of sanction units shall be 90. Offenders sentenced under 2011 Oregon Laws ch 598 shall serve a mandatory minimum term of incarceration of 90 days without reduction for any reason.

The probation term of 5 years applies to levels 9-11, the term of 3 years applies to levels 6-8, 2 years applies to levels 3-5, and 1 ½ years applies to levels 1-2.

The upward dispositional departure maximum sentence (Max Dispositional Depart) for a presumptive probation sentence shall be:

(a) Up to six months for offenses classified in Crime Categories 1 and 2, or grid blocks 3-G, 3-H and 3-I;
(b) Up to twelve months for offenses classified in grid blocks 3-A through 3-F, 4-C through 4-I and 5-G through 5-I; and
(c) Up to eighteen months for offenses classified in grid blocks 5-F, 6-F through 6-I, and 7-F through 7-I.

Under certain conditions a probation sentence may be imposed in grid blocks 8-G, 8-H and 8–I without a departure.

Criminal History Categories

Oregon Administrative Rule 213-004-0007 defines criminal history categories.

A	The criminal history includes three or more person felonies in any combination of adult convictions or juvenile adjudications.
B	The criminal history includes two person felonies in any combination of adult convictions or juvenile adjudications.
C	The criminal history includes one adult conviction or juvenile adjudication for a person felony; and one or more adult conviction or juvenile adjudication for a non-person felony.
D	The criminal history includes one adult conviction or juvenile adjudication for a person felony but no adult conviction or juvenile adjudications for a non-person felony.
E	The criminal history includes four or more adult convictions for non-person felonies but no adult conviction or juvenile adjudication for a person felony.
F	The criminal history includes two or three adult convictions for non-person felonies but no adult conviction or juvenile adjudication for a person felony.
G	The criminal history includes four or more adult convictions for Class A misdemeanors; one adult conviction for a non-person felony; or three or more juvenile adjudications for non-person felonies, but no adult conviction or juvenile adjudication for a person felony.
H	The criminal history includes no adult felony conviction or juvenile adjudication for a person felony; no more than two juvenile adjudications for non-person felonies; and no more than three adult convictions for Class A misdemeanors.
I	The criminal history does not include any juvenile adjudication for a felony or any adult conviction for a felony or Class A misdemeanor.

Presumptive Sentences

The severity of the offense (listed as 1-11 on the left) and severity of the suspect's criminal history (letters A – I at the top) intersect at the presumptive sentence. For example, a person who assaults a public safety officer (level 6), who has three prior assault felonies (level A) would be presumed to be sentenced to 25-30 months in the Dept. of Corrections (DOC).

Departure Sentences

If the state can prove aggravating factors, the person can be sentenced to a greater sentence than is listed as the presumptive sentence. For example, a person presumed to be placed on probation can be sent to a jail or prison sentence. Additionally, a person presumed to be sent to prison could be sent to a longer prison term.

Conversely, if the defendant proves mitigating factors, the person can be sentenced to a lesser sentence than the presumed sentence. So, a person presumed to be sent to prison could be placed on probation. This could be a concern during an investigation if you learn the suspect is on a "downward departure" from a lengthy prison sentence.

Determinate Sentences

Some statutes prescribe the sentence if the person is convicted. The most common set of crimes with determinate sentences are commonly referred to as "Measure 11" offenses. These sentences were enacted by a voter initiative of the same number and can be found in ORS 137.700 – 712. Most of these offenses are major person crimes (e.g., manslaughter, rape, and sodomy). When convicted, the person must be sentenced to the mandatory minimum (day-for-day) in DOC.

Reference Material: The Bill of Rights

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment II

A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

Amendment III

No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

Amendment VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Reference Material: Oregon Constitution Article 1

Section 1

Natural rights inherent in people. We declare that all men, when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.

Section 2

Freedom of worship. All men shall be secure in the Natural right, to worship Almighty God according to the dictates of their own consciences.

Section 3

Freedom of religious opinion. No law shall in any case whatever control the free exercise, and enjoyment of religeous [sic] opinions, or interfere with the rights of conscience.

Section 4

No religious qualification for office. No religious test shall be required as a qualification for any office of trust or profit.

Section 5

No money to be appropriated for religion. No money shall be drawn from the Treasury for the benefit of any religeous [sic], or theological institution, nor shall any money be appropriated for the payment of any religeous [sic] services in either house of the Legislative Assembly.

Section 6

No religious test for witnesses or jurors. No person shall be rendered incompetent as a witness, or juror in consequence of his opinions on matters of religeon [sic]; nor be questioned in any Court of Justice touching his religeous [sic] belief to affect the weight of his testimony.

Section 7

Manner of administering oath or affirmation. The mode of administering an oath, or affirmation shall be such as may be most consistent with, and binding upon the conscience of the person to whom such oath or affirmation may be administered.

Section 8

Freedom of speech and press. No law shall be passed restraining the free expression of opinion, or restricting the right to speak, write, or print freely on any subject whatever; but every person shall be responsible for the abuse of this right.

Section 9

Unreasonable searches or seizures. No law shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.

Section 10

Administration of justice. No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury done him in his person, property, or reputation.

Section 11

Rights of Accused in Criminal Prosecution. In all criminal prosecutions, the accused shall have the right to public trial by an impartial jury in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor; provided, however, that any accused person, in other than capital cases, and with the consent of the trial judge, may elect to waive trial by jury and consent to be tried by the judge of the court alone, such election to be in writing; provided, however, that in the circuit court ten members of the jury may render a verdict of guilty or not guilty, save and except a verdict of guilty of first degree murder, which shall be found only by a unanimous verdict, and not otherwise; provided further, that the existing laws and constitutional provisions relative to criminal prosecutions shall be continued and remain in effect as to all prosecutions for crimes committed before the taking effect of this amendment.

Section 12

Double jeopardy; compulsory self-incrimination. No person shall be put in jeopardy twice for the same offence [sic], nor be compelled in any criminal prosecution to testify against himself.

Section 13

Treatment of arrested or confined persons. No person arrested, or confined in jail, shall be treated with unnecessary rigor.

Section 14

Bailable offenses. Offences [sic], except murder, and treason, shall be bailable by sufficient sureties. Murder or treason, shall not be bailable, when the proof is evident, or the presumption strong.

Section 15

Foundation principles of criminal law. Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation.

Section 16

Excessive bail and fines; cruel and unusual punishments; power of jury in criminal case. Excessive bail shall not be required, nor excessive fines imposed. Cruel and unusual punishments shall not be inflicted, but all penalties shall be proportioned to the offense.—In all criminal cases whatever, the jury shall have the right to determine the law, and the facts under the direction of the Court as to the law, and the right of new trial, as in civil cases.

Section 17

Jury trial in civil cases. In all civil cases the right of Trial by Jury shall remain inviolate.

Section 18

Private property or services taken for public use. Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided, that the use of all roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use.

Section 19

Imprisonment for debt. There shall be no imprisonment for debt, except in case of fraud or absconding debtors.

Section 20

Equality of privileges and immunities of citizens. No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens.

Section 21

Ex-post facto laws; laws impairing contracts; laws depending on authorization in order to take effect; laws submitted to electors. No ex-post facto law, or law impairing the obligation of contracts shall ever be passed, nor shall any law be passed, the taking effect of which shall be made to depend upon any authority, except as provided in this Constitution; provided, that laws locating the Capitol of the State, locating County Seats, and submitting town, and corporate acts, and other local, and Special laws may take effect, or not, upon a vote of the electors interested.

Section 22

Suspension of operation of laws. The operation of the laws shall never be suspended, except by the Authority of the Legislative Assembly.

Section 23

Habeas corpus. The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion, or invasion the public safety require it.

Section 24

Treason. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid or comfort.—No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open Court.

Section 25

Corruption of blood or forfeiture of estate. No conviction shall work corruption of blood, or forfeiture of estate.

Section 26

Assemblages of people; instruction of representatives; application to legislature. No law shall be passed restraining any of the inhabitants of the State from assembling together in a peaceable manner to consult for their common good; nor from instructing their Representatives; nor from applying to the Legislature for redress of greviances [sic].

Section 27

Right to bear arms; military subordinate to civil power. The people shall have the right to bear arms for the defence [sic] of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]

Basic Police Academy

Investigative Interviewing



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Criminal Investigations: Investigative Interviewing

Instructional Goal:

This course is designed to introduce a new officer to methods of gathering information from various subjects in an investigation.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Describe the role of the interview in an investigation.
2. Describe the role of interrogation in an investigation.
3. Develop effective interview questions for a given circumstance.
4. Demonstrate legal interview and interrogation practices.

Criminal Investigations Series:

Part 1: Introduction to Criminal Investigations (2 hours)

Part 2: Investigative Interviewing (4 hours)

Part 3: Evidence Collection (2 hours)

Part 4: Criminal Investigations Lab (3 hours)

Part 5: Complex Investigations (2 hours)

Content Outline:

- Introduction to Investigative Interviewing
- Interview and Interrogation- What is the Difference?
- The Investigative Interview Process
    - Rapport Building
- Interviews
    - Witness Interviews
    - Victim Interviews
    - Cognitive Interviewing
    - Suspect Interviews
- Interrogations
    - Types of Questions
    - Tactics for Suspects whose Guilt is Reasonably Certain
    - Introducing Evidence
    - Ethical Considerations
    - Specialized Techniques
- Truth-Tellers and Liars
    - Examining Verbal Behaviors
    - Examining Physiological Behaviors
    - Getting to the Truth
    - The Confession
- Recording Statements and Confessions
    - Statutory Requirements

In your Communication series, you covered a common interaction where gathering information is critical, the field interview. Here you learned about verbal and non-verbal communication, listening, and asking questions and conducting field interviews wrapped in information from emotional intelligence as well. By now, you have had time to practice your field interviews, and this course builds from there.

Investigative interviewing is an important component of a criminal investigation. This process may include interviewing victims, witnesses, and suspects to gather information, but also interrogating suspects to obtain a confession. Among the essential traits for a successful interviewer are empathy, communication, and professionalism.

> Empathy concerns understanding the experience of another person: their feelings, intentions, and needs.
>
> Research has shown that empathy is an important component in the development of rapport in investigative interviewing.

Additionally, the officer must be knowledgeable about legal parameters. According to the International Association of Chiefs of Police, under the rules of evidence applicable in both state and federal courts, when an interrogation is conducted properly, any resulting statement or admission may be admissible in court against the person making the statement. However, the keyword here is admissible. A confession is of no value as evidence if it is inadmissible at the trial. Federal and State courts have, over the years, established very rigid guidelines as to when, and under what circumstances, a self-incriminatory statement may be admitted in a criminal trial. Failure to follow these guidelines may be fatal not only to the prosecution's chances of obtaining a conviction but also to the successful completion of your investigation process.

Legal guidelines for confessions and interrogations derive from two sources:

- 5th Amendment
- Miranda v. Arizona

You were introduced to Miranda in your Procedural Law series. The Miranda case provides that no confession obtained during a custodial interrogation is admissible unless:

1. The person who made the statement was first advised of his or her Fifth Amendment rights, and
2. The police observed those rights in the process of obtaining the statement.

Miranda Warning Example

1. You have the right to remain silent.
2. Anything you say may be used against you in a court of law.
3. You have the right to talk to a lawyer and have him/her present with you while you are being questioned.
4. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish

Interview and Interrogation- What is the Difference?

The following content comes from Effective Interviewing and Interrogation Techniques (2019) by Nathan Gordon and William Fleisher.

Interview and interrogation are related but two different processes in investigative interviewing. Interviewing is an information-gathering process that could involve a victim, witness, or suspect. Interrogation, on the other hand, seeks to encourage a guilty subject to admit to their involvement in a crime.

Interview	Interrogation
Goal: Gather information	Goal: Get a confession
Tone: Non-accusatory	Tone: Accusatory
Free Flowing	Structured
Subject does most of the talking	Interviewer does most of the talking

Achieving these differing goals requires differences in the behavior of the interviewer and the scope of the questions. Examples of this change include a shift in tone, who does the majority of the talking, and the structure of the questioning. There is an additional challenge in determining the truthfulness of information obtained. This course will explore each of these topics further as well as provide opportunities for application and practice.

The Investigative Interview Process

There are many different styles and techniques in investigative interviewing. Your agency and coaches may have their preferences. According to the International Association of Chiefs of Police, the current standard protocol of investigative interviewing relies on a progressively narrowing or funnel-shaped model of information gathering. Additionally, specialized techniques may be used according to the circumstances and experiences of the interviewer.

According to the model, following an initial stage of rapport building, which should be maintained throughout the interview, subjects are first asked to describe events in their own words, without direction or interruption by the interviewer. Next, the interviewer poses general questions to fill in any missing data or resolve any glaring discrepancies in the narrative. More focused and detail-oriented queries are then used to help "tie up any loose ends" in the narrative and obtain a clear overall picture of the subject's knowledge. Finally, rapport is reestablished at the close of the interview, and the subject is asked to contact the interviewer if he subsequently recalls anything relevant.

Examples:

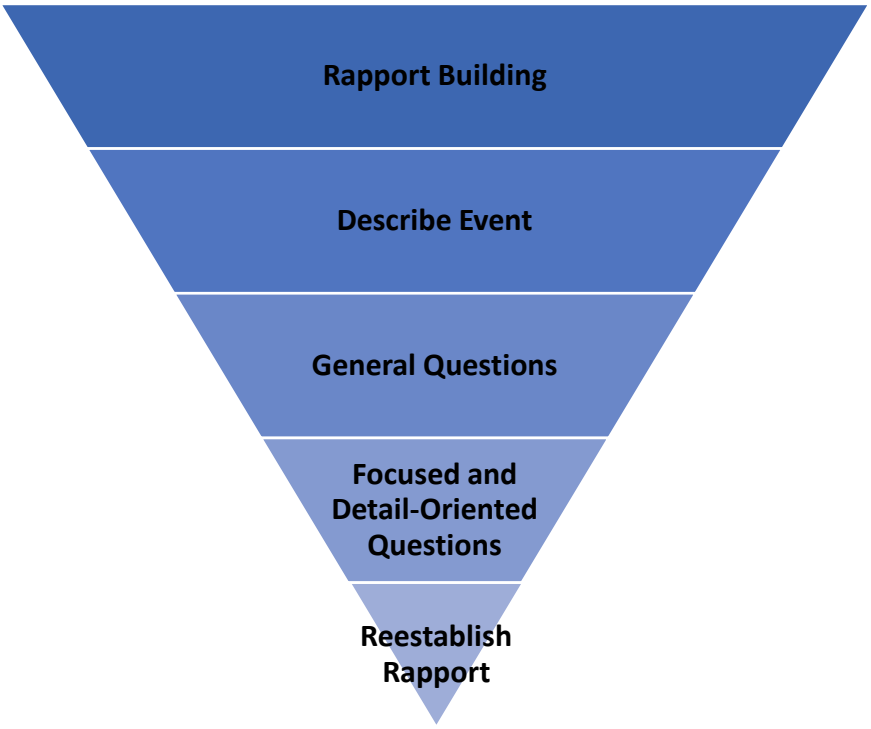
Thanks for coming in today. How was the drive?

Tell me what happened.

Who else might have witnessed that?

Tell me exactly where everyone was standing when the assault occurred.

I do appreciate you helping us out. Do you have anything good planned for (today, tonight, this weekend)?



Rapport Building

For information to be generated in a police interview, rapport must be developed—that is, a shared understanding and communication between the interviewer and interviewee. To develop rapport, the interviewer must be open, flexible, and able to adapt to the state and expressions of the interviewee through the use of different communication techniques or other relational approaches. The development of rapport may help the interviewee to feel safer and more comfortable, moving the individual into a state where it is easier to talk. This demonstrates the importance of the relational aspects of interviewing.

Source: Emotional Intelligence in Police Interviews- Approach, Training and the Usefulness of the Concept (2016).

Developing rapport with a subject early in the interview can be very valuable to ultimately obtaining a confession. Spending time with the subject discussing non-threatening topics will put the person at ease. These questions can be as simple as verifying their address, phone number, the spelling of a name, work history, or even asking questions about their favorite sports team. In addition to putting the subject at ease, rapport building allows you to establish the subject's normal response to questions. This makes evaluating truthful and deceptive responses later in the interview easier.

Interviews

During an investigation, the officer will conduct interviews with the victim(s), the suspect(s), and all available witnesses. The interview is a dynamic, interpersonal process where the quality of the interview relationship varies because of social chemistry, the extent to which the parties understand each other, or other relational processes that affect an individual's state and behavior.

The interview begins by first gathering necessary personal information (name, DOB, address, phone number). The officer should ask open-ended questions in an attempt to elicit as much information as possible. You were introduced to interviews and open-ended questions in your Communications Series.

Interviews	
Free Flowing	Interviewer speaks 5% of the time. Interviewee speaks 95% of the time.

For example:

- "Tell me all about what happened here today."
- "Tell me what you saw here today."

During an interview, the interviewer speaks only about 5% of the time, asking questions and directing the conversation. This allows the interviewee to speak 95% of the time, answering the questions, and providing information. This is in keeping with the goals of the interview process, which is to gather information. The less the interviewer talks, the more information he gathers.

Witness Interviews

Investigators must make a systematic effort to interview all witnesses, so a thorough investigation is completed. Witnesses include anyone who has pertinent information to your investigation. To identify possible witnesses, look around, who is talking to bystanders? ID individuals currently in or leaving the area.

In general, the witness should be asked to describe:

- What they observed in as much detail as possible
- What involvement, if any, they had in the event
- Their knowledge of, or relationship with, any of the participants
- Personal information (name, DOB, phone number, address)

You may have to find different ways to prompt a witness' recollection. For example:

Officer: What time did the shooting occur?

Witness: I don't know, it was evening

Officer: What were you doing before you heard the shooting?

Witness: I was eating dinner

Officer: What time did you start dinner?

Witness: It was about 7 PM

Officer: What were you eating for dinner?

Witness: A salad

Officer: How far into the salad were you?

Witness: I was almost done

Officer: What time do you think that was?

Witness: It was about 7:30 PM

Victim Interviews

Remember what you learned in the Supporting Victims of Crime course. When interviewing a victim, the officer must keep in mind the person they are speaking with has just been through a difficult experience. The victim's health and personal safety must be the officer's primary concern. The victim may be angry, afraid, or even traumatized. These intense emotions may be projected onto the officer. The officer will have to use all of his or her communication skills to obtain the valuable information the victim possesses. This may cause the interview with the victim to be postponed.

The victim should be asked to describe what happened to them in as much detail as possible. Allow them to tell their story without interruption (this is also referred to as free narrative). After they have told their story, go back through their statement chronologically and ask follow up questions. Questions to be asked:

- If they know the other person(s) involved in the incident?
- What, if any, is their relationship to them?
- In property crime cases, establish, in detail, what was taken or damaged, and the dollar value.
- Personal information (work, cell, and email) for follow up contact

Emotional Intelligence and Victim Interviewing

Source: Emotional Intelligence in Police Interviews- Approach, Training and the Usefulness of the Concept (2016)

Scenario: A 28-year-old woman attends a police interview after being subjected to violence by an unknown assailant at a bar a few days earlier. Immediately after the incident, she was rushed to the emergency room for medical care, so she has not been interviewed until now. The investigator assigned to conduct the interview takes the victim from the waiting room to the interview room. Initially, the investigator works to establish rapport. He asks how she is doing, before telling her about her rights and the regulations and informing her about the interview procedure. He asks whether she has any questions before he starts the interview by facilitating a free account from the interviewee.

1. *Interviewer*: I will ask you questions about the incident, where I want you to tell me as much as you can about what happened.
2. *Interviewee*: I don't want to talk about it. I don't feel good . . .
3. *Interviewer*: You don't feel good?
4. *Interviewee*: (looking down, crossing her arms) It feels uncomfortable being here, I want to go home.
5. *Interviewer*: Is there anything we can do that may reduce the discomfort?
6. *Interviewee*: No, I just want to go home. I feel uneasy and nauseous; I just want to go home.
7. *Interviewer*: I can see that you're not comfortable. Many people who come to the police find it uncomfortable, often because they don't want to talk about something bad they have seen or been exposed to, and that's okay. And then we try to make the best of it.
8. *Interviewee*: I don't want to think about what happened.
9. *Interviewer*: I understand that it wasn't easy for you to come here today and that it can be tough to talk about what happened. But you showed up for the interview, and that's good. Many who have been interviewed have said that it has felt good to be able to talk about something difficult in a place that's safe. Is it possible for you to tell me about what happened, and then we can take a break, drink some water, or change the subject if you find that it has become difficult to talk?
10. *Interviewee*: I can try . . .
11. *Interviewer*: We police don't know what happened on Saturday, so we need your account to clarify the incident as much as possible. I would like you to tell me everything you can remember, not omitting anything. Please describe it in as much detail as you can. You can now begin your explanation about the incident, and you can start where it feels natural.

The investigator tries to manage the interviewee's emotional responses by showing an awareness of her emotional activation (3, 7) and by expressing acceptance and understanding of how she is feeling (7, 9). He then approaches the interviewee, emphasizing problem-solving by accommodating her emotional needs (5, 9)—in this case, the need to regulate discomfort by providing support and safety. If we consider the emotional processes that may arise in investigative interviews, we can define emotional intelligence as *the interviewer's use of his or her understanding of and approaches to emotional processes that have positive effects on the well-being of the interviewee and the generation of information.*

Cognitive Interviewing

A specialized interview method for victims, witnesses, and some suspects is called cognitive interviewing. The Police Foundation describes cognitive interviewing as a method of framing questions to obtain a more thorough account of a traumatic event while increasing law enforcement legitimacy in the eyes of the victim.

Neuroscience research finds that memories subjected to a traumatic experience is fragmented and not recalled in a linear way. Peripheral details may not have received the same attention as details perceived necessary for survival, for example, a suspect's face versus the suspect's weapon. To an untrained officer, the lack of clarity may be seen as a lack of credibility or even deception.

Methods:

- Acknowledge the victim's trauma and/or pain
    - Be empathetic, compassionate, and patient
- Ask the victim/witness what they are able to remember about their experience
    - Use questions like "tell me more," "help me understand," and "describe."
    - Give victims the ability to say, "I don't know" or "I don't remember."
- Ask the victim/witness about their thought process at particular points during their experience
    - Prevent re-victimization, don't ask, "Why didn't you fight back?"
    - Instead, ask about thought processes to help you understand actions/inactions
- Ask about tactile memories before, during, and after the incident
    - Sights, sounds, smells, feelings (physical and emotional), and taste
- Ask how the experience has impacted them physically and emotionally
- Ask the victim/witness what the most difficult part of the experience was for them
- Ask the victim/witness what they cannot forget about the experience
- Clarify other information and details after the cognitive interview
    - Who, what, when, where, how?
- Close the interview as empathically as it began

One example of cognitive interviewing is the Forensic Experiential Trauma Interview (FETI). Russell Strand, chief of the Behavioral Sciences Education and Training Division for the U.S. Military Police School, developed this interview protocol and describes FETI in the following: *FETI entails the adaptation of the principles used in critical incident stress debriefing and defusing (impact of the event including emotional and physical responses) as well as principles and techniques developed for forensic child interviews (open-ended nonleading questions, soft interview room and empathy) as well as neurobiology of memory and psychological trauma (initially tapping into the lower functioning portion of the brain to understand the experience as well as the meaning of the experience in a non-threatening, non-suggestive manner).*

Suspect Interviews

There may be times when, depending on the suspect's behavior, an interview will change into an interrogation. Once the tone of the conversation has moved to accusatory (interrogation), it is virtually impossible to stop and go back to interviewing.

As you are asking questions, keep the elements of the crime in mind. What information are you seeking? Generate some questions for an Assault in the Second-Degree investigation:

Elements	Questions
Intentionally or knowingly causes physical injury to another with a deadly or dangerous weapon.	
Intentionally or knowingly causes serious physical injury to another with a deadly or dangerous weapon.	
Recklessly causes physical injury by deadly or dangerous weapon under extreme indifference to value of human life.	

Avoid Harsh Words	Use Soft Words/Phrases
Crime	Incident
Robbery	Situation
Murder	Injury
Arrest	Witness
Punishment	Get your side of the story
Suspect	Take something
Prison	Help me to understand
Felony	Mistake
Steal	Situation got out of hand

Tips for Getting the Most Information from an Interview

- Be able to communicate and relate to a wide variety of people.
- Be empathetic.
- Interview with purpose.
- Know the elements of the crime.
- Keep questions specific, definite, and concrete.
- Choose words with care, avoid legal jargon, remain objective.
- Ask the difficult and embarrassing questions.
- Be persistent, work to get more than minimum information.
- Ask follow up questions or reframe questions to elicit further detail.
- Unobtrusively direct the interview.
- Listen and observe.
- Regulate your emotions (review emotional intelligence).

Interrogations

In contrast, in an interrogation, the officer is seeking to obtain a confession from an individual already suspected to be guilty. An overall goal is to maximize valid confessions while minimizing false confessions. Different than the interview, the officer will do most of the talking in an interrogation.

An interrogation is not the time for collecting information that should have happened during the interview stage. Here, the officer is seeking confirmation of information that is already known or highly suspected. The questions asked of the suspect are more direct and less open-ended. All the officer wants the suspect to do is nod or say "Yes" when he asks a leading question, such as, "Is that why you did it (the crime)"? Asking questions that seek information in this stage suggests that the officer does not have the necessary information to be certain that the suspect committed the crime, thus weakening the officer's chance of success.

Interrogations	
Structured	Interviewer speaks 95% of the time. Interviewee speaks 5% of the time.

Because the goal here is not gathering information, notes are not necessary. During this time, it is important to be attentive to the verbal and non-verbal behaviors of the subject. Behaviors may indicate a suspect is getting close to an admission, or it may provide indicators of deception. More on signs of deception later.

Types of Questions

Source: Effective Interviewing and Interrogation Techniques (2019)

The most effective approach is to use a variety of questions during an interrogation. You have already learned about open versus closed-ended questions, but here we introduce the use of irrelevant, relevant, and comparison questions to maximize your effectiveness.

Irrelevant Questions	Relevant Questions	Comparison Questions
Irrelevant questions are generally background questions that have nothing to do with the investigation, and therefore, offer no threat to innocent or guilty suspects. These questions establish the interviewer's professional authority, allow for assessment of the suspect's situational heightened emotional State, allow for the building of rapport, and assist in preventing resistance by structure.	Relevant questions deal with the matter under investigation. They may deal with direct or secondary involvement. These questions force the guilty to lie and allow the innocent to answer truthfully.	Comparison questions are designed to gauge a reaction. They deal with deviant acts that everyone has performed in their lifetime. If the subject displays more reactive signs to the comparison questions than to the relevant ones, it is a sign that he is truthful on the relevant issue. If, on the other hand, the subject exhibits the opposite behavior, by reacting more strongly to the relevant questions than to the comparison ones, it is a sign he is deceptive.
Examples: • Name • Address • Age • Interest in recent sporting events • Shared military or educational experiences	Examples: Direct Involvement: • Did you set that fire? Secondary Involvement: • Did you help anyone take that money? Knowledge: • Were you present when that shooting took place?	Examples: Theft Comparisons: • Prior to working for your current employer, did you ever steal anything from a job? • In your entire life, did you ever steal anything?

As a general rule, begin the interview with irrelevant questions. Follow this by interspersing relevant and comparison questions.

Choosing the right questions can be difficult. For example, what if you ask a seemingly straightforward question: "Did you steal the money from your employer?" and the subject says "no." Be aware that the subject may be internally justifying their actions. They may not believe they "stole" anything from their employer. Rather, they may justify that they were promised a raise that didn't happen. Think about how to ask questions differently while still being short and focused. Try, for example: "Did you remove any of the money that your boss reported missing?" Also notice how you avoided a harsh word like "stole" and replaced it with a soft word like "remove".

Make sure they answer the question. For example, if you ask "where were you last Saturday night?" and they answer "On Saturdays I go to my mom's for dinner", notice how they gave you an answer, but did not really answer your question.

Tactics for Suspects whose Guilt is Reasonably Certain

- Ask the suspect if she/he knows why she/he is being questioned.
- Ask the suspect to relate all he/she knows about the incident.
- Obtain details about the suspect's activities before, during, and after the incident.
- Ask the suspect about known facts to allow him/her to lie.
- Tell the suspect to "think carefully," if you want to express skepticism, and ask, "Are you sure about that?"
- Ask the suspect to take a polygraph examination.

Themes

Some specialized interview and interrogation methods will train officers on the use of themes. Themes are simply statements of justification offered to the subject, which may motivate them to be truthful about their actions. In these circumstances, the officer proposes reasons to justify or excuse the crime often in the form of a story. The officer will observe the subject's response to the theme. If they are responsive, for example, nodding, then the officer will continue with that theme. If they are not responsive, the officer may try proposing a different theme.

When co-offenders are being interrogated, play one against the other:

- Individually, each may feel confident of their own ability to evade detection but may have a lack of confidence regarding accomplices
- Fear and the mutual distrust among co-offenders can be a useful technique
- Keep the suspects separated
- Identify the leader and the follower

Example: Possible Themes Why a Person Might Steal from an Employer

Employer philosophy (they have a license to steal)	The boss (company) is rich Everyone else is doing it (or unauthorized discounts) Overworked, unappreciated, or underpaid Feeling of being cheated on shifts, hours, or job duties Wasn't their idea, someone put them up to it, or encouraged it
Blame the employer for not paying enough	They were an honest person who made a mistake because they were not being paid enough Blame inflation or the cost of living Family or lifestyle to support
Poor management/security	Employer should have been paying closer attention Poor management or policies Nature of job makes it too easy to steal Blame another person for not doing their job and this happened on the spur of the moment
Exaggerate the amount	If you are investigating $100 loss, claim it is hundreds or thousands. Use caution with this, because it may be thousands and you only know a small part to begin with.
Helping another person	Only took the money to help another: friend, sick kid, family member needing to eat or buy medicine.

The theme does not have to be the right theme for that situation, but it needs to resonate with the subject enough that they feel comfortable telling you what really happened.

Introducing Evidence

You covered types of evidence and evidence collection in your Forensics class. How might that information be used in an interview or an interrogation? Research tells us that withholding information regarding evidence and asking strategic questions about it, is more effective in gathering information to determine if a subject is telling the truth or lying. Liars run a higher-risk of contradicting the evidence that they are unaware of.

Withholding Evidence Information

While conducting a suspect interview where the suspect's car was observed close to the crime scene on the day of the crime, rather than sharing that information with the suspect ("Your car was seen leaving the crime scene. You committed the crime, didn't you?"), first ask questions about the car:

- Did the suspect have their car that day?
- Where did the suspect drive the car that day?

Note any inconsistencies in statements and evidence and begin to dig at the inconsistencies.

Source: Hartwig, M., Granhag, P., Stromwall, L., & Kronkvist, O. (2006). Strategic Use of Evidence During Police Interviews: When Training to Detect Deception Works. Law and Human Behavior, 30(5), 603-619.

Ethical Considerations

Sources: Inside Interrogation: The Lie, The Bluff, and False Confessions (2011), The Social Psychology of False Confessions (2015). Innocenceproject.org.

The use of deception during an interview is one of the most common ethical questions an officer will face. The tactic of bolstering an accusation by presenting false evidence of the subject's guilt ("*your hair was found at the scene*," or "*witnesses identified you leaving the crime scene*"), is permitted by law.

However, misusing deception can result in confessions the courts consider coercive. Never use deliberate or implied promises that you cannot legally fulfill.

State v. Simmons, 302 Or App 133 (2020)

A detective told the defendant that if the defendant talked to him then maybe he could talk to the DA and maybe the charges would be dismissed. This was an improper inducement that violated ORS 163.425(1).

Additionally, bluffing, or pretending to have evidence that you don't have ("*witnesses were present and will be interviewed*," or "*we have collected biological evidence and sent it to the lab for testing*," or even simply carrying a case file as a visual aid), increases false confessions.

It is often unfathomable to think that an individual would confess to committing a crime that they did not commit. However, in nearly 30% of wrongly convicted cases exonerated by DNA evidence through the Innocence Project, false confessions were a contributing factor. As of 2018, the real perpetrators of these crimes had gone on to commit an additional 25 murders, 14 rapes, and nine other violent crimes.

Individuals particularly vulnerable to making false confessions include juveniles, those with intellectual impairments, mental illness, and personality traits that foster compliance and suggestibility.

False confessions may also occur during interviews that take place over an extended, unusually long time, as well as those that involve coercive techniques, or the use of themes that imply leniency.

Consider for a moment, the Milgram experiment video from Ethics where subjects obeyed commands to deliver painful electric shocks to a subject. How did the experiment environment compare to a traditional interrogation? How is deception used? How is authority used?

Officers must be aware of the ethics regarding interrogations and take steps to mitigate risk.

False Confessions- The Central Park Five

In 1989, a female jogger was raped, beaten, and left for dead in New York City's Central Park. She managed to survive but could not remember anything about the attack—then or now. Within 72 hours, five African- and Hispanic-American boys, 14–16 years old, confessed to the assault. Solely based on their oral confessions, four of which were videotaped, and all of which were vividly detailed, though often erroneous, the boys were convicted and sentenced to prison. Almost nobody questioned their guilt—even though there was no other evidence, even though DNA tests on sperm that was recovered from the victim and her clothing had excluded them all.

Thirteen years later, Matias Reyes, in prison for two rapes and a murder committed subsequent to the jogger attack, stepped forward to admit that he was the Central Park jogger rapist and that he acted alone. Reinvestigating the case, the Manhattan District Attorney questioned Reyes and discovered that he had accurate and independently corroborated guilty knowledge of the crime and that the DNA samples originally recovered from the victim belonged to him. The DA issued a report that dismantled the confessions and other evidence. Shortly thereafter, the original convictions were overturned. Then in September of 2014, 25 years after the crime was committed, New York City awarded the defendants a $41 million settlement. The Central Park jogger case now stands as a shocking demonstration of five false confessions resulting from a single high-profile investigation.

2021 Legislative Update

A statement made by a person during a custodial interview conducted by a peace officer is presumed to be involuntary if the person is under 18 years of age and the statement is made in connection with an investigation into a misdemeanor or a felony, or an allegation that the person being interviewed committed an act that, if committed by an adult would constitute a misdemeanor or a felony, and the court determines that the peace officer intentionally used information known by the officer to be false to elicit the statement. This presumption may be overcome if the state proves by clear and convincing evidence that the statement was voluntary and not made in response to the false information used by the peace officer to elicit the statement.

Specialized Techniques

There are specialized techniques for conducting interviews and interrogations in a criminal investigation. As previously mentioned, the use of a technique may be influenced by your agency, training you have attended, and the person you are interviewing. You are not expected to learn these specialized techniques at the academy. Some well-known methods include the Reid Method ™ and the PEACE Method.

Reid Method ™ (US)	PEACE Method (UK and Canada)
Factual Analysis- *Collect and analyze information related to the case, victim, and suspects.* **Behavioral Analysis Interview (BAI)-** *Structured interview of the subject in a controlled environment. Includes evaluation of suspects' normative behavior. Uses investigative and behavior-provoking questions.* **Interrogation-** *Accusatory, nine-step process to elicit the truth from a subject believed to have lied during the interview.*	**Preparation and Planning-** *Formulate aims and objectives* **Engage and Explain-** *Develop rapport, engage the subject in conversation* **Account-** *Elicit information from the subject via a cognitive interview and conversation management techniques. Allows subject to tell their story without interruptions, and before presenting inconsistencies or contradictions between the story and other evidence.* **Closure-** *Summarize the main points and allow the subject to correct or add information.* **Evaluate-** *Evaluate the information in the context of the investigation.*

As you advance in your career and obtain advanced and specialized training, be mindful of the legitimacy of the science behind various methods as well as the critiques.

Truth-Tellers and Liars

The liar is forced to avoid betraying the deception by controlling feelings of guilt or excitement and monitoring his/her words to keep the story straight. While presenting enough detail to appear credible, the liar must avoid the provision of excessive information that could lead to problems recalling and maintaining the lie. While telling the tale, the liar must try to control facial expressions and monitor body language.

Source: Porter, S., & ten Brinke, L. (2010). The Truth About Lies: What Works in Detecting High-Stakes Deception. Legal and Criminological Psychology, 15, 57-75.

The million-dollar question is, how can we tell if a suspect is lying? Unfortunately, there is no guaranteed way to determine this. Trainings will entice you with methods to become a human lie detector, but research tells us that people are mediocre at best at determining when someone is lying to us. Why can't we easily determine if someone is lying?

- An untruth may be caused by many things, and not just a deliberate attempt of deception.
- It is normal that everyone being interviewed will feel apprehensive and nervous.
- People have different perceptions of the same event.
- Not all liars display the same deceptive behaviors.

Despite this uncertainty, there are cues we can look for in the subject's verbal and non-verbal behaviors that can be helpful.

The following content comes from Effective Interviewing and Interrogation Techniques (2019) by Nathan Gordon and William Fleisher.

What is a lie? A lie is defined as the deliberate communication to another (verbally, written, or by gesture), of something that the communicator knows or suspects is not the case; or the presentation or omission of information, with the deliberate intent to deceive and mislead someone who is requesting the truth.

There are multiple types of lies, including lies of omission and lies of commission.

Lying by Omission	Lying by Commission
Denying or leaving out relevant information (passive deceit)	Fabricating information (active deceit)
Generally, this is the lying method of choice. It is easier, and involves less risk because no invention is required.	This method involves greater cognitive energy, commitment, invention, and defense. There is an enhanced risk of contradicting prior information or giving information that can later be proved to be false.
Passive deceit usually contains some elements of fabrication or evidence of missing information that a knowledgeable interviewer can detect and expose through detailed inquiry.	When asked a question, the suspect has two choices: tell the truth or lie. If he chooses to tell the truth, it is easy, because the truth is free-flowing and requires very little mental energy. If he chooses to lie, he now is presented with numerous additional choices and concerns: how big a lie to tell, what to put in, what to leave out, contradicting prior inventions, punishment if caught, etc. It should be noted, this being the case, that the majority of what a deceptive suspect says is actually true.

A good interviewer must learn to sift through whatever truth there is in a liar's story. The most effective means is to focus on the components of the statement that indicate possible deception or deliberate omission of information.

Examining Verbal Behaviors

Attentiveness to language patterns is the most effective means of catching a liar. There is evidence to support that compared to truth-tellers, liars:

- Talk for a shorter time (brief)
- Include fewer details (simple)
- Stories make less sense, are somewhat less plausible and less logically structured.
- Repeat words, phrases, and details

One red-flag area is the flow of the subject's statement. Deceptive subjects do not want to have to talk about the incident. Therefore, they tend to devote a lot of time in the pre-incident as they attempt to avoid getting to the part of the statement dealing with the incident, where they must lie. Once they arrive at the part of the statement where they must lie to conceal their involvement, they tend to lie by omission, resulting in a short narrative about the incident itself.

Flow of a Truthful Statement:
Pre-Incident 20%
Incident 50%
Post-Incident 30%

Another area to pay attention to is to look/listen for signs of credibility with their word choice. Credibility is established by proper use of pronouns and using *first person singular, past tense* to describe what happened. The most psychologically difficult "voice" for a person to lie in is the first person singular, past tense: "I did not touch my daughter's vagina," versus "I would not touch my child's vagina."

Truthful Statements	Deceptive Statements
Rich in details	Lack of details
First-person, singular, past tense	Deviates from the first person singular, past tense
Proper introduction of the victim: "My daughter..."	Improper introduction of the victim: "She..."
Uses possessive pronoun: "My daughter..."	Lack of possessive pronoun: "The child..."
No gaps in time	Missing time: "Two hours later..."
Appropriate emotions in the right place (post-incident)	No emotions
Will deny doing the crime before being asked	Only makes denials to direct questions
Proper flow of story	Incorrect flow of story

Examining Physiological Behaviors

The research tells us that people are not very good at detecting lies. There are multiple reasons for this, including reliance on incorrect and scarce cues. There is no behavioral sign that always accompanies a lie; there is no simple cue (*there is no Pinocchio's nose*). Additionally, some people are just better liars.

Common (But Incorrect) Beliefs	Reality
Liars will be nervous, and this nervousness will be evident in their behavior.	Many indicators of nervousness (fidgeting, blushing, speech disturbances) are not linked to deception.
An increase in movement is associated with deception.	Deception is associated with a decrease in subtle movements.

Despite common belief, most behaviors are only weakly related to deception, if at all. For example, a common belief is that gaze aversion is a sign of deception, but studies find this is not an accurate indicator.

Another challenge in reliance on physiological indicators is that objective cues to deception are scarce. Behavior differences between liars and truth-tellers are, at best, minutia. The research does suggest that liars might be tenser, possibly due to operating under the increased burden or due to an increased effort to appear credible. There is some evidence to suggest that liar's pupils are more dilated, their voice pitch is higher, and they blink less when lying.

Why do physiological indicators occur? Our sympathetic nervous system kicks into action whenever the brain perceives a threat, and telling lies tends to cause a similar reaction. However, not everyone responds in the same way. The degree of change depends on many factors, including:

- The suspect's perception of the interviewer's ability to detect the truth.
- The suspect's past success in similar situations where he lied.
- The degree of guilt and shame the suspect feels about his actions.
- The degree of guilt or shame the suspect experiences about lying to the interviewer.
- The extent of the suspect's reward or punishment if he succeeds or fails in his attempt at deception.

The science behind understanding and interpreting nonverbal communication (NVC) is quite complex. Recognizing one single behavior is not a reliable indicator of deception. Researchers and professionals tend to identify co-occurring multiple cues or clusters of behaviors as more reliable. True behavior analysis involves categorized behaviors and behavior sequences. In all circumstances, the officer first needs to have an understanding of the subject's baseline behaviors before one can assume any behaviors are a result of deception.

Specific cues with the most reliable support include:

- Reduced blink rate
- Increased response latency (delay in beginning to answer a question)
- Longer and more frequent pauses
- Reduced speech rate
- Vague descriptions
- Repeated details or repeating the question
- Overly structured productions
- A lack of contextual embedding
- A lack of reproduced conversation concerning incidents involving multiple persons (i.e., most serious crimes).

Further, the lie catcher should be highly attuned to idiosyncratic 'slips' – including

- Verbal (such as tense changes; e.g., suspect in a missing person case refers to the missing individual in the past tense)
- Non-verbal (such as unconscious communications to the interviewer including potential crime re-enactments),
- Facial cues (involuntary fleeting emotional expressions typically occurring in the upper or lower face only and false expressions more generally)

Getting to the Truth

When the subjects verbal and/or physical behaviors arouse suspicion during an interview or interrogation:

- Apply focused questioning around the topic where the behaviors are observed
- Ask the subject to repeat/recall events in reverse-order/different timeline (increases the complexity for the subject)
- Ask specific questions about incriminating details without revealing evidence (subjects are challenged to provide a believable answer without incriminating self or contradicting the evidence)

The Confession

The final stage in interrogation is obtaining an admissible confession. The officer will want to put an oral statement into written, typed, or recorded form. This step includes establishing voluntariness of the statement by having the subject sign the statement as witnessed by a second person.

Tips for Getting the Most Information from an Interrogation (*In Addition to Interview Tips*)

- Develop rapport.
- Be prepared.
- Know the legal parameters.
- Demonstrate confidence and be in control.
- Demonstrate professionalism.
- Observe and assess verbal and nonverbal behaviors.
- Have patience and perseverance, and display an attitude of never giving up.
- Assume there is more information.
- Do not become judgmental.
- Sound and appear sincere.
- Avoid using emotionally charged words and legal jargon.
- Do not set a time limit.
- Know when to stop, pause, be silent, be direct, be indirect.

Recording Statements and Confessions

It is considered best practice to record statements. Following are the minimum requirements for recording a confession:

- Identity of the suspect
- Recording/interrogating officer's name and department
- Date, time, location of the interview
- Agency case number
- Persons present
- Advise that conversation is being recorded or written down.
- Advise of rights under Miranda
- Witness's signature, if written down

Statutory Requirements

ORS 133.400 (Recording of Custodial Interviews) requires electronic recordation if all three of these conditions about an interview are met:

1. A custodial interview;
2. In a "law enforcement facility"; and
3. In connection with aggravated murder or crimes listed in ORS 137.700 or 137.707 ("Measure 11" crimes).

The requirement to record "custodial interviews" does *not* apply to statements made:

- Before a grand jury;
- In open court;
- A custodial interview done in another state in compliance with the laws of that State;
- Custodial interrogation conducted by federal law enforcement in compliance with the laws of the United States;
- A spontaneous statement of the defendant that did not result from a custodial interview;
- Statements made during arrest processing in response to routine questions;
- If the law enforcement agency has five or fewer peace officers;

- In a custodial interview conducted in connection with an investigation carried out by a corrections officer, a youth corrections officer or a staff member of the Oregon State Hospital in the performance of the officer's or staff member's official duties of treatment, custody, control or supervision of individuals committed to or confined in a place of incarceration or detention; or
- If "good cause" is shown for not electronically recording. "Good cause" includes but is not limited to:
    - A defendant refusing or expressing unwillingness to having the custodial interview electronically recorded;
    - Equipment failure and a replacement device was not immediately available;
    - The person operating the electronic recording equipment had a good faith belief the equipment was recording the interview;
    - Electronic recording would jeopardize the safety of any person, or jeopardize the identity of a confidential informant;
    - Exigent circumstances prevented the electronic recording of the custodial interview; or
    - At the time the custodial interview began, the peace officer conducting the custodial interview reasonably believed that it was in connection with a crime other than aggravated murder or a "Measure 11" crime;

NOTE: Do what you can so that your case (and prosecutor) are not are relying upon this "good cause" exception for the admissibility of statements.

ORS 133.400 (Recording of Custodial Interviews) also:

- Allows unrecorded statements into evidence, *but* requires the judge to give the jury instructions concerning the fact that the statement was not recorded (which will hurt the State's case);
- Requires the State to provide the defendant with an electronic copy of the statement, but not a written transcript of the tape;
- Allows the recordation into evidence in any pre-trial or post-trial proceedings.
- Defines a "law enforcement facility" as a courthouse or a building where a police or sheriff's office is located.

REMEMBER: These electronic recording requirements apply to custodial interviews for anyone (adult, youth, non-English speaker, etc.) charged with aggravated murder or any Ballot Measure 11 crime.

ORS 133.402 (Recording of Custodial Interviews of Juveniles) requires electronic recordation if these conditions about an interview are present:

- A custodial interview inside a law enforcement facility, conducted by a peace officer, a school resource officer or a special campus security officer, with a person under 18 years of age, and that is in connection with an investigation into a crime (misdemeanor or felony);
- A custodial interview anywhere *outside* of a law enforcement facility, conducted by a peace officer, a school resource officer or a special campus security officer, with a person under 18 years of age, and shall be electronically recorded if:
- It is in connection with an investigation into a crime, and
- The officer has a video camera upon the officer's person.

BOTTOM LINE:

Record any in-custody interviews of juveniles.

If you are interviewing a juvenile out of custody and have a body-cam, you must record it.

This recording requirement as to juveniles does not apply to statements made in the same circumstances as listed above for ORS 133.400. The only difference being "corrections officer" is not present here in ORS 133.402 as a corrections officer would not investigate a minor.

ORS 133.402 (Recording of Custodial Interviews of Juveniles) also has the same limitations and requirements as ORS 133.400 (Recording of Custodial Interviews) above.

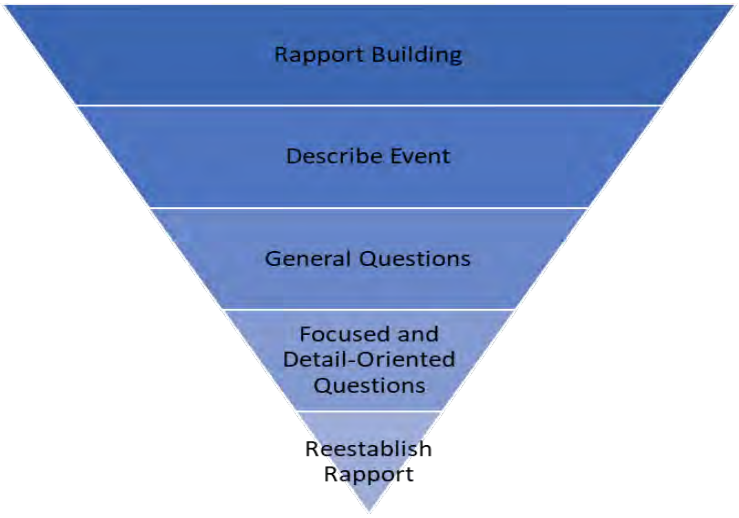
NOTE: A significant difference between what is required for adults and juveniles is that for any in-custody interview of juveniles for any crime, it must be recorded. That is only required for adults being interviewed for aggravated murder and the "Measure 11" offenses.

In-Class Activity

Interview	Interrogation
Goal: Gather information	Goal: Get a confession
Tone: Non-accusatory	Tone: Accusatory
Free Flowing	Structured
Subject does most of the talking	Interviewer does most of the talking

Part 1- Conduct an interview to gain information about the interview subject, the crime in question, and the person's possible connection to the crime.

- Take notes in your field notebook.
- Consider the elements of the crime.
- Use the narrowing/funnel approach.
- Listen and observe.
- Practice talking about the incident while being non-accusatory.
- Avoid harsh words
- Review interviewing tips on page 11.



Part 2- Conduct an interrogation and accuse the suspect of the crime. Attempt to obtain a confession or other admissions.

- Consider if/when to advise Miranda.
- Try using a variety of types of questions: irrelevant, relevant, and comparison.
- Practice being accusatory.
- Try using a theme
- Consider if/when to introduce evidence.
- Identify verbal and non-verbal behaviors possibly indicating deception.
- Review interrogation tips on page 24.

Supplemental Reading (Not Required)

Current State of Interview and Interrogation, The FBI Law Enforcement Bulletin, November 2019
https://leb.fbi.gov/articles/featured-articles/current-state-of-interview-and-interrogation

Information-Gathering Interrogation Approach, Center for Evidence-Based Crime Policy
https://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/information-gathering-interrogation-approach/

Juvenile Interview and Interrogation, International Association of Chiefs of Police
https://www.theiacp.org/resources/document/juvenile-interview-and-interrogation

Basic Police Academy

Juvenile Law



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Juveniles: Adolescent Development and the Juvenile Code

Instructional Goal:

This course is designed to introduce a new officer to basic factors related to interactions and investigations involving juveniles.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Describe police officer duties in the response and investigation of juvenile-involved calls.
2. Articulate the difference between a dependency and a delinquency matter.
3. Recognize and articulate the risks of juvenile investigations.
4. Analyze a situation and determine if there is an applicable ORS offense represented.

Content Outline:

Dependency

- Mandatory Reports
- Karly's Law
- Juvenile Court
- Protective Custody
- Dependency Terminology
- Resources

Delinquency

- Juvenile Court
- Terminology Differences
- Custody
- Juvenile Justice Delinquency Prevention Act
- Detention
- Resources
- Status Offenses

Investigations Involving Juveniles

- Interview/Interrogation Best Practices

The role of the police is varied when it comes to juveniles. This course will introduce different types of police/juvenile interactions, including the different sources of law, potential responses, limitations, external resources, and recommendations for effective interactions.

Adolescent Development and Creation of the Juvenile Court

The criminal court system initially made no distinction between children and adults. Eventually people figured out that children and adolescents are different from adults and a separate system was developed. The first juvenile court was established in 1899, with the primary motive of rehabilitation and protective supervision.

Oregon Youth Authority
Young people are different than adults, and the justice system should treat them differently. Experts tell us that the human brain gets built in an ongoing construction project that continues into at least our mid-20s. Youth are works-in-progress with tremendous capacity for growth and change. Thus, we should take a different approach with youth who commit crimes than what we do with adults.

Despite this creation of a separate system, the system has experienced criticism. Concerns about effectiveness and disparities in sentences led to greater formalization by the Supreme Court in the 1960's. Due process protections were put into place.

Over the years, juvenile courts have experienced wide shifts from more punitive practices to increased services. Changes in laws in 2020 aimed to make the juvenile system in Oregon fairer, help reduce victimization, and increase positive outcomes for youth.

The Juvenile Code

Chapters 419A-C in the Oregon Criminal Code are titled the Juvenile Code. These chapters outline two significantly different types of police/juvenile interactions.

ORS 419B- Dependency	ORS 419C- Delinquency
A juvenile dependency case happens when there are allegations of a child being the victim of abuse.	A juvenile delinquency case happens when a person who is under 18 years of age violates a law in which an adult could be charged with a crime in the state of Oregon.

Juvenile Code: Dependency

ORS 419B.005 provides definitions related to child abuse. Abuse is defined as any assault (defined in ORS Chapter 163) of a child and any physical injury to a child that has been caused by other than accidental means, including any injury, which appears to be a variation with the explanation given of the injury.

You will cover this extensively in your Child Abuse Investigations class. This course serves as an introduction to statutes and terminology as well as to distinguish between the types of juvenile cases.

A child is defined as an unmarried person who:

- Is under 18 years of age, or
- A child in care, as defined in ORS 418.257

Mandatory Reports and Investigations

ORS 419B.010 requires certain persons with reasonable cause to report child abuse. Mandatory reporters include physicians and other medical providers, school employees, state and county health, mental health and juvenile employees, social workers, clergy, attorneys, and others. Mandatory reports must be made to either the Department of Human Services or law enforcement. Reports made to either entity are then cross-reported to the other. These cross reports may have a time limit for notification ranging from within 24 hours to within 10-days. The Department of Human Services sets time limits, and officers should become familiar with their jurisdictions' timelines and practices.

ORS 419B.020 requires that upon receipt of a report of child abuse, the department or agency shall immediately cause an investigation to be made. Roles and responsibilities are jointly determined by jurisdiction, and again you should familiarize yourself with your jurisdiction's practices.

Karly's Law

ORS 419B.023 outlines the duties of the person conducting the investigation. These duties are commonly referred to as Karly's Law, and they will be covered extensively in your Child Abuse Investigations course.

The Juvenile Court

The Juvenile Court is part of the county court system. ORS 419B.100 defines the jurisdiction of the juvenile court as having exclusive jurisdiction in any case involving a person who is under 18 years of age and:

- Who is beyond the control of the person's parent, guardian, or custodian.
- Whose behavior may endanger the welfare of the person or others.
- Whose conditions or circumstances may endanger the welfare of the person or others.
- Who is dependent on the care and support of a public or private child-caring agency.
- Whose parents or any person or persons having custody have:
  - Abandoned the person; or
  - Failed to provide the person with the care or education required by law; or
  - Subjected the person to cruelty, depravity, or unexplained physical injury; or
  - Failed to provide the person with necessary care, guidance, and protection; or
- Who has run away from the home of the person; or
- Who has filed a petition for emancipation.

Note- An Indian tribe has exclusive jurisdiction over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of the tribe, except where the jurisdiction is otherwise vested in the state by existing federal law.

Protective Custody

ORS 419B.150 outlines when a child may be taken into protective custody without a court order, specifically, when a peace officer, counselor, or a DHS employee has reasonable cause to believe that one of the following circumstances exists:

- There is an imminent threat of severe harm to the child;
- The child poses an imminent threat of severe harm to self or others; or
- There is an imminent threat that the child's parent or guardian will cause the child to be beyond the juvenile court's reach before the court can order that the child be taken into protective custody.
- If there is reason to know that the child is an Indian child, the child may be taken into protective custody without a court order only when it is necessary to prevent imminent physical damage or harm to the child.

Concerning the conditions of protective custody, as listed above, the following definitions apply:

- "Reasonable cause" means a subjectively and objectively reasonable belief, given all of the circumstances and based on specific and articulable facts.
- "Severe harm" means:
  (A) Life-threatening damage; or
  (B) Significant or acute injury to a person's physical, sexual or psychological functioning.

When a child has been taken into protective custody, the court will require written findings as to whether the Indian Child Welfare Act (ICWA) applies.

ORS 419B.155 states that protective custody is not an arrest; however, an officer taking a child into protective custody has all of the privileges and immunities of an officer making an arrest.

When a child is taken into protective custody, the person who takes the child into custody shall release the child without unnecessary delay to the custody of the parent, guardian, or shelter facility unless there is a court order directing the child to be taken into protective custody or there is reasonable cause to believe the release may immediately endanger the welfare of the child or others. A child who is not immediately released must be taken before the court or a designation directed by the court.

Except when a child is taken into custody pursuant to a court order, the person taking the child into custody must promptly file a report with the court, including the following:

- The child's name, age, and address;
- The name and address of the person having legal or physical custody of the child;
- Efforts to notify the above-mentioned person;
- Reasons and circumstances under which the child was taken into protective custody;
- Placement of the child and why such placement was chosen;
- If not released, provide the reasons why;
- Determine and report inquiry of Indian heritage.

Dependency Terminology

Best Interests of the Child	In deciding custody, the court must consider those facts that directly affect the well-being of the child.
Emancipation	A legal process that gives a person 16-years-old or older legal independence from his or her parents or guardians.
Guardian	A person appointed by the court to protect a child or incapacitated person. A guardian does not have a duty to support the child or incapacitated person in care.
Indian Child Welfare Act (ICWA)	A federal statute that includes special rules courts must follow if a Native American child is involved in a custody proceeding (including adoptions, guardianships, and foster care).

Dependency Resources

Officers working dependency cases will likely find themselves working with the local branch of the Oregon Department of Human Services (ODHS) Office of Child Welfare Programs.

According to the Oregon Child and Family Services report, the Office of Child Welfare Programs is embedded in the Department of Human Services. It is the entity responsible for providing child welfare services to Oregon's children and families. Oregon is a state-administered, state-delivered Child Welfare system and works in partnership with the other program areas within the Department in the transformation of service delivery. The Child Welfare Program within the Department is administered through 16 Districts, composed of one or more Child Welfare branch offices. There are 39 local offices throughout the state.

ODHS Caseworkers oversee foster care and the Independent Living Program for youths transitioning out of foster care; self-sufficiency programs for runaway and homeless youth; treatment services such as specialized foster care for children with behavioral needs; community-based shelter care; out-of-state treatment programs and other services for vulnerable children.

Other local resources will vary by jurisdiction. Some communities have locally operated youth shelters that provide basic needs and other services for youth.

Research- Where is the local Office of Child Welfare Programs that you will access in your community? What other dependency-related services exist in your community?

Juvenile Code: Delinquency

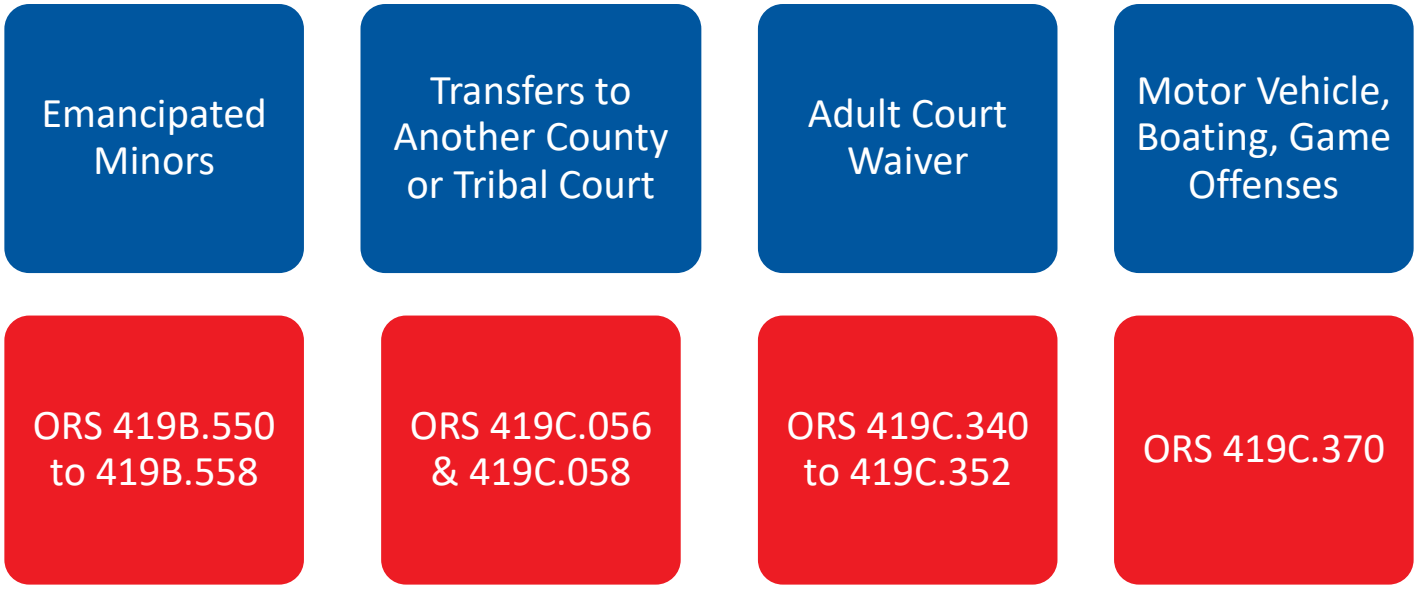
A separate juvenile system has been in existence since the early 1900s. This system has been based on the premise that children and young adolescents are developmentally different from adults. Therefore, they are more amenable to treatment and are not criminally responsible for their actions.

ORS 419C.001 identifies the juvenile system's purpose in delinquency cases: to protect the public, reduce juvenile delinquency, and provide fair and impartial procedures for the initiation, adjudication, and disposition of allegations of delinquent conduct.

The Juvenile Court

ORS 419C.005 states that the juvenile court has exclusive original jurisdiction over any case involving a person who is under 18 years of age and who has committed an act that is a violation, or if done by an adult would constitute a violation of a law or ordinance of the United States, or a state, county, or city.

There are exceptions to juvenile court jurisdiction as seen below:



In 2019, the Oregon legislature made several significant changes to how juvenile offenders were treated, rolling back several changes that had been made in the '80s and '90s, the two most significant of which were:

- Youth who are 15, 16, or 17 years of age who commit "Measure 11" offenses are no longer subject to "automatic" prosecution in adult court; and
- It is more difficult to meet the requirements listed in 419C.349 to waive youth into adult court for prosecution.

Additionally, the legislature tightened up government actors' requirements to take youth out of homes/away from parents or guardians without a warrant.

Youth who are 15, 16, 0r 17 years of age who commit any of the "Measure 11" offenses listed in 137.707 may now be prosecuted in Juvenile Court for such offenses but are subject to the limits and conditions of Juvenile Court disposition as listed in 419C.440 to 419C.510 and are not subject to adult sentencing.

Terminology Differences	
Juvenile System	**Adult System**
Custody	Arrest
Referral	Arrest Report
Petition	Information/Indictment
Hearing or Contested Fact-Finding Hearing	Trial
Found within the Jurisdiction of the Court	Found Guilty
Adjudicated	Convicted
Disposition/ Dispositional Hearing	Sentence/ Sentencing Hearing
Detention	Jail
Youth Correctional Facility (Close Custody)	Prison

Custody

ORS 419C.080 states that a peace officer (or other person authorized by the juvenile court) may take a youth into custody in the following circumstances:

- When, if the youth were an adult, the youth could be arrested without a warrant, or
- When the juvenile court has ordered that the youth be taken into custody.

Additionally, a peace officer **shall** take a youth into custody if there is probable cause to believe that within the last 120 days, the youth possessed a firearm or destructive device in a public building or court facility.

In place of taking a youth into custody, the officer may issue a citation to the youth, under ORS 419C.085, for the same offenses, and under the same circumstances that a citation may be issued to an adult.

Custody under ORS 419C.080 and 419C.088 shall not be considered an arrest as far as the youth is concerned. Just as in dependency cases, police taking a youth into custody have all the privileges and immunities of an officer making an arrest.

As soon as practicable, a youth's parent(s), guardian(s), or other person(s) responsible for the youth shall be notified of the custody.

A youth taken into custody should be released to a parent, guardian, or other person responsible for the youth except in the following circumstances:

- When the court has issued a warrant of arrest against the youth.
- When there is probable cause that to believe the release of the youth may endanger the welfare of the youth, victim, or others.
- When there is probable cause that the youth possessed a firearm or destructive device in a public building or court facility within the last 120 days.

In circumstances where a youth is not released from custody, the youth must be taken before the court, or taken to detention, shelter care, or taken to an agency designated by the court. The court must be notified as soon as possible of the custody.

Most Juvenile Court jurisdictions in Oregon have established alternative procedures under 419C.103(5) in which officers will communicate with a person appointed by the court to effect disposition (typically an on-call Juvenile PO or juvenile detention staff). After obtaining necessary information from the officer, this person will provide direction to the officer as to releasing the youth or delivering the youth to detention or another placement.

Similar to dependency cases, the officer must file a report to include:

- The youth's name, age, and address.
- The name and address of the person having legal or physical custody of the youth.
- Efforts to notify the above-mentioned person.
- Reasons and circumstances under which the youth was taken into protective custody.
- If the youth was not taken to court, the placement of the youth.
- If the youth was not released, the reason why the youth was not released.
- If the youth was not taken to court, why the type of placement was chosen.

While it is not required, it is beneficial if victim information (name, age, address, contact information) is included in an officer's report. A copy of the report must then be sent to the district attorney.

Juvenile Justice and Delinquency Prevention Act (JJDPA)

The Federal Juvenile Justice and Delinquency Prevention Act (JJDPA) is based on a broad consensus that children, youth, and families involved with the juvenile and criminal courts should be guarded by federal standards for care and custody while also upholding the interests of community safety and the prevention of victimization.

The JJDPA has four core requirements:

1. Deinstitutionalization of Status Offenders (DSO)

A status offender is a juvenile charged with, or adjudicated for, conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The most common examples of status offenses are chronic or persistent truancy, running away, violating curfew laws, or possessing alcohol or tobacco.

Curfew ORS 419C.680	Purchase or Possession of Alcoholic Beverages by Person Under 21 ORS 471.430	Possession of Tobacco Products or Inhalent Delivery Systems by Persons Under 18 Years of Age ORS 167.400

Under the JJDPA, status offenders may not be held in secure detention or confinement. There are, however, several exceptions to this rule. The DSO provision seeks to ensure those status offenders who have not committed a criminal offense are not held in secure juvenile facilities for extended periods or in secure adult facilities for any length of time. Instead, these children should receive community-based services, such as day treatment or residential home treatment, counseling, mentoring, family support, and alternative education.

2. Adult Jail and Lock-up Removal

Under the JJDPA, youth may not be detained in adult jails and lock-ups except for limited times. This provision is designed to protect children from psychological abuse, physical assault, and isolation. Children housed in adult jails and lock-ups are eight times more likely to commit suicide, two times more likely to be assaulted by staff, and 50 percent more likely to be attacked with a weapon than children housed in juvenile facilities.

A juvenile who **perceives** that they are not permitted to leave the arresting officer's custody while within a law enforcement facility, office or building is considered to be "detained." The term "secure" infers that the juvenile is detained within a locked room or cell or upon a stationary cuffing apparatus or other secure feature designed to restrict the physical movement of the juvenile in custody. Conversely, the term "nonsecure" refers to the lack of a "secure" feature utilized for the purpose of custody.

- Juveniles being held by law enforcement personnel pursuant to ORS 419B.150-175 -- for their own safety and pending reunification with a parent or guardian or pending transfer to the custody of a child welfare service agency -- are not considered "detained" for purposes of the JJDPA.

- Status and non-offender type juveniles are still prohibited from being held in "secure custody" within any law enforcement facility, office, or building.

3. Sight and Sound Separation

When children are placed in an adult jail or lock-up, "sight and sound" contact with adults is prohibited under the JJDPA.



This provision seeks to prevent children from threats, intimidation, or other forms of psychological abuse and physical assault. Under "sight and sound," children cannot be housed next to adult cells, share dining halls, recreation areas, or any other common spaces with adults, or be placed in any circumstance that could expose them to threats or abuse from adult offenders.

4. Racial and Ethnic Disparities

Under the JJDPA, states are required to assess and address racial and ethnic disparities at key points in the juvenile justice system – from arrest to detention to confinement. Studies indicate that youth of color receive tougher sentences and are more likely to be incarcerated than white youth for the same offenses. With youth of color comprising one-third of the youth population but two-thirds of youth in contact with the juvenile justice system, this provision requires states and local jurisdictions to create action plans to address disparities within their systems.

Detention

Placement in detention settings varies based on age and offense. A general rule is that youths may not be detained in the same facility as an adult. As just covered under the JJDPA, federal (and state law) requires sight and sound separation.

Exceptions to this include:

- A youth or youth offender may be detained in a police station for up to five hours when necessary to obtain their name, age, residence, and other identifying information.
- Youth waived to adult court, if:
  - They are at least 16 years of age, and
  - The director of the county juvenile department and sheriff agree to detain the youth in a jail or other place where adults are detained.

ORS 410C.133 states that no youth under 12 years of age may be placed in a detention facility without a court order. A judge must determine whether the youth is eligible for detention and if alternative methods of controlling the youth's behavior are unavailable.

ORS 419C.145 identifies criteria for holding youth in detention pre-adjudication (conviction) and ORS 419C.150 outlines time limits on detention. ORS 419C.153 provides that youths shall have a review hearing every ten days that they are held in detention.

Delinquency Resources

Officers working with a juvenile delinquency case may be coordinating with the County Juvenile Department or the Oregon Youth Authority. In Oregon, there is a tiered response for supervising juvenile offenders.

County Juvenile Departments	Oregon Youth Authority (OYA)
At the local level, county juvenile departments provide sanctions and services to youth ages 12-17, who are referred primarily for law violations by law enforcement agencies. Youth offenders on county-level probation are subject to formal sanctions and requirements designed to prevent further penetration into the juvenile justice system and include a range of supervision, accountability, and reformation services. Sanction Examples: Community service, work crew, curfews, counseling, inpatient or outpatient substance abuse treatment, sexual offender treatment, electronic monitoring, urinalysis testing, home and school visits, restitution, placement in county detention, etc.	Youth offenders who are unsuccessful in meeting conditions of county probation and/or who commit very serious offenses and/or are found to be a serious risk to community safety may be committed by a juvenile court to the custody of the OYA, a state agency. Youth offenders on state-level probation or parole are subject to formal sanctions and services directed toward preventing further criminal activity as well as accountability and reformation. In addition to the sanctions provided by County Juvenile Departments, OYA sanctions also may include placement in a youth correctional facility, placement in a residential treatment facility, transition programs, or foster homes.

Status Offenses and Exceptions

Curfew (ORS 419C.680)	Purchase/Possession of Alcohol (ORS 471.430)
Curfew hours established by state law are midnight to 4:00 a.m. Minors are not to be in or upon public places, including streets or alleys between these hours.	A person under 21 years of age may not attempt to purchase, purchase, or acquire alcoholic beverages.
Exceptions: Accompanied by a parent, guardian, or other person 18 years of age or over and authorized by the parent. Engaged in a lawful pursuit or activity that requires the presence in such public places during the hours of midnight to 4:00 a.m. Emancipated minor. Parents and legal guardians cannot give permission to a minor to violate the curfew law. Cities and counties are allowed to establish ordinances, which restrict curfew more than the state law. Check your local ordinances.	Exception: Minors in a private residence accompanied by THEIR parent and with THEIR parents' consent.

Investigations Involving Juveniles

According to the International Association of Chiefs of Police, the U.S. Supreme Court has recognized the emotional and developmental differences between adults and juveniles and its implications on the conduct of juvenile interviews in general and interrogations in particular. These differences must be taken into account when an officer conducts an interview or interrogation of a juvenile. Officers must observe juveniles' legal rights and protect against charges of police coercion or intimidation during interviews and interrogations of juveniles.

According to the Office of Juvenile Justice Delinquency Prevention and the International Association of Chiefs of Police publication titled *The Effects of Adolescent Development on Policing*:

> Youth have a lower capacity for self-regulation in emotionally charged contexts, such as interviews or interrogations, and are more susceptible to manipulation and coercion than adults. Adolescents under the age of 18 are three times more likely to confess falsely than adults, creating a severe legal consideration for law enforcement. Law enforcement can reduce the likelihood of juvenile false confessions using a variety of age-appropriate techniques. A 2013 University of Virginia study suggests conducting specialized juvenile interrogation training, limiting lengthy and manipulative techniques, and exploring alternative methods of questioning juveniles.

The following material is from a publication titled "Reducing Risks: An Executive's Guide to Effective Juvenile Interview and Interrogation" (OJJDP, IACP)

Juvenile interrogations and confessions have captured the United States Supreme Court's attention more than any other issue in juvenile justice. The court first tackled these issues more than 60 years ago, when it issued its first foundational decision advising law enforcement to question children with special care. After retreating from this position during the 1970s, 1980s, and 1990s, the court reasserted in *J.D.B. v. North Carolina* (2011) that adolescents under 18 need to be treated differently than adults during questioning. This decision has changed the legal landscape to require police officers to change how juvenile suspects are questioned.

Recommended Best Practices: Juvenile Interrogations

Child-Sensitive Behavioral Analysis

During initial interviews, many interrogation trainers suggest that experienced police interviewers can tell whether a subject is being truthful or deceptive by observing the subject's behavior and choice of words. Behaviors that are thought to indicate lying include fidgeting, slouching, and lack of eye contact. Often, interviewers are encouraged to proceed to a full-blown interrogation if behavioral cues indicate that the subject is lying.

However, children and teens may commonly slouch, avoid eye contact, and exhibit similar behaviors regardless of whether they are telling the truth – particularly in the presence of authority figures. Officers should not interpret these everyday teenage mannerisms as indicators of deception. Rather, officers should decide to interrogate juveniles based on concrete evidence such as witness statements and forensics.

Care with Miranda Warnings

Even intelligent children and teenagers often do not fully understand their Miranda rights, which can require a tenth-grade level of comprehension. This reality has been reflected around the country, as courts have been increasingly willing to throw out a child's confession even after they appear to validly waive their Miranda rights. To ensure that a juvenile's statement is admissible in court, officers should read each warning slowly, stopping to ask the child, after each individual warning, to explain it back in his or her own words. Further, officers should read juveniles simplified Miranda warnings that require only a third-grade comprehension level:

1. You have the right to remain silent. That means you do not have to say anything.
2. Anything you say can be used against you in court.
3. You have the right to get help from a lawyer right now.
4. If you cannot pay a lawyer, we will get you one here for free.
5. You have the right to stop this interview at any time.
6. Do you want to talk to me?
7. Do you want to have a lawyer with you while you talk to me?

When appropriate, law enforcement should also inform young suspects that speaking to police may subject the child to adult criminal consequences. Importantly, police should make sure that the child understands the concept of "adult criminal consequences" – along with any other concepts that the child may not grasp – before proceeding with questioning.

Presence of a Friendly Adult

It is essential to involve a "friendly adult" in the juvenile interrogation process and to allow him or her meaningful opportunities to consult with the juvenile throughout the interrogation privately. Traditionally, the friendly adult is a parent or a youth officer, although each presents different challenges.

- Parent or Guardian. Many states require police to attempt to notify parents before beginning an interrogation. Even states without this requirement still view the absence of a parent negatively. However, some parents can make the situation worse. If a parent pressures her child to confess, her influence can increase the child's risk of giving a false or involuntary statement. If this happens, the officer should call for a break in the interrogation so the parent can calm down.

- Youth Officer. Youth officers are usually police officers who are asked to suddenly switch roles from law enforcement to juvenile advocate – a difficult thing to ask anyone to do. Some youth officers struggle to fulfill this duty. For instance, an Illinois court threw out a confession after a youth officer advised the child to make admissions during a break in the interrogation. (People v. Sanchez, 2011 Ill. App. Unpub. LEXIS 872 (Ill. App. Ct. 2011).) A federal court has also disapproved of youth officers who remain silent during interrogation, calling one such officer a "potted plant." *(Hardaway v. Young, 302 F.3d 757 (7th Cir. 2002).)*

Police should involve other "friendly adults" – like parents or attorneys – rather than youth officers whenever possible

Length of Questioning

Juveniles can tolerate only about an hour of questioning before a substantial break should occur. A juvenile interrogation should never last longer than four hours. If a child or adolescent is questioned for a prolonged period, the risk that any statement will be either involuntary or unreliable increases substantially with each passing hour.

Time of Questioning

Officers should be wary of questioning juvenile suspects, especially younger teens and children, in the middle of the night. Even a few hours of sleep deprivation, combined with the stress of interrogation, can increase the risk of false confession. And courts tend to disapprove of late-night interrogations, particularly when children are involved.

Avoid Use of Deception

Currently, the use of deception during an interrogation – such as a false claim that police possess evidence incriminating the suspect – is permissible. However, the legal landscape's changing nature should make officers think twice before using this technique during juvenile interrogations. The presentation of false evidence may cause a young person to think that the interrogator is so firmly convinced of his guilt that he will never be able to persuade him otherwise.

Review: 2021 Oregon Legislative Update

A statement made by a person during a custodial interview conducted by a peace officer is presumed to be involuntary if the person is under 18 years of age and the statement is made in connection with an investigation into a misdemeanor or a felony, or an allegation that the person being interviewed committed an act that, if committed by an adult would constitute a misdemeanor or a felony, and the court determines that the peace officer intentionally used information known by the officer to be false to elicit the statement. This presumption may be overcome if the state proves by clear and convincing evidence that the statement was voluntary and not made in response to the false information used by the peace officer to elicit the statement.

In that event, the young person may think that he has no choice but to confess – whether guilty or innocent –to cut his losses. For this reason, one of the nation's most well-known interrogation training programs has discouraged the use of false evidence during juvenile interrogations, advising interrogators to avoid such tactics with young children and individuals who have significant mental limitations.

Avoid Promises of Leniency and Threats of Harm

Many officers are trained to suggest during interrogation that the suspect will avoid trouble or get help if he confesses. Even these indirect promises of leniency and threats of harm can be inappropriate when the suspect is a juvenile. They can trigger involuntary or false confessions by presenting the juvenile with an offer he can't refuse: Say what the police want to hear or face negative consequences. A well-known interrogation training firm expressly advises investigators to avoid interrogations in which a suspect is offered help.

In expressing sympathy and understanding toward a suspect during an interrogation, it is tempting for an investigator to state that he desires to "help" the suspect somehow. This may be in the form of an ambiguous statement, such as, "I want to help you out of this thing," or "I can't help you unless you help me first." In other instances, the reference to help may be quite specific, such as, "If you tell me what happened, I can get you psychological help," or "I can get you help for your addiction if you work with me on this." Some courts have ruled that such statements represent an implied promise of leniency, and therefore, investigators should refrain from any references to "helping a suspect out."

In particular, many juvenile false confessors have explained that they confessed under the mistaken belief that they would be able to end the interrogation and immediately go home. To that end, interrogators must take special care to ensure that nothing they say could be interpreted as suggesting that the juvenile could go home if he confesses. An innocent youth might jump at such a chance and falsely confess out of a desire to return home, believing that his innocence will be straightened out later.

Investigators should also never use the suspect's juvenile status to persuade him to confess under the pretense that he or she won't be punished as severely as an adult. Some courts have found this tactic unduly coercive. (E.g., *Commonwealth v. Truong,* 2011 Mass. Super. LEXIS 61 (Mass.Super. Ct. 2011).) When interrogating youth, officers should follow these guidelines:

- Avoid communicating that the suspect will avert or face reduced charges if he confesses.
    - An Iowa court recently threw out a confession as involuntary when police told the suspect that prosecutors "are much more likely to work with an individual that is cooperating with police than somebody who sits here and says I didn't do it." (State v. Polk, 2012, Iowa Sup. LEXIS 33 (Iowa Supr. Ct. Apr 6, 2012).)

- Stay away from unclear or technical language that a young person could interpret as a promise of leniency.
    - A federal court threw out a young man's confession as involuntary when a state police officer indicated that he would not pursue charges if the suspect confessed but failed to explain that the federal government could still press charges. The court called it "utterly unreasonable" to expect the suspect to "parse" the officer's words. (U.S. v. Lall, 607 F.3d 1277 (11th Cir. 2010).)
- Ensure that the suspect understands the consequences of confessing. Many juvenile false confessors have explained that they made false statements because they misunderstood the consequences of confessing: they believed they would go home.
    - Similarly, a Massachusetts court recently threw out a 16-year-old's murder confession as involuntary when the suspect was led to believe she would be placed in foster care instead of prison as a result of confessing. The court found that she "never understood the implications of her statements." *(Commonwealth v. Truong, 2011 Mass. Super. LEXIS 61 (Mass. Super. Ct. 2011).)*

- Refrain from suggesting that you can help the suspect if he confesses.
    - One Florida court threw out a confession as involuntary when the interrogator told the suspect that he would help him if he confessed but failed to explain the limits of his ability to do so. (Ramirez v. State, 15 So.3d 852 (Fla. App. Ct. 2009).) Other courts have gone even further, ruling that any suggestion of "help" in exchange for a confession may constitute an impermissible implied promise of leniency. Therefore, an investigator should avoid suggesting that he or she could help a suspect, even when trying to express sympathy or understanding.

Electronic Recording

When an interview or interrogation is electronically recorded from start to finish, police have a complete record that can be used to convict the guilty and ensure that every statement is reliable and voluntary.

A recording can also provide officers with invaluable protections against frivolous allegations of abuse. And most electronic recording systems pay for themselves by significantly reducing the need for and duration of costly pretrial hearings about what happened inside the interrogation room.

For these reasons, it is imperative that departments around the country videotape interviews and interrogations from the reading of Miranda rights until the end.

A recording is particularly essential when the person being interrogated is a juvenile. The Wisconsin Supreme Court, for instance, has required all juvenile interrogations to be recorded in their entirety, when feasible, because of the particular vulnerabilities of juveniles during interrogations. (In the Interest of Jerrell C.J., 2005.) The same reasoning holds true in every jurisdiction.

Rules mandating the electronic recording of interrogations exist in 16 states, and the District of Columbia and nearly every other state is currently considering legislation. In addition, with the proliferation of reality crime television, the public and juries expect to see electronic recording at every trial.

Oregon Note: The 2019 Oregon Legislature amended ORS 133.400 by separating the recording of custodial interviews of juveniles into its stand-alone statute (133.402). Effective Jan. 1, 2020, electronic recording is now required:

- Whenever an officer conducts a custodial interview of a juvenile **while inside** a law enforcement facility in connection to an investigation into a misdemeanor or a felony.
- Whenever an officer conducts a custodial interview of a juvenile **anywhere outside** of a law enforcement facility, if:
  - The interview is in connection to an investigation into a misdemeanor or a felony, and
  - A video camera is worn upon the officer's person.

- Exceptions for agencies employing five (5) or fewer officers and good cause for not recording are also listed in this statute.

Recommended Best Practices: Investigative Follow-Up

- Confirm the confession indicates first-hand knowledge of guilt.
- All juvenile interrogations should meet the gold standard.
- Ensure the confession is corroborated by objective, physical evidence – not just by statements from other juveniles.
- Don't be fooled by a detailed confession.
    - The vast majority of proven false confessions contained a surprising number of accurate details, but the suspect's knowledge of that information was later shown to be the result of interrogators' disclosure of those details during questioning.

Basic Police Academy

Missing Persons



Missing Persons Investigations

Instructional Goal:

This course is designed to introduce a new police officer to types of missing persons and the different approaches to investigations.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify investigation considerations for various types of missing person cases.
2. List criteria required to initiate an AMBER Alert.

Content Outline:

- Missing Persons
- Missing Vulnerable Adults
- Missing Children
    - Family Abductions
    - Non-family Abductions
    - Runaway
    - Lost, Injured, or Otherwise Missing
        - Missing Children with Special Needs
    - Critically Missing Young Adults
- AMBER Alert
- Additional Resources

This course is intended to be an introduction to the response and investigation of missing persons cases, emphasizing missing/abducted children. While this class provides some investigative steps, the class and this document do not include all the steps that an officer would need to follow.

Missing Persons

The International Association of Chiefs of Police (IACP) provides the following guidance on missing persons: Many missing person reports involve individuals who have voluntarily left home for personal reasons, while other reports are often unfounded or quickly resolved. However, there are many instances in which persons disappear for unexplained reasons and under circumstances where they may be considered at risk. The complaint taker and initial responding officer's roles are critical in identifying the circumstances surrounding missing persons and identifying those persons at risk.

Therefore, agencies should ensure that:

1) All reports of missing persons are given full consideration and attention to include careful recording and investigation of factual circumstances surrounding the disappearance, and
2) That particular care is exercised in instances involving missing children and those who may be mentally or physically impaired or others who are insufficiently prepared to take care of themselves.

To initiate a successful missing person investigation, the first responder must quickly gather factual information and safeguard potential evidence. This is particularly the case with regard to missing children, whether they be abducted, runaway, or lost. This may also be true of some elderly persons or others who are not fully capable of taking care of themselves because of physical or mental disability or reduced functioning. The elderly, particularly those who have Alzheimer's disease or similar problems, present specific concerns as the subjects of missing persons' reports. Open terrain searches for missing persons in general also require adherence to professionally-accepted search management principles.

Missing Vulnerable Adults

The Oregon Legislature addresses the critical importance of investigating reports of missing vulnerable adults. Finding that:

- The number of people in Oregon with Alzheimer's disease and related dementia is growing. Alzheimer's is a devastating disease that slowly destroys memory and thinking skills and, eventually, even the ability to carry out the simplest daily living tasks.

- Sixty percent of people with Alzheimer's will wander from their homes. Sixty percent of people with Alzheimer's who wander, if not found within 24 hours, die as a consequence of wandering. Eighty percent die if not found within 72 hours.

- Other adults in Oregon, including those with intellectual or developmental disabilities or other conditions, are vulnerable if they go missing as well.

Additionally, the legislature provides for all law enforcement in Oregon to be fully prepared to protect the safety of some of our most vulnerable citizens while providing each police department or sheriff's office with the flexibility to determine what works best in the local jurisdiction.

State Laws Related to Missing Persons Procedures
ORS 181A.300- Establishment and Maintenance of Missing Persons Clearinghouse • The Oregon State Police shall establish and maintain a missing children and adults clearinghouse that receives from and distributes to local law enforcement agencies, school districts, state and federal agencies, and the general public information regarding missing children and adults. • The information shall include technical and logistical assistance, pictures, bulletins, training sessions, reports, and biographical materials to help local efforts locate missing children and adults. • The Oregon State Police shall maintain a regularly updated computerized link with national and other statewide missing person reporting systems or clearinghouses.

ORS 181A.305- Duties of Administrator of Clearinghouse

- Provide information and training to local law enforcement agencies and child welfare agencies, and other state agencies with child welfare duties.
- Appoint an advisory committee consisting of persons with interest and training related to missing children and adults to advise the administrator on the clearinghouse's operation and serve without compensation or expense reimbursement.
- Seek public and private grants and gifts for purposes of the clearinghouse and the duties required by this section.
- Maintain a 24-hour hotline to receive and provide information on missing children and adults.

ORS 181A.310 When Notification of Missing Children Clearinghouse Required

- A member of a law enforcement agency who has probable cause to believe that custodial interference in the first or second degree, or kidnapping in the first or second degree, with respect to a child, has occurred shall notify the Oregon State Police missing children clearinghouse within 24 hours.

ORS 181A.320- Written Policies Relating to Missing Vulnerable Adults Required

- For purposes of this section, a missing vulnerable adult includes, but is not limited to, a missing adult who has:

  (a)An impaired mental condition, such as dementia;
  (b)An intellectual or developmental disability; or
  (c)A brain injury.

- The Department of State Police and each sheriff's office and municipal police department shall adopt written policies relating to missing vulnerable adults that conform to this section's requirements.
- Written policies adopted pursuant to this section shall specify the procedures for investigating reports of missing vulnerable adults to ensure that such cases are investigated as soon as possible, utilizing all available resources.

Missing Children

The following is excerpted from Missing and Abducted Children: A Law Enforcement Guide to Case Investigation and Program Management, available from the National Center for Missing & Exploited Children

It is important for law enforcement officers to understand that all missing children, regardless of the reason they are missing, maybe at risk for violence, victimization, and exploitation.

IACP recommends that law enforcement agencies respond to every report of a missing child as if the child is in immediate danger.

The key to any officer's on-scene initial response is risk assessment, especially when a child is involved. Regardless of the alleged circumstances of a child's taking or retention, it is essential to confirm the child's location and welfare as quickly as possible. The primary responsibility for this task lies with the agency to which the child is reported missing. Once contacted, officers must first ask key questions to determine the level of endangerment facing the child, with the necessary identifying information for both the child and taking party.

When a law enforcement agency receives a missing child's report, there is seldom a clear indication as to whether the child has wandered off or been delayed and will be found in a short time or is instead the victim of foul play. According to a study titled "Law Enforcement Policies and Practices Regarding Missing Children and Homeless Youth," initial information is often insufficient for accurate and unambiguous risk assessment. The absence of sufficient information for clear decision-making requires officers to exercise discretion in their choice of response. The assessment and approach an agency and its officers take during the initial response have profound implications for whether the child is recovered and returned home safely or remains missing for months, years, or worse yet, is never located.

Categories of Missing Children

The National Center for Missing and Exploited Children (NCMEC) uses five categories for missing children, each with different considerations and investigative approaches.

- Family Abductions
- Non-Family Abductions
- Runaway Children
- Lost, Injured, or Otherwise Missing Children
- Critically Missing Young Adults

Family Abductions

A family abduction involves the taking or keeping of a child by a family member or someone acting on his or her behalf, in violation of one's custodial rights.

Calls for service concerning these cases can appear to be particularly complicated, but, at their core, they involve familiar territory for law enforcement.

- Is a child in danger?
- Is a crime being committed?

They can also vary in their degree of severity, which means officers must know how to sort through often-confusing circumstances efficiently and effectively.

Most importantly, the focus must remain on the real victims, the children at the center of these scenes. They may often live within an environment of domestic discord, in which their parents feel compelled to use them for retaliation, out of desperation, or as a tool of control and manipulation against each other. It is law enforcement's responsibility to ensure, within this context, children are not harmed at the hands of their parents, and criminal action is not taken in relation to their custody.

Confirm as quickly as possible:

Child's Location **Child's Welfare**

Key Considerations:

- Physical or mental health conditions
- Potential for violence by abductor such as criminal history, unreported incidents
- Precipitating events such as on-going custody issues, arguments, previous abductions
- Potential for interstate or international flight such as articles taken/left behind, travel tickets

Family abduction involves the violation of a legal right to the care or control of a child by a family member. To determine whether a criminal abduction, illegal taking, or retention of the child has occurred, the investigator must clarify exactly the legal custody situation.

Some State Laws Related to Family Abduction	
ORS 163.245 Custodial Interference in the Second Degree	A person commits the crime of custodial interference in the second degree if, knowing or having reason to know that the person has no legal right to do so, the person takes, entices, or keeps another person from the other person's lawful custodian or in violation of a valid joint custody order with intent to hold the other person permanently or for a protracted period. Class C felony
ORS 163.257 Custodial Interference in the First Degree	A person commits the crime of custodial interference in the first degree if the person violates ORS 163.245 (Custodial interference in the second degree) and: (a) Causes the person taken, enticed, or kept from the lawful custodian or in violation of a valid joint custody order to be removed from the state; or (b) Exposes that person to a substantial risk of illness or physical injury. Class B felony

Non-Family Abductions

A non-family abduction involves a child who has been wrongfully taken by a non-family perpetrator through the use of physical force, persuasion, or threat of bodily harm. These cases were previously called stranger abductions; however, abductors of children are sometimes known to the child or family somehow, so that term is no longer used.

According to the U.S. Department of Justice AMBER Alert Best Practices Guide, in nearly 60 percent of the missing children homicide cases studied, more than two hours passed between the time someone realized the child was missing and the time police were notified. In 76 percent of the cases studied, the child was dead within three hours of the abduction, and in 88.5 percent of the cases, the child was dead within 24 hours.

> "Time is the enemy".
> -US Department of Justice

These types of calls are the least common, but often children in these cases are in great danger. Investigations may have sparse evidence, few leads, no witnesses, and intense public pressure. A comprehensive tactical plan is essential. Your agency likely has a policy related to these types of calls. If not, NCMEC has a model policy and procedure available at www.missingkids.com.



Unique from other investigations, child-abduction cases require a two-prong approach of searching for the child while also preserving evidence for prosecution. The primary focus should be on safely recovering the child. Consider what outside resources may be needed: K-9, search and rescue, volunteers, etc.

Risk Factors:

- The child is 13 years of age or younger.
- The child is out of what is believed to be the zone of safety for his or her age and developmental stage.
- The child has mental or behavioral disabilities.
- The child is drug dependent, including prescribed medication and/or illegal substances, and the dependency is potentially life-threatening.
- The child has been absent from home for more than 24 hours before being reported to law enforcement.
- The child is determined to be in a life-threatening situation based on available information.
- The child is believed to be in the company of an individual who could endanger his or her welfare based on available information.
- The child is absent in a way inconsistent with his or her established patterns of behavior, and the deviation cannot be readily explained.
- The child is determined to be "at-risk" based on other circumstances involved causing a reasonable person to conclude the child should be considered as such.

NCMEC recommends all non-family abduction investigations include an immediate neighborhood canvas, managing and coordinating information in an information management system, consider the use of polygraphs, establish a command post, set up a hotline, and assign a family liaison.

Some State Laws Related to Nonfamily Abduction	
ORS 163.225 Kidnapping in the Second Degree	A person commits the crime of kidnapping in the second degree if, with intent to interfere substantially with another's personal liberty, and without consent or legal authority, the person: (a) Takes the person from one place to another; or (b) Secretly confines the person in a place where the person is not likely to be found. Class B felony
ORS 163.235 Kidnapping in the First Degree	A person commits the crime of kidnapping in the first degree if the person violates ORS 163.225 (Kidnapping in the second degree) with any of the following purposes: (a) To compel any person to pay or deliver money or property as ransom; (b) To hold the victim as a shield or hostage; (c) To cause physical injury to the victim; (d) To terrorize the victim or another person; or (e) To further the commission or attempted commission of any of the following crimes against the victim: • Rape in the first degree • Sodomy in the first degree • Unlawful sexual penetration in the first degree Class A felony

Runaway Children

A runaway child, often a teenager, leaves home voluntarily for a variety of reasons. This would include any child 17 years of age or younger.

As with other reports of missing children, an initial task is to verify if the child is actually missing. Help ensure nothing is overlooked. For example, have voice and email been checked? Find out if there have been previous instances of running away. Gather additional information from the missing child's friends.

Questions to Consider:

- Has the child been sneaking out at night?
- Has the child been skipping school?
- Have the child's grades fallen?
- Has the child been increasingly tardy?
- Has the child used, or does the child continue to use, prescription medications, over-the-counter medications, alcohol, and/or illegal substances?
- Is the child often tired?
- Is the child suicidal?
- Have the child's friends changed?
- Has the child's personality changed?
- Is the child a cellphone user, and which carrier provides that service?
- Does the child access the Internet, where and when does access occur?
- Has the child received unaccounted for funds of gifts?
- Has the child purchased expensive items with no known or vague funding sources?
- Has the child started dating an older boy or girlfriend?

Lost, Injured, or Otherwise Missing Children

A lost, injured, or otherwise missing child is defined as a child who has disappeared under unknown circumstances or a child who is too young to be considered a runaway appropriately. This ranges from a child wandering off and becoming lost to a child who may have been abducted, but no one saw it happen. These circumstances sometimes involve "foul play," or those reporting the incident may attempt to cover up a crime involving the child.

In addition to the general risk factors as previously listed, consider the following factors:

Physical Risk Factors	Psychological and Behavioral Factors	Physiological Factors	Environmental Factors	Situational Factors
Child's stature Sensory perception (hearing, sight, etc.) Overall health from any short/long term illnesses to injuries, pregnancy, etc.	Mental conditions, including bipolar or depression Drug dependency	Availability of food, nourishment, adequate clothing, transportation, money, other forms of financial support, other caretakers	Weather conditions Terrain or nearby landscape (woods, lakes, streams, rivers) Population density in the community Criminal activity in or near the home or place last seen	Fluency level with primary and other languages used Socio-economic level Exposure to others involved in high-risk behavior Use, manufacture, sale of narcotics Prostitution in the home or other areas of life Sex offenders in the home or other areas of life Exposure to non-family members living in the home Victims of physical or sexual abuse Victim of violence Witness to criminal activity

What, How, and Where to Search

After assessing risk factors and identifying the targeted search/containment area, it should be determined what exactly will be searched. Search any place a child may hide or be hidden by an abductor. Consider the following:

- Dumpsters
- Dryers/washers
- Freezers
- Vehicles/trunks
- Boxes, crates, under tarps
- Ponds, pools, septic tanks, bodies of water
- Attics, crawl spaces, basements, roofs, closets
- Ground disturbances, mounds, depressions, leaves, branches, in and under logs and trees, and the areas immediately above those ground disturbances
- Any location where a person could hide a child and not necessarily where a child can hide
- Any location where there are safety hazards
- Any location in which the child likes to play or hang out with friends

Missing Children with Special Needs

The following information is from NCMEC's special needs addendum, located at http://www.missingkids.org/theissues/autism#overview

Finding and safely recovering a missing child with special needs often presents a unique and difficult challenge for families, law enforcement, first responders, and search teams. The behaviors and actions of a missing child with special needs are often much different than those of a missing non-affected child.

While the behaviors will differ from child-to-child, missing children with certain special needs may:

- Wander away, run away, or bolt from a safe environment.
- Exhibit a diminished sense of fear causing them to engage in high-risk behavior
- Elude or hide from search teams
- Seek small or tightly enclosed spaces concealing themselves from search teams
- Be unable to respond to rescuers

A special-needs condition may be characterized by debilitating physical impairments, social impairments, cognitive impairments, or communication challenges.

One such cause for these types of impairments and challenges is Autism Spectrum Disorder (ASD). Generally speaking, no two children with ASD are alike. It is also important to note that the chronological age of individuals with ASD is often irrelevant to their functioning level. For example, a 15-year-old may have the cognitive function of a much younger child.

According to a pediatrics study, 49% of children with ASD tend to wander or bolt from safe settings (Anderson et al., 2012). Individuals with ASD are often attracted to water yet have little to no sense of danger. Drowning is a leading cause of death in children with ASD. Children with ASD may also exhibit other interests or fascinations posing similar dangers, such as active roadways/highways, trains, heavy equipment, fire trucks, roadway signs, bright lights, and traffic signals. Because of this tendency, it is vitally important to quickly identify the child's unique interests and create a list of their favorite places. It is imperative first responders talk to the parents, siblings, relatives, caregivers, and others who know the child well to ask for information about interests, fascinations, stimulations, or obsessions when developing search plans and determining where the child may go. This information could provide critical clues leading to a speedy recovery.

Critically Missing Young Adults (Section 5779)

Federal law includes a provision for missing young adults, ages 18, 19, and 20, especially those whose disappearance is out of keeping with their usual behavior pattern. This provision is known as Suzanne's Law. It provides that there shall be no waiting period before a law enforcement agency initiates an investigation of a missing person under the age of twenty-one and reports the missing person to the Department of Justice's National Crime Information Center.

<table>
<tr><th colspan="2">Federal Laws Related to Missing Persons
(National Child Search Assistance Act (42 USC § 5779 and 5780))</th></tr>
<tr><td>Sec 5779 Reporting Requirement
Each Federal, State, and local law enforcement agency shall report each case of a missing child under the age of 21 to the National Crime Information Center of the Department of Justice.</td><td>Sec 5780 State Requirements
Forbids LEA to establish waiting periods before accepting a missing persons report.
Requires immediate entry into LEDS and NCIC within two hours.</td></tr>
<tr><th colspan="2">State Laws Related to Missing Persons Investigations</th></tr>
<tr><td>ORS 146.177- Procedures for Investigating Missing Persons
Requires written policies identifying the procedure for investigating missing persons cases, particularly those involving children, to ensure reports are investigated as soon as possible and utilize all available resources.</td><td>ORS 146.187 DNA
The Law Enforcement Agency shall attempt to obtain a DNA sample when the person has been missing for longer than 30 days.</td></tr>
<tr><td colspan="2">ORS 146.181- Missing Persons
Requires entry in LEDS and NCIC within 12 hours
May request from the person making the report, information or material likely to be useful in identifying the missing person or the human remains of the missing person
May request in writing from any dentist, denturist, physician, optometrist, medical practitioner possessing it such as medical, dental, or other likely physically descriptive information as is likely to be useful in identifying the missing person or the human remains of the missing person.</td></tr>
<tr><td colspan="2">ORS 404.135 – Investigative Subpoenas (effective January 1, 2024)
If law enforcement has probable cause to believe a person is missing and in danger they may request the district attorney to issue an investigative subpoena for testimony, documents, or other physical evidence from a person believed to have information that may be useful in locating the missing individual.</td></tr>
</table>

America's Missing: Broadcast Emergency Response (AMBER) Alert

AMBER Alerts are activated in the most serious child-abduction cases. An AMBER Alert's goal is to instantly galvanize the community to assist in the search for and safe recovery of a missing child. These alerts are broadcast through radio, T.V., road signs, cellphones, and other data-enabled devices. The AMBER Alert system is being used in all 50 states, the District of Columbia, Indian country, Puerto Rico, the U.S. Virgin Islands, and 27 other countries.

The Oregon State Police Northern Command Center (OSP NCC) is responsible for providing statewide coordination of Oregon's AMBER Alert program. OSP is the designated law enforcement agency that local law enforcement agencies contact to initiate and activate an AMBER Alert based upon the following criteria:

- Law enforcement officials reasonably believe that an abduction has occurred; and
- The child is 17 years or younger; and
- Law enforcement officials believe that the child is in imminent danger of serious bodily harm or death; and
- There is adequate descriptive information available to believe that its dissemination to the public could help locate the child, suspect, and/or suspect's vehicle; and
- The child's name and other critical data elements - including the child abduction (C.A.) and AMBER Alert (A.A.) flags must be entered into the National Crime Information Center (NCIC) system.

To request assistance, agencies should call the OSP NCC at (503) 375-3555, which is staffed 24 hours a day, seven days a week. The OSP Southern Command Center (SCC) is the backup center to NCC for AMBER Alert notifications. If NCC is not available, law enforcement agencies can request an AMBER Alert by contacting OSP SCC at (541) 776-6111. SCC is also staffed 24 hours a day, seven days a week.

During the initial call intake, patrol officers' first response, and preliminary field investigation, law enforcement is working to obtain, verify, and build the following information about the missing child.

Primary Identifiers

- Name, including nicknames
- Date of birth
- Race
- Gender
- Physical description (height, weight, hair color, eye color, scars/marks/tattoos, clothing last seen wearing)
- Physical anomalies or recognizable physical attributes such as a limp, tick, or physical behavior
- Notable items the child may be carrying, such as a backpack, purse, or comfort item such as a special blanket, doll, or stuffed animal
- Current and realistic photographs, digital images, and videos of the child as he/she looks every day

Caution/Medical Information

- Blood type, if known
- Medical conditions (such as diabetes, asthma, epilepsy)
- Neurological/behavioral conditions (autism, attention deficit hyperactivity disorder, attention deficit disorder)
- Medications the missing child is taking or needs to take (name, type, such as pill, injection, or inhaler) and time last taken, if known
- Known or suspected weapons involved with the child's disappearance or abduction

Additional Information

- Social Security number
- Child's cell phone number and description/location of any other computer or mobile devices the child has or uses
- Email address(es)
- Facebook, Twitter, Instagram, Snapchat, or other social media accounts/screen names; also ask about any online gaming platforms/sites the child uses
- Reasons why the reporting person believes the child is missing
- The child's normal routines and any history of running away
- Any circumstances that may indicate the disappearance was not voluntary, and the child may be in imminent danger
- Name and location of the child's school
- Name and location of the child's dentist and primary care physician, if known
- Name and location/address of any friends the child could be with or could have spoken to at/around the time of the disappearance or abduction

Suspect Information
• Name, including any aliases or nicknames • Relationship to the missing child (e.g., family member, friend/associate, acquaintance, stranger to the child) • Race • Gender • Physical description (height, weight, hair color, eye color, scars/marks/ tattoos, clothing last seen wearing) • Physical anomalies or other recognizable physical attributes • Date of birth • Vehicle information if one is known or suspected to be used in the crime: color, year, make, model, body (rust, dents, stickers), license/tag, state of tag • Any known or suspected weapons used/in possession of the suspect • Criminal history • Companions or associates the suspect may be with or going to see • The possible direction of or routes of travel – including any public transit the suspect may be likely to use • Places the suspect may be going • Cell phone number • Email address(es) • Facebook, Twitter, Instagram, Snapchat, or other social media accounts/screen names • Any online gaming platforms/sites the suspect is known to use or suspected of using

AMBER Alert should not be used for cases involving runaways, missing children, or child custodial disputes in which there is no evidence of imminent danger of serious bodily injury or death. Additionally, AMBER Alert is also not designed to be used in case of missing adults. Still, it may be appropriate in cases where all other AMBER Alert criteria have been met, and because of disability, the adult's mental functioning is that of a child.

Activating an AMBER Alert

Step 1- Investigation

- A preliminary investigation must be done before requesting AMBER Alert activation. Once the investigation determines that abduction has occurred, activation should be viewed as just one investigation component. Other actions should be taken simultaneously, in accordance with agency child abduction response plans.

Step 2- Request AMBER Alert

- Once it is confirmed that all AMBER Alert criteria have been met, the law enforcement agency will contact the Oregon State Police Northern Command Center (503) 375-3555 to request initiation and approval for AMBER Alert activation.

Step 3- Stand Up Tip Center

- The Tip Center staffing needs to be in process to expedite the transfer of the AMBER telephone Tip-Line number to the activated Tip Center.

Step 4- LEDS BOLO

- Send a statewide Be-On-the-Look-Out (BOLO) Administrative Message (AM) via LEDS to all law enforcement agencies statewide. The text must start with the words "OREGON AMBER ALERT." Include the following information in the message, if available:
    - Name, age, sex, and physical description of the victim
    - Description of clothing
    - Location and time last seen
    - Description of possible suspect(s) and vehicle
    - Last known direction of travel and possible destination
    - Investigating law enforcement agency, investigating officer, and telephone number

- Following is an example of a LEDS BOLO:

AM: ALX
SUBJECT: OREGON AMBER ALERT
ATTN: BROADCAST IMMEDIATELY

THE (LAW ENFORCEMENT AGENCY) IS INITIATING AN AMBER ALERT. THE VICTIM IS JANIE DOE, A 9-YEAR OLD FEMALE JUVENILE. SHE HAS BLONDE HAIR, BLUE EYES, I.S. 4' TALL AND WEIGHS 85 POUNDS. SHE WAS LAST SEEN WEARING A S/SLEEVE RED TOP AND BLACK PANTS. POLICE BELIEVE SHE WAS ABDUCTED THIS DATE AT APPROXIMATELY 2:00 PM, BY A WHITE MALE, APPROXIMATELY 25-35 YEARS OLD, APPROXIMATELY 6'-2"/230 POUNDS, BROWN HAIR WITH A SHORT BEARD AND MOUSTACHE. SUSPECT IS DRIVING A SILVER SUV, LAST SEEN HEADING NORTHBOUND ON ALPHA STREET FROM THE (ABDUCTION LOCATION/CITY) AREA. IF YOU HAVE ANY INFORMATION, PLEASE CONTACT EITHER DETECTIVE SERGEANT JOHN DOE OR DETECTIVE JIM DOE, (LAW ENFORCEMENT AGENCY) AT (503) XXX-XXXX. THIS NUMBER IS FOR INVESTIGATIVE LEADS/INFO ONLY, AND NOT FOR MEDIA INQUIRIES.

Step 5- LEDS/NCIC Entry

- The agency requesting/initiating the amber alert is to enter the suspect information and victim information into LEDS/NCIC.
- If known, enter the suspect's name in the "AKA" moniker field if possible. This will allow cross-reference to the Child Abduction entry before any arrest warrant(s) is entered into LEDS.

Step 6- Obtain Photo of Victim/Suspect

- If possible, obtain a photo of the victim and suspect (and suspect vehicle if applicable) as soon as possible and forward it to the OSP NCC via electronic means (email) as an attachment. The photos may be used for dissemination to the public. The AMBER alert does not require photos, but they have obvious potential for aiding positive identification once disseminated.

SAMPLE AMBER ALERT FIELD CHECKLIST

INCIDENT DATE	INCIDENT TIME	INCIDENT NUMBER	SUPERVISOR APPROVAL BY

ALL FIVE OF THE FOLLOWING CRITERIA MUST APPLY:

1. Reasonable belief that an abduction has occurred; and
2. The child is 17 years or younger; and
3. Law enforcement officials believe that the child is in imminent danger of serious bodily harm or death; and
4. There is adequate descriptive information available to believe that its dissemination to the public could help locate the child, suspect, and/or suspect vehicle; and
5. The child's name and other critical data elements-including the child abduction (C.A.) and AMBER Alert (A.A.) flags must be entered into the National Crime Information Center (NCIC) system.

Do not use Amber Alert for runaways or parental/custodial abductions unless the child is in danger of imminent bodily harm or death. Consideration should be given not to activate the plan if there is no immediate, specific information for the public to use to assist in the recovery, or there has been an extended period since the disappearance.

- ☐ Obtain information to complete the AMBER ALERT EAS Message Form. The alert must contain a description of the child and suspect, the suspect's vehicle, and the abduction details.
- ☐ Obtain sworn supervisor approval for initiation request. Supervisor to contact OSP NCC @ (503) 375-3555
- ☐ Notify agency PIO or establish immediate media contact person.
- ☐ Obtain a recent photo of child/suspect for media and law enforcement broadcast.
- ☐ Send LEDS Administrative BOLO Message titled "AMBER ALERT."
- ☐ Enter Victim/Suspect into LEDS/NCIC.

Reporting Officer	DPSST #

Additional Resources

A Child is Missing

- www.achildismissing.org
- 888-875-2246
- A Child Is Missing, Inc. (ACIM) is a non-profit 501(c)(3) organization. A Child Is Missing Alert Program and Recovery Center assists Law Enforcement Agencies nationwide in the early search and recovery of missing children (often with Autism, Down syndrome), the elderly (often with Alzheimer's disease, dementia), disabled persons, on-campus college students, and other vulnerable populations, in the first hours of their disappearance. ACIM has no jurisdictional restraints. The Alert Program is available to law enforcement 24/7, 365 days a year.

National Center for Missing and Exploited Children (NCMEC)

- 1-800-843-5678
- www.missingkids.org
- The National Center for Missing & Exploited Children is a private, non-profit 501(c)(3) corporation whose mission is to help find missing children, reduce child sexual exploitation, and prevent child victimization. NCMEC works with families, victims, private industry, law enforcement, and the public to assist with preventing child abductions, recovering missing children, and providing services to deter and combat child sexual exploitation.
- Publications:
    - A Child is Missing: Providing Support for Families of Missing Children
    - Investigative Checklist for First Responders
    - Investigative Checklist for Law Enforcement When Helping Unsupervised and Runaway Children
    - Investigative Checklist for Law Enforcement When Responding to Missing Children With Special Needs
    - Long-Term Missing Child Guide for Law Enforcement
    - Missing and Abducted Children: A Law Enforcement Guide to Case Investigation and Program Management

Oregon State Police

- OSP Northern Command Center 503-375-3555
- www.Oregon.gov/osp
- Publication:
    - AMBER Alert Plan Manual

US Department of Justice

- www.amberalert.ojp.gov
- Publications:
    - AMBER Alert Best Practices
    - Amber Alert Field Guide for Law Enforcement Officers
    - Report to Congress on AMBER Alert in Indian Country

INVESTIGATIVE CHECKLIST FOR FIRST RESPONDERS

NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN® | OJJDP Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs • U.S. Department of Justice | AMBER ALERT

This Checklist is meant to provide a framework of actions, considerations, and activities that may assist in performing competent, productive, and thorough missing/abducted-children investigations.

First Responder

- [ ] Activate patrol-vehicle-mounted video camera, if circumstances warrant, when approaching the scene to record vehicles, people, and anything else of note for later investigative review.
- [ ] Interview parent(s)/guardian(s)/person who made the initial report.
- [ ] Confirm the child is in fact missing.
- [ ] Attempt to verify the child's custody status.
- [ ] Identify the circumstances of the missing episode.
- [ ] Determine when, where, and by whom the missing child was last seen.
- [ ] Interview the individuals who last had contact with the child.
- [ ] Identify the child's zone of safety for his or her age and developmental stage.
- [ ] Make an **initial assessment**, based on the available information, of the type of incident whether nonfamily abduction; family abduction; runaway; or lost, injured, or otherwise missing.
- [ ] Obtain a **detailed** description of the missing child, abductor, and any vehicles used.
- [ ] Secure photos/videos of the missing child/abductor, and don't forget photos that may be available on cell phones.
- [ ] Evaluate whether the circumstances meet **AMBER Alert™ criteria** and/or other immediate community-notification protocol if not already activated. Discuss plan activation with supervisor.
- [ ] Evaluate whether the circumstances warrant requesting the National Center for Missing & Exploited Children®'s (NCMEC) Team Adam. If a Child Abduction Response Team (CART) is in the area, does the child's case meet their activation criteria?
- [ ] Relay detailed descriptive information to communications unit for broadcast updates.
- [ ] Determine need for additional personnel including investigative and supervisory staff.
- [ ] Brief and bring up-to-date all additional responding personnel.
- [ ] Identify and separately interview everyone at the scene. Make sure their interview and identifying information is properly recorded. To aid in this process, if possible, take pictures or record video images of everyone present. Video cameras affixed to patrol vehicles may be helpful with this task.
  - [ ] Note name, address, home/business phone numbers of each person.
  - [ ] Determine each person's relationship to the missing child.
  - [ ] Note information each person may have about the circumstances surrounding the missing episode.
  - [ ] Determine when/where each person last saw the child.
  - [ ] Ask each one, "What do you think happened to the child?"
  - [ ] Obtain names/addresses/phone numbers of the child's friends/associates and other relatives and friends of the family.
  - [ ] Determine if any suspicious activity or people were seen in the area.
  - [ ] Determine if any people were seen who seemed unusual, strange, or out-of-place.
- [ ] Continue to keep communications unit apprised of all appropriate developing information for broadcast updates.
- [ ] Obtain and note permission to search home or building where incident took place **even if the premises have been previously searched by family members or others**.
- [ ] Conduct an immediate, thorough search of the missing child's home **even if the child was reported missing from a different location**.
- [ ] Seal/protect scene and area of the child's home, including the child's personal articles such as hairbrush, diary, photos, and items with the child's fingerprints/footprints/teeth impressions, so evidence is not destroyed during or after the initial search and to help ensure items that could help in the search for and/or to identify the child are preserved. Determine if any of the child's personal items are missing. If possible, photograph/take videos of these areas.
- [ ] Evaluate the contents and appearance of the child's room/residence.
- [ ] Inquire if the child has access to the Internet and evaluate its role. Do not overlook activity on social-networking websites and teen chatlines.
- [ ] Ascertain if the child has a cell phone or other electronic communication device and obtain the most recent records of their use.
- [ ] Extend search to surrounding areas and vehicles, including those that are abandoned, and other places of concealment such as abandoned appliances, pools, wells, sheds, or other areas considered "attractive nuisances."
- [ ] Treat areas of interest as potential crime scenes including all areas where the child may have been or was going to be located.
- [ ] Determine if surveillance or security cameras in the vicinity may have captured relevant information. This information may be used to help locate the child and/or corroborate or refute witness statements.
- [ ] Interview other family members, friends/associates of the child, and friends of the family to determine
  - [ ] When each last saw the child.
  - [ ] What they think happened to the child.
  - [ ] If the child had complained about being approached by anyone.

Basic Police Academy

Motor Vehicle Code PPT



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Motor Vehicle Code 2

Basic Police

1

Course Goals

This course is designed to:

Develop the officers understanding, knowledge, and skills relating to unknown-risk and high-risk vehicle stops

Develop the officers ability to assess conditions and respond appropriately to maintain personal and public safety

Minimize potential liability and public concern by using accepted vehicle stops practices

2

2

Learning Outcomes

Following completion of this course, students will be able to:

Demonstrate a clear understanding of subject matter issues, objectives, purpose of vehicle stops and officer safety.

Demonstrate knowledge and skills related to critical tactical concepts: Cover and Concealment, Communication, Control and Containment, Contact and Cover, and Tactical Advantage.

Perform fundamental skills: Pre-stop communication, tactical communication, vehicle positioning, preparing and issuing a citation, officer approach, violator control tactics, officer positioning, transition to high risk, weapon control, vehicle clearing.

3

3

Session #1 Review

- Police/Citizen requirements
- Definitions
- Violations

4

4

Emergency Vehicle Considerations



5

5

ORS 820.300 – Exemptions from traffic laws

1. The driver of an emergency vehicle or ambulance may do any of the following:
   - A. Park or stand in disregard of a statute
   - B. Proceed past a red signal or stop sign.
   - C. Exceed the designated speed limits.
   - D. Disregard direction of movement or turning
   - E. Proceed past the flashing bus safety lights after:
     - I. Determines that no passengers of the bus remain on the roadway; and
     - II. Proceeds with caution.

6

6

ORS 820.300 – Exemptions from traffic laws…. continued

2. The provisions of this section:
   A. Do not relieve duty to drive with due regard for the safety of all other persons.
   B. Are not a defense for criminal negligence or reckless conduct.

7

7

ORS 820.320 – Illegal operation of emergency vehicle

1. Violates any of the following:
   A. Only exercise privileges responding to an emergency call or an emergency or in pursuit of violator
   B. Must use a visual signal with appropriate warning lights when exercising privileges

8

8

ORS 820.320 – Illegal operation of emergency vehicle….. continued

C. In addition to visual signal, must use an audible signal when the driver is proceeding past a stop light or stop sign.
D. If parking or standing shall not use the audible signal.

9

9

ORS 820.320 – Illegal operation of emergency vehicle….. continued

E. Violates bus exemptions
F. In proceeding past any stop light or stop sign must slow down
G. must not exceed speed limit to an extent which endangers persons or property.

10

10

ORS 820.320 – Illegal operation of emergency vehicle….. continued

2. Not required to use visual or audible signal if it would prevent apprehension or detection of a violator
3. Class B traffic violation.

11

11

More Violations



12

12

Is there a violation? If so what is it? Why?



13

13

ORS 811.485 – Following too close

Drives a motor vehicle more closely than is reasonable and prudent

- Does not apply if funeral procession

Class B traffic violation

14

14

Oregon drivers manual

- A safe following distance is defined as 2-4 seconds. For speeds greater than 30 mph, a safe following distance should be 4 seconds or more

Stopping Distances



- https://www.random-science-tools.com/physics/stopping-distance.htm

15

15

Is there a violation? If so what is it? Why?



16

16

ORS 811.375 – Unlawful or unsignaled lane change

Person changes lanes by moving to the right or left when:

- The movement cannot be made with reasonable safety; **or**
- The driver fails to signal continuously 100 feet before changing lanes.

ODOT Centerline Standards

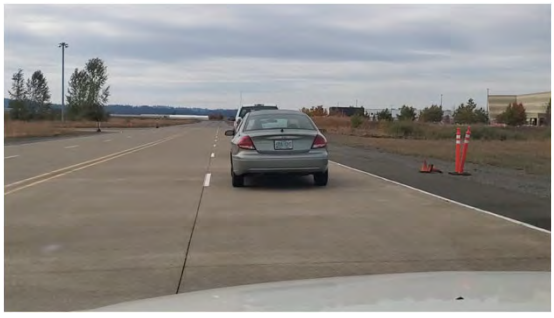


Class D traffic violation.

17

17

What about this?



18

18

Is there a violation? If so what is it? Why?



19

19

ORS 811.028 – Fail stop for pedestrian

1. Driver must stop and remain stopped when the pedestrian is:
   A. Following traffic control device or crossing in a crosswalk; and
   B. Pedestrian is in any of the following locations:
      I. In the lane in which traveling;
      II. In a lane adjacent to the lane in which traveling;
      III. In the lane into which the driver's vehicle is turning;
      IV. In a lane adjacent to the lane into which turning, or
      V. Less than six feet from the lane into which the driver's vehicle is turning, if the driver is making a turn at an intersection that has a traffic control device under which a pedestrian may proceed

20

20

ORS 811.028 – Fail stop for pedestrian… continued

2. A bicycle lane or the part of a roadway where a vehicle stops that is adjacent to a lane of travel is part of that adjacent lane of travel.
3. This section does not require a driver to stop for a pedestrian under following circumstances:
   A. Upon a roadway with a safety island, or
   B. Where a pedestrian tunnel or overhead crossing has been provided at or near a crosswalk.
4. A pedestrian is crossing the roadway in a crosswalk when any part of the pedestrian moves onto crosswalk with the intent to proceed.
5. Class B traffic violation.

21

21

Is there a violation? If so what is it? Why?



22

22

ORS 811.155 – Fail stop for bus safety lights

1. If the driver meets or overtakes from either direction any vehicle that is stopped on a roadway and that is operating red bus safety lights and does not:
   A. Stop before reaching the vehicle; and
   B. Remain standing until bus lights are no longer operating.
2. Class A traffic violation.

23

23

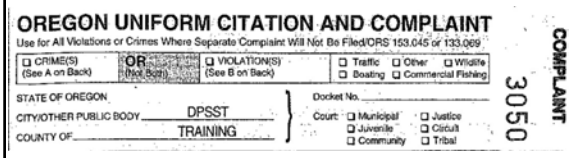
To cite or not to cite, that is the question…. Lets talk about citations



24

24

Front of citation



OREGON UNIFORM CITATION AND COMPLAINT

Use for All Violations or Crimes Where Separate Complaint Will Not Be Filed/ORS 153.045 or 133.069

☐ CRIME(S) (See A on Back) | OR (Not Both) | ☐ VIOLATION(S) (See B on Back) | ☐ Traffic ☐ Other ☐ Wildlife ☐ Boating ☐ Commercial Fishing

COMPLAINT 3050

STATE OF OREGON

CITY/OTHER PUBLIC BODY DPSST

COUNTY OF TRAINING

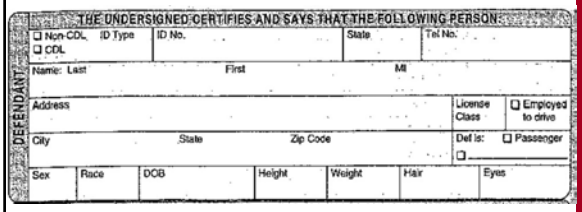
Docket No.

Court: ☐ Municipal ☐ Justice ☐ Juvenile ☐ Circuit ☐ Community ☐ Tribal

25

25

Front of citation…. continued



THE UNDERSIGNED CERTIFIES AND SAYS THAT THE FOLLOWING PERSON

DEFENDANT

☐ Non-CDL ☐ CDL | ID Type | ID No. | State | Tel No.

Name: Last | First | MI

Address | License Class | ☐ Employed to drive

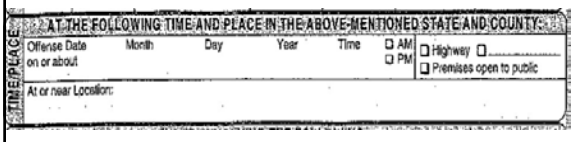
City | State | Zip Code | Def is: ☐ | ☐ Passenger

Sex | Race | DOB | Height | Weight | Hair | Eyes

26

26

Front of citation…. continued



AT THE FOLLOWING TIME AND PLACE IN THE ABOVE-MENTIONED STATE AND COUNTY:

TIME/PLACE

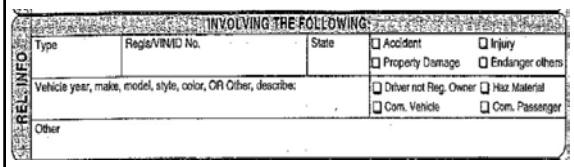
Offense Date on or about | Month | Day | Year | Time ☐ AM ☐ PM | ☐ Highway ☐ ..... ☐ Premises open to public

At or near Location:

27

27

Front of citation…. continued



REL. INFO

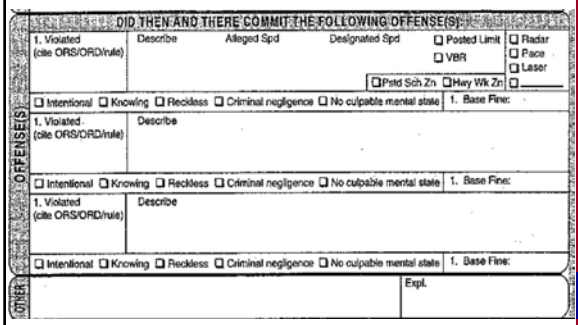
INVOLVING THE FOLLOWING:

Type	Regis/VIN/ID No.	State	☐ Accident ☐ Injury ☐ Property Damage ☐ Endanger others
Vehicle year, make, model, style, color, OR Other, describe:			☐ Driver not Reg. Owner ☐ Haz Material ☐ Com. Vehicle ☐ Com. Passenger
Other			

28

28

Front of citation…. continued



OFFENSE(S)

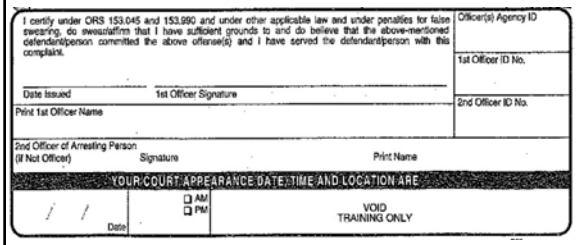
DID THEN AND THERE COMMIT THE FOLLOWING OFFENSE(S):

1. Violated (cite ORS/ORD/rule)	Describe	Alleged Spd	Designated Spd	☐ Posted Limit ☐ VBR ☐ Radar ☐ Pace ☐ Laser ☐ Psid Sch Zn ☐ Hwy Wk Zn ☐
☐ Intentional ☐ Knowing ☐ Reckless ☐ Criminal negligence ☐ No culpable mental state				1. Base Fine:
1. Violated (cite ORS/ORD/rule)	Describe			
☐ Intentional ☐ Knowing ☐ Reckless ☐ Criminal negligence ☐ No culpable mental state				1. Base Fine:
1. Violated (cite ORS/ORD/rule)	Describe			
☐ Intentional ☐ Knowing ☐ Reckless ☐ Criminal negligence ☐ No culpable mental state				1. Base Fine:
OTHER				Expl.

29

29

Front of citation…. continued



I certify under ORS 153.045 and 153.990 and under other applicable law and under penalties for false swearing, do swear/affirm that I have sufficient grounds to and do believe that the above-mentioned defendant/person committed the above offense(s) and I have served the defendant/person with this complaint.

Officer(s) Agency ID

1st Officer ID No.

Date Issued

1st Officer Signature

2nd Officer ID No.

Print 1st Officer Name

2nd Officer of Arresting Person (If Not Officer) Signature Print Name

YOUR COURT APPEARANCE DATE, TIME AND LOCATION ARE

Date ☐ AM ☐ PM

VOID
TRAINING ONLY

30

30

Back of citation

A COMPLAINT WILL BE FILED AGAINST YOU IN THE COURT SHOWN ON THE FRONT OF THIS CITATION.

READ CAREFULLY

If the front of this citation shows you are charged with a:

A. CRIME, YOU MUST APPEAR at the court on the day and time written on the front.

B. VIOLATION, you must do one option listed below:

31

31

Once a citation is issued be prepared to explain the process

Officer, I'm not saying I did it, but I'm also not saying I didn't. I just want to pay the fine, what are my options?



32

32

Option #1

Enter a plea of no contest and pay the court the amount of the presumptive fine written on the front of this citation.

If the court accepts your plea, the court may not impose a fine that is more than the amount of the presumptive fine.

33

33

Officer, can I send a letter to the judge to try to get the fine reduced?



34

34

Option #2

- **Enter a plea of no contest and send a letter of explanation**. You must do all of the following before the day and time this citation requires you to appear in court. If you respond by mail, the mail must arrive at the court before you are required to appear.
  - 1. Sign/date here: _____ (Signature) _____(Date), AND
  - 2. Send or take to the court this citation and the full amount of the presumptive fine; AND
  - 3. Attach a written statement explaining the circumstances of the violation(s) charged.
- **IMPORTANT**: If you choose this option, you will make a written appearance and waive your right to a trial. The court may consider your written statement when establishing the amount of the fine. The court cannot impose a fine that is less than the minimum fine amount. If the court finds you guilty, the court may keep all or part of the money you pay. The court will not fine you more without giving you notice to come to the court for a hearing.

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35

Officer, you are wrong. How do I take this to trial?



36

36

Option #3

Enter a plea of not guilty and request a trial by doing one of the following;

A. **Go to the court** on or before the day and time written on the front of this citation to plead not guilty and request a trial.

B. **Submit a written request** for a trial by doing all of the following before the day and time this citation requires you to appear in court. If you respond by mail, the mail must arrive at the court before you are required to appear.

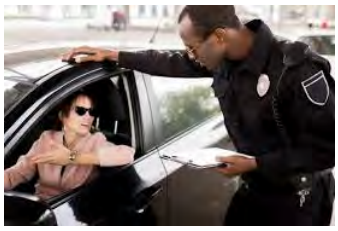
- 1, Sign/date_____ (Signature) _____ (date); AND
- 2, Send or take to the court this citation by itself or with a written request for a trial.

IMPORTANT: You have a right to a trial. The court will give you notice of the time and place when you MUST appear in person and may impose penalties if you do not appear. The court may require you to deposit money to assure your appearance if you failed to appear on any offense charges in the past. If the court finds at trial that you are guilty, the court cannot impose a fine that is less than the minimum fine amount. The court will not impose a fine if it finds you not guilty.

37

37

Officer, I want to take you to court, but I live in Arizona



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Option #4

Enter a plea of not guilty and request a trial by affidavit. Contact the court before the day and time this summons requires you to appear to determine if you qualify for a trial by affidavit. If so, the trial will be based upon sworn, written statements. Future court appearances may not be necessary. If you do not qualify or the court does not offer this option, you must comply with one of the other options listed above.

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Officer, what happens if I just ignore this citation?



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Notice

1. **IF YOU FAIL TO FOLLOW THESE INSTRUCTIONS, THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST and/or may suspend your license if you fail to appear on a citation for a traffic offense.**
2. THE COURT MAY SEND YOU A NOTICE AND REQUIRE YOU TO APPEAR AT THE COURT FOR A HEARING.
3. For traffic offenses, this record will be sent to the licensing authority of the state where you are licensed to drive to decide if a license suspension is appropriate.
4. For violations, you must notify the court and the prosecuting attorney's office before you are required to appear in court if you are going to have an attorney represent you.
5. For violations, if you do not pay the full presumptive fine amount in advance and do not appear, the court may enter a conviction and a Judgment against you for more than the presumptive fine and up to the maximum penalty allowed by law for the charged offense(s) including the maximum fines, restitution, and other costs.

41

41

Where can you write a citation? What are the pros? What are the cons?

- Standing outside your passenger side door
- Standing at the rear passenger side of the patrol vehicle
- Standing on the roadside/sidewalk
- Sitting in or partially in the patrol vehicle
- Other options?

42

42

What factors might influence where you write your citation?

- Perceived threat
- Weather
- Environment (roadside conditions etc.)
- E-Cite / In-car data systems
- Availability of a cover officer
- Traffic conditions/ stop location (high speed roadways, parking lots)
- Others?

43

43

ORS 131.125 – Statute of limitations for a violation

8. Prosecutions for other offenses must be commenced within the following periods of limitations after their commission:

C. For a violation, six months

44

44

ORS 153.076 – Conduct of trial, Evidence needed for violation conviction

2. Burden of proving the charged violation by a **preponderance of the evidence**.

45

45

Activity – Citation completion

Provide photocopies of citations for students to complete in class or during free time

46

46

Activity – Traffic stop communication

(Groups of 3 or 4)

- Practice your tactical communication as though you've just stopped a vehicle for failing to stop at a stop sign.
- Practice first contact
- Delivery of a citation
- Non-confrontational close.
- Observer(s) provide feedback.

47

47

Activity – Traffic stop communication

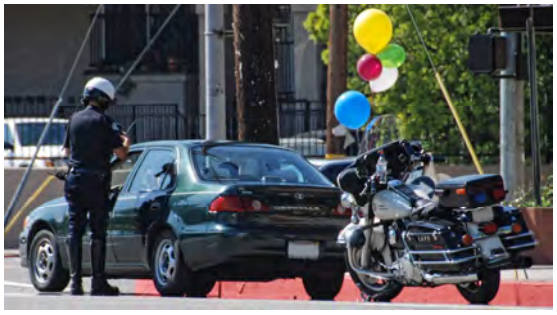
(Groups of 3 or 4)

- Practice your tactical communication as though you've just approached the driver on an unknown risk traffic stop.
- Practice first contact.
- Driver is verbally confrontational and does not want to give you their driver license.
  - Pivot
  - 5 Step
- Non confrontational closure
- Observer(s) provide feedback.

48

48

END



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Motor Vehicle Code 3

1

Course Goals

This course is designed to:

Develop the officers understanding, knowledge, and skills relating to unknown-risk and high-risk vehicle stops

Develop the officers ability to assess conditions and respond appropriately to maintain personal and public safety

Minimize potential liability and public concern by using accepted vehicle stops practices

2

2

Learning Outcomes

Following completion of this course, students will be able to:

- Demonstrate a clear understanding of subject matter issues, objectives, purpose of vehicle stops and officer safety.
- Demonstrate knowledge and skills related to critical tactical concepts: Cover and Concealment, Communication, Control and Containment, Contact and Cover, and Tactical Advantage.
- Perform fundamental skills: Pre-stop communication, tactical communication, vehicle positioning, preparing and issuing a citation, officer approach, violator control tactics, officer positioning, transition to high risk, weapon control, vehicle clearing.

3

3

Speeding Violations

- 811.111 Violation speed limit
- 811.100 Violation basic rule
- 811.125 Speed racing
- Where is speeding in a school zone located?
- 811.124 Children are present



4

Special Zones:

811.230 – Highway Work

- Area must be identified
- Only when workers present?



5

Special Zones: 811.235 – School Zone

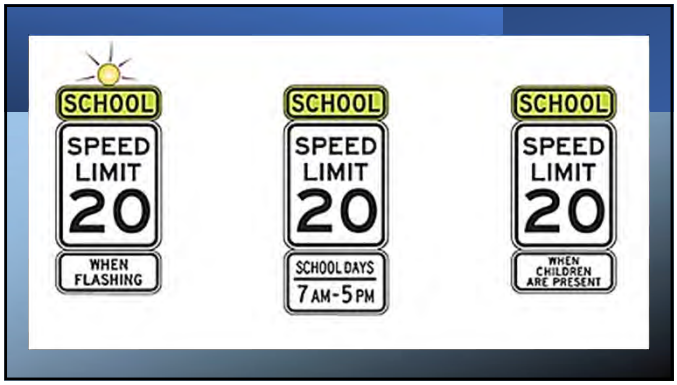
Notice of the school zone is indicated plainly by traffic control devices conforming to the requirements established under ORS 810.200 and posted under authority granted by ORS 810.210 and:

a) Children are present as described in ORS 811.124; or

b) A flashing light is used as a traffic control device and operated as provided under ORS 810.243

Fines double

6



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Special Zones: 811.483 – Safety Corridor

The Department of Transportation shall post signs in safety corridors chosen by the department indicating that fines for traffic offenses committed in those safety corridors will be doubled

Fines double

8

8



9

Major Traffic Crimes

10

Scenario #1

- You attempt to stop a vehicle for speeding, 35 mph in a 25 mph zone. Your emergency lights and siren are activated. (stop at 4:10)



11

11

ORS 811.540 – Attempt to elude police

The person is operating a motor vehicle; and

A police officer use lights, sirens or other signal and;
The person eludes in vehicle, or
The person gets out of the vehicle and flees

12

12

ORS 811.540 – Attempt to elude police, Continued

Affirmative defense:

If officer isn't driving a marked police car, person can lawfully drive to "safe" area.

Fleeing in vehicle is C Felony

Fleeing on foot A misdemeanor

13

13

Scenario #2 Stop at 6:10



Bunch of violations, but what else is it?

14

14

ORS 811.140 – Reckless driving

Drives a vehicle on a highway or other premises in a manner that endangers the safety of persons or property.

Class A misdemeanor

If it <u>likely</u> endangers person or property it's?

Careless Driving – ORS 811.135

Class B violation or class A if contributes to a crash

15

15

Scenario #3



16

16

ORS 811.700 – Hit and run property

Involved in collision does not do following:

- Stop
- Remain at scene
- Provide;
  - Name and address driver, vehicle owner and occupants
  - Insurance info
  - If requested driver license

If can't determine owner leave a note with above info

Class A misdemeanor

17

17

ORS 811.705 – Hit and run injury

Same as with property and;

- Render aid if necessary
- May leave scene if necessary to call or render aid

Class B or C felony depending on injury

18

18

ORS 811.182- Driving While Suspended (DWS) felony/misdemeanor

Drives a vehicle while being criminally suspended or revoked

Class A misdemeanor or B felony depending on why suspended

19

19

ORS 813.010 - Driving Under Influence of Intoxicants (DUII)

Drives a vehicle and;

- Under the influence alcohol, marijuana, inhalants, psilocybin and/or controlled substances.
- Blood alcohol content .08%

Class A misdemeanor or C felony with history

20

20

Other traffic crimes





21

21

Scenario #1

- During lawful traffic stop the driver gives you the name and date of birth of his friend instead of his own.



22

22

ORS 807.620 – False info to police

Knowingly uses or gives a false or fictitious name, address or date of birth to any police officer who is enforcing motor vehicle laws

Class A misdemeanor

23

23

Scenario #2



24

24

ORS 811.231 - Reckless endangerment of highway worker

Drives motor vehicle in highway work zone;

- Endangers person or property
- Intentionally strike traffic control device

Class A misdemeanor

25

25

What else do you need to know in regards to unknown risk traffic stops?



26

26

High Risk Vehicle Stops

Why would an officer make a high-risk vehicle stop?

- Serious crime
- Known weapons
- High risk or known violent driver
- Other reasons?

27

27

High Risk Vehicle Stops

What makes this different than an unknown-risk stop?

- Number of officers/other resources needed
- Positioning of patrol cars
- Calling the occupants out of the car to detain them
- Use of specific clear commands / PA system
- Stop location
- Use of cover

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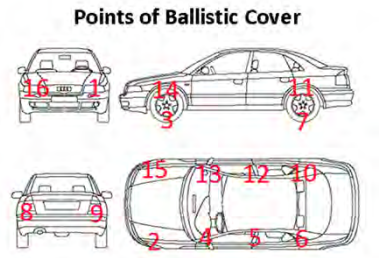
How effective is your vehicle at providing cover?



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Window shape



Rake



Camber

30

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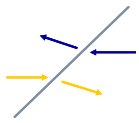
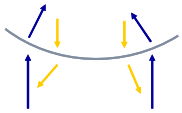
Window shape



Rake



Camber

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Why this matters



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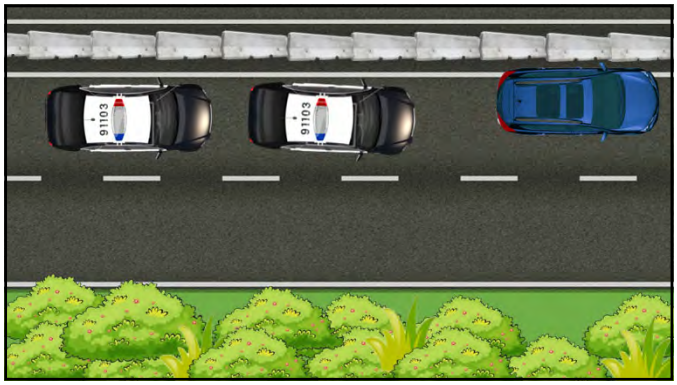

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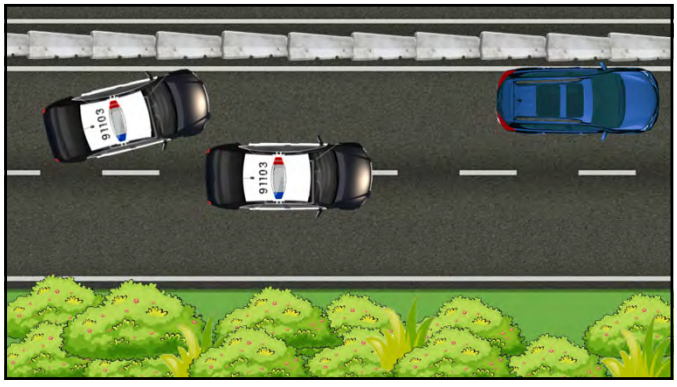

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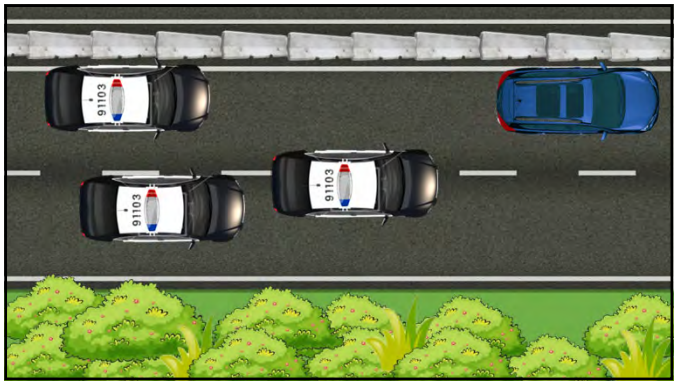

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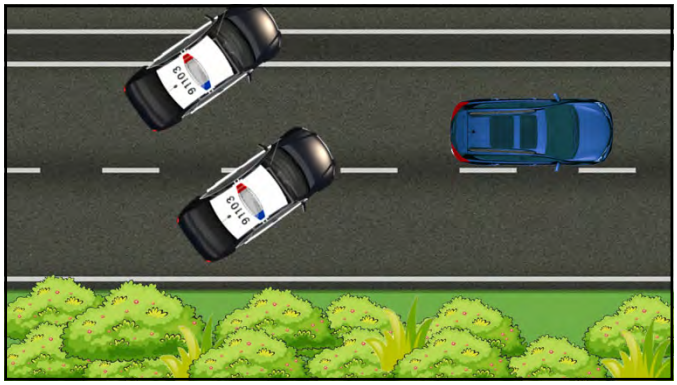

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High risk vehicle stops are a concept, remain flexible

What are important considerations?

- Use appropriate cover
- Slow down
- Communicate with other officers
- Someone should be in charge
- Control vehicle occupants
- Other considerations?

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END



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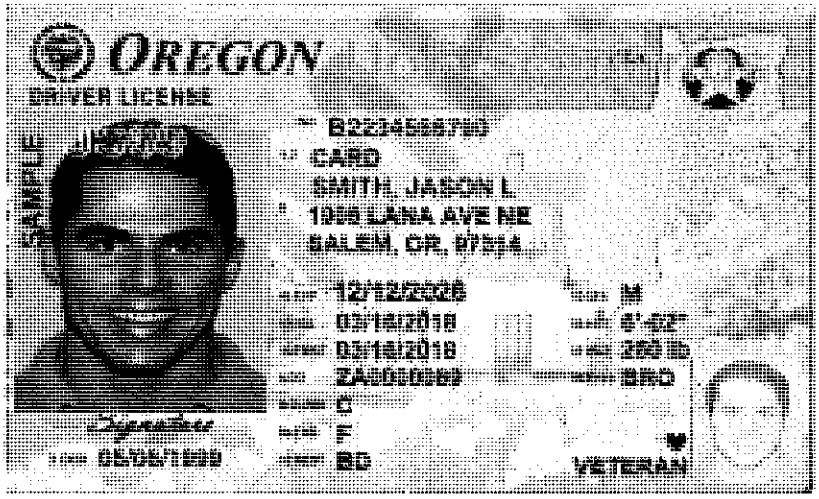
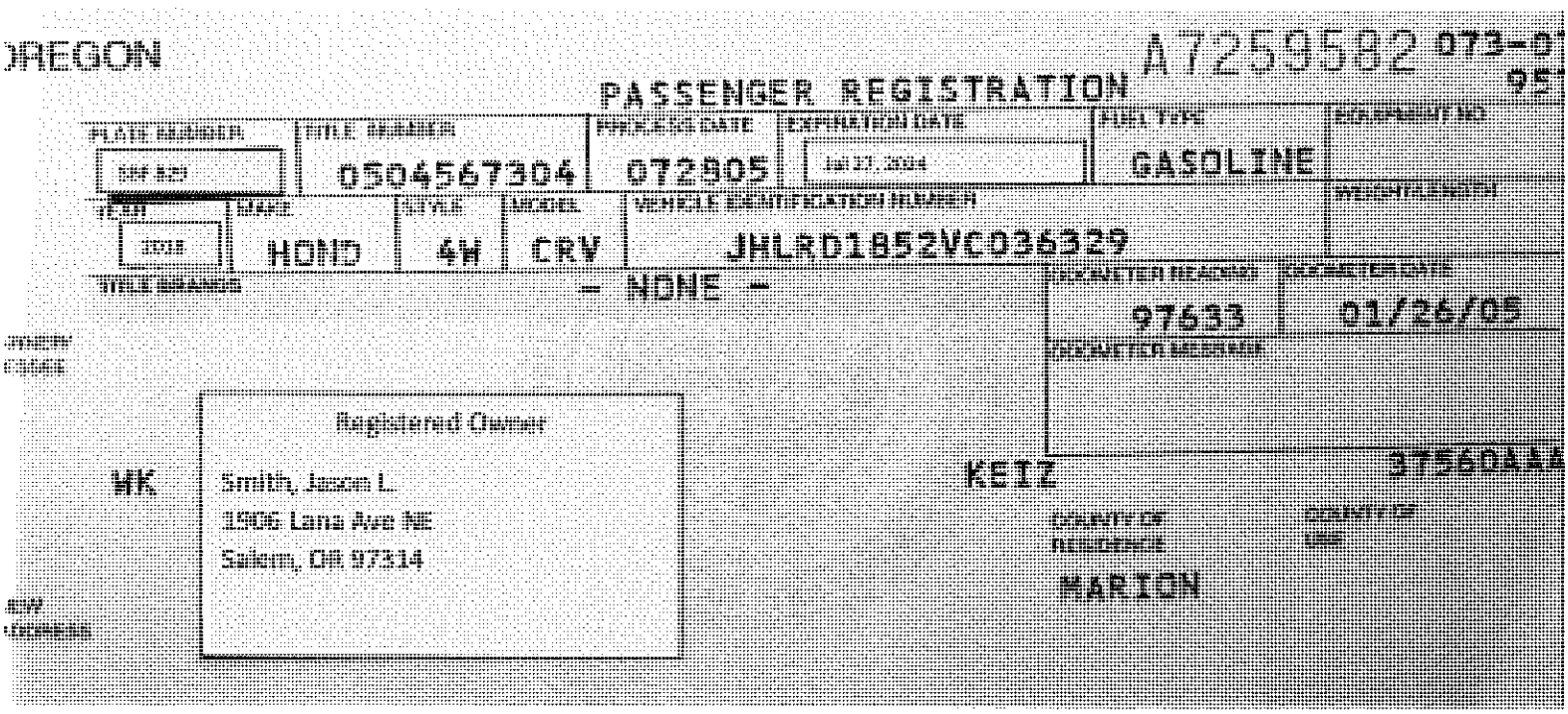

OREGON
DRIVER LICENSE
SAMPLE
CARD
SMITH, JASON L
1906 LANA AVE NE
SALEM, OR, 97314
12/12/2026
03/16/2018
03/16/2018
ZA0000089
C
F
BD
M
6'-02"
260 lb
BRO
VETERAN
Signature
05/06/1999


OREGON
A7259582 073-0
95
PASSENGER REGISTRATION
PLATE NUMBER
TITLE NUMBER
0504567304
PROCESS DATE
072805
EXPIRATION DATE
FUEL TYPE
GASOLINE
EQUIPMENT NO
YEAR
MAKE
HOND
STYLE
4W
MODEL
CRV
VEHICLE IDENTIFICATION NUMBER
JHLRD1852VC036329
WEIGHT/LENGTH
TITLE BRANDS
- NONE -
ODOMETER READING
97633
ODOMETER DATE
01/26/05
ODOMETER MESSAGE
Registered Owner
Smith, Jason L.
1906 Lana Ave NE
Salem, OR 97314
WK
KEIZ
37560AAA
COUNTY OF RESIDENCE
MARION
COUNTY OF USE

WA USA **WASHINGTON** DRIVER LICENSE



4d LIC# MPLJA18580 9 CLASS DONOR
1 MAPLE
2 JAMIE A
Use of Force Scenarios
3 DOB 01/06/1988 4a ISS 01/06/2019
8 123 STREET ADDRESS
YOUR CITY WA 99999-0000
15 SEX F 18 EYES BRO
16 HGT 5'-08" 17 WGT 165 lb
12 RESTRICTIONS 9a END NONE
NONE 4b EXP 08/12/2025



Jamie A Maple
5 DD SAMPLJA185801234567XX1101
Veteran
REV 01/06/2019

LICENSING

Registration Certificate

Model Year	Make	Model	Body Style	Vehicle identification number (VIN)	Scale Weight
2018	Chev	Silverado	UT	2G1WB57K391172039	

Plate/Tag no	Tab/Decal no	Primary vehicle use type	Issue date	Exp date
A001WSU	Z123456		01/04/2020	01/04/2024
Plate/Tag no	Tab/Decal No	Vehicle use type	Issue date	Exp date

Gross Weight	Gr wt start date	Gross weight exp date	Fleet no	Equip no

Basic Police Academy
Motor Vehicle Code



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Motor Vehicle Code 1

Basic Police

Course Goals

This course is designed to:

Develop the officers understanding, knowledge, and skills relating to unknown-risk and high-risk vehicle stops

Develop the officers ability to assess conditions and respond appropriately to maintain personal and public safety

Minimize potential liability and public concern by using accepted vehicle stops practices

2

Learning Outcomes

Following completion of this course, students will be able to:

Demonstrate a clear understanding of subject matter issues, objectives, purpose of vehicle stops and officer safety.

Demonstrate knowledge and skills related to critical tactical concepts: Cover and Concealment, Communication, Control and Containment, Contact and Cover, and Tactical Advantage.

Perform fundamental skills: Pre-stop communication, tactical communication, vehicle positioning, preparing and issuing a citation, officer approach, violator control tactics, officer positioning, transition to high risk, weapon control, vehicle clearing.

3

Session #1 Review

- Police officer authority
- What the stop looks like
- What the radio traffic sound like
- What the stop sounds like

4

Requirements for officer



5

ORS 810.400 – Uniform or badge required

To enforce the traffic laws officer

- shall be in uniform or
- shall conspicuously display an official identification card



6

ORS 810.420 – Use of speed measuring device

1. When vehicle has been checked by a speed measuring device the driver of the vehicle may be stopped and issued a citation by a police officer if the officer is in **uniform** and has either:
   a) Observed the recording of the speed of the vehicle by the device; **or**
   b) Probable cause to detain based upon a description of the vehicle or other information received from the officer who has observed the speed of the vehicle recorded.



7

ORS 810.420 – Use of speed measuring device

2. A police officer may not issue a citation based on a speed measuring device unless the officer has taken and passed a training course in the use of the speed measuring device.



8

When you turn on emergency lights what are people required to do?



9

ORS 811.145 – Failure to yield to emergency vehicle

1. If an ambulance or emergency vehicle that is using a **visual or audible** signal approaches the vehicle the person does not do all of the following:
   a) Yield the right of way to the ambulance or emergency vehicle.
   b) Immediately drive to a position as near as possible and parallel to the right-hand edge or curb of the roadway clear of any intersection.
   c) Stop and remain in such position until the emergency vehicle or ambulance has passed.

10

ORS 811.145 – Failure to yield to emergency vehicle…… continued

3. This section does not relieve the driver of an emergency vehicle or ambulance from the duty to drive with due regard for the safety of all persons using the highway, nor does this section protect the driver of any such vehicle from the consequence of an arbitrary exercise of the right of way granted under this section.

4. The offense described in this section is a Class B traffic violation.

11

Requirements of vehicle occupants

- What documents do you typically ask for on a stop?
  - Driver license.



Is this required? What are consequences?

12

ORS 807.570 – Fail to present and carry

1. A person commits the offense of failure to carry a license or to present a license to a police officer if the person either:
   a) Drives any motor vehicle upon a highway in this state without a license, driver permit or out-of-state license in the person's possession; or
   b) Does not present and deliver such license or permit to a police officer when requested by the police officer under any of the following circumstances:
      i. Upon being lawfully stopped or detained when driving a vehicle.
      ii. When the vehicle that the person was driving is involved in an accident.
4. A police officer may detain a person arrested or cited for the offense described in this section only for such time as reasonably necessary to investigate and verify the person's identity.
5. The offense described in this section is a Class C misdemeanor.

Does this apply to passengers?

13

What do you do when someone refuses to give you their driver license?

Pivot

Are there other means to get what you need?

What are those means?



14

What do you do when someone refuses to give you their driver license?

5-Step Appeal:

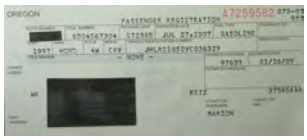
- "Would you please…" Ask again to make sure understood.
- "This is policy/procedure/law…" Tell them why.
- "You have a couple of options here…" Present them with options
- "Are you willing to …" Ask if anything can do/say to get to comply
- Decision… Act

Legal and tactical considerations?

15

Requirements of vehicle occupants?

- What documents does law enforcement as for on a stop? What is required?
  - Driver license
  - Registration.



Is this required? What are consequences?

16

ORS 803.505 – Failure to carry registration

1. The owner of a vehicle registered in this state must keep registration card in or on the vehicle in a manner that makes it readily available for police inspection.

   When will it be on the vehicle?

2. The offense described in this section is a Class D traffic violation.

17

Requirements of vehicle occupants?

- What documents does law enforcement as for on a stop? What is required?
  - Driver license
  - Registration
  - Proof of insurance.



Is this required? What are consequences?

18

ORS 806.012 – Fail carry proof of financial responsibility

1. A person commits the offense if the person operates a motor vehicle in this state and does not have in the vehicle current proof of compliance with financial responsibility requirements.
3. This section does not apply:
   b) If a police officer verifies proof of compliance with financial responsibility requirements through the Law Enforcement Data System.
4. The court shall dismiss any charge under this section if the person delivers to the court proof of compliance with financial responsibility requirements at the time of the violation.
5. The offense described in this section is a Class B traffic violation

19

ORS 806.010 – Driving uninsured

1. A person commits the offense if the person operates a motor vehicle in this state on any highway or premises open to the public in this state without either:
   a) The person being insured while driving the vehicle under a motor vehicle liability insurance policy that meets the requirements described under ORS 806.080 (Insurance); or
   b) The person or the owner of the vehicle provides other satisfactory proof of compliance with the financial responsibility requirements of this state.
   c) Exemptions ORS 806.020
5. Class B traffic violation.

20

Words matter…. So do definitions



21

ORS 801.260 – Emergency vehicle

- "Emergency vehicle" means a vehicle that is equipped with lights and sirens and that is any of the following:

1. Operated by public police, fire or airport security agencies.
2. Designated as an emergency vehicle by a federal agency.
3. Designated as an emergency vehicle by the Director of Transportation.






22

ORS 801.590 - Vehicle

- "Vehicle" means any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means. "Vehicle" does not include a manufactured structure.





23

801.360 – Motor Vehicle

- Motor vehicle" means a vehicle that is self-propelled or designed for self-propulsion.





24

ORS 801.305 - Highway

1. "Highway" means every public way, road, street, thoroughfare and place, including bridges, viaducts and other structures open, used or intended for use of the general public for vehicles or vehicular traffic as a matter of right.
2. "highway" includes premises open to the public that are owned by a homeowners association and whose boundaries are contained within a service district established on or before July 1, 2002




25

ORS 801.400 – Premises open to the public

"Premises open to the public" includes any premises open to the general public for the use of motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for the use of the premises.

- Pocket Press page 213 – laws enforceable on premises open to the public



26

Is there a violation? What is it? Why?



27

ORS 811.265 – Fail obey traffic control device

1. A person commits the offense if the person drives a vehicle and the person does any of the following:

   a) Fails to obey the directions of any traffic control device.
   b) Fails to obey any specific traffic control device described in ORS 811.260

2. Exceptions?
   ORS 820.300, ORS 811.360, ORS 814.414, ORS 814.416

28

Is there a violation? What is it? Why?

- https://youtu.be/ZyrjUkuFSxU?t=10

29

ORS 811.260 – Response to traffic control devices

Steady circular yellow signal

A driver facing the yellow light shall stop.

If a driver cannot stop safely, the driver may drive cautiously through the intersection.



30

Is there a violation? What is it? Why?



31

ORS 811.370 – Fail to maintain lane

1. Operates a vehicle upon a roadway that is divided into two or more clearly marked lanes for traffic and the driver does not:
   a) Operate the vehicle as nearly as practicable entirely within a single lane; and
   b) Refrain from moving from that lane until the driver has first made certain that the movement can be made with safety.
2. Commercial motor vehicle more than one lane when it is not practicable to remain entirely within one lane.
3. The offense described in this section is a Class B traffic violation.

32

Is there a violation? What is it? Why?



33

Another look….



34

ORS 811.210 – Fail to wear seatbelt

1. Person commits the offense of failure to properly use safety belts if the person:

   a) Operates a motor vehicle on the highways of this state and is not properly secured with a safety belt or safety harness as required by subsection (2) of this section.

Exemptions - ORS 811.215

35

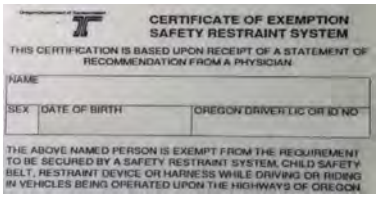
ORS 811.210 – Fail to wear seatbelt

2. To comply with this section:
   a) Child under two years of age must be rear-facing position.
   b) Child 40 pounds or less must utilize child safety system that meets the minimum standards
   c) Child weighs more than 40 pounds and who is four feet nine inches or shorter must utilize child safety system that elevates the person so that a safety belt or safety harness properly fits the person.
   d) taller than four feet nine inches must be properly secured with a safety belt or safety harness.
   e) a person who is eight years of age or older need not be secured with a child safety system but must be properly secured with a safety belt or safety harness

ORS 815.055 (Rules establishing standards for safety belts, harnesses and child safety systems)

36

ORS 811.215 – Seatbelt exemption



CERTIFICATE OF EXEMPTION
SAFETY RESTRAINT SYSTEM

THIS CERTIFICATION IS BASED UPON RECEIPT OF A STATEMENT OF RECOMMENDATION FROM A PHYSICIAN.

NAME

SEX	DATE OF BIRTH	OREGON DRIVER LIC OR ID NO

THE ABOVE NAMED PERSON IS EXEMPT FROM THE REQUIREMENT TO BE SECURED BY A SAFETY RESTRAINT SYSTEM, CHILD SAFETY BELT, RESTRAINT DEVICE OR HARNESS WHILE DRIVING OR RIDING IN VEHICLES BEING OPERATED UPON THE HIGHWAYS OF OREGON.

37

Is there a violation? What is it? Why?



38

ORS 811.365 – Illegal U-turn

1. Person turns the vehicle so as to proceed in the opposite direction in any of the following places:
   a) Within an intersection where traffic is controlled by an electrical signal. This paragraph does not apply where posted otherwise.
   b) Upon a highway within the limits of an incorporated city between intersections.
   c) At any place upon a highway where the vehicle cannot be seen by another driver approaching from either direction within a distance of:
      I. 500 feet within the incorporated limits of a city; or
      II. 1,000 feet outside a city.

39

Is there a violation? What is it? Why?



40

ORS 811.507 – Operate motor vehicle while using electronic device

2. A person commits the offense of driving a motor vehicle while using a mobile electronic device if the person, while driving a motor vehicle on a highway or premises open to the public:
   a) Holds a mobile electronic device in the person's hand; or
   b) Uses a mobile electronic device for any purpose

Exemptions…..

41

What about this?



42

Is there a violation? What is it? Why?



43

ORS 811.350 – Dangerous left turn

1. A person commits the offense of making a dangerous left turn if the person:
   a) Is operating a vehicle;
   b) intends to turn the vehicle to the left within an intersection or into an alley, private road, driveway or place from a highway; and
   c) Does not yield the right of way to a vehicle approaching from the opposite direction that is within the intersection or so close as to constitute an immediate hazard.

44

ORS 811.335 – Unlawful or unsignaled turn

1. Person turns the vehicle right or left when:
   a) The movement cannot be made with reasonable safety; or
   b) The person fails to give an appropriate signal continuously during not less than the last 100 feet traveled by the vehicle before turning.
2. Appropriate signals for use while turning are as designated under ORS 811.395 and 811.400
3. The offense described in this section, making an unlawful or unsignaled turn, is a Class D traffic violation.

45

Is there a violation? What is it? Why?



46

ORS 803.560 – Improper display

1. A person commits the if the person owns or drives a vehicle on which the display of registration stickers provides proof of valid registration and:
   a) The stickers are not displayed in a manner required by the Department of Transportation; or
   b) The stickers are displayed on the vehicle after the registration period shown on the stickers.
3. The court shall dismiss any charge under this section if the person charged delivers to the clerk of the proof of registration of the vehicle at the time of the violation.
4. The offense described in this section is a Class D traffic violation.

47

ORS 803.455 – Failure to renew

1. A person commits the offense if the registration period for a vehicle registered in the person's name expires and the person does not pay the fee required for renewal of registration.
4. The offense described in this section is a Class D traffic violation.

48

ORS 803.550 – Illegal alterations or display of plates

1. A person commits the offense of illegal alteration or illegal display of a registration plate if the person knowingly does any of the following:
   a) Illegally alters a registration plate in a manner described in subsection (2).
   b) Causes a registration plate to be illegally displayed as described in subsection (3).
   c) Operates any vehicle that is displaying a registration plate that is illegally altered/displayed.
   d) Owns and causes or permits a vehicle to display a registration plate that is illegally altered/displayed.

49

ORS 803.550 – Illegal alterations or display of plates….. continued

2. A registration plate is illegally altered if the plate:
   a) Any change of the color, configuration, numbers, letters or material of the plate.
   b) Any material or covering, other than a frame or plate holder, placed on, over or in front of the plate that alters the appearance of the plate.
   c) Any frame or plate holder that obscures the numbers, letters or registration stickers, so as to render them unreadable.

50

ORS 803.550 – Illegal alterations or display of plates…… continued

3. A registration plate is illegally displayed if the plate:
   a) Is displayed on a vehicle other than the vehicle for which the plate was issued; or
   b) Displays registration stickers that contain an expiration date that is different from the expiration date shown upon the vehicle registration records of the Department of Transportation.

51

Is there a violation? What is it? Why?



52

ORS 816.330 – Operate vehicle without required lighting

1. A person commits the offense if the person does any of the following:
   a) Drives or moves on any highway any vehicle that is not equipped with lighting equipment that is required for the vehicle under ORS 816.320 (Lighting equipment required for motor vehicles).
   b) The offense described in this section is a Class C traffic violation

53

SB 1510 impact on required lighting

1. A police officer may not initiate a traffic violation stop for unlawful use or failure to use lights or operation without required lighting equipment if the vehicle:
   a) Has a headlight that is in compliance;
   b) Has a taillight that is in compliance;
   c) Has a brake light that is in compliance;
   d) Has a taillight that does not emit red light; or
   e) Has a registration plate light that is not in compliance.
2. A police officer may issue a citation for unlawful use or failure to use lights or operation without required lighting equipment only if the police officer has already stopped the driver for a separate traffic violation or other offense.

54

ORS 816.320 – required lights

- Headlights.
- Taillights.
- Brake lights.
- Rear reflectors.
- Turn signal lights.
- Registration plate light.






55

ORS 153.019 – Presumptive fines

Except as provided in ORS 153.020 (Presumptive fines), the presumptive fines for violations are:

- $440 for a Class A violation.
- $265 for a Class B violation.
- $165 for a Class C violation.
- $115 for a Class D violation



56

ORS 153.020 – Presumptive fines highway work zones, school zones, safety corridors

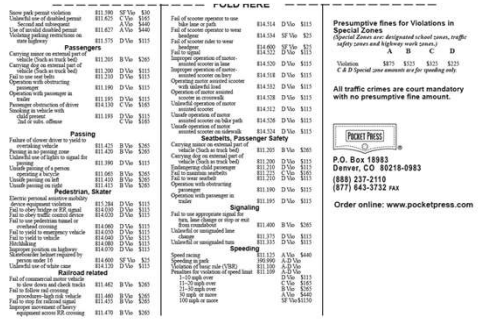
The presumptive fines for violations in highway work zones, school zones and safety corridors are:

- $875 for a Class A violation.
- $525 for a Class B violation.
- $325 for a Class C violation.
- $225 for a Class D violation



57

ORS resources – thumb drive



Presumptive fines for Violations in Special Zones

(Special Zones are: designated school zones, traffic safety zones and highway work zones.)

	A	B	C	D
Violation	$870	$525	$325	$225

C & D Special zone amounts are for speeding only.

All traffic crimes are court mandatory with no presumptive fine amount.

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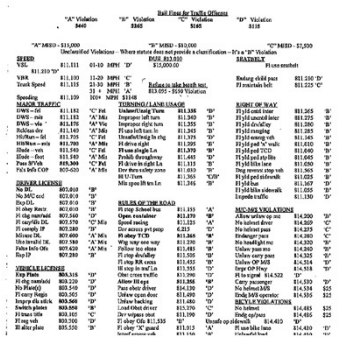
ORS resources – Agency cheat sheet



Bail Fines for Traffic Offenses

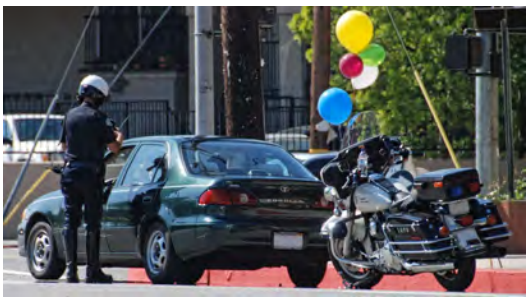
"A" Violation $660 | "B" Violation $365 | "C" Violation $165 | "D" Violation $110

"A" MISD - $15,000 | "B" MISD - $10,000 | "C" MISD - $5,000

Unclassified Violations - Where statute does not provide a classification – It's a "B" Violation

59

END



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Basic Police Academy

Officer In Court



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Officer in Court

Instructional Goal:

This course is designed to:

1. Introduce a new officer to courtroom basics, including types of proceedings, and the role of the officer and other parties in proceedings.
2. Develop a new officer's ability to provide courtroom testimony.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate the role of the officer in various court proceedings.
2. Demonstrate basic courtroom testimony skills.

Content Outline:

- Court System Review
- Court Participants: Judge, District Attorney, Defense Attorney, Juries
- Criminal Proceedings
- Law Enforcement Testimony: Knowledge of the Facts of the Case; Knowledge of Laws, Policies, and Procedures; Your Character
- Preparing for Court
- Presenting in Court

Remember back to your Introduction to the Justice System class? There you covered the various types of courts. This course will introduce some of the key participants and their various roles, including yours. Before completing academy training, you will have several opportunities to practice testifying in a mock court.

The American Bar Association describes courts as divided into three layers on both the state and federal system.

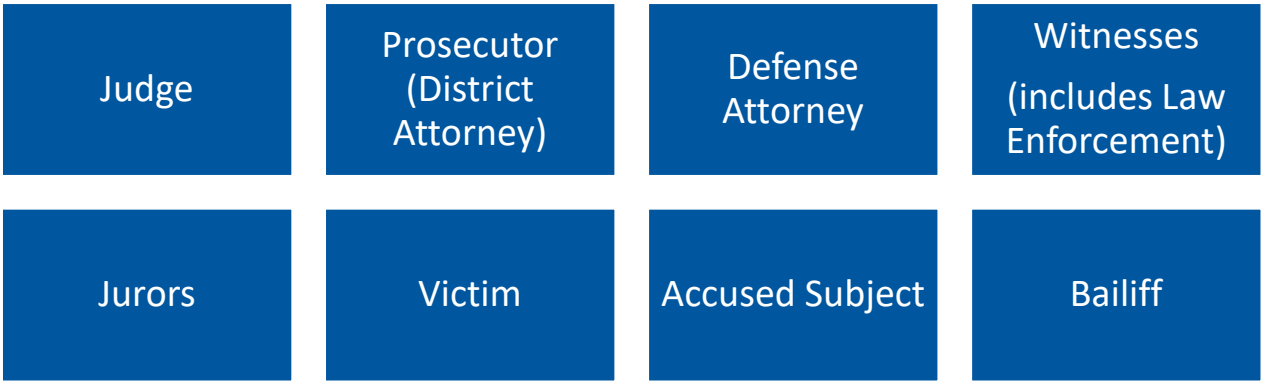
1. Trial courts- Where cases start
2. Intermediate (appellate) courts- Where most appeals are first heard
3. Courts of last resort (usually called supreme courts) - Which hear further appeals and have final authority in the cases they hear.

Layer	Federal Courts	State Courts
1	Federal District Courts	**Circuit Courts** County Courts Justice Courts **Municipal Courts** Specialty Courts: Drug Court, Mental Health Court, etc.
2	U.S. Court of Appeals	Oregon Court of Appeals
3	U.S. Supreme Court	Oregon Supreme Court

This course will focus on circuit and municipal court proceedings, which are likely where you will spend most of your court time.

Court Participants

In a criminal proceeding, there are several primary participants in addition to other professionals working in the court system.



This section will introduce the role of the first five participants: judge, prosecutor, defense attorney, law enforcement (witness), and jurors. Unless otherwise noted, the following participant definitions are from the Cornell Law School Legal Information Institute https://www.law.cornell.edu/wex/

The Role of Judges

A judge is an appointed or elected official who decides legal disputes in court.

The American Bar Association describes judges in the following way: Even though he or she works for the state, a judge is not a law enforcement officer. A judge is not a prosecutor. Judges don't arrest people or try to prove them guilty. Judges are like umpires in baseball or referees in football or basketball. Their role is to see that both sides follow the rules of court procedures. Like the ump, they call 'em as they see 'em, according to the facts and law—without regard to which side is popular (no home-field advantage), without regard to who is "favored," without regard for what the spectators want, and without regard to whether the judge agrees with the law.

The Role of the District Attorney/Prosecutor

A District Attorney (DA) is a lawyer who is elected or chosen by local government officials to represent the state government in criminal cases brought in a designated county or judicial district. A DA's duties typically include reviewing police arrest reports, deciding whether to bring criminal charges against arrested people and prosecuting criminal cases in court. The DA may also supervise other attorneys, called Deputy District Attorneys or Assistant District Attorneys. In some states, a District Attorney may be called a Prosecuting Attorney, County Attorney, or State's Attorney. In the federal system, the equivalent to the DA is a United States Attorney. The country has many U.S. Attorneys, each appointed by the president, who supervise regional offices staffed with prosecutors called Assistant United States Attorneys.

The Role of the Defense Attorney

A defense attorney is an attorney representing the defendant in a lawsuit or criminal prosecution. Attorneys who regularly represent clients in civil lawsuits are often called "plaintiffs' attorneys."

The Role of Juries

A jury is a group of people empowered to make findings of fact. During a court trial, the jury decides the truth of disputed facts while the judge decides the rules of law, including whether particular evidence will be presented to the jury.

There are generally two types of juries that you will interact with: grand juries and trial juries (formally called Petit Juries).

Grand Jury	Trial Jury
A group of people summoned to sit on a jury that decides whether to return an indictment. An indictment formally charges a person with committing a crime and begins the criminal prosecution process.	A group of people summoned and sworn to decide on the facts in issue at a trial.
Grand juries convene for a period of one month up to one year, hearing multiple cases. Grand juries are usually reserved for felony cases. The grand jury proceedings are held in private; the suspected criminal actor is usually not present at the proceedings. Criminal prosecutors present the case to the grand jury. The grand jury assesses whether there is an adequate basis for bringing a criminal charge against a suspect (aka True Bill). The grand jury may request that the court compel further evidence, including witness testimony and subpoenas of documents. The grand jury is generally free to pursue its investigations unhindered by external influence or supervision.	The United States Constitution guarantees the right to trial by jury for most criminal and many civil matters. The American Bar Association describes trial juries in the following way: The jury is composed of people who represent a cross-section of the community. The jury listens to the evidence during a trial, decides what facts the evidence has established, and draws inferences from those facts to form the basis for their decision. The jury decides whether a defendant is "guilty" or "not guilty" in criminal cases, and "liable" or "not liable" in civil cases. When cases are tried before a jury, the judge still has a major role in determining which evidence may be considered by the jury. The jury is the fact-finder, but it is left to "find" facts only from the legally admissible evidence. The judge instructs the jury on the legal principles or rules that must be followed in weighing the facts. If the jury finds the accused guilty or liable, it is up to the judge to sentence the defendant.

The Role of Law Enforcement as a witness

Police bear an important role in a court proceeding. A criminal case arrives in court following a law enforcement investigation, arrest, and written report. Many criminal cases do not go to trial due to the defendant pleading guilty as a result of a negotiation between the District Attorney and the defense attorney. As cases proceed through the criminal court, police become involved in multiple ways, including providing testimony.

The Criminal Proceeding

In a criminal proceeding, the state (District Attorney/Prosecutor) has the burden of proof. Through the trial, the state must prove beyond a reasonable doubt that the defendant is guilty. The state will present evidence including direct evidence (confessions, weapons, eyewitness accounts), and circumstantial evidence (the appearance of a crime scene, physical evidence which suggests criminal activity, and testimony suggesting a connection with a crime). What evidence can be admitted is governed by strict rules.

The *Brady v. Maryland* decision and subsequent rulings have made it a duty of all law enforcement agencies to (1) identify and provide to the prosecution any exculpatory material that would have a reasonable probability of altering the results in a trial, or any material that could reasonably mitigate the sentencing of a defendant and (2) any material relevant to the credibility of government witnesses, including but not limited to police officers.

Duty to disclose: The affirmative duty of law enforcement to notify the prosecutor of any exculpatory material. Agencies should consult with their legal advisor to determine if there are any additional applicable notification requirements.

Exculpatory evidence: Evidence that is favorable to the accused; is material to the guilt, innocence, or punishment of the accused; and/or may impact the credibility of a government witness, including a law enforcement officer or other agency employee. Impeachment material is included in the disclosure requirements.

-International Association of Chiefs of Police

The District Attorney will present evidence by calling witnesses to provide testimony. Questions asked of witnesses are called direct examination and may include matters of fact, sometimes opinions, or the identification of documents or other items of evidence. During this process, the defense attorney may make objections based on various rules of evidence. The judge will decide whether to sustain (attorney must re-phrase the question or ask a different question) or overrule (the questioning may continue) an objection. After the District Attorney completes their questioning, the defense attorney may cross-examine the witness. Cross-examination is generally limited to matters that were raised during the direct examination. The purpose of cross-examination is to test the credibility of statements made during direct examination. Defense attorneys may try to reduce the credibility of the witness or the evidence.

After the presentation of evidence, the District Attorney will announce that the case rests. During this time, the defense attorney may ask the judge to make a ruling, such as to dismiss the charges due to the state not adequately proving the case. If the judge makes such a ruling, the proceedings are over. If the charges are not dismissed, the defense attorney is allowed to present evidence by calling witnesses to testify. This follows the same process as described above regarding direct and cross-examination and rules of evidence.

Following the defense presenting their evidence, the District Attorney has the opportunity to present rebuttal witnesses or evidence.

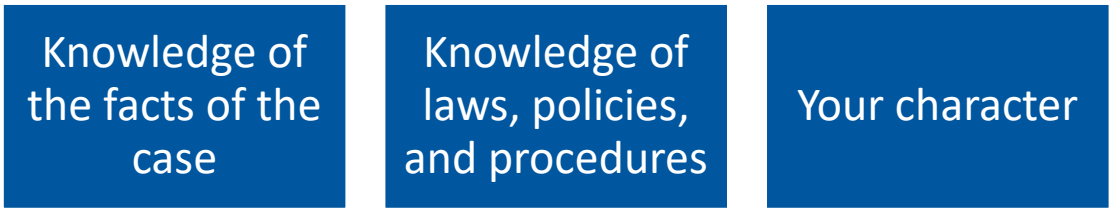
After all evidence has been presented, the case is ready to go to the jury. The proceedings will conclude with each attorney presenting closing arguments summarizing the evidence. The judge will provide instructions to the jurors before releasing them to the jury room to deliberate. After reaching a verdict, the parties reconvene in the courtroom for the decision to be announced. Possible verdicts in a criminal case are guilty and not guilty (acquitted).

Law Enforcement Testimony

Being called to testify in court can be stressful due to the fear of public speaking, a lack of control over the process, the burden to prove guilt beyond a reasonable doubt, and even horror stories from fellow officers. In the article, *Overcoming the Terror of Testifying*, Lexipol states the best way to overcome this anxiety is by being prepared.

Preparation begins long before the court date, with a pre-trial meeting with the District Attorney/Prosecutor. This meeting serves to identify and discuss any weaknesses in the case and how to best address them. At this time, you will go over case reports and evidence to make sure all appropriate materials are provided to the defense. Be sure to familiarize yourself with the case report before this meeting.

Lexipol suggests three areas to prepare against defense attorney "attacks":



Knowledge of the Facts of the Case

One of the main areas the defense will attack is your knowledge of the facts in the report. Thoroughly investigating and documenting your incident is key. This is like the open book part of a test. If you have ever taken an open-book test without preparing for it, you may have found yourself scrambling for answers. If you had prepared ahead of time, you probably found yourself breezing through the exam. Prepare for the open-book test by studying the report well enough to know where the answers are located. Additionally, review any relevant video and take notes if necessary. Chances are there is a lot in the video that may spur independent recollections not in the written report.

> "You must be the smartest person in the courtroom on the facts about which you are testifying."
>
> Michelle Heldmyer, FLETC

Source: Lexipol "Overcoming the Terror of Testifying" (2019)

https://www.lexipol.com/resources/blog/overcoming-terror-of-law-enforcement-courtroom-testimony/

Knowledge of Laws, Policies, and Procedures

When factual attacks are not working for the defense lawyer, they may attack your knowledge of laws, policies, and procedures. When preparing for court, study up on any relevant laws or training you have received in the specific issues surrounding your case. If necessary, take a copy of these laws up to the stand. The defense lawyer may want to examine what documents are taken to the stand. If they walk off with your papers, ask for them back. If there are policy issues relevant to the case, study up on your policy. It is not uncommon for a defense lawyer to get a copy of any relevant policies or training manuals on which you relied, such as impaired driving training manuals.

Remember the three levels of police/citizen interaction: mere conversations, stops (detain), and arrests. Depending on the type of case, some defense lawyers will want to attack your assessment of the type of encounter. When reviewing reports, think in terms of where the interactions shifted from one type of encounter to another.

Source: Lexipol "Overcoming the Terror of Testifying" (2019)
https://www.lexipol.com/resources/blog/overcoming-terror-of-law-enforcement-courtroom-testimony/

Your Character

Under Brady, evidence affecting the credibility of the police officer as a witness may be exculpatory evidence and should be given to the defense during discovery. Evidence that the officer has in their personnel file, sustaining a finding of untruthfulness, is clearly exculpatory to the defense.

The concern is with improper, intentional, deceptive conduct that affects an officer's credibility, whether that deceptive conduct consists of lying, making material omissions, or engaging in other unacceptable deliberate actions. Know your agencies policy.

-The Police Chief Magazine

The third area of credibility attack is an attack on your character. Defense lawyers often use open records requests and subpoenas to obtain personnel files. If you have even a slight negative mark in your personnel file, let the prosecutor know early. The prosecutor may be able to get a protective order or limiting instruction if there is no relevance to the case. This will prohibit the defense lawyer from dropping a bomb in the middle of the trial. If a protective order isn't a possibility due to relevance, you can discuss with the prosecutor how to get out in front of the issue so as to take the wind out of defense counsel's sails. Remember, what you have put out on social media could possibly show up in the courtroom.

> "Not only can lies end an officer's testimony, they can also end his career. Lies on almost any subject – told before or during testimony, under oath or during casual conversation, even during previous divorce proceedings or on social media – could be used to impeach an officer and damage her case."
>
> Michelle Heldmyer, FLETC

Finally, don't argue with the defense lawyer while on the stand. Most questions will be phrased for a yes or no answer. Listen carefully to the question. If the question is a compound question or not comprehensible, ask for clarification. Safe answers for cross-examination are "Yes," "No," and "I don't recall." The prosecutor will probably revisit anything that needs clarification, allowing for explanation if a yes or no answer was inadequate. Treat the defense lawyer like you treat the prosecutor. Nothing can destroy credibility to a jury quicker than being rude to a defense attorney from the stand. Also, don't let the defense lawyer control the pace of questioning, a tactic to get you flustered. This is something you can control by pausing before you answer.

> "You must be credible. At the heart of credibility is truth. Law enforcement witnesses must be fair, objective and impartial throughout all their interactions in court."
>
> Michelle Heldmyer, FLETC

Source: Lexipol "Overcoming the Terror of Testifying" (2019)

https://www.lexipol.com/resources/blog/overcoming-terror-of-law-enforcement-courtroom-testimony/

Preparing for Court

Timeline

Upon receipt of a subpoena, carefully review the case file and all reports related to the case. Review and locate physical evidence. Make any necessary copies of tapes, photographs and provide to the District Attorney as requested. Contact the District Attorney immediately with any areas of concern. Be honest and candid.

The week before the trial, contact the District Attorney to confirm court date and times, and discuss areas of special concern. Check the status of physical evidence, who will bring it to court? How will it be handled? Check with your agency and the District Attorney regarding the expectations of your attire for court. Should you wear your agency uniform or a business suit? Appropriate attire will vary by jurisdiction and by type of case.

The day of the trial, dress in appropriate attire looking polished and professional. Arrive early and prepared. Bring a copy of your reports and all physical evidence (photos, tapes, and any other related material).

Preparation

Knowledge of the facts of the case- Be very familiar with the case (elements and witnesses). Review demonstrative evidence if needed. Review all reports and records. Be very familiar with the case dates, times, and specifics. Carefully review all related reports. Contact the prosecutor well in advance if there are any issues with the report.

Knowledge of laws, policies, and procedures- Review any relevant case law if necessary. Know your agency policies and any procedures that could arise.

Presenting in Court

Basic courtroom etiquette includes practices such as turning down radios and cell phones (know your agency policy regarding turning off devices). Notify dispatch of your location if you are working. Keep courtroom conversations to a minimum. Additionally, take off your hat and do not use gum or smokeless tobacco.

On the day of testimony, wait right outside the door, so the bailiff can find you when it is your turn. You may not be the only witness waiting in the hallway. Be aware of persons around you when discussing the case outside the courtroom.

Pay attention and listen for directions from the moment you walk into the courtroom. Walk into the courtroom with confidence and poise and walk to the spot where you will be sworn in without being told where to go and what to do. When the judge enters (or exits) the room, stand to show your respect.

While you are testifying, look at whoever asks you the question, but look at the jury or judge to respond. Position your body on the stand when you first sit down, so you are slightly facing the jury box. Slightly pivot your upper body, not just your head, to get questions and give responses. Maintain eye contact with questioner for brief responses. Maintain neutral eye contact with prosecutor and defense attorney, or you will look biased. Also, look at each juror during testimony. Not through them, not glaring, not glazed, but open and friendly eye contact. Consider that you are talking to them, not at them.

Maintain a professional demeanor at all times. The jury is watching you in the lobby, hallways, elevator, cafeterias, nearby coffee shops. This includes making no reaction to the verdict when it is read.

When you have finished testifying, make sure you are excused before you leave and walk out without comments, gestures, or emotions.

The Federal Law Enforcement Training Center (FLETC) offers this advice on maintaining credibility while testifying:

- Appear calm
- Be patient
- Act mature (regardless of the behavior of others)
- Your body language, tone, and temper should remain the same regardless of who is addressing you
- Avoid absolutes such as "always" and "never."
- If you do not know an answer or understand a word, say so directly and confidently (a simple "I don't know" is an excellent answer). Do not try to bluff or guess.
- Watch the use of police jargon.

Your role in testifying as a witness is to be objective. Leave the advocacy to attorneys. Officers should testify impartially and honestly.

Using Reports and Notes

Should you use a report, notes, or file when testifying, and if so, how? It is recommended to refresh your memory with reports and notes. Do not rely on your memory regarding important details. Review these in advance, but also ask to check the report if you have any doubt as to specifics (dates, times, distances). Put the report in a clean, manila folder to bring with you. Carry the report in your left hand as approach the stand, this allows you to easily raise your right hand during swearing in without an awkward shuffling of papers. Leave the report on the witness table during your testimony. Be careful not to read verbatim from the report unless you are quoting. Keep in mind, you may testify to anything which you have an independent recollection, even if it is not included in the report.

Presenting Physical Evidence

Make sure the evidence is retrieved from evidence storage and brought to court, along with all necessary paperwork attached (chain of custody). Give the evidence to the prosecutor per local procedures and be aware of any evidentiary foundation issues. When testifying, refer to items as "Exhibit #X," not by its common name. Do not display exhibit to jury until directed. Always follow established procedures for the safe and secure handling of evidence.

Presenting Visual Aids

Go over the presentation with the prosecutor in advance. During the trial, wait for permission from the judge to go to the flip chart, electronic presentation, or marker board. Always ensure the jury, the opposing side, and the judge can see the display.

Representing the State's Interests (Presenting your Own Cases)

On some occasions, you will be called upon to represent the "State's" interests in adversarial proceedings without the aid of a prosecutor. This may include traffic violation proceedings and criminal violation proceedings.

On these occasions, it is recommended that you follow the same procedures for court preparation and presentation as outlined above. You may also want to walk through the presentation with a prosecutor beforehand to anticipate certain pitfalls.

Trial rules for violations are governed by ORS 153.240, 153.575, and 153.805 through 153.810. See also ORS 153.083, which provides officers with the authority to present evidence, examine witnesses, and make an argument in these types of proceedings.

Responding to a Disturbance During Court Proceedings

If a disturbance of any sort should arise in the courtroom during your testimony, take steps to get the appropriate and immediate help (radio, panic button, phone). Take necessary actions to protect members of the court, keeping in mind the judge comes first. Follow the judge's instructions about what to do with the person causing a disturbance. Use an appropriate level of force to ensure the safety of the court and carry out instructions of the judge.

Post-trial Issues

A trial may end abruptly by several means, including a mistrial, by a disturbance, through a postponement, or being rescheduled. Following the trial, arrange the return of all evidence. Additionally, debrief with the District Attorney.

Grand Jury

The term grand jury was introduced earlier in this course. How do grand jury proceedings differ from trial court proceedings?

Grand jury proceedings are not held in a courtroom; instead, they are often held in a conference room. In a typical grand jury room, the officer sits next to the District Attorney to facilitate communication during the officer's testimony. The foreperson (presiding juror) sits at the opposite end of the table, and the remaining jurors are seated on sides of the table. Before giving any testimony, the foreperson will swear you in. The defense attorney and their client are not present in the grand jury room.

Similar to a criminal trial, the officer needs to be prepared and bring a copy of the report. Additionally, there is no difference in evidence rules which apply to trials and grand juries. If you wouldn't be allowed to talk about it in the trial, you can't talk about it during grand jury. Examples: invocation, probation/parole status, polygraph, etc. Look to the District Attorney for guidance when grand jurors ask questions that would require commenting on the inappropriate subject matter.

Once all testimony has been given by the officer(s), victim, and witnesses, the grand jury meets privately to determine whether there is sufficient evidence to proceed further (true bill/not true bill).

Additional Tips for Improving Courtroom Testimony (FLETC)

Every witness is different, and each brings their unique personality to the stand. Anyone facing the prospect of testimony should honestly and objectively evaluate themselves, their personalities, and their strengths and weaknesses as a presenter. Personalities can and should shine through because jurors want to know you as a person. No one should attempt to be something they are not. Those who are quiet in nature should not attempt to appear aggressive and vice versa. Jurors could translate this behavior as insincerity. Every personality type has value. Accentuate your strengths.

Work on your presentation weaknesses, too. For example, if you are one to use "word whiskers" such as "I guess" or "I think," or insert "ummm..." or "so..." into sentences, work on eliminating such habits in your everyday conversations. Consider your voice and personal way of communicating. Do you speak softly or loudly? Do you use inflection, or are you monotone? Do you have a natural smirk or smile at inappropriate times? Even more important, if you tend to anger or take offense easily, it may be time for that meditation class.

Not all cross-examinations are angry or even unpleasant. If you have information favorable to the defense, they may be downright jovial. Generally speaking, however, the rule is this: the worse you hurt their client, the harder they will be on you. Please remember, it is not personal. They do not hate you, and often they don't believe you performed your job poorly. They simply have a job to do. Remembering that will help you hold your temper, which is crucial to surviving cross-examination with your credibility intact. Feeling anger, frustration, annoyance, impatience, discouragement, or self-condemnation will show on your face and in your body language, and very quickly will shatter your credibility. Control your emotions until you have completed your testimony. Take a quiet, deep breath or a sip of water if you need a moment.

You can help yourself stay in control by treating defense counsel as your peer, not someone to be feared or scorned. They are not better or more important than you are. Greet them politely when they first address you. Also, consciously set your own pace and voice volume in answering the questions – do not let counsel's speed or inflections dictate your own. Taking control of the tempo of cross-examination will help shift the power to you.

Basic Police Academy
Mock Trial



Officer in Court- Mock Trial

Instructional Goal:

This course is designed to:

1. Introduce a new officer to courtroom basics, including types of proceedings, and the role of the officer and other parties in proceedings.
2. Develop a new officer's ability to provide courtroom testimony.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate the role of the officer in various court proceedings.
2. Demonstrate basic courtroom testimony skills.

Proving your Traffic Case

Keys to Success



Every Court and every Judge is different. You will need to learn the preference of each court that you testify in and prepare your case accordingly. This may mean adjusting your testimony or gathering additional evidence.

Do not argue with the court, the defendant or witnesses!

Traffic Enforcement Requirements

- Shall be in uniform; or
- Shall conspicuously display official ID card showing officer's lawful authority.
- ORS 810.400

Citation Authority

- May issue citation within or outside jurisdictional authority of officer's government unit
- Committed in officer's presence; or
- There is probable cause to believe violation has occurred based on information from officer observing violation
- ORS 810.410

Violation Restrictions

- May not arrest for a violation
- May stop and detain for traffic violation – reasonably related to traffic violation, ID and issuance of citation
- May make inquiry into circumstances arising from reasonable suspicion of criminal activity

Note taking

- Either in notebook or pink officer's copy of citation
- Includes information not entered on face of citation such as passengers, statements, unusual actions, etc.
- Need to develop own shorthand style
- Whatever you do, take good notes...

Role of Police at Violation Trial

- Present evidence
- Examine/cross-examine witnesses
- Make arguments related to application of statutes, literal meaning of statutes, admissibility of evidence and proper procedures
- ORS 153.083

Case Proof Requirement

- Burden of proof required by the state : The preponderance of the evidence
- In other words: Evidence which is of greater weight often determined by opportunity for knowledge, information possessed and manner of testimony

Judicial Individuality

Each Judge utilizes his/her own knowledge and/or interpretation of the law, personal experience coupled with all the evidence presented, from both sides, to render a decision. Each Judge is Different!

Trial Preparation

- Be familiar with your case prior to trial: that means you need to review your notes
- Know the statute pertaining to your case
- Dress professionally
- Be prepared to present your case in chronological order
- Don't argue with the defendant or Judge
- Integrity is your most important asset!

Speed Cases

Basic Testimony

- Name, title and agency (i.e., John Smith, Officer, Salem PD)
- Date and time
- On duty, in uniform
- In marked (agency name) patrol vehicle
- Location and venue (On US Hwy 97, MP 1346 located in Deschutes County)
- What where you doing at the time? Describe it (parked, driving – which direction, etc.)

Radar

- Operating – Name and model of Radar Unit
- Radar training
- Moving mode or stationary mode?
- When was it "checked" for calibration (beginning and end of shift or use) some courts prefer you to describe the "check" using tuning forks.
- What were the results of the "check"?
- What was posted speed and where?
- What did you observe that brought the vehicle's attention to you? (estimated speed above posted, passing other vehicles, several lane changes)
- Any unsafe conditions in the area? (roadway, weather, pedestrians, bicycles, other vehicles, construction, school)
- Any obstruction to view

- Other posted traffic signs
- Vehicle position just prior to Radar reading
- Any obstructions in between you and other vehicles
- Obtain Radar reading of ____
- Tracking history of defendant vehicle
- Location of traffic stop
- Statements made by defendant
- Citation issued to defendant for _____

Unsafe Condition Considerations

- Weather
- Traffic
- Roadway surface
- Visibility
- Type of area
- Intersections
- Driver attention
- Vehicle condition
- Any other conditions

Lidar

- Similar to Radar cases
- Only operated in stationary position
- Accuracy check difference
- Additional distance reading
- Beam width difference
- Tracking history difference

Pace

- Similarities to Radar / Lidar cases
- Use of multiple speed measuring devices (Calibrated Speedometer, Dash Mounted Radar)
- Maintaining consistent distance
- No set pacing distance (6-7 second pace @ 70 MPH = 1/8 mile)
- Pace from behind or adjacent lane

Keep in Mind

- Integrity is everything
- When in doubt, Do Not Stop & Cite
- If you don't know, Say So
- If you don't remember, Say So
- Trying to win a case at all costs is not an option

INTEGRITY IS EVERYTHING!

Basic Police Academy

Problem Oriented Policing



Problem-Oriented Policing

Instructional Goal:

This course is designed to develop a new officer's problem-solving skills in relation to addressing community problems.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the steps of the SARA model.
2. Apply problem-oriented policing strategies to a given circumstance.

Content Outline:

- Role of the Police- Service Delivery, Order Maintenance, Law Enforcement
- Problem-Oriented Policing Defined
- History and Development of Problem-Oriented Policing
- Why Problem-Oriented Policing
- Key Elements of POP
- Problem Solving
- The SARA Model

The Role of the Police

In Roles and Responsibilities, you covered the various roles of police: Service Delivery, Order Maintenance, and Law Enforcement. To meet these objectives, you were introduced to reactive versus proactive policing.

Reactive Policing	Proactive Policing
• Police respond to citizen calls for assistance • Patrol is routine and unstructured • 911 calls drive police activity • Dispatch section dictates police activity • Emphasis on solving crimes	• Police seek crime solutions before the crimes occur • Patrol is targeted • Crime patterns drive police activity • Records Management/Research dictates police activity • Emphasis on preventing crimes

The focus of this class is a proactive policing strategy called Problem-Oriented Policing or POP.

The terms problem-oriented policing and problem-solving are often used interchangeably, but are actually different. The term problem-oriented policing describes a comprehensive framework for improving the police's capacity to perform its mission. Problem-oriented policing impacts virtually everything the police do, operationally as well as managerially. Problem-oriented policing focuses, one-by-one, on specific problems of crime and disorder to identify and alter the particular factors giving rise to each problem.

The term problem-solving more accurately describes the mental process that is at the core of problem-oriented policing. Problem-solving models like SARA and CAPRA were created to express this mental process.

SOURCE: Scott, Michael (2000). Problem-Oriented Policing: Reflections on the First 20 Years. Washington, DC. U.S. Department of Justice, Office of Community Oriented Policing Services.
http://www.popcenter.org/Library/RecommendedReadings/Reflections.pdf

History and Development of Problem-Oriented Policing

In 1979, Herman Goldstein developed and advanced the concept of "problem-oriented policing," which encouraged police to begin thinking differently about their purpose. His idea was that policing should fundamentally be about changing the conditions that give rise to recurring crime problems and should not merely be about responding to incidents as they occur or trying to forestall them through preventive patrols.

Goldstein suggested that problem resolution constituted the true, substantive work of policing and advocated that police identify and address root causes of problems that lead to repeat calls for service. POP required a move from a reactive, incident-oriented stance to one that actively addressed the problems that continually drained police resources.

The core concept for problem-oriented policing was results: the effect of police activity on public safety, including (but not limited to) crime prevention.

SOURCE: Policing for Crime Prevention, Lawrence Sherman

Why Problem-Oriented Policing?

Police deal with a range of community problems, many of which are not criminal. Traditional methods, including arrest and prosecution alone, do not always effectively resolve problems. However, giving officers discretion to design solutions is extremely valuable to solving problems.

Police can use a variety of methods to redress recurrent problems. The problems addressed in POP tend not to be confined to just a few police jurisdictions but are more widely experienced. It is therefore likely that some other agency has tried to solve the kind of problem that you are dealing with now. Or perhaps some researcher has studied a similar problem and learned things that might be useful to your work. You could save yourself a lot of time and effort by finding out what they did and why. In particular, you can learn which responses seemed to be effective and which were not.

Key Elements of POP

According to the Center for Problem-Oriented Policing, there are key elements that make up POP. These elements primarily focus on defining and analyzing problems. In POP, a problem is the basic unit of police work rather than a crime, a case, calls, or incidents. A problem is something that concerns or causes harm to citizens, not just the police. Things that concern only police are important, but they are not problems in this sense of the term.

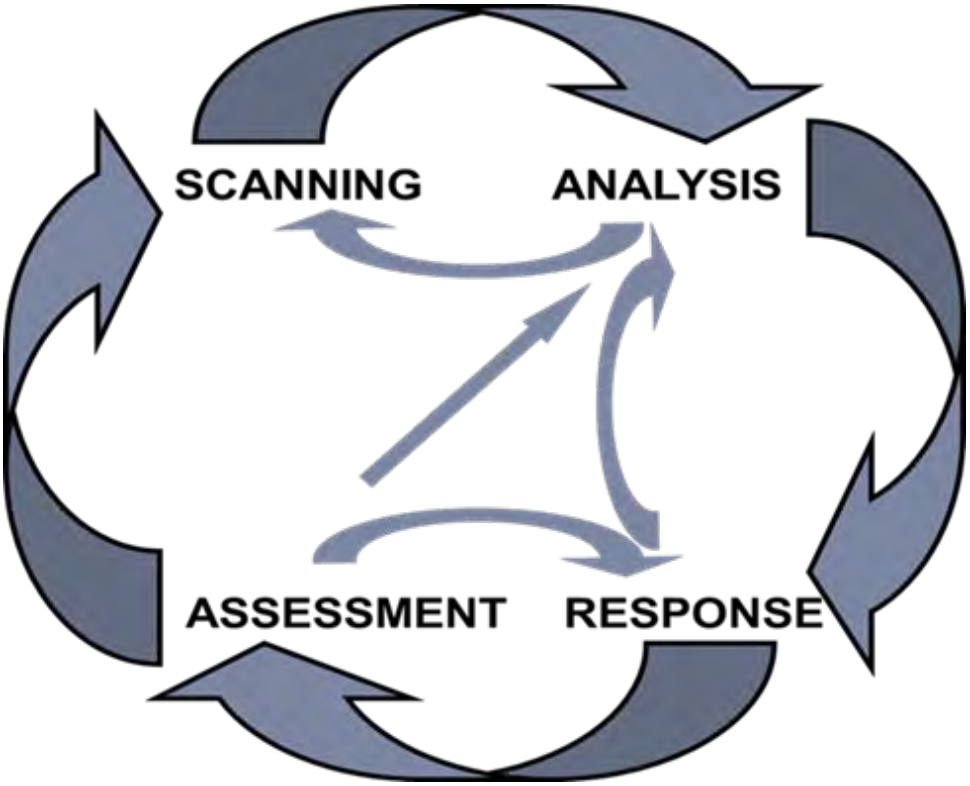
Addressing problems means more than quick fixes: it means dealing with conditions that create problems. Police officers must routinely and systematically analyze problems before trying to solve them. Individual officers and the department must develop routines and systems for analyzing problems. The analysis of problems must be thorough, even though it may not be complicated. Problems must be described precisely and accurately and broken down into specific components.
The police must proactively try to solve problems rather than just react to the harmful consequences of problems.

SOURCE: Center for Problem-Oriented Policing, http://www.popcenter.org/about-keyelements.htm

Problem Solving- The SARA Model

The SARA acronym refers to the four problem-solving stages of Scanning, Analysis, Response, and Assessment. By dividing the overall project into separate stages, SARA helps to ensure that the necessary steps are undertaken in proper sequence – for example, that solutions are not adopted before an analysis of the problem has been conducted.

Following a model helps prevent the tendency to jump to a solution without first defining the problem.



SOURCE: Clarke, Ronald V., and Eck, John E (2005). Crime Analysis for Problem-Solvers: In 60 Small Steps, U.S. Department of Justice, Office of Community Oriented Policing Services, Washington, DC. http://www.popcenter.org/Library/RecommendedReadings/60Steps.pdf

Scanning- Identifying and prioritizing problems

The objectives of scanning are to identify an underlying problem, determine the nature of that problem, determine the scope of the seriousness of the problem, and establish baseline measures. An inclusive list of stakeholders for the selected problem is typically identified in this phase.

Identifying a problem can be difficult in itself. A problem can be thought of as two or more incidents similar in one or more ways, and that is of concern to the police and the community. However, there is nothing magical about the number two. Even a single incident might prompt a broader investigation into an underlying problem if the incident is of sufficient consequence to the community, and there is a high likelihood of future similar incidents. Nor does the mere occurrence of multiple similar incidents automatically constitute a problem. The number of incidents must be both substantial and significant

to warrant defining the pattern as a problem; that is, the number of incidents should exceed some norm or expected occurrence rate.

The common feature among the incidents, moreover, must bear some significance. Exploring the pattern of burglaries committed by males, for example, is not likely to be productive, given that there is nothing remarkable about burglars being male.

SOURCE: Scott, Michael (2000). Problem-Oriented Policing: Reflections on the First 20 Years. Washington, DC. U.S. Department of Justice, Office of Community Oriented Policing Services.

SOURCE: Eck, John E. & Clarke, Ronald V. (2003). Classifying Common Police Problems: A Routine Activity Approach. Crime Prevention Studies; Vol. 16: 7-39.

http://www.popcenter.org/Library/RecommendedReadings/Reflections.pdf

Problems can be a type of behavior, a place, a person or persons, a special event or time, or a combination of any of these. The police, with input from the community, should identify and prioritize concerns.

POP is about sharing responsibility for community problems; therefore, appropriate persons must be identified to share in the responsibility. Stakeholders are private and public organizations, types, or groups of people that will benefit if the problem is addressed or may experience negative consequences if the problem is not addressed. These may include:

- Local service/government agencies with jurisdiction or an interest in the problem
- Victims of the problem, or associations representing victims
- Neighbors, coworkers, friends, and relatives of victims or neighborhood residents affected by the problem
- Agencies or people that have some control over offenders
- Commercial establishments adversely impacted by the crime or disorder problem
- National organizations or trade associations with an interest in the problem.

Identify as many stakeholders as possible for the problem selected. Each stakeholder may bring different knowledge and different leverage for impacting the problem to the effort. The more stakeholders that are identified, the more resources you will have to address the problem.

However, some communities have found that the problem-solving effort progresses most efficiently if only two or three stakeholders—a core group—work on the problem throughout the project. Other, more peripheral, stakeholders often have something to contribute at specific stages of the project, but not throughout the entire effort.

SOURCE: U.S. Department of Justice, Office of Community-Oriented Policing Services. (1998). Problem-Solving Tips: A Guide to Reducing Crime and Disorder Through Problem-Solving Partnerships. http://www.popcenter.org/Library/RecommendedReadings/Tips.pdf

Scanning consists of:

- Identifying recurring problems
- Prioritizing the problems
- Developing broad goals
- Confirming that the problems exist
- Determining how often the problem occurs and how long it has been a concern
- Selecting problems for closer examination

Analysis

The analysis is the heart of the problem-solving process. The objectives of analysis are to develop an understanding of the dynamics of the problem, develop an understanding of the limits of current responses, establish correlation, and develop an understanding of cause and effect. It is important to find out as much as possible about each aspect of the crime triangle by asking who, what, when, where, how, why, and why not about the victim, offender, and crime location.

Comprehensively analyzing a problem is critical to the success of a problem-solving effort. Effective, tailor-made responses cannot be developed unless you what is causing your problem.

The analysis consists of:

- Identifying and understanding events and conditions that precede and accompany the problem
- Identifying relevant data to collect
- Researching what is known about the problem type
- Taking inventory of how the problem is being addressed and any strengths/limitations of the current response
- Narrowing the scope of the problem
- Identifying resources that may be of assistance in developing a deeper understanding of the problem
- Developing a working hypothesis about why the problem is occurring; is it really occurring?

SOURCE: Slide: http://www.popcenter.org/about-SARA.htm

Reasons Why Analysis is Sometimes Overlooked/Skipped:

- The nature of the problem sometimes falsely appears obvious at first glance.
- There may be some tremendous internal and external pressure to solve the problem immediately.
- The pressure of responding to calls does not seem to allow for time for detailed inquiries into the nature of the problem.
- Investigating/researching the problem does not seem like "real" police work
- Supervisors may not value analytical work that takes time but does not produce arrests, citations, or other traditional measures of police work.
- In many communities, a strong commitment to the old ways of handling problems prevents looking at the problem in different ways.

SOURCE: U.S. Department of Justice, Office of Community-Oriented Policing Services. (1998). Problem-Solving Tips: A Guide to Reducing Crime and Disorder Through Problem-Solving Partnerships.

Risky Facilities

Facilities are environments with special functions. Educational facilities involve teaching and study. Industrial facilities produce and process materials. Office facilities process information. Retail facilities include sales and monetary transactions. Some facilities are frequent sites for crime and incivilities. These include taverns, parks, railway stations, payphone booths, convenience stores, and public housing projects. These facilities make a disproportionately large contribution to crime and disorder - they are "risky facilities."

Resources

Although it depends on the problem, the following is a general list of resources for the analysis stage.

- Crime analysts
- Crime analysis/report-writing software
- Mapping/geographic information systems
- Technical assistance
- Resident/business surveys
- Crime environment surveys
- Interviews with victims and offenders
- Systems for tracking repeat victimization

SOURCE: U.S. Department of Justice, Office of Community-Oriented Policing Services. (1998). Problem-Solving Tips: A Guide to Reducing Crime and Disorder Through Problem-Solving Partnerships. http://www.popcenter.org/Library/RecommendedReadings/Tips.pdf

Response

The third stage of the SARA model focuses on developing and implementing effective responses to the problem. Before entering this stage, an agency must be sure it has thoroughly analyzed the problem. The temptation to implement a response and "start doing something" before analysis is complete is very strong. But quick fixes are rarely effective in the long-term. Problems will likely persist if solutions are not tailored to the specific cause of the problem.

To develop tailored responses to crime problems, problem-solvers should review their findings of the three sides of the crime triangle—victims, offenders, and the crime location– and develop creative solutions that will address at least two sides of the triangle. They should approach the development of solutions without any preconceived notions about what should be done. Often the results of the analysis phase point police in unexpected directions.

SOURCE: http://www.popcenter.org/about-SARA.htm

The goals of the response can range from eliminating the problem, substantially reducing the problem, reducing the amount of harm caused by the problem, or improving the quality of community cohesion.

SOURCE: U.S. Department of Justice, Office of Community-Oriented Policing Services. (1998). Problem-Solving Tips: A Guide to Reducing Crime and Disorder Through Problem-Solving Partnerships.

The response stage includes:

- Brainstorming for new interventions
- Searching for what other communities with similar problems have done
- Choosing among the alternative interventions
- Outlining a response plan and identifying responsible parties
- Stating the specific objectives for the response plan
- Carrying out the planned activities

Remember the list of stakeholders? Try not to limit responses to the police; others may need to be involved and take some responsibility.

Responses should be manageable given the resources, available time, and urgency in solving the problem. A variety of potential responses may be more effective than a single response in some situations.

Assessment- Evaluating the Success of the Response

Assessment attempts to determine if the response strategies were successful by understanding if the problem declined and if the response contributed to the decline. This information not only assists the current effort but also gathers data that build knowledge for the future.

Strategies and programs can be assessed for process, outcomes, or both. If the responses implemented are not effective, the information gathered during the analysis should be reviewed. New information may have to be collected before new solutions can be developed and tested. The entire process should be viewed as circular rather than linear, meaning that additional scanning, analysis, or responses may be required.

The assessment consists of:

- Collecting pre- and post-response qualitative and quantitative data
- Process Evaluation
    - Determining whether the plan was implemented
    - Determining whether broad goals and objectives were attained
    - Identifying any new strategies needed to augment the original plan
    - Better handling of incidents and improved response to the problem
    - Conducting ongoing assessment to ensure continued effectiveness

Positive Impacts on Problems:

- Total elimination of the problem
- Fewer incidents
- Less severe or harmful incidents
- Better handling of the incidents/improved response to the problem
- Removing the problem from police consideration (shifting and sharing responsibilities)
- Diffusion of benefits

Several measures have traditionally been used by police agencies to assess effectiveness. These include numbers of arrests, levels of reported crime, response times, clearance rates, citizen complaints, and various workload indicators such as calls for service and the number of field interviews conducted.

Several of these measures may be helpful to you in assessing the impact of a problem-solving effort, including calls for service related to the problem, changes in the incidence of reported crime, and changes in levels of citizen complaints. Other traditional measures, such as arrests and the number of field interviews conducted, may not be that useful for your problem-solving effort unless these measures can be directly linked to a long-term reduction in the harm associated with the targeted crime problem.

Diffusion of benefits can occur when either the current crime/problem is reduced more widely than expected or when other forms of crimes/problems are reduced even though those crimes/problems were not targeted, to begin with.

SOURCE: U.S. Department of Justice, Office of Community-Oriented Policing Services. (1998). Problem-Solving Tips: A Guide to Reducing Crime and Disorder Through Problem-Solving Partnerships; http://www.popcenter.org/Library/RecommendedReadings/Tips.pdf

Problem-solving projects can be complicated. In action research, the team is expected to persist until success is achieved, refining, and improving intervention in the light of what is learned from earlier experiences. The process is not necessarily completed once the assessment has been made. If the problem persists or has changed its form, the team may have to start over. This is represented in the figure where the outer arrows describe the feedback between assessment and scanning.

However, the four problem-solving stages do not always follow one another in a strictly linear fashion. Projects rarely follow a linear path from the initial scanning and analysis stages through the stages of response and assessment.

Instead, the process often has loops so that an unfolding analysis can result in refocusing the project, and questions about possible responses can lead to the need for fresh analyses. The longer and more complicated the project, the more loops of this kind are likely to occur. The set of smaller inner arrows in the figure illustrates this dynamic process.

For example, one might jump from scanning to the implementation of a short-term emergency response to stabilize the problem while further analysis is undertaken. An assessment of the short-term response could add to the analysis and contribute to the formulation of a new response, which is then assessed. This might lead back to scanning as new information forces a revision of the problem definition or the discovery of new problems. The important point is that analysis and evaluation are meaningfully incorporated into the sequence of events, and one does not simply jump from scanning to response and declare victory.

SOURCE: Clarke, Ronald V., and Eck, John E (2005). Crime Analysis for Problem-Solvers: In 60 Small Steps, U.S. Department of Justice, Office of Community Oriented Policing Services, Washington, DC. http://www.popcenter.org/Library/RecommendedReadings/60Steps.pdf

Community Policing and Problem-Oriented Policing Together

Historically, many considered these two concepts to be mutually exclusive. Police leaders and academics tend to agree that these concepts overlap in philosophy and practice.

Community policing includes problem-solving as addressed in problem-oriented policing, but it also consists of the development of external partnerships with community members and groups. Additionally, community policing addresses organizational changes that should take place in a police agency designed to support collaborative problem-solving, community partnerships, and a general proactive orientation to crime and social disorder issues. Community policing is, therefore, more focused on police-public interaction than is problem-oriented policing and represents a broader organizational philosophy that incorporates the principles of problem-oriented policing within it.

When done well, community policing provides a strong overarching philosophy in which to engage in POP, but community policing that fails to incorporate the principles of POP within it is unlikely to have a substantial impact on reducing crime.

Sources

Center for Problem-Oriented Policing, http://www.popcenter.org/about-keyelements.htm

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Policing for Crime Prevention, Lawrence Sherman

slide: http://www.popcenter.org/about-SARA.htm

U.S. Department of Justice, Office of Community-Oriented Policing Services. (1998). Problem-Solving Tips: A Guide to Reducing Crime and Disorder Through Problem-Solving Partnerships. http://www.popcenter.org/Library/RecommendedReadings/Tips.pdf

Basic Police Academy

Problem Solving/ Critical Thinking



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Problem Solving

Instructional Goal:

Introduce students to learning and critical thinking strategies.

Learning Outcomes:

Students will be able to:

1. Recognize the importance of active engagement in the learning process.
2. Use critical thinking strategies to increase academy success.
3. Develop a plan for continued use of critical thinking strategies post academy.

Content Outline:

- Role of Thinking
- The Basic Police Academy Classroom Model
- Higher Order Thinking
- Studying for Higher Order Thinking
- Active Reading

Introduction

Welcome to the Basic Police Academy (BPA). As was covered in your orientation, you have 640 hours of rigorous academic and skills training to complete over the next sixteen weeks. There is a tremendous amount of information to be covered in a short time. What you get out of it depends on what you put into it.

> Law enforcement requires the officer to invoke reason and critical thinking skills in order to solve intricate problems in real time, on the job.
>
> Barker, B. (2011)

This first class is designed to introduce you to the methods used in the academy to develop problem solving and critical thinking skills. Understanding and applying these methods will help you learn the content, which in turn will help you perform well on academy testing and in field training.

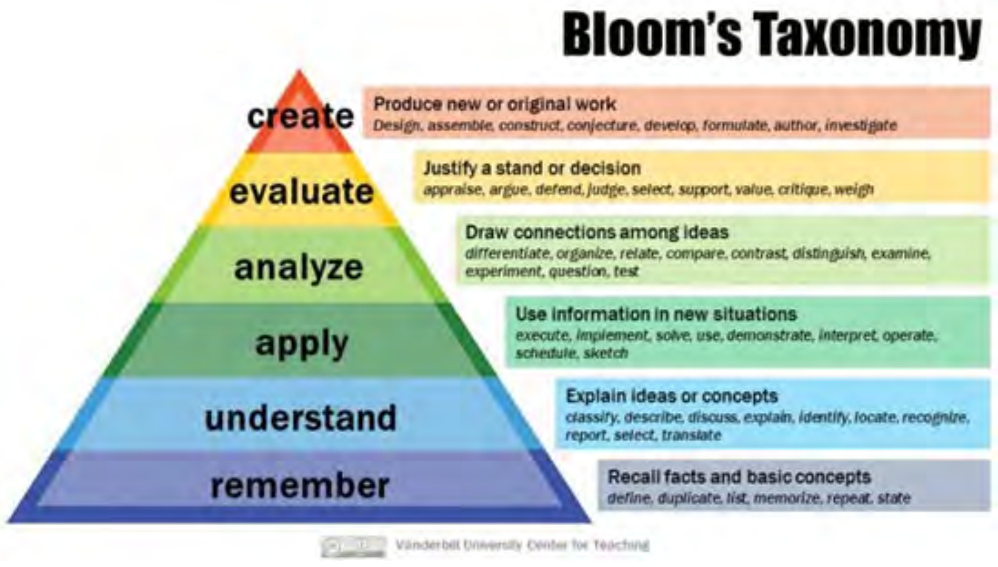
The Role of Thinking

Policing is inherently about problem-solving. A typical day involves numerous problems of varying natures that an officer is expected to solve.

Problem Solving:	Critical Thinking:
The process of finding solutions to difficult or complex issues.	The objective analysis and evaluation of an issue in order to form a judgment.

Critical thinking drills down to the essence of the problem. It is what helps us be more effective decision makers. In the article *Critical Thinking: What is It and Why It's Important* (Indeed, 2022), a critical thinker doesn't only accumulate information well, but they also know how to use the information to deduce facts and determine outcomes. Critical thinking is a higher order thinking skill, meaning it goes beyond knowing basic facts or memorizing terms.

According to a longstanding foundational learning framework called Bloom's Taxonomy, there are six levels of thinking:

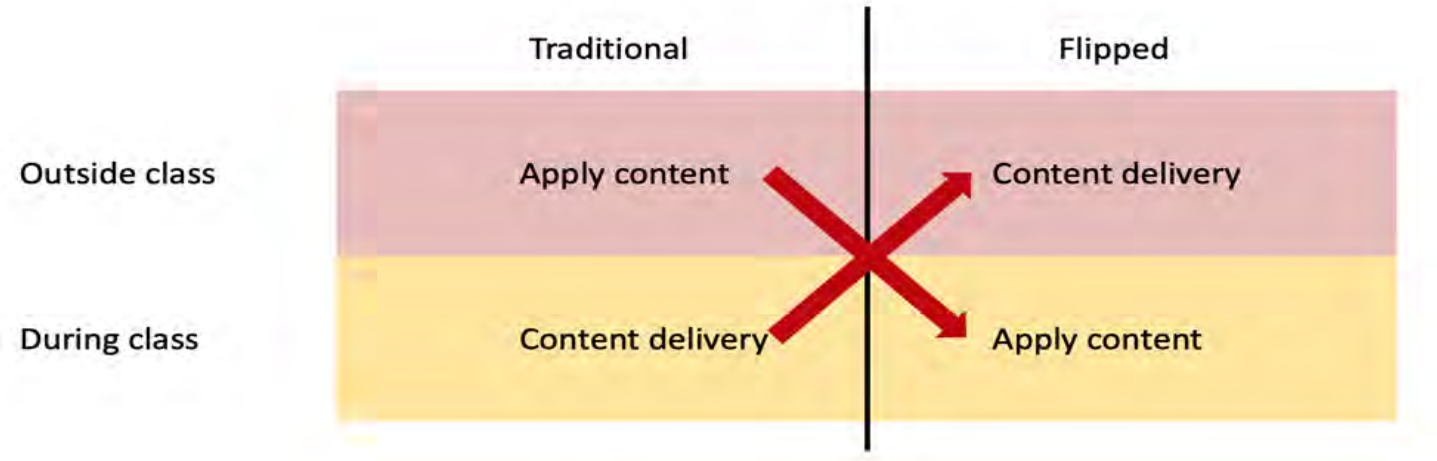


To be successfully in the Basic Police Academy, in Field Training, and beyond, you must learn beyond the ability to recall facts and basic concepts. To become an effective critical thinker and problem solver, you must work your way through these higher levels of thinking. The Basic Police Academy program is designed for this purpose.

The BPA Classroom

The Basic Police Academy uses a non-traditional content delivery method, called a flipped classroom. This is important for you to know as a learner so you can maximize its benefits.

> Flipped courses are "flipped" relative to what can be described as "traditional" courses. In traditional courses, students read the textbook before class, and the instructor lectures to the class while students take notes and perhaps ask questions. After class, students apply the information presented in the lecture in homework assignments. In a flipped course, the content delivery of the lecture is moved to the pre-class work done by students. Instead of lecturing during class, the instructor leads students in active-learning exercises and students engage with the content to develop skills outlined in the course learning objectives. The instructor is then able to provide expert feedback to students in the moment, as they learn.
>
> USC Center for Excellence in Teaching



This means it is critical that you read the course material before attending class. The instructor will not cover all of the content during class time, and you cannot rely simply on what is on the slides. The instructor will cover the highlights, but much of the class time will be spent in discussion, activities, and small group teach backs. To maximize learning, come to class prepared to apply the content and ask clarifying questions.

Studying for Higher Order Learning

The Bloom's pyramid above can help you figure out how to study for success. The following study methods come from the Learning Center, University of North Carolina at Chapel Hill.

Level 1: Remember

This level helps us recall foundational or factual information: names, definitions, components, or methods.

Study Methods	Ask Yourself	Example
Make flashcards for key terms	How would you define___? What is ___?	Define vicarious trauma What is probable cause?
Make a list	List the ___ in order Can you list ___?	List the steps of communication in order. List the steps of an investigative interview in order. Can you list the three primary categories of police functions? Can you list the elements of the Miranda warning? Can you list the components of an effective command?
List the main characteristics of something	What were ___? How would you describe ___? Why is ___? How would you explain ___?	What were the factors that led to the community policing era? How would you describe police legitimacy? Why is officer resiliency important? How would you explain the general elements of a crime?

Level 2: Understand

Understanding means that we can explain main ideas and concepts and make meaning by interpreting, classifying, summarizing, inferring, comparing, and explaining.

Study Methods	Ask Yourself	Example
Discuss content with or explain it to a partner	How would you differentiate between ___ and ___? How would you compare/contrast ___? Can you explain what is meant by ___?	How would you differentiate between Assault II and III? How would you differentiate between type and amount of force? How would you differentiate between an interview and an interrogation? How would you compare and contrast a mere conversation and a stop? How would you contrast the culpable mental states Intentionally and Knowingly? Can you explain what is meant by objective reasonableness?
Explain the main idea of the section	What is the main idea of ___?	What is the main idea of Qualified Immunity? What is the main idea of reducing ambiguity in an encounter? What is the main idea of crisis de-escalation?
Write a summary of the section in your own words	How would you summarize ___?	How would you summarize Crime Prevention Through Environmental Design? How would you summarize the major needs of victims?

Level 3: Apply

Application allows us to recognize or use concepts in real-world situations and to address when, where, or how to employ methods and ideas.

Study Methods	Ask Yourself	Example
Seek concrete examples of abstract ideas	Why does ___ work? How would you use ___? What video/fragment drill/scenario demonstrated ___?	Why does counter stereotyping work to reduce bias? How would you use commands to obtain compliance with a person in crisis? What fragment drill demonstrated a bias crime? What video demonstrated effective de-escalation?
Work practice problems and exercises	How would you solve ___ using what you have learned? How would you apply what you learned to develop? What approach would you use to ___? What questions would you ask in ___?	How would you respond to a missing child report using what you have learned? How would you interview the victim of a sexual assault using what you have learned? How would you apply what you learned to develop a community workgroup focused on reducing crime? What approach would you use to engage a person in crisis? What questions would you ask the victim in a burglary investigation?
Write an instructional manual or study guide on the class that others could use	How would you develop a set of instructions about...? How would you show your understanding of ___?	How would you develop a set of instructions for Standardized Field Sobriety Testing? How would you show your understanding of system 1/system 2 processes?

Level 4: Analyze

Analysis means breaking a topic or idea into components or examining a subject from different perspectives. It helps us see how the "whole" is created from the "parts". It is easy to miss the big picture by getting stuck at a lower level of thinking and simply remembering individual facts without seeing how they are connected. Analysis helps reveal the connections between facts.

Study Methods	Ask Yourself	Example
Generate a list of contributing factors	How does this element contribute to the whole? What is the relationship between ___? What are the parts or features of ___? What ideas justify ___? Can you make use of the facts to ___?	How does empathy contribute to investigative interviewing? What is the relationship between emotional intelligence and effective policing? What makes up an effective crisis response? What are the features which could make a traffic stop challenging? What factors made the officer's force decision justified/not justified? Can you make use of the facts presented to determine what if any crime was committed?
Determine the importance of different elements or sections	What is the significance of this section? Why do you think?	Why do you think the subject was lying? Why do you think the subject posed a risk to others? Why do you think there is probable cause for an arrest?
Think about it from a different perspective	How would _____ group see this?	How would the Chief/Sheriff see this? How would a Grand Jury see this? How would a community group view this?

Level 5: Evaluate

Evaluating means making judgments about something based on criteria and standards. This requires checking and critiquing an argument or concept to form an opinion about its value. Often there is not a clear or correct answer to this type of question. Rather, it's about making a judgment and supporting it with reasons and evidence.

Study Methods	Ask Yourself	Example
Decide if you like/ dislike, agree/ disagree with a decision.	What is your opinion about _____? What evidence and reasons support your opinion? Do you agree with the actions ___?	What is your opinion about this officer's interaction during the traffic stop? Do you agree with the actions of the officer to use that level of force? What evidence supports your opinion?
Consider what you would do if asked to make a choice.	What choice would you have made? How would you improve this? How could you determine? How would you prioritize ___?	What choice would you have made in this situation? How would you improve the officer's interactions with this community member? How could you determine if the subject in this scenario is telling the truth? How would you prioritize your actions in this crash scenario?
Determine which approach or argument is most effective.	Which argument or approach is stronger? Why was it better that ___? Would it be better if ___? What would you recommend?	Should the officer in this scenario wait for backup or proceed without? Why was it better that the officer gave the Miranda warning when they did? Would it be better if

Level 6: Create

Creating involves putting elements together to form a coherent or functional whole. Creating includes reorganizing elements into a new pattern or structure through planning. This is the highest and most advanced level of Bloom's Taxonomy.

Study Methods	Ask Yourself	Example
Build a model and use it to teach the information to others.	How can you create a model and use it to teach this information to others?	How can you create a model of de-escalation and teach it to others?
Design an experiment.	What experiment can you make to demonstrate or test this information?	What can you do to demonstrate the importance of rapport building in a criminal investigation? What could you do to test the effectiveness of various traffic stop positioning?
Write a scenario about the concept.	How can this information be told in the form of a scenario?	Write a scenario which demonstrates effective conflict resolution in a traffic stop.

Active Reading

Source: The Learning Center, University of North Carolina at Chapel Hill

Research shows that you retain more when you actively engage and interact with texts, as opposed to simply reading and re-reading without a clear purpose. Many students can relate to the type of reading that involves copying down pages of notes word-for-word from the text or simply scanning over pages without really reading them or interacting at all. While these two approaches are on opposite ends of the spectrum, neither of them engages your brain in a way that elicits deep understanding and retention. Active reading engages your brain in effective strategies that force your brain to interact with the text before, during, and after reading and that help you better gauge what you are (and aren't) learning.

Before Reading

Know the purpose

Are you studying for an exam and need details or studying for a discussion and need main points and relationships.

Integrate prior knowledge

Determine what you already know about the material you are to read. Think about how the reading relates to other course topics.

Preview the text

Give the text an initial glance, noting headings, diagrams, tables, pictures, bolded words, summaries, and key questions. Consider reading introductions and conclusions to gather main ideas. After you preview, predict what the section or chapter will be about and what the main concepts are going to be.

Plan to break reading into manageable chunks

Do you have five days to read twenty pages? Read four pages a night. Twenty pages in only one night? Read four pages and then take a fifteen-minute break to rest your mind and move your body. Taking breaks while reading improves focus, motivation, understanding, and retention.

Decide whether and how to read from a screen

Before you read, decide if your reading is something you could and would want to print out. Sometimes it is easier to grasp content when it is on paper. If this is not your preference or is not an option, make reading breaks an even higher priority, consider adjusting your screen, and be strategic about the time of day when you are reading in order to avoid eye strain or headaches.

During Reading

Self-monitor

As soon as you notice your mind drifting, STOP and consider your needs. Do you need a break? Do you need a more active way to engage with the text? Do you need background noise or movement? Do you need to hear the text aloud? What about a change of environment? Before resuming, summarize the last chunk of text you remember to make sure that you know the appropriate starting point.

Annotate

Overusing the highlighter? Put it down and try annotation. Develop a key/system to note the following in the text: key ideas/major points, unfamiliar words/unclear information, key words and phrases, important information, and connections.

Summarize

After reading small sections of texts (a couple of paragraphs, a page, or a chunk of text separated by a heading or subheading), summarize the main points and two or three key details in your own words. These summaries can serve as the base for your notes while reading.

Ask yourself higher level, critical thinking questions

After Reading

Assess how much you understood

This skill is one of the hardest to practice because if you truly missed the mark on what you read, you might not know until you get to class—or worse, until test day. Here are some ways to self-check your reading comprehension. Try "cross-referencing" the information you read by discussing your takeaways with peers. If you and your peers vary widely in your takeaways, go back to the text.

Show what you know

Create an outline of the text from memory, starting with the main points and working toward details, leaving gaps when necessary to go back to the text for facts or other things you can't remember.

Discuss the material with a friend or classmate.

Call a family member and teach them what you now know.

Brain dump: write down everything you remember from the reading in 5 minutes.

Ask yourself critical questions about the reading and answer those questions in a timed format.

Identify the important concepts from the reading and provide examples and non-examples of each concept.

Create a concept map from memory to illustrate your learning from the assigned reading.

Take screenshots from digital texts as a starting point for class notes or annotations.

Investigate further

If any information remains unclear, locate other resources related to the topic such as a trusted video source or web-based study guide. Still have questions you can't answer on your own? Make note of them to ask an instructor.

Self-test

Create flashcards or an outline for the main concepts, terms, dates, etc. in the text.

Use the flashcards or outline to test yourself on what you read and see how much you remember and can explain correctly.

Cover the answers or explanations and don't look at them until after you have already answered or explained in your own words.

Answer the questions in the workbook.

Design exam questions for yourself.

Sample Reading Template

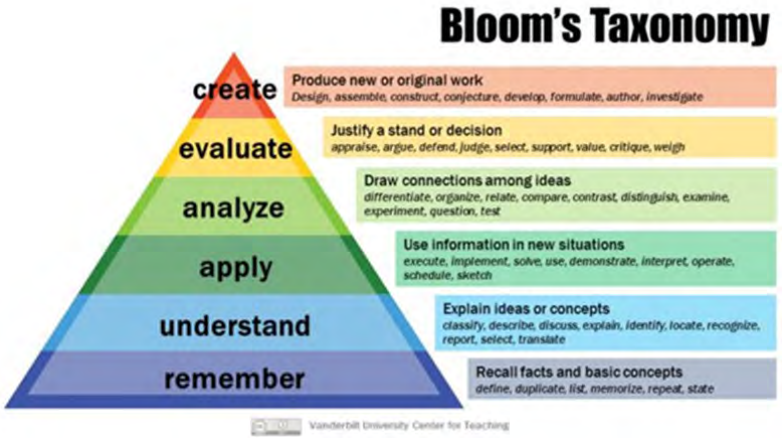
Facts	What is _____? Who is _____? When is _____? Where is _____? How is _____?
Examples and Applications	What is an example of _____? What is a real-world application of _____? When is _____ used?
Significance	Why is _____ important? Why did the author include _____ in the text?
Relationships	How does _____ relate to other topics that we're studying? How does _____ compare and contrast with _____?

Worked Example

Basic Police Academy Course: Procedural Justice (4 hours)

Learning Outcome: *Compare and contrast legal and legitimate actions.*

Learning Level: Understand



Study Approach:

1. Purpose of Reading: classroom discussion activity, exam
2. Ask- What do I know about this topic?
3. Pre-read the text
4. Decide how long you will need to read the text and plan accordingly
5. Decide if your need to print the material
6. Take breaks if needed
7. Don't overuse the highlighter, try making other notes
8. Stop periodically to summarize what you have read
9. Ask yourself higher level thinking questions
10. Cross check your understanding with peers
11. Use a strategy to capture the learning
12. Seek more information when you are unclear
13. Test yourself

Tips for Success

Read the course material before the class (active reading)

Participate in class discussions and activities (active learning)

Use retrieval practice and reflection as your primary methods of study (this is what the workbook is designed for)

Resources

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Basic Police Academy

Procedural Justice



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Procedural Justice

Instructional Goals:

This course is designed to:

1. Introduce a new officer to the concepts of police legitimacy and procedural justice.
2. Develop a new officer's understanding of why legitimacy is a critical component of trust and confidence in the police.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Summarize the concept of police legitimacy.
2. Identify the four pillars of procedural justice.
3. Explain the importance of procedural justice in attaining legitimacy.

Content Outline:

- Legitimacy
  - Legitimate vs. Legal
- Procedural Justice
  - Respect
  - Voice
  - Neutrality
  - Trustworthy
- Perception versus outcome
- The Bank Account

In-Class Activity- A Fair Wage Exercise

You are a farmer in a local community. It is near the end of your apple harvest, and you are struggling to find workers to finish your harvest. You come across three workers who offer to work for you. You tell the three you will pay them a "fair wage" at the end of the day for their work.

At the end of the day, you take your harvested apples, 40 bushels, to the market, and are able to sell them netting $1500 (after you pay yourself, cover expenses, etc.). You are left with $1500 to disperse amongst the three workers as you see fit.

Read the below work descriptions and then indicate how much you would pay each worker. Be prepared to discuss and support your answer.

John Smith: John showed up for work on time and ready. John worked really hard throughout the morning, picking 18 bushels of apples. At lunch, John went to eat with some friends nearby. When John returned from lunch, he was noticeably drunk. John spent the afternoon wandering the orchard and barely managed to pick two more bushels of apples. John also lost the keys to the truck, causing the entire work crew almost to be late to the market with the apples.

Bob Jones: Bob is your brother-in-law. You have not always seen eye to eye as Bob can be lazy at times. Bob worked moderately throughout the day, picking 15 bushels of apples. Bob found plenty of time to stop work and play on his cell phone. At the end of the day, Bob notices there are still apples to be picked and offers to help out another day if the wages for today's work are "fair enough."

Mark Anderson: Mark shows up with his hand in a bandage. Mark tells you he recently broke his hand at his other job and was laid off because of the injury. Mark works as hard as he can, but his injury has obviously held him back as he only picked 5 bushels of apples. On the ride to the market, Mark tells you about his family and how they are currently staying at the local church due to losing their home. Mark says he intends on taking half of his wages and donating it to the church as the pastor has so far refused to take any money in compensation for him staying there. Mark thanks you profusely for giving him the chance to earn some money to help support his family and give back to those who have helped him.

Wage Disbursement:

John Smith: $_____ **Bob Jones: $_____** **Mark Anderson: $_____**

People obey the law when they believe it is fair. People accept police authority when they believe police are fair. For the police to do their job, the public must perceive the police as a legitimate authority.

Legitimacy

Reflects the belief that the police ought to be allowed to exercise their authority to maintain social order, manage conflicts, and solve problems in their communities. Legitimacy is reflected in three ways:

1) Public Trust & Confidence in Police: This trust/confidence stems from a belief that police are honest, try to do their jobs well, and are trying to protect the community (against crime & violence).

2) The willingness of Residents to Defer to Law and Lawful Authority: This stems from their sense of obligation and responsibility to accept police authority because they believe they are the rightful holders of that authority and that the justice system is equal and fair.

3) Police Actions are Morally Justified & Appropriate: This stems from the actions of the police aligning with their morals, principles, and values or at least being able to be justified as appropriate with support regarding the circumstance.

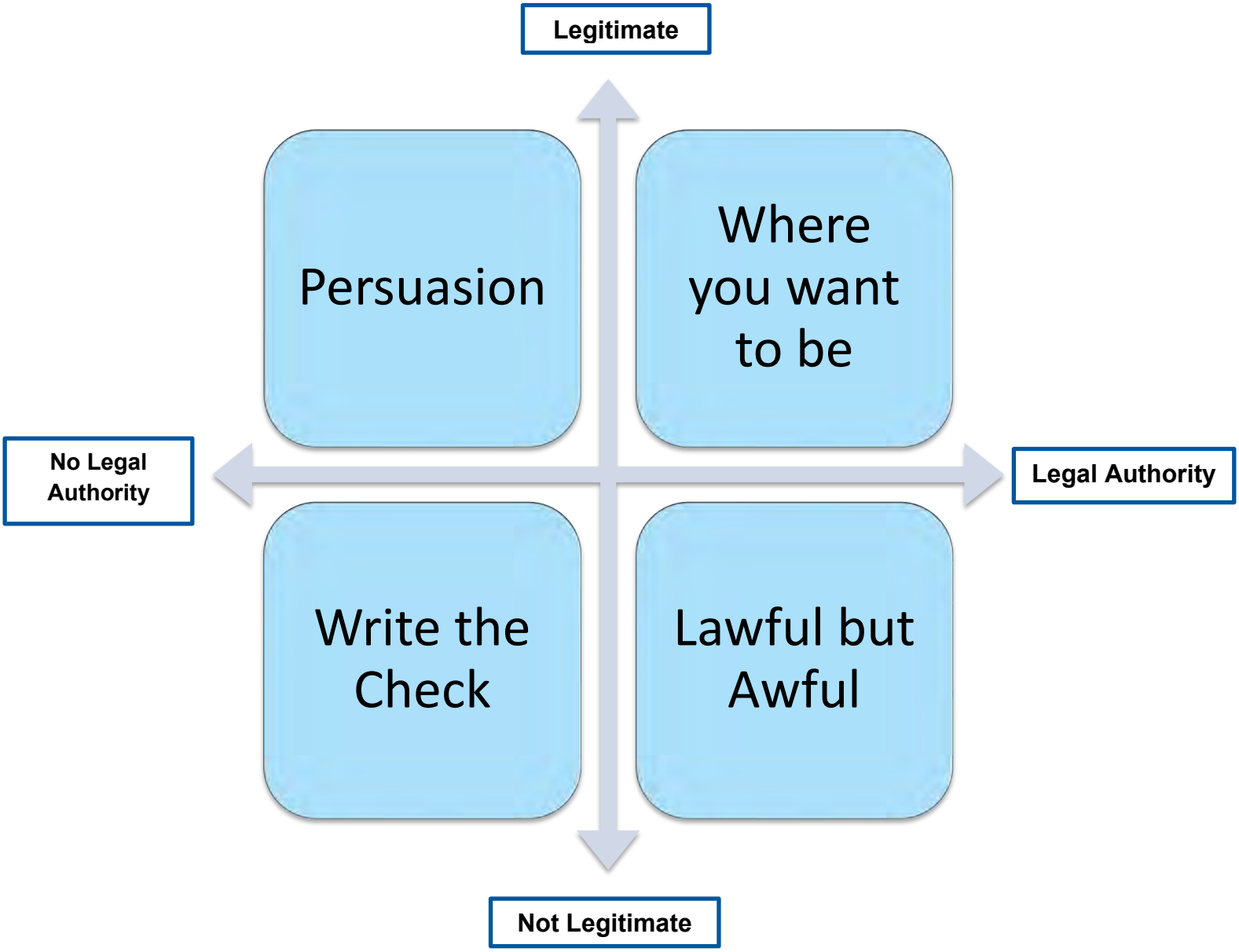
Legitimate vs. Legal

The concepts of "legitimacy" and "legality" may be confused or even considered interchangeable by some people, but they are not the same thing.

Lawful is compliance with laws/ordinances, rules and regulations, and court rulings and decisions. Determining if a police behavior is lawful is generally easier – we have been taught to look at behavior and determine if it falls within any prohibited behavior. These decisions are more objective, but not entirely so.

Legitimacy is a little more complicated because it is based on a belief – a belief that the police acted fairly (decision making) and treated them fairly (quality of treatment). Legitimacy refers to the judgments that ordinary residents make about the authority of the police to make decisions about how to enforce the law and maintain social order.

Legitimacy	Legality
Legitimacy lies within the perceptions of the public.	Lawfulness is complying with laws, rules, regulations, court rulings, and decisions.



See the following table for a description of each box.

The upper left quadrant, these are actions by the police that reinforce community norms, or community wants, even if they are not lawful. This is the area where police use their authority to gain compliance even when there may be no legal prohibition against the activity (for example, juveniles gathering and loitering in a park). The starting question may be, "did the police even have a right to be where they were?"	The upper right quadrant reflects where the police can be most effective – where their actions comply with the law and are also seen as legitimate by the people because the decisions made are reasonable, and people are treated with respect. Not only are the police actions lawful, but they are making good impartial decisions and treating people with respect.
The lower left quadrant "Write the Check" are the police actions that lead to civil rights suits and damage awards against police officers and police agencies	The lower right quadrant, these are actions where the police behavior may be justified, but in the context, they lose legitimacy, usually through neglecting one or more of the concepts of procedural justice

What is justice? Justice is the use of authority and power to uphold what is right, fair, or lawful. So, what is procedural justice? It is the procedures used by police officers where citizens are treated fairly and with proper respect as human beings

Procedural Justice

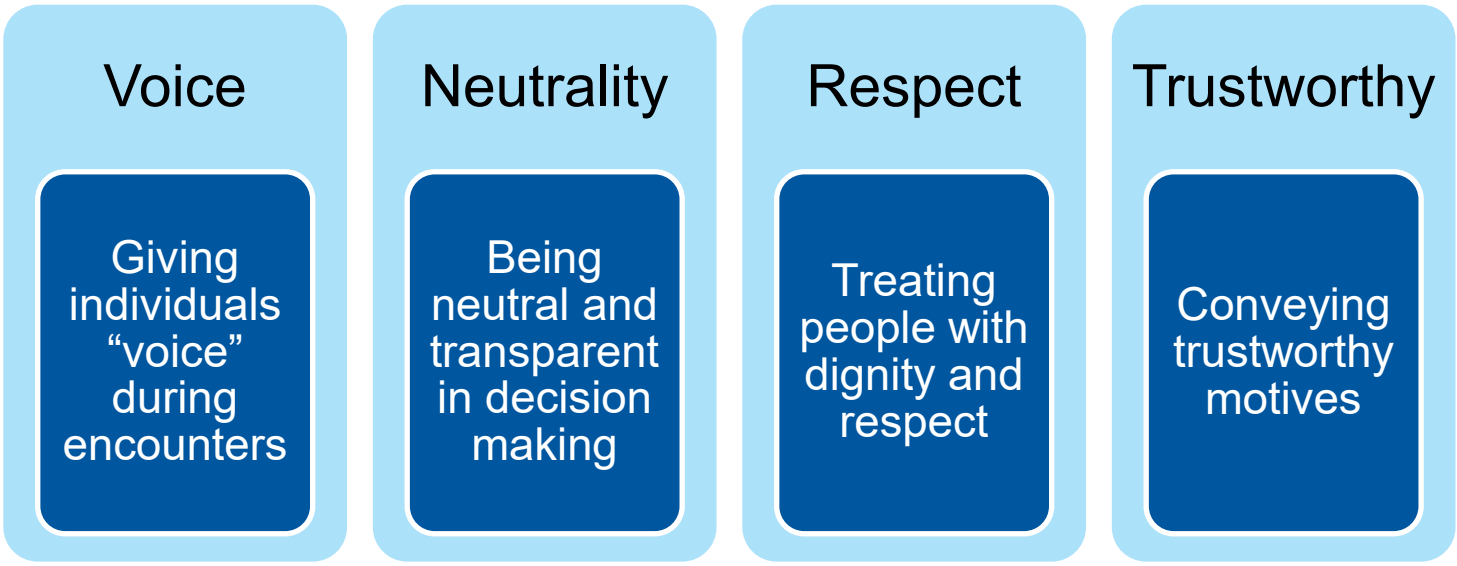
Can be viewed as a means to attaining legitimacy and can be defined in terms of four components:

1) People want to have an opportunity to explain (voice) their situation or tell their side of the story to a police officer. This opportunity to make arguments and present evidence should occur before the police make decisions about what to do.

2) People react to evidence that the authorities with whom they are dealing are neutral. This involves officers making decisions based upon consistently applied legal principles and the facts of an incident, not an officer's personal opinions and biases. Transparency and openness about what the rules and procedures are and how decisions are being made facilitate the belief that decision-making procedures are neutral. This helps the police to be seen to be acting neutrally.

3) People are sensitive to whether they are treated with dignity and politeness, and to whether their rights are respected. The issue of interpersonal treatment consistently emerges as a critical factor in reactions to dealings with legal authorities. People believe that they are entitled to treatment with respect and react very negatively to a dismissive or demeaning interpersonal treatment.

4) People focus on cues that communicate information about the intentions and character of the legal authorities with whom they are dealing (their "trustworthiness"). People react favorably when they believe that the authorities with whom they are interacting are benevolent and caring, and are sincerely trying to do what is best for the people with whom they are dealing. Authorities communicate this type of concern when they listen to people's accounts and explain or justify their actions in ways that show an awareness of and sensitivity to people's needs and concerns.



A citizen's assessment of their police interaction is influenced by both the outcome AND their perception of the process (how they were treated).

O: The outcome of the interaction with police; positive or negative (warning, citation, arrest, etc.)
P: The perception of how they were treated; the process used by the police (fair or unfair)
A: The overall assessment of the interaction the individual had with the police (how they feel about the entire encounter)

Research shows Procedural Justice is more important than the outcome and that a positive or negative outcome mostly does NOT have an effect on legitimacy.

O + P = A

Research has shown that when the public believes that the police exercise their authority in these procedurally just ways, they accept the legitimacy of the police and defer to police authority, both in particular situations and through a generally increased level of compliance with the law and cooperation with the police. The use of fair procedures encourages voluntary acceptance of police and legal authority, as well as respect for the broader justice system.

Studies suggest that the public is not generally knowledgeable about the law and the legalities of police practices. Hence, the public is not likely to be able to assess the legality of some police practices correctly. Instead, the public evaluates police legality by reacting to how they and others are treated.

A key indicator that police are acting in reasonable and appropriate ways is that they behave professionally. Meaning they make decisions in rule-based, factual ways; they listen to people and obtain necessary information from those involved so that they can make informed and intelligent decisions; and they treat people with dignity and respect. When the police act in these ways, they find the public more deferential to and supportive of their actions and more willing to infer that the police are acting within their authority and to trust that their motives are sincere and caring.

Legitimacy in policing is not a police program, initiative, or set of policies. The concept of legitimacy applies to all police departments. Every department can be said to have a certain degree of legitimacy in the eyes of its residents. That level of legitimacy can be measured, for example, by conducting surveys of the public. Community members decide whether to willingly defer to and accept police decisions and policies, and make their judgments about the extent to which they are willing to work with the police to help them maintain order in the community.

The idea that legitimacy within the community is the basis for a general policing philosophy is not, of course, a novel one in the history of policing. Sir Robert Peel famously argued that “the police are the public and the public are the police.” Peel’s model emphasized the need for the police to have legitimacy within the community they police, recognizing that “the ability of the police to perform their duties is dependent upon the public approval of police actions.”

The Bank Account

Policing a community is like having a bank account. When you have a good encounter, you make a deposit. When you have a bad encounter, you make a withdrawal. Consider what it means to police in a community where there is an over-abundance of withdrawals.



Develop the mindset that every contact is an opportunity to increase our legitimacy. Are you making a deposit or withdrawal with the way you police?

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ARRESTING A NON-U.S. CITIZEN

Consular Notification Process

Q. Are you a U.S. citizen?

A. "YES, I am a U.S. citizen."

(No further action required.)

STOP

"NO, I am not a U.S. citizen."

NEXT

Q. Are you a national of one of these countries?

Albania	Costa Rica	Kazakhstan	Poland[2]	Tanzania
Algeria	Cyprus	Kiribati	Romania	Tonga
Antigua and Barbuda	Czech Republic	Kuwait	Russia	Trinidad and Tobago
Armenia	Dominica	Kyrgyzstan	St. Kitts and Nevis	Tunisia
Azerbaijan	Fiji	Malaysia	St. Lucia	Turkmenistan
Bahamas	Gambia	Malta	St. Vincent and the Grenadines	Tuvalu
Barbados	Georgia	Mauritius	Seychelles	Ukraine
Belarus	Ghana	Moldova	Sierra Leone	United Kingdom[3]
Belize	Grenada	Mongolia	Singapore	Uzbekistan
Brunei	Guyana	Nigeria	Slovakia	Zambia
Bulgaria	Hungary	Philippines	Tajikistan	Zimbabwe
China[1]	Jamaica			

1. *Includes Hong Kong and Macao. Does not include Republic of China (Taiwan).*
2. *Mandatory only for non-permanent residents in the United States (i.e., those not holding a "green card"); for green card holders, notification is upon request.*
3. *UK includes Anguilla, British Virgin Islands, Bermuda, Montserrat, and the Turks and Caicos islands. Residents' passports bear the name of their territory and may also bear the name "United Kingdom." Whether or not the passport bears the name "United Kingdom," consular services for these persons are provided by UK consulates.*

A. "YES."

Step 1. Inform detainee that he or she may communicate with consulate, and that you must notify consulate of arrest/detention.

Step 2. Notify nearest consulate **without delay**.

Step 3. Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

Step 4. Allow consular officers access to detainee if they subsequently request access.

(No further action required.)

STOP

"NO."

Inform detainee, **without delay**, that he or she may have consulate notified of arrest/detention.

NEXT

Q. Do you want your consulate notified of your arrest/detention?

A. "YES."

Step 1. Make note in case file.

Step 2. Notify nearest consulate **without delay**.

Step 3. Make record of notification in case file. Where fax or email sent, keep fax confirmation or sent email.

Step 4. Allow consular officers access to detainee if they subsequently request access.

(No further action required.)

STOP

"NO."

Step 1. Make note in case file.

Step 2. Do **NOT** inform the consulate.

(No further action required.)

STOP

IN ALL CASES:

- *Do not inform consulate about detainee's refugee or asylum status.*
- *Detainee may communicate with consular officer and may request consular access at any time (whether previously declined or not).*
- *Consular officers may have access to detainee regardless of whether detainee requests it. Even if detainee does not want to be visited, consular officers may still have one face-to-face visit.*

Consular Notification & Access (CNA)
U.S. Department of State
CA/P
SA-17, 12th Floor
Washington, DC 20522-1712

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LEGAL Bulletin

EFFECTS OF MEASURE 110 ON INVESTIGATION AND PROSECUTION OF DRUG OFFENSES

Appellate and Criminal Justice Divisions, Oregon DOJ

January 14, 2021

The recent enactment of Ballot Measure 110 means that possession of controlled substances, whether under ORS 475.752 or the substance-specific statutes later in Chapter 475, will now generally be a violation, not a crime. Drug possession will only be a crime when it involves a certain quantity of a drug covered by the substance-specific offenses listed below, or a commercial drug offense (CDO) that involves a Schedule I or II drug or a drug listed in the substance-specific offenses. These changes impact the scope of an officer's ability to investigate drug offenses.

Measure 110 takes effect February 1, 2021. The changes to the legal classifications of conduct will apply only prospectively—*i.e.*, only to conduct *committed* on or after that date. The changes do not apply to conduct committed before February 1, 2021, even if the defendant is not charged or tried until after that date. *See* ORS 161.035(4) (even after statute is amended or repealed, the law in effect at the time of the person's conduct controls the prosecution). [1]

[1] Although the legislature has the power to make a statute apply retroactively to conduct committed before its enactment, ORS 161.035(4) states a general policy judgment that conduct is prosecuted and punished based on the law at the time of the offense. Compare *State v. Isom*, 313 Or 391, 395 (1992) (later amendments redefining crime of escape did not affect the classification of the defendant's conduct, which constituted escape under the law in effect at the time), with *State v. McDonnell*, 329 Or 375, 384-85 (1999) (where legislature expressly provided that amended sentencing statute applies to "any defendant sentenced to death after [its effective date]," ORS 161.035(4) did not override legislative stated intent that it apply to conduct committed before effective date). As a result, because Measure 110 states only that its amendments "become operative" on February 1, 2021, and does not purport to change the classification of prior conduct, ORS 161.035(4) provides that the prior statutes remain effective for conduct committed before its operative date.

Below, DOJ addresses the most significant effects of the new law on current drug enforcement practices. The reclassification of "mere possession" as a violation will limit officers' authority to make initial stops based on suspicion of drug possession, to investigate suspected drug possession even during a lawful stop made for another offense, and to make arrests and—at least to some degree—to search pursuant to the automobile exception based on probable cause for possession of drugs.

A. THE INITIAL STOP: WHAT JUSTIFICATION IS NEEDED TO STOP FOR SUSPECTED DRUG POSSESSION?

1. A stop for a *violation*-level offense requires probable cause.

An initial question under the new law is what authority an officer has to make a stop for suspected possession of drugs, now that it has been reclassified as a violation. Although DOJ previously has attempted to convince the appellate courts that reasonable suspicion should be sufficient, the Oregon Court of Appeals has held that the state constitution requires probable cause to stop a person for a traffic violation. *See, e.g.*, *State v. Aguilar*, 307 Or App 457, 466-67 (2020) ("[U]nder Article I, section 9, of the Oregon Constitution, an officer must develop probable cause—rather than merely reasonable suspicion—to stop a citizen for a traffic violation.") (citing *State v. Gordon*, 273 Or App 495, 500 (2015), *rev den*, 358 Or 529 (2016)). And if probable cause is required to stop for a *traffic* violation, it seems likely that test will be the same for a *non-traffic* violation.[2]

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[2] ORS 153.039(2), which governs non-criminal violation stops, sets a lower standard than probable cause—allowing a stop based on "*reasonable grounds*" that the person has committed a violation—but that does not affect the constitutional analysis. Moreover, the meaning of "reasonable grounds" is nebulous at best. In a different context, the Oregon Supreme Court has held only that "reasonable grounds" means something *more* than reasonable suspicion, but *less* than probable cause. *State v. Gulley*, 324 Or 57 (1996). And, although the state has attempted to argue that "reasonable grounds" means reasonable suspicion, the Court of Appeals—at least at this time—has declined to address the issue. In sum, even if ORS 153.039 is relevant to the constitutional question, that standard currently requires *more* than reasonable suspicion to stop for a violation.

Thus, in a close case as to probable cause, it may be worth making a backup argument that reasonable suspicion, or "reasonable grounds," can justify a stop for a non-traffic violation—to preserve the issue for appellate review. The Oregon Supreme Court has not directly decided the issue—*see, e.g.*, *State v. Watson*, 353 Or 768, 774 n 7 (2013)—and, in *dictum* in one case, has strongly suggested that reasonable suspicion may be constitutionally sufficient for a violation stop. *See, e.g.*, *State v. Suppah*, 358 Or 565, 568 n 2 (2016). But the Court of Appeals cases requiring probable cause for a traffic stop are binding unless the Supreme Court holds otherwise, and it is unlikely that it would set a lower standard for non-traffic violations.

2. A stop for a *crime* requires reasonable suspicion.

Of course, the reasonable suspicion standard still applies to stops to investigate criminal offenses (or to expand the scope and duration of a traffic stop to investigate a criminal offense). Under the new law, manufacture and delivery of drugs remain crimes.

Possession remains **criminal** only if it involves the following:

Quantities of specific-drug offenses:			
LSD	40 or more user units	ORS 475.752(7)(b)(A)	A misd.
Psilocybin	12 gram(g) or more	ORS 475.752(7)(b)(B)	A misd.
Methadone	40 or more user units	ORS 475.824(2)(c)	A misd.
Oxycodone	40 or more pills	ORS 475.834(2)(c)	A misd.
Heroin	1 g or more	ORS 475.854(2)(c)	A misd.
MDMA	1 g or more; or 5 or more pills	ORS 475.874(2)(c)	A misd.
Cocaine	2 g or more	ORS 475.884(2)(c)	A misd.
Meth	2 g or more	ORS 475.894(2)(c)	A misd.
Commercial drug offenses involving:[3]			
Schedule I	Any, incl. LSD and psilocybin	ORS 475.752(7)(a)	B fel.
Schedule II	Any amount	ORS 475.752(8)	C fel.
Methadone	Any amount	ORS 475.824(2)(b)	C fel.
Oxycodone	Any amount	ORS 475.834(2)(b)	C fel.
Heroin	Any amount	ORS 475.854(2)(b)	B fel.
MDMA	Any amount	ORS 475.874(2)(b)	B fel.
Cocaine	Any amount	ORS 475.884(2)(b)	C fel.
Meth	Any amount	ORS 475.894(2)(b)	C fel.

As shown above, drug possession is criminal only when accompanied by CDO factors or if the amount of the substance exceeds the specified threshold. Thus, unless the officer has a specific and objective factual basis for believing that the suspect possesses drugs in a quantity exceeding the threshold or that CDO factors are present, the officer can initiate a stop for the violation-level offense only based on *probable cause*.

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[3] ORS 475.900(1)(b): CDO involves three or more factors, such as unlawful possession of guns or possession weapons for use in a controlled substance offense, possession of packaging or manufacturing materials, drug records, stolen property, or modification of structures to facilitate a drug offense or use of public lands. Other factors apply only when the crime involved specific controlled substances—*i.e.*, such as delivery of certain substances (heroin, cocaine, methamphetamine, lysergic acid diethylamide, psilocybin or psilocin) "for consideration," or possession of more than a specified amount of a particular substance.

For example, even if an officer reasonably suspects that a suspect has *some* drugs, that fact alone does not establish probable cause to believe that the suspect has *a criminal quantity* of the substance. *See, e.g., State v. Tallman*, 76 Or App 715, 720 (1985) (discovery of less than one ounce of marijuana "cannot by itself create probable cause to search for more"); *State v. Huff*, 253 Or App 480, 490-91 (2012) (mere discovery of meth pipe with residue in defendant's RV did not provide probable cause to search the RV for more drugs). Similarly, to support a reasonable suspicion that three CDO factors are present, the officer must be able to point to specific and articulable facts about the particular suspect that reasonably would give rise to that suspicion.

And, as explained below, Measure 110's decriminalization of "mere possession" of drugs not only impedes officers' abilities to stop a person for having drugs, but also their ability to further investigate during an otherwise lawful stop if they suspect that the person has drugs. That is because an officer's investigation during a stop for one purpose must be "reasonably related" to that offense, unless the officer has independent reasonable suspicion of a *crime* that would justify a separate investigation. An officer's discovery that the detainee has a noncriminal quantity of a controlled substance does not, by itself, provide grounds to expand a stop in order to inquire or request consent to search for evidence of a criminal-level drug offense.

B. EXTENSION OF LAWFUL STOP: WHEN CAN AN OFFICER INVESTIGATE A PERSON FOR DRUG POSSESSION DURING A STOP FOR AN UNRELATED PURPOSE?

The Oregon Supreme Court recently rejected the Court of Appeals' longstanding "unavoidable lull" rule, which allowed inquiries unrelated to the basis for the initial stop as long as it did not extend the duration of the stop. The supreme court held that an extension of the stop occurs either when the duration is extended or when an officer investigates beyond the subject matter of the original stop. Now, "all investigative activities, including investigative inquiries," that are unrelated to the reason for the stop are unlawful unless the state can prove that there was "independent constitutional justification." *State v. Arreola-Botello*, 365 Or 695 (2019).

Under *Arreola-Botello*, it appears that the level of "independent constitutional justification" that will justify an unrelated investigation during a stop is the same as the justification that would be required if an officer stopped a suspect to conduct that investigation.[4] In other words, the level of suspicion needed to extend the scope of a stop will depend on whether the officer seeks to investigate a **violation** or a **crime**.

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[4] In *Arreola-Botello*, the court noted that the officer's inquiries could have been justified if the officer had "reasonable suspicion that [the] defendant had engaged or was about to engage

1. Extension of an unrelated stop to investigate a drug *violation* requires probable cause.

As stated above, in Oregon, an officer needs **probable cause** to initiate a stop or any other constitutionally significant inquiry related to a **violation**. Thus, under *Arreola-Botello*, an officer can ask questions or otherwise investigate a violation drug offense during an unrelated stop only based on probable cause for the violation.

If PC develops for a violation-level offense, the officer can ask only those questions reasonably related to that offense. Such questions might include:

- Questions about the specific drugs for which PC exists;
- A request for consent to search for those drugs;
- A command to hand over the drugs, because the officer has authority to seize contraband.
    - Note: An officer cannot actually enter a vehicle—which is a separate event with different constitutional significance—to seize contraband unless a warrant exception applies, such as consent, exigency, or the automobile exception, described below.

- Questions about whether the suspect possesses *other* drugs, unless it is clear that the officer is shifting the investigation to *criminal* activity without reasonable suspicion.
    - Example: A question whether there are "a lot more drugs" or whether CDO facts exist is clearly investigating a crime, not the original violation.

Questions about packaging materials or other evidence of a *crime* must be based on independent suspicion that the person is engaged in *criminal* activity in drugs, as explained below.

2. Extension of an unrelated stop to investigate a drug *crime* requires reasonable suspicion for that crime.

An officer who develops suspicion during a stop that a person is engaged in a drug *crime* must be able to articulate facts supporting **reasonable suspicion** to inquire about or otherwise investigate the criminal activity. Here are some examples:

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in *criminal conduct*." 365 Or at 714. But the court treated unrelated questions or investigation during the initial stop as a separate stop that requires its own constitutional justification.

- **Possession of a criminal quantity of a controlled substance.** During a stop for another offense, an officer with reasonable suspicion that the defendant possesses a controlled substance in a quantity—or under other circumstances—that would make it a crime, rather than a violation, can ask questions related to the *crime*.

    - **Substances with low threshold amounts.** In the case of possession of substances for which the legislature has set low threshold amounts, the same facts that support probable cause for the violation may often be sufficient to establish reasonable suspicion of a criminal amount, if the officer can articulate why he or she reasonably believed that the amount exceeded the threshold.[5] For example, it takes only a gram of heroin for possession to be a crime; thus, it may not take a lot more than a belief that the person has *some* heroin to suspect a crime.

- **Drug possession, plus three CDO factors.** If an officer has reasonable suspicion for possession of a controlled substance and that three or more CDO factors are present, the officer can inquire about that crime during an unrelated stop. But in that scenario, it may be just as easy for the officer to rely on reasonable suspicion for delivery of a controlled substance, rather than trying to explain facts supporting a belief that specific CDO factors are present.

- **DUII.** An officer who reasonably suspects DUII can ask questions about the presence of alcohol or a controlled substance because that is reasonably related to the purposes of a DUII investigation**.** *State v. Williams*, 297 Or App 384, *rev den*, 365 Or 658 (2019). *See also* pages 67-70 of the DOJ Search and Seizure Manual (2020 ed) for other cases with facts supporting reasonable suspicion for DUII.

C. HOW WILL MEASURE 110 IMPACT OFFICERS' ABILITY TO ARREST AND TO SEARCH ABSENT CONSENT OR A SEARCH WARRANT?

As we all know, an officer lacks authority to make a custodial arrest for a violation, so Measure 110's reclassification of most conduct involving drug possession to violations eliminates any arrest authority that formerly would have been available for that

[5] Even when an officer does not know the quantity of drugs involved, if an officer articulates reasonable suspicion of a *crime*, the fact that it is possible the defendant may possess only a *violation*-level quantity does not restrict the officer from investigating the crime. *State v. Acuna*, 264 Or App 158, 169 n 4, *rev den*, 356 Or 400 (2014).

conduct.[6] In addition, some exceptions to the warrant requirement depend on whether the suspect was subjected to a lawful arrest. For example, most inventories of a person and his or her belongings are permitted only upon an arrest, and a search incident to arrest is allowed only if there is a lawful custodial arrest. In those circumstances, the lack of authority to arrest will mean that officers no longer will have authority to conduct a search that previously would have been allowed.

Automobile exception. One exception to the warrant requirement, the automobile exception, still applies, even to violation-level offenses. The automobile exception to Article I, section 9, permits a warrantless search of a vehicle if the vehicle "is mobile at the time it is stopped by police," and the officer has probable cause "to believe that the vehicle contain[s] contraband or evidence of a crime." *State v. Brown*, 301 Or 268, 274 (1986). Contraband includes evidence of violations. *State v. George*, 287 Or App 312 (2017), *rev den*, 363 Or 744 (2018) (finding that automobile exception applied to justify warrantless search for evidence of an open container violation); *State v. Smalley*, 233 Or App 263, *rev den*, 348 Or 415 (2010) (finding that the automobile exception applied to justify a search for suspicion of less than an ounce of marijuana). *See also State v. Tovar*, 256 Or App 1, 10 (2013), *rev den*, 353 Or 868 (2013) (describing holding in *Smalley*). The automobile exception will therefore justify a search of a vehicle if car was mobile at the time of the stop and the officer has probable cause to believe that the car contains drugs, even if the amount of drugs possessed would be only a violation.

> ***A word of caution about probable cause:*** Probable cause for purposes of the auto exception is probable cause to believe that evidence or contraband is *in* the vehicle, not merely probable cause that the person has committed a crime. That is, "'additional facts' beyond mere physical possession of drugs must be presented to establish the probability that *further* evidence of criminal activity will be found" in the vehicle. *State v. Sunderman*, 304 Or App 329, 343 (2020) (search under the automobile exception was unlawful because the presence of unused methamphetamine pipes did not "establish probable cause of current possession"); *see also State v. Tovar*, 256 Or App 1, 9 (2013), *rev den*, 353 Or 868 (2013) (the "scope" of search pursuant to the automobile exception "is defined by the

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[6] For that reason, Measure 110 limits officers' ability to take a youth into custody for drug possession now classified as a violation. *See* ORS 419C.080(1) (a youth can be taken into custody without a warrant or court order "[w]hen, if the youth were an adult, the youth could be arrested without a warrant"). Thus, an officer cannot take a youth into custody based on the youth having committed a violation under Ballot Measure 110. Instead, the officer must issue a citation, returnable to the juvenile court. ORS 419C.085. ***Note:*** ORS 419C.370(1)(b) authorizes a juvenile court to enter an order directing that "offense[s] classified as violation[s] * * * be waived to municipal court if the municipal court has agreed to accept jurisdiction." That statute appears to authorize such an order with respect to violations under Ballot Measure 110.

warrant that the officer could have obtained").[7] It should also be noted that an officer's observation of a defendant's intoxication—without more—is insufficient to establish the inference that a defendant presently possesses a controlled substance. *Sunderman*, 304 Or App at 343; *State v. Schmitz*, 299 Or App 170, 177 (2019).

Thus, if an officer sees a user amount of drugs in plain view, the officer may conduct a limited search of the automobile for the purpose of seizing those drugs. To search the car for additional drugs, however, the officer most likely will need to articulate facts establishing probable cause to believe that the car contains additional drugs. If an officer has probable cause to believe that there are additional drugs in the car, the officer may search the car and any containers that might reasonably contain the drugs.

Please note that the continuing validity of the automobile exception is at issue before the Oregon Supreme Court in *State v. McCarthy*, case no. S067608.

Probable cause and exigency. Additionally, a search for, or the seizure of, contraband may also be permissible pursuant to the probable cause and exigency exception to the warrant requirement. The probable cause prong refers to the justification for the issuance of a warrant. *See State v. Matsen*, 287 Or 581, 586-87 (1979) (finding that officers had probable cause to search, but "the state failed to prove that destruction of contraband or the escape of the defendants was imminent"). Contraband is a permissible object of a search and seizure warrant. ORS 133.535(2). Hence, an officer with probable cause to believe that a person has contraband could seek a warrant to search that person.

Moreover, if that officer also has an objectively reasonable belief that there is an exigent circumstance, that officer may be justified in conducting the search or seizure without seeking a warrant. "An exigent circumstance is a situation that requires the police to act swiftly to prevent danger to life or serious damage to property, or to forestall a suspect's escape or destruction of evidence." *State v. Stevens*, 311 Or 119, 126 (1991). Hence, if an officer reasonably believes that a person may destroy contraband before the officer could lawfully obtain a warrant, the officer may seize that contraband.

D. PROSECUTION OF DRUG VIOLATIONS

1. Can the state rely on a presumptive field test result at trial?

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[7] *Tovar* distinguished its probable-cause holding from that in *State v. Huff*, 253 Or App 480, 486-88 (2012), which is not an automobile-exception case, but which explained that, in that case, discovery of a quarter gram of meth and a pipe with residue in the defendant's RV did not establish probable cause to search the RV because the officer's affidavit did "not provide *any* potential linkage between the presence of some drugs and the likelihood of more drugs."

The first question is whether a presumptive field test, if admitted, will be sufficient to prove the identity of a controlled substance in a violation trial. In most circumstances, a field-test result will be legally sufficient to prove a violation by a preponderance of the evidence under ORS 153.076(2).

Another question relates to the foundation for admission of a field-test result, which will be treated as "scientific" evidence under OEC 702. The obvious difficulty in a violation case is that the defendant often will appear *pro se* (*i.e.*, without an attorney), in which case the district or city attorney's office may assist with the case preparation and subpoena witnesses, but the officer generally makes any legal arguments to the court. ORS 153.076, 153.083. Unless the legislature enacts a statute that would affirmatively make presumptive field tests admissible in these cases, prosecutors will either need to ensure that officers are trained on—and prepared to respond to—potential evidentiary objections to the field test or provide direct assistance when objections arise.

A trial court generally has an obligation as a gatekeeper to require an evidentiary foundation for scientific evidence—often by application of the *Brown/O'Key* multi-factor test—but there are circumstances in which a full evidentiary hearing is not required to establish scientific validity of the science underlying a particular technique. One circumstance involves scientific evidence that is the subject of *prima facie* legislative recognition under *State v. Helgeson*, 220 Or App 285 (2008) and *State v. O'Key*, 321 Or 285 (1995). That is, if the legislature has determined that evidence obtained using a particular scientific technique is admissible, that is at least *prima facie* evidence of its validity and can support its admission at trial. In the case of presumptive field tests, the legislature has provided (in ORS 475.235(3)) that their results are admissible in grand jury and other preliminary proceedings, thereby recognizing the underlying "science" to be valid. In short, that legislative recognition is one way to establish scientific validity without application of the *Brown/O'Key* multifactor test.

Another way of establishing the scientific foundation without a full hearing is to establish that the principles or methodology underlying field testing are "universally accepted" and thus are a "clear case" in which no additional foundational evidence is required for admission. *See O'Key*, 321 Or at 293; *see also State v. Branch*, 243 Or App 309 (2011) (principles underlying LIDAR speed measurement are universally accepted). Note that the requirement of "universal acceptance" applies to the scientific principles used in the technique, not the ultimate *result* of the testing.

Finally, even if the trial court believes that it must apply the *Brown/O'Key* multi-factor test, the state could rely on evidence—from the manufacturer or other source of information—explaining the methodology and error rates for the results.

The OSP crime lab has provided some simple explanations of the two methods involved in field testing (**Raman spectroscopy**, the technique underlying the TruNarc handheld analyzer, and **Colorimetric reagent analysis**, which is the testing method underlying the NIK color tests), along with scientific sources for those explanations. DOJ has compiled those explanations into "cheat sheets" that explain the testing methods and summarize the legal arguments in support of the use of judicial notice and *prima facie* legislative recognition as foundation for the reliability of testing based on those techniques. DOJ hopes that the "cheat sheets" are useful tools in court.

2. What if a defendant fails to appear on a citation?

If a defendant is cited for a possession violation and fails to appear on the citation or any other court appearance, the court can issue an order to show cause why the defendant shall not be held in contempt. ORS 153.064(2). The show-cause order can be served by certified mail with return receipt requested, and if that cannot be done, the defendant must be served *personally* with the order. If the defendant is served and does not appear as required by the order, the court can issue an arrest warrant. ORS 153.064(2). A person who knowingly fails to appear on a citation or other court appearance required after the person is served with a citation can be charged with failure to appear in a violation proceeding under ORS 153.992. If the person fails to appear on that misdemeanor charge, the court may issue an arrest warrant. ORS 153.064(1).

E. FURTHER MEASURE 110 RESOURCES (AND RECOGNITION OF AUTHORSHIP)

This memorandum is the result of substantial work by attorneys for the Oregon Department of Justice, as well as the assistance of the Oregon State Police Crime Laboratory. If you have questions, please feel free to call any of the authors of this memo: Criminal Justice Division AAG Kurt Miller, at 503-378-6347; or Appellate Division AAGs Leigh Salmon, Joanna Jenkins, Philip Thoennes, and Jennifer Lloyd, at 503-378-4402.

Please do not forget to use the attached "cheat sheets" in court if you believe they will be helpful for purposes of establishing the scientific foundation for presumptive field tests in violation trials.

RAMAN SPECTROSCOPY/TRUNARC™ PRESUMPTIVE FIELD TEST

How it works: The TruNarc handheld analyzer is the field version of an instrument that has been used in laboratories, including crime labs, since the 1970s. The instrument is a presumptive test that analyzes substances in their packaging, which greatly reduces the risk of losing evidence or exposing an officer to dangerous substances. The instrument operates on the principles of Raman spectroscopy. This method focuses a laser on a sample to measure the spectrum of light that passes through the sample at different wavelengths. The instrument compares the measurements to known standards of substances to make a presumptive identification, which is then displayed to the officer. The properties of Raman scattering were discovered in 1928 and practical applications have been universally accepted in the scientific community for decades.[8]

Foundation for admission at trial: There are two possible bases on which the trial court can find that the technique is reliable scientific evidence:

1. The court can take judicial notice because the technique is universally accepted in the scientific community. Because the scientific principle of Raman spectroscopy is universally accepted in the scientific community, and the TruNarc instrument applies that principle to identify the substance at issue in a violation trial, the court can find that this is a "clear case," and also a case for judicial notice of the indisputable scientific validity, such that the state is not required to present additional scientific foundation to satisfy the *Brown/O'Key* test for the admissibility of scientific evidence as discussed in *State v. Branch*, 243 Or App 309 (2011), *rev den*, 351 Or 216 (2011) (LIDAR involves scientific evidence, but requires no scientific foundation because it presents a clear case, and a case for judicial notice).

2. The technique is a subject of *prima* facie legislative recognition. Further, ORS 475.235(3)(a) provides that a presumptive field test is *prima facie* evidence of the identity of the substance for purposes of grand jury and a preliminary hearing. Because the legislature has accepted presumptive tests for those purposes, the trial court may find that presumptive tests are the subject of *prima facie* legislative recognition of the reliability of that process for testing substances such that the state is not required to present additional evidence to satisfy the *Brown/O'Key* foundation for the admissibility of scientific evidence as discussed in *State v. Helgeson*, 220 Or App 285 (2008) (testing for BAC involves scientific evidence, but requires no scientific foundation because it is the subject of *prima facie* legislative recognition of the testing process).

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[8] K. S. Krishnan; Raman, C. V. (1928). "The Negative Absorption of Radiation", *Nature*, 122 (3062): 12-13; Moffat, A.C. et al., (editors). *Clarke's Analysis of Drugs and Poisons*, (most recent edition) the Pharmaceutical Press, Volume 1, (chapter on Raman Spectroscopy); Lewis, I.R. and H.G.M. Edwards (editors), *Handbook of Raman Spectroscopy*, Marcel Dekker, Inc., 2001. pp. 1-40, 733-748; *Gardiner, D.J. (1989). Practical Raman spectroscopy. Springer-Verlag;* Ravreby, M. D., Gorski, A., "Effects of Crystal Habits in Heroin on the Infrared Spectra", Proceedings of the International Symposium on the Forensic Aspects of Controlled Substances, 1988, pp. 165-167; Guidelines on Raman Handheld Field Identification Devices for Seized Material. United Nations Office on Drugs and Crime. www.unodc.org/documents/scientific/Guidelines_Raman_Handheld_Field_dentification_Devices.pdf

COLORIMETRIC ANALYSIS/NIK® PRESUMPTIVE FIELD TEST

How it works: NIK brand tests, as well as other colorimetric reagent test kits, have been used by officers and in laboratories for decades. The kits are a presumptive test that detects the presence of a particular class of drugs by a simple method whereby the officer places a small portion of the substance in the kit. A specific color change will indicate a presumptive positive for the specified compound. These tests are based upon the known chemical color reactions when two substances are exposed to each other. The science of chemical color tests dates to 1859 and practical applications have been universally accepted in the scientific community for decades.[9]

Bases for admission at trial: There are two possible basis on which the trial court can find that the technique is reliable scientific evidence:

1. The court can take judicial notice because the technique is universally accepted in the scientific community. Because the scientific principle of colorimetric analysis is universally accepted in the scientific community, and the test kit used by an officer applies that principle to identify the substance at issue in a violation trial, the court can find that this is a "clear case," and also a case for judicial notice of the indisputable scientific validity, such that the state is not required to present additional scientific foundation to satisfy the *Brown/O'Key* test for the admissibility of scientific evidence as discussed in *State v. Branch*, 243 Or App 309 (2011), *rev den*, 351 Or 216 (2011) (LIDAR involves scientific evidence, but requires no scientific foundation because it presents a clear case, and a case for judicial notice).

2. The technique is a subject of *prima* facie legislative recognition. Further, ORS 475.235(3)(a) provides that a presumptive field test is *prima facie* evidence of the identity of the substance for purposes of grand jury and a preliminary hearing. Because chemical reagent tests based on colorimetric analysis are presumptive tests under ORS 475.235(6), the trial court may find this is the subject of *prima facie* legislative recognition of that testing method such that the state is not required to present additional foundational evidence to satisfy the *Brown/O'Key* test for the admissibility of scientific evidence as discussed in *State v. Helgeson*, 220 Or App 285 (2008) (BAC testing involves scientific evidence, but requires no scientific foundation because it is the subject of *prima facie* legislative recognition of the testing method).

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[9] Alim A Fatah. Color Test Reagents/Kits for Preliminary Identification of Drugs of Abuse. National Institute of Standards and Technology (NIST): Maryland; 2000; Rapid Testing Methods of Drugs of Abuse. United Nations Office on Drugs and Crime: Vienna; 1995; A.C. Moffat, M.D. Osselton, and B. Widdop (Eds.), *Clarke's Analysis of Drugs and Poisons*, 3rd Edition, Pharmaceutical Press, London, p. 279-300 (Vol. 1: colour tests), 978-979 (Vol.2: ephedrine); Feigl F, Anger V. Spot Tests in Organic Analysis. Amsterdam, Netherlands: Elsevier Science B.V; 1966; Feigl F, Anger V. Spot Tests in Inorganic Analysis. Amsterdam, Netherlands: Elsevier Science B.V; 1972; Moffat, A. C., Osselton, M. D., Widdop, B., & Watts, J. (2011). *Clarke's analysis of drugs and poisons: In pharmaceuticals, body fluids and postmortem material*. London: Pharmaceutical Press; Andrea E. Holmes et al. Evaluation of the NIK® test: Primary general screening test for the presumptive identification of drugs. Int J Cri & For Sci. 2:5, 81-137; 2018; David J S, Michael J K, Marco P, Andrea E H. General Advantages and Disadvantages of the NIK Narcotic Test. J Forensic Sci & Criminal Invest. 2018; K. Grates, J. Ring, K. Savage, T. Denicola, V. Beall, J. Dovyak, E. Schlomer, Conclusion of Validation Study of Commercially Available Field Test Kits for Common Drugs of Abuse, National Forensic Science Technology Center; 2008.

M110 Summary

As of 2/1/2021, Measure 110 will limit officers' authority to investigate, search, and arrest for drug possession.

INITIAL STOP FOR DRUG POSSESSION:

- **A stop for a *violation* offense requires probable cause that the suspect committed the offense.**
- **A stop for a *crime* requires reasonable suspicion that the suspect has committed that crime.**
  - PCS in the following quantities or with additional factors are criminal:
    - Heroin—one gram or more
    - 3,4 methylenedioxymethamphetamine (MDMA)—at least: 1 gram, or 5 tablets, pills, capsules
    - Methamphetamine—2 grams or more
    - Methadone—40 or more user units
    - Oxycodone—40 or more pills, tablets, or capsules
    - Cocaine—two grams or more
    - LSD—40 or more user units
    - Psilocybin or psilocin—12 grams or more
    - PCS in Schedule I or II (including the above specific drugs) *and* three or more CDO factors

EXTENSION OF A STOP: ANY UNRELATED INQUIRY REQUIRES LEGAL JUSTIFICATION:

- **Officer can ask questions and investigate a drug *violation* during an unrelated stop when:**
  - Specific, articulable facts make it *probable* that the suspect possesses drugs; and
  - Investigation is limited to the violation for which there is PC
    - Questions must be reasonably related to investigating the possession violation
    - Officer can ask for consent to search, but only for the drugs for which there is PC

- **Expansion of a stop to investigate drug *crimes* requires reasonable suspicion of that crime.**
  - PCS in specified quantities or with CDO factors (see above).
  - DUII: Questions about the presence of alcohol or drugs are reasonably related to DUII**.**

ABILITY TO ARREST AND TO SEARCH BASED ON VIOLATION PCS:

- **M110 does not change authority to search for *crime* evidence. But some warrant exceptions depend on a lawful arrest (which is not permitted for a violation).**
    - Most inventories of a person apply only upon an arrest
    - *Search incident to arrest* requires PC to arrest for a *crime*.

- **Plain view: authorizes a seizure of contraband from a lawful vantage point**
    - An observation made in the course of a plain-view seizure *may* support a more expanded search

- **Automobile exception applies to violation drug possession.**
  - Allows search of a vehicle that was **mobile** when it was stopped only when there is **PC** that *contraband* or evidence of a crime is inside.
    - Contraband means anything the law prohibits possessing.
  - This search is **limited** to an entry to seize the contraband to which the PC relates
    - PC for commission of a drug crime does not, by itself, provide PC that drugs are in the *car*:
    - Possession of *some* drugs does not, on its own, supply PC that *more* drugs are present.
    - Intoxication, in and of itself, does not supply PC that the suspect *currently* has drugs.
  - To search for *more* drugs, there must be other facts that establish PC that *more* drugs are present.
    - If so, you may search any area or containers that might reasonably contain those drugs.

- **PC & Exigency**
    - If an officer has PC that a subject possesses contraband and reasonably believes an exigent circumstance exists (e.g. destruction of evidence) the officer may seize the contraband.

Basic Police Academy

Procedural Law



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Procedural Law 1-3

Instructional Goal: This series is designed to develop a new officer's understanding of the legal authority to carry out duties.

Learning Outcomes:

Upon completion of instruction, student will be able to:

1. Identify different types of encounters and the justification for that interaction
2. Analyze a situation, determine if Miranda applies, and apply when needed
3. Articulate search and seizure authority in a given circumstance
4. Identify the required contents of a search warrant

Content Outline:

Part 1- Types of Encounters

I. Types of Encounters
   a. Mere Conversation
   b. Stop
   c. Arrest

II. Stop and Frisk
   a. Federal Law
   b. Oregon Law

Part 2- Consular Notification & Miranda

III. Consular Notification

IV. Custody Interrogation
   a. Miranda v Arizona

Part 3- Search and Seizure

Part 1- Types of Encounters and Discretion

In order to help ensure that the laws are applied fairly, there are certain rules and procedures that must be enforced. This set of laws, rules, and procedures is known as procedural law.

These rules are the constitutional and statutory limitations upon the manner in which a criminal suspect may be arrested and convicted and in which evidence may be seized. Everything, from the investigation into a matter, through the trial must follow a specific procedure outlined by law.

Procedural law defines how law enforcement can treat suspects, not what activities are illegal.

This is in contrast to "substantive law," which refers to the actual laws by which a crime may be charged, or which govern how the facts of the case will be accepted and presented.

Police-Citizen Encounters

Encounters between police and citizens are governed by the Fourth Amendment:

> The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

There are three generally recognized levels of encounters between police officers and citizens:

Mere Conversation (also called mere or consensual encounters)

Stop

Arrest

Mere Conversation	Stop	Arrest
Mere Conversations are questioning of persons without any restraint of the person's liberty.	A stop is a temporary restraint of a person's liberty by a peace officer lawfully present in any place. A stop is not an arrest. **ORS 131.605(7)**	Arrest means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging that person with an offense. **ORS 133.005(1)**
The officer can ask any question he or she wishes and obtain consent to search the person or person's property. The citizen is free to leave, refuse to answer any questions or be searched, decline to identify themselves and ask the officer to leave their property.	Less than an arrest, but still restrains a citizen's free movement.	The citizen is not allowed to leave.
Requires no justification	Justified by reasonable suspicion	Justified only by probable cause
Example: An officer sees a person walking down the sidewalk and parks nearby (not blocking the person's movements) and asks to speak to the person. The person agrees and they talk.	Example: An officer responds to a bar fight at a local tavern and as the officer approaches the officer notices someone running out who has their clothing in disarray and a cut on their face. The officer says "stop" and begins to talk to the person.	Example: An officer sees a person the officer knows is the subject of an arrest warrant. After the officer confirms the warrant the officer contacts the person and immediately tells the person he/she is under arrest.

Stops

Federal Law	Oregon Law
In Terry v. Ohio, 392 US 1 (1968), the Supreme Court held that an officer may detain suspect based upon a reasonable suspicion that: • A crime has occurred; • Is occurring; or • Is about to occur. As to whether or not a police officer may "frisk" a "stopped" person, the Supreme Court held: "Where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the person with whom he is dealing may be armed and presently dangerous,... he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him. Such a search is a reasonable search under the Fourth Amendment, and any weapons seized may properly be introduced in evidence against the person from whom they were taken."	Definitions for Stop and Frisk. ORS 131.605 • A stop is a temporary restraint of a person's liberty by a peace officer lawfully present in any place. A "stop" is not an arrest. • A crime is any offense for which a sentence of imprisonment may be imposed. • A frisk is an external patting of a person's outer clothing. • A dangerous weapon is any instrument, article or substance that under the circumstances of its use, attempted use or threatened use is readily capable of causing death or serious physical injury. • A deadly weapon is any instrument, article or substance specifically designed for and presently capable of causing death or serious physical injury. • Reasonable suspicion means to hold a belief that is reasonable under the "totality of the circumstances" existing at the time and place the officer acts.

- Peace officer has the meaning given that term in ORS 133.005. The current definition is set forth below under "Arrest."

NOTES:

The officer must be able to point to "articulable objective facts" used in establishing reasonable suspicion.

Reasonable suspicion requires both a subjective and objective component. An officer must have a reasonable belief based on specific and articulable facts that the person committed/was about to commit a specific type of crime and that belief must be objectively reasonable.

"Reasonable suspicion" is not the same as probable cause.

An anonymous tip without independent observations by the stopping officer that a crime is occurring or has occurred has been found to lack sufficient reliability to support a stop. State v. Black, 80 Or App 12 (1986)

- Is about to commit means unusual conduct that leads a peace officer reasonably to conclude in light of the officer's training and experience that criminal activity may be afoot.

Stopping of Person ORS 131.615

- Basis for stop – A peace officer who reasonably suspects that a person has committed or is about to commit a crime may stop the person and, after informing the person that the peace officer is a peace officer, make a reasonable inquiry.

- Detention and inquiry – Shall be conducted in vicinity of stop for no longer than a reasonable time. "Reasonable inquiries" are limited to immediate circumstances arousing officer's suspicion and other circumstances during detention that give rise to a reasonable suspicion of criminal activity.
    - Note: The "unavoidable lull" doctrine referred to the time necessary, e.g., for an officer to investigate a violation and write the citation without delay. You may hear more experienced officers refer to this. In late 2019, the Oregon Supreme Court effectively did away with this doctrine in State v. Arreola-Botello. The impact is this: the issue is not if the inquiry adds additional time to the encounter; *the issue is if the officer's inquiry was "reasonably related" to the stop (or if the officer had reasonable suspicion to instigate additional "investigative activities" on other matters).*

    - An officer may ask the driver questions "reasonably related" to investigating the reason(s) for the stop, e.g., the traffic violation(s).

    - However, if an officer wishes to engage in "investigatory activities" (including questions) that are not "reasonably related" to the issues of the original stop, then the officer must be able to articulate reasonable suspicion to do so, i.e., "there must be an independent constitutional justification to [engage in] those activities." State v. Watson, 353 Or 768 (2013).

    - An example of an "investigative activity": State v. Sherriff, 3030 Or App 638 (2020) – An officer stopped defendant for a driving violation. While that officer was investigating the offense, a second officer ran his drug-dog around the vehicle (causing no additional delay). As there was no reasonable suspicion of an offense beyond the traffic violation, and as this was not "reasonably related" to the initial violation, this was a prohibited "investigative activity"; defendant's conviction was reversed.

- Safety-related inquiries– ORS 131.615 and ORS 810.410 also authorize officers, during criminal investigation stops and traffic stops, to make an inquiry to ensure "the safety of the officer, the person stopped or other persons present, including an inquiry regarding the presence of weapons."

  So, how do these rules about "reasonably related" and reasonable suspicion for additional "investigative activities" impact a law enforcement officer's ability to either ask questions about weapons or search for weapons in these situations?

  - *Asking questions* about weapons
    - Not permitted to do so as a matter of course or routine, but
    - You are permitted to ask if asking about weapons is "reasonably related" to effectuate an investigation of the basis for the stop, and
    - You are permitted to ask if you can articulate circumstance-specific facts indicating possible danger to you or people in the public, and
    - And you certainly may ask if during your investigation of the initial offense (and your actions in doing so were "reasonably related" to the initial offense) you became aware of facts that give rise to reasonable suspicion of a weapons offense.
  - What about conducting a search for weapons?
    - You may search (vs. just ask about weapons) if you can articulate reasonable suspicion that the person "might pose an immediate threat of serious physical injury."

Without any particularized suspicion, questions may be unlawful if they aren't related to the reasons for the stop.

These inquiries may be justified, under an appropriate set of facts, by the "officer safety exception." *(Discussed below under "searches without a warrant")*

- Force used to effectuate stop – The peace officer making a "stop" may use the degree of force reasonably necessary to make the stop and ensure the safety of the peace officer, the person stopped or other persons present.

Frisk of Stopped Persons ORS 131.625

Basis for Frisk	Seizure of Weapon
A peace officer may frisk a stopped person for dangerous or deadly weapons if the officer reasonably suspects that the person is armed and dangerous to the officer or other persons present.	If, in the course of the frisk, the peace officer feels an object which the peace officer reasonably suspects is a dangerous or deadly weapon, the peace officer may take such action as is reasonably necessary to take possession of the weapon.

"Such reasonable suspicion exists where: (1) the container has the physical capacity to conceal a weapon, and (2) under the totality of the circumstances, there was a reasonable suspicion that it did contain a weapon." State v. Wiggins, 184 Or App 333 (2002) The "officer must hold a subjective belief that the object the officer feels is a weapon and must also state specific and articulable facts to show that belief is objectively reasonable."

Case Law Example: "Frisk" or "patdown" of stopped person vs. a more significant intrusion

State v. Rudder, 219 or App 430 (2008)
The Oregon Court of Appeals found an officer was justified in restraining and hand cuffing defendant for the purpose of conducting an officer- safety pat down. Defendant had been stopped in a residential neighborhood in the early morning hours near the area of a residential burglar alarm; He was sweating profusely, had shaky hands and had bulges in his pockets. However, the court found officer- safety concerns did not justify reaching into defendant's pocket after the pat down did not indicate any weapons and where restraining and cuffing defendant alleviated any potential danger.

In affirming the Court of Appeals ruling, the Oregon Supreme Court noted: "A patdown, because of its limited intrusiveness, is constitutionally permissible if it is based on a reasonable suspicion of a threat to officer safety. But intrusion into a suspect's clothing requires something more – either probable cause or some greater justification than was present here." State v. Rudder 347 Or 14 (2009)

Case Law Examples: When is an encounter a "seizure?"

a) "Only when the content of police questions, the manner of asking them, or other police action would convey to a reasonable person that the police are exercising their authority to coercively detain the citizen does the encounter rise to the level of a seizure." State v. Backstrand, 354 Or 392 (2013).

b) "A 'seizure' of a person occurs under Article I, section 9, of the Oregon Constitution: (a) if a law enforcement officer intentionally and significantly restricts, interferes with, or otherwise deprives an individual of that individual's liberty or freedom of movement; or (b) if a reasonable person under the totality of the circumstances would believe that (a) above has occurred." State v. Ashbaugh, 349 Or 297 (2010).

c) "The thing that distinguishes 'seizures,' that is, 'stops' and 'arrests' –from encounters that are 'mere conversation' is the imposition, either by physical force or through some 'show of authority,' of some restraint on the individual's liberty." Ashbaugh

d) An officer stops a person when he or she communicates that he or she is conducting an investigation that "could result in the person's citation or arrest at that time and place"...A stop occurs "when an officer tells a person that the person has committed a violation or crime." State v. Morfin-Estrada, 251 Or App 158, rev den 352 Or 565 (2012).

Case Law Examples: Unlawful "prolongation" of scope or duration of stop

State v. Rodgers/Kirkeby, 347 Or 610 (2010)

"In summary, Article I, section 9, and this court's case law establish the following principles that must guide the police in their contact with motorists stopped for routine noncriminal traffic violations. Police authority to perform a traffic stop arises out of the facts that created probable cause to believe that there has been unlawful, noncriminal activity .... Police authority to detain a motorist dissipates when the investigation reasonably related to that traffic infraction, the identification of persons, and the issuance of a citation (if any) is completed or reasonably should be completed. Other or further conduct by the police, beyond that reasonably related to the traffic violation, must be justified on some basis other than the traffic violation...Police conduct during a noncriminal traffic stop does not further implicate Article I, section 9, so long as the detention is limited and the police conduct is reasonably related to the investigation of the noncriminal traffic violation."

State v. Dennis, 250 Or App 732 (2012)

In Dennis, the officer, while conducting a traffic stop, began making unrelated inquiries instead of expeditiously processing the traffic citation. The Court of Appeals ruled that an officer unlawfully extends a traffic stop if the officer ceases to process the citation and instead, without justification, begins making inquiries unrelated to the traffic stop.

State v. Jimenez, 357 Or 417 (2015)

In this case, a defendant was stopped for jaywalking and was asked by the trooper if he had any weapons on him. The Oregon Supreme Court, upholding the ruling of the Oregon Court of Appeals, concluded: "Article 1, section 9 of the Oregon Constitution does not permit a law enforcement officer to make such an inquiry as a matter of routine and in the absence of circumstances that indicate danger to the officer or members of the public.

In contrast, when an officer has probable cause to detain an individual and conduct a traffic investigation and the officer has reasonable, circumstance-specific concerns for the officer's safety, the officer may inquire about the presence of weapons. In that instance, the officer's inquiry is reasonably

related to the traffic investigation, and reasonably necessary to effectuate it, and therefore does not violate Article 1, section 9."

When the Jimenez case was before the Oregon Court of Appeals, that court had held:

"When a person is approached by a police officer – whether the person is in an automobile, on a bicycle, or on foot – for committing a noncriminal traffic violation, and the police officer and the person know that is the basis for the stop, then the officer who has approached the person must proceed to process the traffic violation, and may not launch an investigation into unrelated matters *unless the inquiries are justified by reasonable suspicion of the unrelated matter, the inquiry occurred during an unavoidable lull in the citation-writing process, or some exception to the warrant requirement applies."*

State v. Kimmons, 271 Or App 592 (2015)
"The principles related to seizures under Article I, section 9, are categorical, as a constitutional matter, and thus **do not distinguish** between traffic and criminal matters. Therefore it is of "no consequence" that in Jimenez, above, the inquiry occurred in the context of a noncriminal traffic investigation.

Case Law Examples: Clarification regarding requests for identification, retention of identification, and "warrant checks."

State v. Backstrand 354 Or 392 (2013).
"We reaffirm that police requests for information or cooperation do not implicate Article I, section 9, as long as the officer does no more than seek the individual's cooperation through noncoercive questioning and conduct. A request for identification, in and of itself, is not a seizure. Nor is an officer's act of checking the validity of that identification, in and of itself, a seizure. For a request and verification of identification to amount to a seizure, something more is required on an officer's part. Either through the context, the content or manner of questioning, or the other circumstances of the encounter, the officer must convey to a reasonable person that the officer is exercising his or her authority to significantly restrain the citizen's liberty or freedom of movement." (Emphases added).

In State v. Thompson, 264 Or App 754, (2014), the Court of Appeals characterized Backstrand, and its companion cases Highley and Anderson, as holding that neither briefly holding a person's identification, nor calling in a person's identification to check for warrants necessarily and always means the person has been stopped. However, when an officer takes a person's identification and retains it for "more than a reasonable time," the encounter is a stop.

ARREST

Definitions - ORS 133.005

- "Arrest" - ORS 133.005 (1) means to place a person under actual or constructive restraint or to take a person into custody for the purpose of charging him with an offense.
- "Peace officer" (ORS 133.005 (3)) means a member of the Oregon State Police; a sheriff, constable, marshal, or municipal police officer; a reserve officer; a police officer commissioned by a university under ORS 352.383 or 353.125; an investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or any other state, or an investigator of the Criminal Justice Division of the Department of Justice of the State of Oregon; a humane special agent as defined in ORS 181A.345; a regulatory specialist exercising authority described in ORS 471.775 (2); an authorized tribal police officer as defined in ORS 181A.680; or a judicial marshal appointed under ORS 1.177 who is trained pursuant to ORS 181A.540.

NOTE:

An "arrest" is more than a "stop"

"Offense" includes crimes and violations. ORS 161.505

Who May Make an Arrest? ORS 133.220

- A peace officer under a warrant;
- A peace officer without a warrant;
- A parole and probation officer under a warrant;
- A parole and probation officer without a warrant for violations of conditions of probation, parole or post-prison supervision;
- A private person;
- A federal officer

Arrest by Private Person ORS 133.225

- A private person may arrest another person for any crime committed in the presence of the private person if the private person has probable cause to believe the arrested person committed the crime.
- A private person making such an arrest shall, without unnecessary delay, take the arrested person before a magistrate, or deliver the arrested person to a peace officer.
- In order to make the arrest a private person may use physical force as is justifiable.

Arrest by a Peace Officer; Procedure ORS 133.235

- A peace officer may arrest for a crime at any hour of any day or night.
- A peace officer has the authority to arrest without a warrant per ORS 133.310 (1), and the officer may arrest anywhere in the state regardless of the location of the crime.
- The officer shall inform the person to be arrested of the officer's authority, and if the arrest is under a warrant, **shall** show the warrant, unless... [Circumstances make it]...impracticable.
- The officer may use physical force as justified to make the arrest. See ORS 161.235; ORS 161.239 and ORS 161.245

ORS 133.235(5) allows a police officer to enter premises in which the officer has probable cause to believe the person to be arrested to be present – ***but see the constitutional limitations on entering into a residence to make an arrest.***

ENTRY INTO A RESIDENCE FOR PURPOSES OF MAKING AN ARREST:

Federal and Oregon constitutional law limit when an officer has the authority enter into a residence to make an arrest:

For a suspect without an arrest warrant, an officer must have consent or exigent circumstances before entering into a residence to arrest the suspect.

For a suspect with an arrest warrant, an officer can enter into a private residence without consent or exigency if it is the suspect's own residence and they have PC the suspect is in the residence. If the suspect is inside a third-party's residence, officers must have consent or exigency to enter.

In all other situations **a search warrant must be obtained** before entering to make an arrest.

The officer **must** "knock and announce" his identity, authority and purpose before entering the premises.

Arrest by Peace Officer with a Warrant

- An arrest warrant is an order from the court directed to a peace officer, who serves the warrant by arresting the person named in the warrant and bringing him before the court.

- Content and form of warrant of arrest ORS 133.140

  A warrant of arrest is issued by a magistrate only upon probable cause that the person has committed the crime complained of and shall:
  - Be in writing;
  - Specify the name of the person to be arrested;
  - State the nature of the crime;
  - State the date when issued and the county or city where issued;
  - Be in the name of the State of Oregon or city where issued, be signed by and bear the title of the office of the magistrate having authority to issue the warrant;
  - Command any peace officer, or any parole and probation officer for a person who is being supervised by the Department of Corrections or a County Community Corrections agency to arrest the person for whom the warrant was issued;
  - In special circumstances, waive "knock and announce" requirements;
  - Specify amount of security for release

Authority to Issue Warrant ORS 133.120

- Only a magistrate may issue an arrest warrant.

- Magistrates are defined in ORS 133.030 as:
  - Supreme Court judges
  - Court of Appeals judges
  - Circuit Court judges
  - County judges and justices of the peace
  - Municipal judges

- A judge of the Supreme Court or Court of Appeals may issue a warrant of arrest for any crime committed or triable anywhere in the state.

- Arrest warrants issued by all other magistrates are limited to crimes committed or triable only within the jurisdiction of their court.

Authority of Peace Officer to Arrest without Warrant ORS 133.310

- A peace officer **may** arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following:
  - A felony;
  - A misdemeanor;
  - An unclassified offense equal to or greater than the maximum penalty allowed for a class C misdemeanor
  - Any other crime committed in the officer's presence

- A peace officer **may** arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer's jurisdiction.

- A peace officer **shall** arrest and take into custody a person without a warrant when the officer has probable cause to believe:
  - Person has violated a "restraining order", a "protective order for victims of sexual abuse", or a temporary "emergency protective order"; or
  - Person has violated a "foreign restraining order"; or
  - Person has been charged with an offense and is presently released under ORS 135.230 to 135.290, and person has failed to comply with a no contact condition of release agreement.
  - A peace officer or other officer with power of arrest may arrest a probationer without a warrant for violating any condition of probation (ORS 137.545). An officer must have probable cause the person has violated a probation condition in order to arrest.

Probable Cause Defined ORS 131.005 (11)

"Probable cause" means there is a substantial objective basis for believing that more likely than not an offense has been committed and a person to be arrested has committed it.

NOTE: Probable cause in Oregon has both a subjective and an objective component. An officer must subjectively believe that an arrest is lawful and that belief must be objectively reasonable in the circumstances. State v. Owens, 302 Or 196 (1986).

The arresting officer may make a warrantless arrest based on probable cause known to a different officer and unknown to the arresting officer at the time of the arrest. However, the state must prove the existence of probable cause by a preponderance of the evidence if the warrantless arrest is later challenged. State v. Crawford, 91 Or App 587 (1988)

Probable Cause Determination after Arrest

In County of Riverside v. McLaughlin, 500 US 44 (1991), the U.S. Supreme Court held that, absent extraordinary circumstances, the Fourth Amendment requires that a person in custody on a warrantless arrest is entitled to a judicial determination of probable cause within 48 hours.

This rule requires that the officer file a sworn probable cause statement / affidavit with the court when lodging a suspect in custody.

Please refer to sample Probable Cause Statement form at end of this handout.

Criminal Citation ORS 133.055 – 133.070

- A police officer may issue a citation for:
  - Misdemeanors
  - Felonies subject to misdemeanor treatment
  - Violations
  - A criminal citation is not the same as a uniform traffic citation

- Domestic disturbances are exceptions ORS 133.055 (2)
  - Police shall arrest and take into custody the alleged or potential assailant if there is probable cause to believe:
  - An assault (includes strangulation) has occurred between "family or household members," or
  - One such person *has placed the other in fear* of imminent serious physical injury. This is more than Menacing, which only requires an attempt to place the other in fear. Mandatory arrest for Menacing is triggered by a victim actually placed in fear. Remember your definition of "imminent"

- The citation issued shall contain:
  - The name of the court in which the cited person is to appear;
  - The name of the person cited;
  - A complaint containing at least:
  - Name of court, name of public body bringing action and name of defendant;
  - Readily understandable statement of the crime and date, time and place of alleged crime; and

Statutory FTA Warning:

"This citation is not a complaint or information.

One may be filed and you will be provided a copy thereof at the time of your first appearance.

You MUST appear in court at the time set in the citation.

IF YOU FAIL TO APPEAR AND A COMPLAINT OR INFORMATION HAS BEEN FILED, THE COURT WILL IMMEDIATELY ISSUE A WARRANT FOR YOUR ARREST."

- Peace officers certification of sufficient grounds to believe person named in complaint committed the offense;
- Time, date and place at which the person cited is to appear in court;
- If arrest was made by a private person, the arresting person's name;
- Whether a complaint or information has been filed at the time the citation was issued; and
- Statutory warning about failure to appear warrant.

Prohibitions on Law Enforcement Assisting with Immigration Enforcement:

Oregon law generally prohibits law enforcement from supporting or assisting any federal immigration authority. This includes things like: allowing any member of a federal immigration authority into any part of a police facility that the general public does not have access to, providing personal information about a person (contact information, country of birth, custody status etc.) to a federal immigration authority, investigating or questioning a person for purposes of immigration enforcement, or establishing a traffic perimeter for the purpose of helping immigration enforcement. (ORS 181A.826)

ORS 181A.823 prohibits law enforcement from inquiring into or collecting information about a person's immigration or citizenship status or country of birth unless:

- The information is required to advance an investigation into a violation of *state* or *local* criminal law (not federal);
- The information is submitted to state court, in connection with a proceeding in that court; or
- As necessary to determine the individual's eligibility for a benefit, but only when the individual has requested the benefit

ORS 181A.823 also prohibits law enforcement from providing information about an individual in police custody to a federal immigration authority for the purpose of civil immigration enforcement unless:

- As may be required by a *judicial* subpoena or other compulsory court-order issued as part of a court proceeding (not an administrative subpoena)
- To the extent the information is available to the general public, but the information can only be made available under the same terms and conditions that apply to the general public

The restrictions on questioning a person about their citizenship status or country of origin do not get rid of the obligations under the Vienna Convention on Consular Relations. In order to ensure compliance with consular notification requirements, ORS 181A.823 (3) requires that a law enforcement agency shall explain to the individual in writing, with interpretation into another language if requested:

- The individual's right to refuse to disclose the individual's nationality, citizenship or immigration status; and
- That disclosure of the individual's nationality, citizenship or immigration status may result in civil or criminal immigration enforcement, including removal from the United States.

Consular Notification

CONSULAR NOTIFICATION AND ACCESS - ORS 181A.470

Oregon law requires all police officers are trained to "Understand the requirements of the Vienna Convention on Consular Relations and identify situations in which the officers are required to inform a person of the person's rights under the convention."

Summary of requirements pertaining to foreign nationals:

- When foreign nationals are arrested or detained, they must be advised of the right to have their consular officials notified.
- In some cases, the nearest consular officials must be notified of the arrest or detention of a foreign national, regardless of the national's wishes.
- Consular officials are entitled to access to their nationals in detention, and are entitled to provide consular assistance.
- When a government official becomes aware of the death of a foreign national consular, officials must be notified.
- When a guardianship or trusteeship is being considered with respect to a foreign national who is a minor or incompetent, consular officials must be notified.
- When a foreign ship or aircraft wrecks or crashes, consular officials must be notified.

These are mutual obligations that also pertain to American citizens abroad. In general, you should treat a foreign national as you would want an American citizen to be treated in a similar situation in a foreign country. This means prompt, courteous notification to the foreign national of the possibility of consular assistance, and prompt, courteous notification to the foreign national's nearest consular officials so that they can provide whatever consular services they deem appropriate.

Steps to follow when a foreign national is arrested or detained:

- Determine the foreign national's country. In the absence of other information, assume this is the country on whose passport or other travel document, the foreign national travels.
    - Remember a person first needs to be notified pursuant to ORS 181A.823 of their right to refuse to answer questions related to their nationality, citizenship, or immigration status. A person can then choose to voluntarily answer questions for purposes of consular notification.

- If the foreign national's country is not on the mandatory notification list:
    - Inform the foreign national, without delay, that he or she may have his or her consular offices notified of the arrest or detention and may communicate with them. (Suggested statement provided below)

> "As a non-U.S. citizen who is being arrested or detained, you may request that we notify your country's consular officers here in the United States of your situation. A consular official may be able to help you obtain legal representation, and may contact your family and visit you in detention, among other things. If you want us to notify your consular officers, you can request this notification now, or at any time in the future. After your consular officials are notified, they may call or visit you. Do you want us to notify your consular officers at this time?"

    - If the foreign national asks that consular notification be given, notify the nearest embassy or consulate of the foreign national's country without delay. (Suggested notification fax sheet found at the end of Student Resource)
    - Forward any communication from the foreign national to his or her consular officers without delay.

- If the foreign national's country is on the list of mandatory notification countries:

    - Notify that country's nearest embassy or consulate, without delay, of arrest / detention. (You may use the suggested fax sheet for making the notification.)

    - Tell the foreign national that you are making this notification and inform him or her (without delay) that he or she may communicate with his or her consular officers. (Suggested statement provided below)

        "Because of your nationality, we are required to notify your country's consular officers here in the United States that you have been arrested or detained. We will do this as soon as possible. In addition, you may communicate with your consular officers. You are not required to accept their assistance, but your consular officers may be able to help you obtain legal representation and may contact your family and visit you in detention, among other things. Please sign to show that you have received this information."

    - Forward any communication from the foreign national to his or her consular officers without delay.

    - Keep a written record of the provision of notification and actions taken.

Mandatory Notification Countries and Jurisdictions		
Albania	Georgia	Russia
Algeria	Ghana	Saint Kitts and Nevis
Antigua and Barbuda	Grenada	Saint Lucia
Armenia	Guyana	Saint Vincent and the Grenadines
Azerbaijan	Hungary	Seychelles
Bahamas, The	Jamaica	Sierra Leone
Barbados	Kazakhstan	Singapore
Belarus	Kiribati	Slovakia
Belize	Kuwait	Tajikistan
Brunei	Kyrgyzstan	Tanzania
Bulgaria	Malaysia	Tonga
China (including Macedonia and Hong Kong) (see 1 below)	Malta	Trinidad and Tobago
	Mauritius	Turkmenistan
Costa Rica	Moldova	Tuvalu
Cyprus	Mongolia	Ukraine
Czech Republic	Nigeria	United Kingdom (see 3 below)
Dominica	Philippines	Uzbekistan
Fiji	Poland (see 2 below)	Zambia
Gambia	Romania	Zimbabwe

1 Notification is not mandatory in the case of persons who carry the "Republic of China" passports issued by Taiwan. Such persons should be informed without delay that the nearest office of the Taipei Economic and Cultural Representative Office (TECRO), the unofficial entity representing Taiwan's interests in the United States, can be notified at their request.

2 Mandatory only for foreign nationals who are not lawful permanent residents in the United States (i.e., "green card" holders). Otherwise, upon the nation's request.

3 The bilateral consular convention between the United States and the United Kingdom applies to British nationals from Great Britain (England, Wales, and Scotland); Northern Ireland; the Crown Dependencies of Jersey, Guernsey, and the Isle of Man; and the British Overseas Territories, including Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Gibraltar, Montserrat, and the Turks and Calcos Islands, along with other island territories. Residents of the Overseas Territories may be traveling on a passport issued by the territory with no indication that the territory is British. Nevertheless, for them and all others from a British possession listed above, consular notification and access should be provided to the nearest U.K. consulate.

Foreign Embassies and Consulates in the United States

Information regarding foreign embassies and consulates in the United States is available from the Department of State. Consular notification should be made to the officer nearest the place of arrest or detention. Washington, D.C., information is generally for embassies to the United States; numbers for other locations are for consular offices outside of Washington or, in the case of some countries without embassies or consular offices in the United States, for the country's mission to the United Nations in New York.

A list of numbers may be obtained from the Office of Public Affairs and Policy Coordination Bureau of Consular Affairs, telephone 202-647-4415 (after hours 202-647-1512); facsimile 202-736-7559 or by visiting the consular notification website at https://travel.state.gov/content/travel/en/consularnotification.html.

Part 2 - Miranda

CUSTODY AND INTERROGATION

Miranda v. Arizona, 384 US 486 (1966)

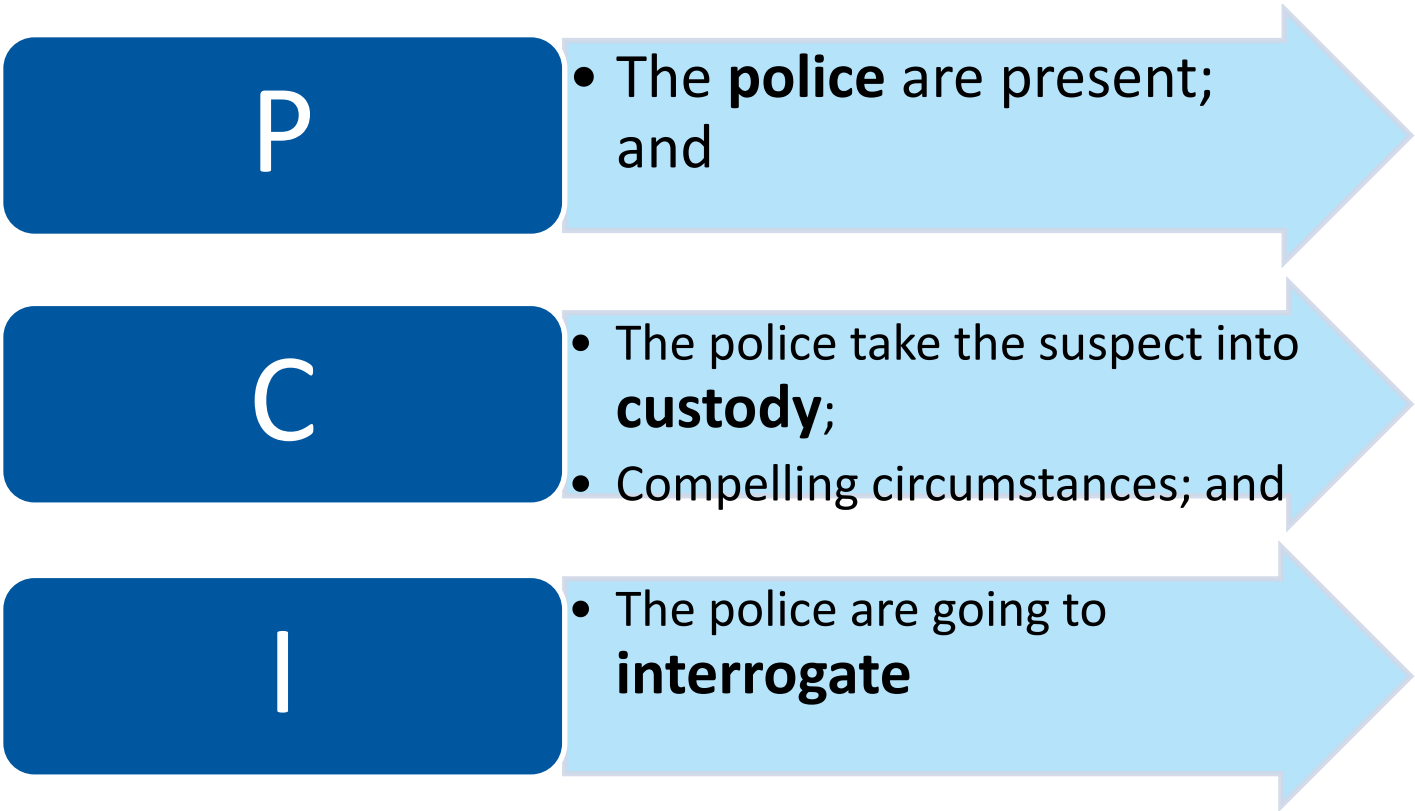
In Miranda, the Supreme Court held that if a person is subjected to custodial police interrogation, any statements obtained therefrom, whether incriminating or exculpatory, are not admissible unless the prosecution demonstrated that sufficient procedural safeguards were afforded the accused.

Elements of Miranda Warning

The Supreme Court required that prior to questioning the accused must be advised:

- That he or she has the right to remain silent;
- That any statement made may be used against the accused;
- That the accused has the right to an attorney prior to and during questioning, and
- That an attorney may be appointed to represent the accused if accused is unable to afford one.

A person should be advised of the Miranda rights if:



Custody (Federal – 5th Amendment analysis)

- In Miranda, the Court specified that the Miranda rule applied to questioning initiated by a law enforcement officer after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.

- Test is not what the suspect himself actually believed (i.e., subjective test)

- Apply objective test: how a reasonable person in suspect's position would have understood the situation. Berkemer v. McCarty, 468 US 420 (1984)

- Miranda does not apply when the defendant's freedom to depart is not restricted in any way. Oregon v. Mathiason, 429 US 492 (1977)

- Location of interrogation is a factor in "compelling circumstances":
  - Police station = usually more compelling/custodial
  - Jails = custodial
  - Homes = usually less compelling/custodial
  - Places of business = Usually less compelling/custodial
  - Automobiles = routine traffic stops usually not compelling/custodial

- Juvenile suspects – The U.S. Supreme Court has held, "so long as the child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of that test. This is not to say that a child's age will be a determinative or even a significant, factor in every case...It is however, a reality that courts cannot simply ignore." J.D.B. v. North Carolina, 564 US 261 (2011).

Custody (Oregon Analysis – Article 1, Section 12)

- If the police place a person in either full custody or "compelling circumstances," they must give that person Miranda warnings before questioning him or her. See State v. Burdick, 186 Or App 460 (2003).

- A person is in "compelling circumstances," for purposes of determining whether *Miranda* warnings are required, when, considering the totality of circumstances, the circumstances indicate that a reasonable person would believe that they are being compelled to answer an officer's questions; such a circumstance occurs in a police-dominated atmosphere. State v. Yaeger, 311 Or App 626 (2021)

- In deciding whether a reasonable person would conclude the circumstances were compelling, the Oregon Supreme Court has considered the following non-exclusive host of factors:
  - The location of the encounter;
  - The length of the encounter;
  - The amount of pressure exerted on the defendant; and
  - The defendant's ability to terminate the encounter. State v. Roble – Baker, 340 Or 631 (2006)

The "overarching inquiry is whether the officers created the sort of police-dominated atmosphere that Miranda warnings were intended to counteract."

- The Oregon Court of Appeals has also considered a number of factors in determining whether the circumstances of an encounter were "compelling", including:
  - The number of officers present;
  - Whether the suspect was physically restrained with handcuffs or confined in a patrol car;
  - Whether officers used force or displayed weapons;
  - The duration of the detention;
  - The demeanor of the officers in engaging and questioning a suspect;
  - The language used by the officers;
  - Whether sirens or flashing lights were present; and
  - Whether the suspect had been expressly confronted with incriminating evidence at the time of the questioning. State v. Shirley, 221 Or App 12 (2008)

- None of these factors are to be applied "mechanically". Rather "the Miranda warnings are necessary to ensure that a person's statement is truly the product of free choice and not involuntary or the product of his will being overborne." Shirley

"Compelling circumstances" case examples:

State v. Shaff, 343 Or 639 (2007)

Officers responded to a 911 call about an injured woman at defendant's trailer. After defendant let them inside, they spoke with him without reading him his Miranda rights. While the victim spoke with one officer outside, the primary officer overheard her state that she had merely fallen down. Regardless, he asked defendant why the victim would say that she had been assaulted. The Oregon Supreme Court held:

1) The fact defendant was not free to leave did NOT create "compelling circumstances." He was detained for only a brief period of time, no more than a typical traffic stop. Also, he was questioned in his own home, not at the police department, and the officer did not raise his voice, threaten defendant, or engage in a show of force to coerce defendant to answer;

2) The officer's show of authority was, at most, a stop. The fact that defendant was not free to leave did not, in and of itself, make the setting compelling;

3) The trial court had implicitly found that the officer acted in an appropriate and courteous manner in inquiring about the victim's welfare;

4) The mere fact the one statement by the officer had a "false premise" did not create coercion; rather, the question is "what effect the information that the statement conveyed would have had on a reasonable person in the suspect's position;" and

5) Confronting a suspect with evidence of guilt, without any "heightened level of activity" on the officer's part, does not render the circumstances "compelling."

State v. Saunders, 221 Or App (2008)

Defendant was convicted of various sexual crimes involving minor children, based in part on statements he made to police during questioning at his home without Miranda warnings. The interviewing detectives confronted him with incriminating evidence, and at that point, when he asked to get up to get cigarettes, one of the detectives told him to sit down and retrieved the items for him. The Court of Appeals held that confronting defendant with incriminating evidence in a "police dominated atmosphere" did not create compelling circumstances in this case. Under Shaff, the confrontation of a defendant with incriminating evidence does not create compelling circumstances unless it is done in a "coercive" manner. Here there was no evidence the detectives confronted defendant in a coercive manner. Likewise, their request that defendant "please sit down" did not, by itself, make the situation compelling.

State v. Shirley, 220 Or App 606 (2008)

A plainclothes officer contacted defendant after seeing him make an apparent drug buy. The officer identified himself, then saw defendant swallow "very hard" which caused the officer to believe defendant was attempting to dispose of the drugs he just purchased. He told defendant to spit it out, and defendant denied he had anything. The officer told him he just watched him buy drugs, and defendant opened his mouth to reveal a piece of candy. Then the officer noticed a packaged piece of rock cocaine on the ground almost directly under defendant. The officer handed it to another officer and told defendant it didn't "matter" because they found his drugs. He also told defendant he didn't need to lie and that it was "disrespectful" for him to lie about the drugs. At that point, defendant admitted he bought it for $10. The Oregon Court of Appeals held defendant's statement was made under compelling circumstances, and the failure to give Miranda warnings required suppression. Before the officer saw the cocaine on the ground, he had lawfully stopped defendant based on reasonable suspicion. That temporary restraint on defendant's liberty did not create compelling circumstances. However, once the officer saw the cocaine on the ground, a reasonable person in defendant's situation would have believed that he was going to be placed in custody. The officer's subsequent comments about lying being "disrespectful" constituted interrogation regarding whether defendant had possessed the cocaine, and those comments prompted defendant's admission without the benefit of a Miranda warning.

State v. Roble – Baker, 340 Or 631 (2006)

Defendant voluntarily came with detectives to the police station to answer questions. Defendant spent five to six hours at the police station; officers refused to honor her requests to end the contact; defendant was dependent on them for a ride home; and the detectives continued to ask questions that assumed her guilt. The Oregon Supreme Court found compelling circumstances, requiring Miranda warnings for statements to be admissible.

State v. Burdick, 186 Or App 460 (2003)

At least seven officers forcibly entered a home (not Burdick's) pursuant to a search warrant for drugs. Officer ordered Burdick and other occupants to the floor at gunpoint, handcuffed them for 15 to 30 minutes, and after removing the handcuffs, confined them on the porch while the officers continued searching the house and interviewing the occupants. After being released from handcuffs, Burdick asked if he could leave to go to work. A detective asked Burdick if he had any drugs on him. Burdick produced a pipe, some meth, etc. He then was allowed to leave. The Court of Appeals ruled the detective should have given Burdick Miranda warnings before questioning him. "Considering all the circumstances, the situation was, at a minimum, compelling... The officers' actions created the sort of police-dominated atmosphere that Miranda warnings were intended to counteract."

Interrogation

- Interrogation, under Miranda, means "either express questioning or its functional equivalent."
- Interrogation "refers not only to express questioning, but also to any words or actions on the part of the police that the police should know are reasonably likely to elicit and incriminating response from the suspect."
- "Interrogation" does not include routine booking questions put forth by corrections officers.

Volunteered Statements

- A statement made at any time that is not in response to a question by any law enforcement officer.
- Volunteered statements of any kind are not barred by the Fifth Amendment and are not affected by Miranda decision.

- Police are not required to stop and advise a person who enters a police station and states a wish to confess to a crime.
- Test for voluntariness is "totality of circumstances"

Admission v. Confession ORS 136.425

Admission	Confession	Corroboration
A statement by the accused of facts pertinent to an issue and tending, in connection with proof of other facts, to prove the accused's guilt.	A statement by the accused disclosing his guilt of the crime with which he is charged and excluding the possibility of reasonable inference to the contrary.	A confession by itself is not sufficient to warrant the conviction of the defendant without some other proof that the crime has been committed.
Example: While talking to a theft suspect the suspect admits to being at the location of the theft during the time of the theft.	**Example:** When talking to a theft suspect the suspect admits to taking the missing items, and to knowing it was wrong.	**Example:** The theft suspect not only confesses to taking the missing money, but tells you where he/she is hiding those items which you eventually recover.

State v. Manzella, 306 Or 303 (1988)

- Case law typically established a distinction between "confessions" as acknowledgements of guilt and "admissions" as acknowledgements of fact.
- A "confession" must have been made after the commission of the crime in question, for the purpose of acknowledging the speaker is guilty of some criminal offense.
- If in the course of the "confession" the accused admits one or more elements of the crime charged, the State must produce "some other evidence" (corroboration) of that element.

Waiver of Rights

Under Miranda, a defendant's waiver of constitutional rights must be:



"Voluntariness of course is always a requirement for admission of a defendant's incriminating statements. Even warned statements may be inadmissible if they are not otherwise voluntary." State v. Vondehn, 348 Or 462 (2010).

"We acknowledge, of course, that a defendant is entitled to demonstrate (whether by defendant's own testimony or otherwise) that the defendant's waiver was not knowing. So, for example, a defendant may demonstrate that he or she did not understand the warnings due to cognitive or linguistic limitations." Vondehn.

When a translation of the Miranda rights has been given, our inquiry is whether the concepts have been expressed rather than whether the words have been accurately translated. State v. Corona, 60 Or App (1982).

Courts will presume defendant did not waive his rights; waiver cannot be inferred from silence.
Determination of whether waiver occurred depends upon "the particular facts and circumstances surrounding the case, including the background, experience and conduct of the accused." North Carolina v. Butler, 441 US 369 (1979).

Explicit assertion of Miranda rights is not necessary; these rights exist whether or not the accused claimed them. Key inquiry is whether a waiver occurred and whether it was free, voluntary and involved no police persuasion. State v. McGrew, 38 Or App 493 (1979).

Signed or written waiver is not required; though when a defendant is asked if he or she understands Miranda rights, signs a Miranda card, and says, "Yes," waiver of rights occurs. State v. Anderson, 30 Or App 257 (1977).

Unnecessary to articulate waiver following warnings; rather, clear and unambiguous conduct by person advised of rights that includes willingness to answer questions sufficient to establish waiver. State v Davison, 252 Or 617(1969). Answering police questions following Miranda warnings is evidence of waiver of rights under Article I, section 12. State v. Collins, 253 Or 74 (1969).

An officer's testimony that he advised a suspect of each right under Miranda is generally sufficient proof that the suspect was so advised.

Assertion of Rights

In Miranda the Supreme Court held that if a defendant "indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning."
"An accused's request for an attorney is per se an invocation of his Fifth Amendment rights, requiring that all interrogation cease." Fare v. Michael C., 442 US 707 (1979). Under the Oregon Constitution, Article I, section 12, when a suspect makes an equivocal request for counsel, the police may ask only "further questions seeking clarification of the suspect's intent." State v. Charboneau, 323 Or 38 (1996).

"An accused...having expressed his desire to deal with police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless accused himself initiates further communication..." Edwards v. Arizona, 451 US 477 (1981)

- Edwards applies to second officer who is unaware of earlier invocation.
- Also applies to questioning about separate charges, whether related or unrelated. Arizona v. Roberson, 486 US 675 (1988)
- "Initiated" means any statement by the suspect that evinces "...a willingness and a desire for a generalized discussion about the investigation; [and] not merely a necessary inquiry arising out of the incidents of the custodial relationship." Oregon v. Bradshaw, 462 US 1039 (1983)

Suspects represented by counsel

State v. Gilmore, 350 Or 380 (2011) - After a defendant has been charged, officers may talk to a represented defendant without counsel only if defendant initiates the conversation AND waives their right to counsel. A waiver is knowing only if defendant is aware of "the benefit that they are giving up" – that counsel could help them in the interview. Defendant's awareness of *Miranda* rights may suffice to establish that their waiver was knowing.

GENERAL RULE: Once a suspect is represented by counsel, **there cannot be any further police interrogation about the charged crimes**. Except in rare circumstances, law enforcement is **only** able to communicate with the suspect about the charged crimes through or in the presence of their defense counsel**.**

Part 3- Search and Seizure

SEARCH AND SEIZURE: WITH A WARRANT

Fundamental Principles

United States Constitution – Fourth Amendment	Oregon Constitution – Article 1, Section 9
"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."	"No law shall violate the right of the people to be secure in their persons, houses, papers and effects, against unreasonable search, or seizure; and no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched and the person or thing to be seized."

In State v. Owens, 302 Or. 196 (1986), the Oregon Supreme Court defined "search" and "seizure" in terms of the interests protected by the Oregon Constitution:

> "Article 1, Section 9, protects privacy and possessors' interests. A 'search' occurs when a person's privacy interests are invaded."

What about "abandoned property?"

The Oregon Supreme Court, in State v. Cook, 332 Or 601 (2001), identified three legal principles applicable to the analysis:

1. First, the determination whether a defendant has relinquished a constitutionally protected interest in an article of property involves both factual and legal questions, which [the] court reviews in the same manner that it reviews other search and seizure questions....

2. Second, because Article 1, section 9, protects both the possessory and privacy interests in effects, property law concepts of ownership and possession are relevant, though not always conclusive, in the factual and legal determination whether a defendant relinquished all constitutionally protected interests in an article of property.

3. Finally, for constitutional purposes, the question to be resolved ... [is] whether the defendant's statements and conduct demonstrated that the relinquished all constitutionally protected interests in the articles of property...."

Later, in State v. Brown, 348 OR 293 (2010), the Court rejected those Court of Appeals opinions since Cook which appeared to add a requirement that the defendant indicated an intent to "permanently" relinquish the property. No proof of "permanent relinquishment" is required.

In balancing the inherent tension between the constitutional provisions of "reasonable searches" and "probable cause warrants," the courts acknowledge that the requirement of a warrant is preferred, and that the government must establish that a warrantless search was necessary and reasonable under the circumstances.

General rule: "searches, in the absence of well-recognized exceptions, may be made only under the authority of a search warrant." Chimel v. California, 395 US 752 (1969)

What about "curtilage?"

Article I, Section 9, provides protection not only to an individual's house proper, but also to the area surrounding the house, known as the curtilage. Under the Oregon Constitution, a warrantless intrusion onto residential curtilage is presumptively a trespass, unless the entry is privileged or the defendant has given express or implied consent. A trespassory intrusion onto the curtilage of a person's home violates Article I, section 9.

The "curtilage" of a home is the land immediately surrounding and associated with a person's residence.

Search Warrants – General Requirements ORS 133.545

- A search warrant may be issued only by a judge (magistrate)
- Jurisdiction of warrant depends upon jurisdiction of judge.
- Application for a search warrant may be made only by a district attorney, a police officer, or by a "special agent" as described in ORS 131.805.
- The application shall conform to ORS 133.565 and be supported by one or more affidavits particularly setting forth the facts and circumstances tending to show that the objects of the search are in the places, or in the possession of the individuals to be searched. If an affidavit is based in whole or in part on hearsay, the affidavit shall set forth facts bearing on any unnamed informant's reliability and shall disclose, as far as possible, the means by which the information was obtained.
- Application may be in writing or judge may take oral statement under oath. The oral statement shall be recorded and a copy of the recording submitted to the judge who took the oral statement. Judge shall certify that the recording of the sworn oral statement is a true recording of the oral statement under oath and shall retain the recording as part of the record. The recording shall constitute an affidavit. The applicant shall retain a copy of the recording and shall provide a copy of the recording to the district attorney if the district attorney is not the applicant.

- The written affidavit and warrant may be submitted by FAX or similar electronic transmission. The affidavit may have a notarized acknowledgement or affiant may swear to affidavit over telephone. Affiant must note on affidavit if oath administered telephonically. Judge's declaration must be filed with return.

- A judge may authorize execution of a search warrant outside of the judicial district in which the court is located if the judge finds that:
    - One or more of the objects of the search relate to an offense committed or triable within the judicial district in which the court is located; OR
    - There is interrelated conduct between the authorizing judge's district and another district, and the interrelated conduct is related to certain controlled substances; or
    - The search relates to one of the following offenses involving a victim who was 65 years of age or older at the time of the offense:
        - Criminal mistreatment in the first degree as described in ORS 163.205 (1)(b)(D) or (E);
        - Identity theft;
        - Aggravated identity theft;
        - Computer crime;
        - Fraudulent use of a credit card;
        - Forgery in any degree;
        - Criminal possession of a forged instrument in any degree;
        - Theft in any degree; or
        - Aggravated theft in the first degree;

    - The objects of the search consist of financial records; and

    - The person making application for the search warrant is not able to ascertain at the time of the application the proper place of trial for the offense described in paragraph (a) of this subsection.

Contents of Search Warrant ORS 133.565

- Dated and addressed to officer authorized to execute it;

- The warrant shall state, or describe with particularity:
  - The identity of the issuing judge and date;
  - The name of the person to be searched, or the location and designation or the premises or places to be searched;
  - The things constituting the object of the search and authorized to be seized; and
  - The period of time, not to exceed five days, after execution...within which the warrant must be returned.

- Unless authorized otherwise, the warrant shall be executed between the hours of 7:00 a.m. and 10:00 p.m. and within five days from date of issuance.

Execution of Search Warrant ORS 133.575

- A search warrant may be executed only within the period and at the time authorized by the warrant and only by a police officer.

- Before entering the premises executing officer shall give appropriate notice of the identity, authority and purpose of the officer to the person to be searched.

  NOTE: Under Oregon law, a search warrant cannot provide advance authority for police to enter without knocking and announcing. Determination of the need to forgo knocking and announcing can be made only at time of entry. State v. Arce, 83 Or App 185 (1986)

- Before undertaking any search or seizure pursuant to the warrant, the executing officer shall read and give a copy of the warrant to the person to be searched.

Objects of Search and Seizure ORS 133.535

- Evidence of or information concerning the commission of a criminal offense;
- Contraband, the fruits of a crime, or things otherwise criminally possessed;
- Property that has been used, or is possessed for the purpose of being used, to commit or conceal the commission of an offense; and
- A person for whose arrest there is probable cause or who is unlawfully held in concealment.

List of Things Seized ORS 133.595

- Promptly upon completion of the search, the officer shall:
  - Make a list of the things seized,
  - Deliver a receipt embodying the list to the person from whose possession they were taken or the person in apparent control of the premises or vehicle from which they were taken.
  - If vehicle or premises are unoccupied or there is no one present in apparent control, leave the receipt suitably affixed to the vehicle or premises.

Search Warrants: Case law regarding digital evidence

The Court of Appeals has ruled that a search warrant, which authorized a search of the entire hard drive of a digital device, was unconstitutionally overbroad, since the officer's affidavit did not create a nexus to the specific type of things to be searched within the device, in this case, a phone.

The decision in State v. Mansor, 363 Or 185 (2018) affects any search warrant that is seeking to search, seize and analyze digital evidence items such as cell phones, laptops, thumb drives, etc.

For example, an officer may have probable cause to look at a drug dealer's text messages. The warrant shouldn't be written so broadly as to authorize the officer to search through the suspect's photos, calendar items, browser history, and/or to search for items which significantly predate

the believed illegal conduct. Rather, the officer's affidavit would need to articulate a nexus to each type of data the officer seeks.

The court said "the warrant must identify, as specifically as reasonably possible in the circumstances, the information to be searched for, including, if relevant and available, the time period during which that information was created, accessed, or otherwise used." Mansor, 363 Or at 218. This means the warrant itself should list the subject of the search, or the officer should specifically include a reference incorporating the affidavit into the warrant to help guide the examiners understanding of the limits of the search.

The court also recognized that a "forensic examination likely will need to examine, at least briefly, some information or data beyond that identified in the warrant." Mansor. If the officer discovers evidence outside the scope of the warrant, the officer should immediately stop and seek a further warrant to expand the scope of the search. In that second affidavit, the officer must identify the facts that support a search warrant exception (e.g. plain view) for discovery of the evidence outside the scope of the original warrant.

SEARCH AND SEIZURE: WITHOUT A WARRANT

Search Incident to Arrest

The Oregon Supreme Court has held that unlike federal search and seizure law, a valid custodial arrest does not alone give rise to a unique right to search. Such a warrantless search must be justified by the circumstances surrounding the arrest. See State v. Caraher, 293 Or 741 (1982)

Under Article 1, Section 9, of the Oregon Constitution, there are three valid justifications for a search incident to a lawful arrest:

To protect the officer's safety, and/or prevent escape;	To prevent the destruction of evidence; and	

		To discover evidence relevant to the crime for which the defendant is being arrested.

A pat-down or limited search for weapons to protect the officer or to prevent escape would be justified whenever a person is taken into custody. State v. Owens, 302 Or 196 (1986). Beyond that limited search, however a further search incident to arrest conducted to protect officer safety or to prevent escape must be reasonable, taking into account all the facts surrounding the arrest.

The justifications for always allowing some limited warrantless search incident to arrest are clear: The proximity of an officer to an arrestee during arrest and handcuffing makes it imperative that the arrestee not have immediate access to a weapon or tool of escape that might be easily concealed and reachable even if the arrestee were handcuffed...but...when the immediate danger of handcuffing and arresting a suspect has passed, and the officer has determined that the arrestee has no means of escape concealed on his person...any further search incident to arrest must be justified by specific and articulable facts. State ex rel Juv. Dept. v. Singh, 151 Or App 223 (1997).

Once police have seized a closed container from an arrestee, the threat to officer safety from any item within that container has dissipated, and the police can protect themselves by taking steps short of conducting a search while waiting to obtain a search warrant. Singh.

A police officer who, while investigating a crime, develops probable cause to believe another crime has been committed may conduct a search for evidence that is relevant to the latter crime and that reasonably could be concealed on the arrestee's person or in the belongings in his or her immediate possession at the time of the arrest. State v. Crampton, 176 Or App 62 (2001).

As long as the search is for evidence of the crime for which the arrest was made, and such evidence reasonably could be concealed on the arrestee's person or in the belongings in his or her immediate possession at the time of the arrest, no "container rule" blocks the intensity of the incidental search. Owens.

A search for the purpose of discovering evidence of the crime of arrest may be justified even if the defendant has been removed from the area in which an officer believes that evidence may be located. In those circumstances, the search will comport with Article I, section 9, even though the defendant no longer has control over the area searched, as long as the evidence reasonably could be found in that area and the search is otherwise reasonable in time, scope, and intensity. State v. Washington, 265 Or App 532 (2014).

A search may be considered "incident to arrest" even though it preceded the arrest. See State v. Anfield, 313 Or 554 (1992).

Summary of relevant cases concerning police authority to search, "incident to arrest," for officer protection and/or means of escape:

State v. Hoskinson, 320 Or 83 (1994)
Facts: After arresting defendant for driving while suspended, officer handcuffed defendant and then conducted a "pat-down search" of defendant's person. During the pat-down, officer took a wallet from defendant's back pocket. Officer opened it and looked inside. On direct, officer was asked if he had any indication from looking at the wallet before opening it that it may contain a weapon or a means of escape. He said he "could not tell that by not opening it up." On cross he said, "its normal practice for myself to obtain the wallet and see if there are any weapons or any indications of things that would be used to escape that would alert myself to search the subject more thoroughly and extensively for additional means of escape." Trial court said valid search conducted to protect officer safety and to prevent escape.

Ultimately, the Oregon Supreme Court, after analyzing the history of Caraher and Owens, said "...a further search incident to arrest conducted to protect officer safety or to prevent escape must be reasonable, taking into account all the facts surrounding the arrest. Thus, an officer may conduct a

further protective search (after pat-down) if he or she develops a reasonable suspicion, based on specific and articulable facts, that the person in custody poses a serious threat of harm or escape and that a search would lessen or eliminate that threat."

The court in ruling, that officer's warrantless search of defendant's wallet was not justified under the "officer-safety prong" of the search incident to arrest exception, noted the following: Officer testified he searched defendant's wallet because it was his "normal practice" to do so. Officer testified he had no specific reason to believe defendant's wallet contained a weapon or means of escape. He testified his training and experience led him to believe that the wallet could have contained one of those items, but he could not tell until he opened it.

Therefore, the court found, there was nothing to suggest the officer had a *reasonable* suspicion defendant posed an immediate threat of escape or harm.

State v. Lumpkin, 133 Or App 265 (1995)
The court in Lumpkin referred to the ruling in Hoskinson as "the constitutional standard for determining when, after conducting a limited, pat-down search for weapons, an officer may conduct a more extensive search incident to arrest to protect officer safety or to prevent escape."

In ruling that the officer was justified in removing a pouch from defendant that he felt during the pat-down, the court said "The officer here gave very clear reasons as to why he was concerned that the object that he felt might have contained a weapon: Despite his repeated instructions to defendant to keep his arms spread out on the trunk of the police car, defendant twice pulled his arms and hands in toward the midsection of his body and out of officer's view, exactly where the officer felt the unidentified object." The court concluded the officer's belief was reasonable.

State v. Sopiwnik, 176 Or App 127 (2001)
Officer testified he becomes concerned for his safety when somebody "bails out of a car", as this indicates the person intends to fight or flee. He believes a person is a flight risk, or may become confrontational, when the person is fidgety and does not make eye contact. In his experience, people involved with theft crimes (like defendant) are often involved with drugs and often have weapons. He was particularly concerned defendant might have small weapons such as razor blades, needles or knives

or that he might have a handcuff key or some other small tool that could be used to pick the handcuff lock.

Officer then described his "search incident to arrest." "What I do is I go through the pockets. I check – I pat the outside, and then I go actually into the pockets because I don't want to miss anything. I don't want to bring a weapon into the jail. I don't want to have him have access to a weapon while he is in the back seat of my patrol car, which is going to hurt me." He follows this procedure "every time" he makes an arrest. In this case, officer found nothing during exterior pat-down, but when going through pockets of defendant's thick jacket, found meth.

The court reminded that under Caraher, "A valid custodial arrest does not by itself authorize a search." Under Owens, "Reasonable steps taken to prevent a detainee from escaping or from harming others in the area may fall within the officer-safety justification...An initial pat-down of the exterior of the clothing of a person in custody is always justified to protect the officer's safety." Then the court cited the ruling in Hoskinson, quoted above.

Looking at Hoskinson, and the facts of this case, the court said "The fact that officer reaches into the pockets of everyone he arrests did not necessarily make his decision to search the interior of this defendant's pockets unreasonable. The decisive questions are whether, irrespective of his normal practice, officer believed that defendant posed a threat to officer safety and whether such a belief was reasonable. The court ruled that the circumstances of this case, "coupled with officer's training and experience, gave rise to a reasonable belief that defendant posed a risk to officer safety."

State v. Weems, 190 Or App 341 (2003)
Officer testified that she, after patting down the defendant, searched him "for officer safety." She did not testify why she believed removal of items from defendant's pockets was warranted. "The testimony from officer is she conducted a search, during which she discovered the bindle and removed it." She explained she "checked all the pockets...I did just a pat-down. Well, I guess it would be a search because when you, on a felony warrant, the practice is, they'd be arrested. We do the processing at Hermiston and then they are taken to the county jail."

The court cited Owens as authority for officer's pat-down of defendant. However, the court found that the officer's further search was "not justified because, after the pat-down there was no evidence that defendant posed an immediate threat of injury to the officers present."

Oregon's "Officer Safety Doctrine"

The Oregon Supreme Court has held that certain actions taken by police officers to protect the safety of officers (or others present) do not violate Article I, Section 9. The most comprehensive discussion of the officer safety doctrine (which effectively functions as a warrant exception) is found in State v. Bates, 304 Or 510 (1987). In Bates, the Court held:

> "Article I, Section 9 of the Oregon Constitution does not forbid an officer to take reasonable steps to protect himself or others, if during the course of a lawful encounter with a citizen, the officer develops a reasonable suspicion, based upon specific and articulable facts, that the citizen might pose an immediate threat of serious physical injury to the officer or others then present." (Emphasis added).

The Court further noted:

> "....it is not our function to uncharitably second guess an officer's judgment. A police officer in the field frequently must make life-or-death decisions in a matter of seconds. There may be little or no time in which to weigh the magnitude of a potential safety risk against the intrusiveness of protective measures. An officer must be allowed considerable latitude to take safety precautions in such situations. Our inquiry, therefore, is limited to whether the precautions taken were reasonable under the circumstances as they reasonably appeared at the time the decision was made." (Emphasis added).

> "The requirement of specific, articulable facts relates only to whether an officer reasonably suspected an immediate threat...Beyond that, the doctrine asks only whether safety precautions chosen by the officer were reasonable under the perceived circumstances. The state is not

required...to justify the choice of one reasonable precaution over another." State v. Foster, 347 Or 1 (2009).

Exigent Circumstances

An exigent circumstance is a situation that requires the police to act swiftly to prevent danger to life or serious damage to property, or to forestall a suspect's escape or the destruction of evidence.

- This exception requires both probable cause and an exigency.
- "An exigent circumstance is a situation that requires the police to act swiftly to prevent danger to life or serious damage to property, or to forestall a suspect's escape or the destruction of evidence." State v. Stevens, 311 Or 119 (1991)
- The exigent circumstances must exist both:
  - For the item you wish to seize; and
  - During the time frame in which you wish to seize it.

NOTE: The state should provide testimony regarding the estimated time required to get a warrant, including a telephonic warrant, and why it was impracticable at the time.

- The search must be limited to the exigency that justified it.
- A person's history of assault and resisting arrest does not necessarily constitute exigent circumstances justifying noncompliance with the knock and announce requirement. State v. Arce, Or App 185 (1986)
- A police officer cannot create exigent circumstances by his or her own action or inaction.
- Federal law and minor offenses: The Ninth Circuit has held that "an exigency related to a misdemeanor will seldom, if ever, justify a warrantless entry into a home." Lalonde v. County of

Riverside, 204 F3d 895 (2000). Further, the Ninth Circuit characterized the US Supreme Court as having "suggested that exigent circumstances can rarely, if ever, support entry into a home to investigate or arrest someone for a misdemeanor offense."

What about animals?

The Oregon Supreme Court has ruled that "the exigent circumstances exception to Article I, Section 9, is not limited [as defendant had argued] to circumstances in which human life is threatened. [In the case at issue] the officer had probable cause to believe that a crime [animal neglect] was in progress and, based on specific, articulable facts, determined that warrantless action was necessary to prevent an ongoing criminal act from causing further serious imminent harm to the victim of the crime - an animal entitled to statutory protection. In those circumstances, the exigent circumstances exception permitted the officer's actions." State v. Fessenden/Dicke, 355 Or 759 (2014).

"community caretaking functions" means any lawful acts that are inherent in the duty of the peace officer to serve and protect the public.

The "emergency aid" exception and significance of "community caretaking"

- "Emergency aid" is a recognized exception to the warrant requirement; "community caretaking", standing alone, is not.

ORS 133.033, The "community caretaking" statute, provides:

"Except as otherwise expressly prohibited by law, any peace officer of this state is authorized to perform community caretaking functions.

As used in this section, "community caretaking functions" means any lawful acts that are inherent in the duty of the peace officer to serve and protect the public. "Community caretaking functions" includes, but is not limited to:

- The right to enter or remain upon the premises of another if it reasonably appears to be necessary to:

- Prevent serious harm to any person or property;
- Render aid to injured or ill persons; or
- Locate missing persons.

- The right to stop or redirect traffic or aid motorists or other persons when such action reasonably appears to be necessary to:
    - Prevent serious harm to any person or property;
    - Render aid to injured or ill persons; or
    - Locate missing persons...."

In State v. Martin, 222 Or App 138 (2008), the Court of Appeals distinguished between "community caretaking" and the "emergency aid" exception":

> "ORS 133.033 does not independently establish as exception to the warrant requirement. Rather, it provides legislative authorization for... a particular class of searches, subject to many of the same constitutional constraints that operate to limit other searches, including the warrant requirement. A lawful community caretaking search, in other words, must first be within the universe of police action described in ORS 133.033, and then it must also fall within one of the constitutional exceptions to the warrant requirement."

The Oregon Supreme Court has articulated that the "need to render emergency aid or prevent serious injury or harm is an appropriate justification for an immediate warrantless entry under Article 1, Section 9." In State v. Baker, 350 Or 641 (2011), the Court thus concluded that an "emergency aid" exception to the warrant requirement is justified when:

> "Police officers have an objectively reasonable belief, based on articulable facts, that a warrantless entry is necessary to either render immediate aid to persons, or to assist persons who have suffered, or who are imminently threatened with suffering, serious physical injury or harm."

The Oregon Court of Appeals has held the exception may, in appropriate cases, extend to "warrantless searches or seizures that law enforcement officers reasonably believe are necessary to render immediate aid or assistance to **animals**."

Consent to Search

Effective January 1, 2023, if an officer requests consent to search from someone who is stopped under ORS 131.615 (reasonable suspicion stop) or ORS 810.410 (traffic stop during which an officer develops reasonable suspicion of criminal activity), the officer must first inform the person they have the right to refuse the request for consent. If the person consents, then the officer must make sure there is a **written, video, or audio record** that the person gave informed and voluntary consent to search.

Key Factors Indicating Voluntariness of Consent	Factors Showing Non-Consent
• Advise of right to refuse consent • Advise of the right to limit the scope of the search • Advise that consent to search make be revoked at any time • Knowledge of right to refuse consent • Congenial and uncoercive atmosphere • Absence of threats or promises • Unequivocal consent • Conduct indicating the defendant agrees to the search • For juvenile suspects – Age is relevant factor	• Police lies • Threats to commit illegal acts • Failure to advise person of right to refuse consent • Failure to advise person of right to revoke consent • Custodial settings are more coercive than non-custodial • Uninvited police entry

Scope of Consent: Police may not go beyond the physical boundaries established by the consent. The scope of a consent search is what the person actually intended.

Case Law Discussion-Scope of Consent

State v. Blair, 361 Or 527 (2017)

Deputies responded to a report that armed suspects were chasing a man in a public park. When they arrived, they found defendant, who was dirty, agitated and couldn't hold still or respond to questions. The deputies determined that the report about being chased by armed suspects was likely not "completely true." Defendant mentioned that he had left his stuff, including his backpack, up at the park. A sergeant went with defendant to find his backpack, and when they found it the sergeant asked defendant if he could search it. Defendant said, "Yeah, go ahead." The sergeant opened the backpack and found an opaque Fred Meyer grocery bag that was tied shut, which he opened. Inside, he found a bag of psilocybin mushrooms, and defendant was charged with PCS. Defendant moved to suppress the evidence, as he claimed that opening the closed bag inside his backpack exceeded the scope of his consent. He also claimed that his consent was not voluntary since he was high on mushrooms when he gave it. The sergeant testified that when he asked to search the backpack, it was his intent to search for weapons and controlled substances, but that he had not communicated that to defendant.
The Oregon Supreme Court, who reversed the Oregon Court of Appeals and remanded to the trial court for more fact finding, ruled: "The logic behind the consent exception supports a focus on the defendant's actual understanding and intent with respect to the scope of her consent to a search, but what a person says is often the best indicator of what the person intended. In light of those considerations, we think that the nature of the inquiry should be described in the following way: In determining whether a particular search falls within the scope of a defendant's consent, the trial court will determine, based on the totality of circumstances, what the defendant actually intended. That determination is a factual one...

However, where – based on the totality of circumstances- the defendant's intent with respect to the scope of consent is unambiguously expressed, that manifestation of intent is controlling. In that way, what a reasonable person would understand by his or her choice of unambiguous words or other manifestation of intent will bear its expected weight in citizen-police interactions. Such clarity in expression will be further promoted when officers requesting consent make clear to a suspect what the objects of the requested search are and what level of scrutiny is sought."

State v. Winn, 361 Or 636 (2017)

Defendant entered a court house and her purse went through the x-ray machine. There were signs on the wall letting people know that they were subject to search and that firearms and dangerous weapons were prohibited in the building. The officer looking at the x-ray saw items that she thought might be drug-related, so she asked defendant for permission to run the purse through a second time. Defendant agreed. After the second scan, she asked defendant, "May I please search your purse?" Defendant consented to the search, and the officer opened an opaque make-up compact that contained meth. Defendant was charged with PCS, and moved to suppress the evidence on the grounds that the search exceeded the scope of her consent (she didn't know or expect that the officer would open her make-up compact).

The Oregon Supreme Court reversed the Oregon Court of Appeals, and remanded back to the trial court for more fact-finding, ruling:

"In light of Blair, (NOTE: Winn and Blair were "companion cases" when they went to the Court of Appeals, and the Oregon Supreme Court similarly considered them together) we initially consider whether, in light of the surrounding circumstances, defendant unambiguously manifested consent—or denial of consent—to the opening of any small closed containers, like the compact in question, that [one] might encounter while searching the purse. We conclude that she did not: As in Blair, in view of the surrounding circumstances, defendant's affirmative response to [the] generalized request to search gave rise to competing inferences with respect to the scope of her consent... Because evidence in the record would support either of those opposing inferences, we cannot conclude that defendant's unqualified expression of assent to [the] request to search her purse by hand was unambiguous with respect to the scope of her consent. Instead, the scope of consent determination requires the resolution of those competing inferences...The trial court's written decision indicates that the court did not resolve that factual issue...Accordingly, as in Blair, we must remand to the trial court to determine the scope of defendant's consent under the correct standard.

Jointly Occupied Property

- The U.S. Supreme Court in Georgia v. Randolph, 547 US 103 (2006) held: "A physically present inhabitant's express refusal to consent to a police search is dispositive as to him regardless of the consent of a fellow occupant."

- As a practical matter, this means a police entry based on, e.g., sister's consent and over brother's objection means that any evidence found thereby is inadmissible against brother under the Fourth Amendment.

- However, the court noted if police obtain consent to search from someone with authority over premises (in Oregon actual versus apparent authority is required), there is no obligation to seek out and ask a co-occupant who is not physically present and who otherwise is not expressly objecting.

- Further, the court observed if the police have some other lawful basis for entry, e.g., exigent circumstances, etc., that does not depend on consent, they can ignore the co-occupant's objection.

- Parents may have authority to consent to a search of private possessions of their minor child if the parent has historically exercised control over the possessions of the minor.

Third-Party Consent

- A third party consent is valid only to the extent the party has actual authority to consent to search commonly held property.

- An officer's good faith belief that a third party has authority to consent is irrelevant to the legal determination.

- A third party has "actual authority" to consent to a search only if he or she has "common authority as shown by that person's joint use or occupancy of the premises before validly authorizing the search."

- The "scope of a person's authority [to consent] depends on the level of access that the co-occupants have agreed on."

- Authority to consent to a search of an area is not necessarily coextensive with authority to consent to a search of personal items within that area. With "respect to items of personal property within jointly occupied space, a co-occupant's actual authority to consent to a search depends on that person's use of, or access to, those items."

Significance of State v. Hall, State v. Unger, and related cases, to consent to search and "exploitation"

- Whenever the state has obtained evidence following the violation of a defendant's Article I, section 9 rights, it is presumed that the evidence was tainted by the violation and must be suppressed. State v. Unger, 356 Or 59 (2014).

- The state may rebut this presumption by establishing that the disputed evidence "did not derive from the preceding illegality." State v. Hall, 339 Or 7 (2005).

- When a defendant challenges the validity of his or her consent based on a prior police illegality (illegal stop or search), the state bears the burden of demonstrating that the consent was voluntary and was not the product of police exploitation of that illegality.

- When determining whether a defendant's consent to search is the product of exploitation of police misconduct, courts are to consider the totality of the circumstances, including: the temporal proximity between the misconduct and the consent; the existence of any intervening or mitigating circumstances; the nature of the misconduct, including its purpose and flagrancy and whether the police took advantage of it; and the voluntariness of the consent. Unger

- The Supreme Court observed in Hall and reaffirmed in Unger that exploitation of police misconduct may exist if the police seek the defendant's consent solely as a result of knowledge of inculpatory evidence obtained from their unlawful conduct.

Inventory Search

- In State v. Atkinson, 298 Or App 1 (1984), the Oregon Supreme Court addressed inventory policies. Non-investigatory inventories of the contents of impounded vehicles (and personal property seized from a person being taken to a secure facility), are a search warrant exception under the Federal Constitution.

- Under Article 1, Section 9, of the Oregon Constitution, law enforcement agencies may adopt and administer inventory policies in order to protect private property.

- The inventory must be conducted pursuant to a properly authorized administrative program, designed and systematically administered so that the inventory involves no exercise of discretion by the law enforcement person directing or taking the inventory.

- The person performing the inventory must not deviate from the established protocol.

- The scope of the inventory must be reasonable in relation to its purpose. Weber v. Oakridge School Dist. 76, 184 Or App 415 (2002) rev den, 335 Or 422 (2003).

- Generally, property is to be listed by its outward appearance; no closed opaque container may be opened to determine what if anything is inside it so that the contents may be inventoried in turn. State v. Ridderbush, 71 Or App 418 (1985).

- The exception to the rule above, is that an inventory policy may authorize officers to open closed containers that are "designed to or likely to contain" valuable items. State v. Williams, 227 Or App 453 (2009).
- Any object discovered in plain view, while conducting the inventory pursuant to policy, including the contents of glove compartments, consoles and vehicle trunks, may be inventoried and seized. State v. Keller, 265 Or 622 (1973).

Open View and Plain View

Oregon courts generally distinguish between two kinds of plain view:

Open View	Plain View
When something is in "open view" it means an officer is outside of a protected space and lawfully looking inside. In this case an officer doesn't need a warrant to search for the evidence (i.e., to make the observation) — but generally still requires a search warrant to enter the protected area or to seize the item.	When something is in "plain-view" that means an officer is lawfully is inside of a protected space and sees contraband in that place. In this case the officer does not need a warrant to **seize** that contraband. A plain-view seizure requires: 1) A justifiable intrusion/entry into the premises by the officer; 2) Observation of the object in plain-view from a lawful vantage point; and 3) probable cause to seize the item observed
Example: An officer lawfully outside premises, standing on a sidewalk or front porch, looks through open windows and sees contraband inside the house. The officer's observation is lawful, but the officer still needs either a search warrant or an exception to the warrant requirement before he or she may enter to seize the contraband. The initial observation of the contraband is lawful under the "open-view" exception.	**Example** If an officer is lawfully inside private premises executing a warrant to search for and seize a gun used in a homicide, and while inside the premises finds unrelated contraband in plain view while looking for the gun. The officer's entry and observation are lawful, and the officer does not need either an additional search warrant or an exception to the warrant requirement before he or she may seize the contraband. Lawful entry, observation, and seizure — under the plain-view exception.

Department of Public Safety Standards and Training
Probable Cause Statement and Data Sheet

☐ Reliable Eyewitness ☐ Confession/Admission/Provable Lie ☐ Physical Evidence Connecting Defendant to Crime

I offer the following information based upon my information and belief:

Name of Arrestee _____ DOB _____

Crime(s) Alleged _____

Date of Crime(s) _____ Date of Arrest _____

Location of Crime(s) _____ Location of Arrest _____

Other Arrestees _____

Victim(s) of Crime _____ DOB _____

Victim Address _____ Victim Phone _____

Witness (es) ☐ Adult ☐ Minor _____

Injury _____ Loss/Damage _____ Value _____

Summary of Probable Cause _____

_____

_____

_____

Submitted by _____
(Sign and Print Name, Print DPSST#, Department and Date Completed)

State of Oregon,)
County of_____)

Under penalty of perjury, I declare that I have examined this statement and to the best of my knowledge and belief, it is true, correct, and complete and is based on all information of which the preparer has any knowledge.

Subscribed and sworn to before me this _____ day of _____, 20___

_____
Deputy Clerk of the Court

☐ I find that probable cause exists to believe the arrestee committed the crime(s).
☐ I find that insufficient probable cause exists, so the defendant must be released on this charge.
☐ No decision is needed because the defendant has been released.
Judge _____ Date _____ Time _____

SUGGESTED FAX SHEET FOR NOTIFYING CONSULAR OFFICIALS OF ARRESTS OR DETENTIONS

SUBJECT: NOTIFICATION OF ARREST OR DETENTION OF A NATIONAL OF YOUR COUNTRY

DATE/TIME: _____

TO: Embassy/Consulate of _____in_____, _____
(COUNTRY) (CITY) (STATE)

FROM:

Name/Office_____
Address_____
City_____ State _____ Zip Code _____
Telephone (____) _____ Fax (____) _____

We arrested/detained the following foreign national, who we understand is a national of your country, on _____.
(DATE)

Name: _____
Date of Birth/Place of Birth: _____
Nationality/Country: _____
Passport Issuing Nation: _____
Passport Number: _____

This person has been or may be charged with the following offense(s):
_____

For more information, **please call** _____between the hours of _____
Please refer to **case number** _____when you call.

ADDITIONAL INFORMATION:

Basic Police Academy
Report Writing



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Report Writing Series

Instructional Goals:

This course is designed to:

1. Develop a new officer's report writing skills to document information discovered and received during an investigation.
2. Develop a new officer's understanding regarding the proper procedures for preparing a police report for criminal prosecution.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the principles of report writing and note-taking.
2. Demonstrate the ability to construct reports given the necessary information correctly.

Content Outline:

- Importance of Police Reports
- Report Writing Process
- Four Pillars: Clear, Concise, Complete, Accurate
- Report Sections
- Reviewing and Proofreading
- Assignment

Part 1

Why should police officers care about report writing? The excitement of responding to emergencies and helping to stabilize situations is the foundation for an officer's awareness that the officer is making a positive impact on society on a daily basis. The boredom of sitting to write a report can lead many officers to shortcut the process and the final product. While report writing is not the most exhilarating, nor glamorous, part of police work, it is the most important tool to ensure long-term success. A well-written police report communicates vital information to the reader while reflecting the professionalism of the writer. A poorly drafted report confuses facts, is missing essential information, and is usually the basis for either a dismissal by the prosecutor or a successful cross-examination by a defense attorney.

It is also likely that this report will be transmitted to a multitude of agencies and individuals. These other entities use police reports to perform essential functions in their fields. These other individuals also have the opportunity to critically review the report for a greater length of time than the officer who authored the report. Before an officer decides to shortcut a report, the officer should consider the importance of the report to the officer and the officer's agency and all the other persons who will also use that report.

While agencies may have different forms and formats, the fundamental process of writing a report does not vary. Additionally, report writing, like any other task, improves with experience. Therefore, to ensure a quality report on the first day of your career and the final day of your career, you should follow the same report writing procedure. In this, report writing is similar to investigating since a routine procedure that is repeated on each occasion builds skills and increases the likelihood of a quality end-product. Writing a report starts from the time an officer begins his or her shift, continues through the investigation, and culminates in the actual written document.

The Importance of Police Reports

Even the most basic of police reports are reviewed by someone other than the reporting officer. Multiple people will review the police report after the officer submits it. First will be a supervisor where it will be either approved or sent back. Next, it goes to records staff who enter the information into databases and are often forwarded to other locations.

Police reports are official government documents used not only in the criminal justice system but also in various government agencies, business organizations, and the general public. Given this importance, an officer should take the time necessary to communicate relevant factual information in a manner that reflects the officer's professionalism.

Consider the many ways in which a police report is used:

Importance to Law Enforcement
To the officer writing the report: ● For review before a hearing or trial ● Can be the basis of cross-examination and establishing a reputation ● Portrays professionalism and pride To other officers or detectives inside or outside the reporting officer's agency who review to continue the investigation or utilize to assist in another investigation. To supervisors who: ● Evaluate officer performance ● Determine personnel needs during shifts and patrol locations ● To crime analysts who track statistics ● To grant writers who apply for funding ● To attorneys who defend you and your agency from lawsuits o False arrest o Excessive force o Wrongful death o etc.

Importance to Prosecutors

To evaluate the case and probability of successful prosecution by identifying strengths and weaknesses in the case.

To make charging decisions

- Are there sufficient facts to satisfy the elements of each crime?
- Are there potential defenses, and are they likely to succeed?
- Is the evidence subject to suppression?
    - Was the scope of the contact/stop reasonable?
    - Was the search/seizure legal?
        - Voluntary
        - Exigent
        - Search incident to arrest
        - etc.
    - Were the statements voluntary?
        - Miranda
        - Coercion
        - Voluntariness
        - etc.
- Was force used, and if so, was it reasonable?

To plan trial tactics

- To make decisions regarding witnesses
- To evaluate the admissibility of testimony
- To evaluate physical exhibits and evidence
- To comply with disclosure obligations

General (ORS 135.815)

- Case law and legislation:
    - Brady v. Maryland, 373 US 83 (1963)
    - The state must disclose any material that tends to:
        - Exculpate the defendant,
        - Negate or mitigate the defendant's guilt or punishment, or,
        - Impeaches a person the state intends to call

Importance to Defense Attorneys
To make decisions on how to handle the case • To identify strengths and weaknesses in the prosecution's case • To determine the possibility of successful motions to suppress • To evaluate defense theories (e.g., self-defense, insanity, etc.) • To plan cross-examination of the officer and other witnesses
Importance to Corrections Officers
To evaluate offenders' needs, dangerousness, supervision level, conduct while on release, and truthfulness
Importance to Juvenile Dept. / Oregon Youth Authority
To evaluate youths' conduct, risk of recidivism and determine the appropriate level of intervention
Importance to Child Welfare Workers
To evaluate the threat of harm to children, assess parenting strengths and weaknesses, and determine the appropriate level of intervention
Importance to mental health professionals
Assess the defendant's ability to aid and assist in his or her defense and potential guilty except for insanity (GEI) issues Determine danger to self, others, or inability to provide self-care
Importance to other professionals
Forensic evaluators Insurance adjusters Investigators for licensing boards Private investigators Other

The Report Writing Process

As previously mentioned, the process to write a high-quality report, just like the procedure to follow for a thorough investigation, is something that can be learned and repeated.

Most agencies use electronic report writing programs, but they look very much like the older handwritten or typed reports once printed out. When looking at the printed version, the police report can almost always be divided into two sections.

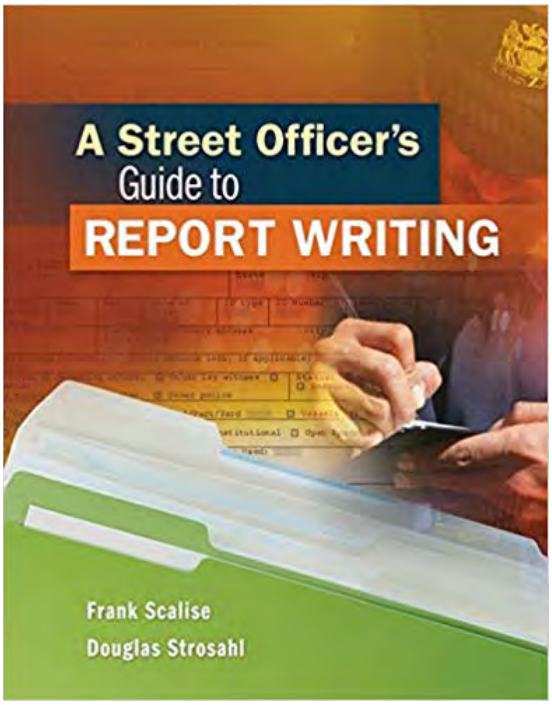
1. The statistical section (names, address, phone number, DOB's, vehicle information, etc.) often called a face sheet or cover page.
2. The narrative.

We will spend more time talking about constructing the narrative section of the police report throughout this series.

For the Report Writing series, DPSST uses the book "A Street Officer Guide to Report Writing." This book was checked out to you at orientation. To prepare for class, please review the following chapters:

- Chapter 2 - CLEAR
- Chapter 3 - CONCISE
- Chapter 4 - COMPLETE
- Chapter 5 - ACCURATE

These four pillars will provide the foundation for the Report Writing series. They will be the criteria upon which your reports will be evaluated.



Document Complete and Accurate Information in your Field Notebook

Before you write a report, you must first capture the necessary information. Some investigations are short and simple, and some are highly complex. In both cases, to best preserve the factual information, you should begin taking accurate and thorough notes as soon as the scene is safe. The Field Notebook is still the best tool for recording information for later use in writing your reports. There are other methods to record data, such as audio and video recordings. These other tools should be in addition to your notebook, not in place of it.

Most officers get into a routine on starting a shift and what information to record in their notebooks. Some agencies even use a Notebook Stamp to gather specific information. There is no set format for doing this, but a notebook should be kept professional as it is not private property. Instead, it belongs to your agency and can be reviewed by others, including the defense attorneys in some cases. Because of this, removing pages is strongly discouraged as it leads others to speculate you are hiding something.

When documenting information in your field notebook, try to obtain as much relevant information as possible. The following table includes some examples of facts to document in your investigation if they are relevant to your investigation.

The Investigation type will dictate how little or how much information you will need to collect.

People	Vehicles	Bicycles	Weapons
Full legal name Aliases, nicknames, and street names Gang names and affiliations Gender Date of birth Race, ethnicity, nationality, origin Physical descriptions (height, weight, hair, eyes, etc.) Scars, marks, tattoos, outstanding features Clothing (if needed for identification) Identification numbers (driver's license, SSN, alien registration, etc.) Address (mailing address, physical address, directions) Home, work, cellular, message, etc. number Occupation – even though unemployed s/he may have an occupation Place of employment, including hours/shift worked Vacation or travel plans (if needed as a potential witness)	License plate number, state of issue, and VIN Color, make, model, year, etc. Customization, bumper stickers, other identifying modifications Previous damage and expected damage (hit and run) Description of vehicle contents Location of keys Name and location of the owner Value	Make, model name, and number Size and color of the frame Serial number, owner applied number City or county license tag information Equipment (light, kickstand, etc.) Customization, previous/expected damage Owner's name and address Value	Type (revolver, semi-automatic handgun, shotgun, knife) Manufacturer, model Caliber Serial number, owner applied number Finish, distinctive features, condition Modification, accessories Origin, if it can be determined (handmade, stolen, purchased) Value

Audio and Visual Recording

While the primary tool for documenting facts at the scene is your field notebook, there are other tools for recording information. An audio or visual recording is a useful way to supplement field notes to write the most thorough report. However, officers should not rely on electronic equipment to substitute field notes, given that equipment may fail.

Since technology rapidly changes and different agencies use varied equipment, a thorough discussion of specific devices is impossible. Despite the differences in equipment, some generalities remain.

Benefits of Recording	Downsides of Recording

• A permanent record of exact statements/events
• Helpful to review during report writing to refresh recollection
• Captures events in a level of detail beyond the written report
	• Equipment failure
	  o Do not rely on as sole means of writing report (i.e., use notes)
	  o Challenged by the defense (e.g., purposeful, inept, etc.)
	• Notification of recording can be forgotten
	  o Can lead to suppression of recordings
	• The knowledge that statements are being recorded can make the encounter seem more formal or could limit disclosures
	• The entire encounter can be scrutinized for minor mistakes

Tips for success

- Test equipment at the beginning of shift if possible
- Build a routine to remember turning on and off at appropriate time during and after the event
- A routine introduction also helps you remember to notify that the encounter is being recorded
- Certain cameras can be refocused to capture events more clearly

Mandatory Recording of Certain Interviews

While recording events is almost always a useful tool in thoroughly documenting investigations. State law mandates that custodial interviews in law enforcement facilities be electronically recorded in certain investigations.

See ORS 133.400- Recording of Custodial Interviews

- The requirement for recording includes investigations for aggravated murder and Measure 11 offenses (found in ORS 137.700 and .707).
- While there are some exceptions to this law, it is best practice to record any interview in a law enforcement facility.
- A law enforcement facility includes any agency building, a courthouse, and any jail or detention facility, including juvenile detention.
- Failure to record the interview leads to a jury instruction regarding the legal requirement to record and the superior reliability of electronic recordings compared with testimony.

Principle Components of Report Writing

Police reports need to be written with the following criteria. These are universal components statewide, with only a few exceptions. As such, your reports will be evaluated to make sure they meet these criteria:

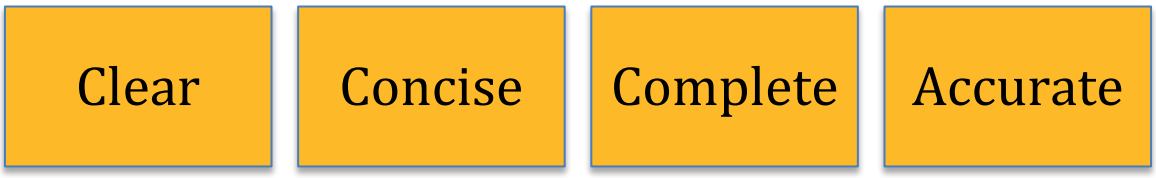
- Chronological Order
  - The report is told in the order the events unfolded from the officer's perspective
  - Example: I got a call of a fight, I responded to the call, I arrived...
- First Person
  - The officer will use the word "I" to describe what they did
- Active Voice
  - Attaching each action to a direct person
  - Example: I found the broken glass.
- Past Tense
  - All events are done when you write the report, so use the past tense to describe what happened
  - Example: I noticed the victim had a black eye and bloody lip.
- Be Professional
  - Choosing the right words, using plain language, and telling the story professionally

Reports that follow the above criteria are more likely going to meet the needs of most police agencies. Reports not using these criteria are likely to be rejected.

Part 2

Completing the investigation and taking good notes has led to the point where you are ready to sit down and write the report. Before writing a detailed narrative, it's a good idea to remind yourself that nearly everyone that reads your report will have no idea of the events that happened. Therefore, you must communicate effectively by explaining relevant facts that you learned through your investigation.

We will be using the four pillars described in the book "A Street Officer's Guide to Report Writing."



First Person

Although it should go without saying, you must write your report in the first person. Do not write from the third person observing your investigation. You are the person writing the report, and you should use "I" to refer to actions you take. Historically, officers have referred to themselves in a report as "this officer" or "the undersigned writer." Using these phrases instead of "I" generally confuses the reader and impairs the readability of your report.

Professional

Even though we must be professional every time we write a report, that does not mean we must unnecessarily use big words. Since we communicate to a vast range of audiences, we are most effective using commonly understood words. Reports should be written as though the writer is speaking face-to-face with the reader.

Remember, good writing is simple writing. Put words together in sentences that are easy to understand. Do not overwhelm the reader; communicate the information as simply and directly possible. Do your best to avoid long sentences and uncommon abbreviations (e.g., CSO, LPO, etc.). Also, avoid police jargon:

- proceeded vs. drove, went
- advised vs. told, said
- contacted vs. wrote, telephoned, spoke with
- utilized vs. used

The task is not only to express ideas but also to make an impression on the reader's mind. Reports are meaningless unless the reader is informed, understands a situation, or is moved into action. With that in mind, we will briefly review some common pitfalls and how to avoid them.

Date References

Dates and times are also essential in good police report writing. Exact dates or narrow date ranges are extremely important for various legal issues (e.g., the statute of limitations, adult vs. juvenile charging decisions, etc.). Therefore, if the exact date is unknown, you must narrow the time window as much as possible. If the interviewed person's memory of the month and year is unclear, use seasons, birthdays, holidays, school years, etc., to narrow the window of time in which the event occurred. The burden is on the investigating officer to determine this, then as the report writer to explain it.

For example, if you are talking to a 22-year-old about being sexually abused when she was a young child. She may not remember what year or how old she was when the crime happened, but you need this for the report. However, she might remember that she shared a bedroom with her sister or that the house had a big front porch. You may need to ask other family members when the sisters shared a bedroom or what year the family lived in a house with a big front porch, then document how you determined the year in your report.

Pronoun Usage

When frequently referring to a person in a sentence, it is common to use a pronoun (e.g., he, she, they, etc.) rather than a name. Appropriate pronoun usage is concise and improves the readability of a sentence. Keep in mind that the pronoun must relate to the last-named person. Using multiple pronouns in a sentence can confuse who is performing the action.

For example:

- The judge agreed that he was impaired when Powers committed the assault.
- Littleton told her that her sergeant called, and she left a message that she should clean out her locker.

Opinions and Conclusions

Do not include opinions expressing personal approval or disapproval and never make an unsupported opinion. Be aware, opinions on the credibility of victims and witnesses are always provided to the defense. This includes whether they are relayed to the prosecutor in a report, e-mail, or conversation. Therefore, avoid opinions on the credibility of witnesses.

You may include opinions on subjects other than credibility when they assist the reader in understanding the information presented. Opinions are general conclusions you make based on your training and experience. When writing your report, you should clearly label your opinion and include the facts which support that opinion.

Example: "I noticed that Mr. Jones had bloodshot and watery eyes, slurred speech, an odor of an alcoholic beverage on his breath, and was unsteady on his feet. From these observations, and based on my training and experience, I formed the opinion that Mr. Jones was under the influence of alcohol."

Similar to opinions, conclusions may be included in your report when they are factually supported. While you should generally avoid making legal conclusions (e.g., search warrant exceptions, serious physical injury, etc.), conclusions that are common interpretations of events observed and not necessarily formed based on your training and experience may be included. However, always describe the facts supporting your conclusion. Writing a conclusion without identifying the facts is not persuasive and cannot substantiate the elements of a crime.

Compare the following:

Unsupported Legal Conclusion	Factual Observation
It appeared the victim was physically injured.	I saw a one-inch cut on the victim's left forearm that was bleeding.
The suspect braked when he saw me.	Shortly after I saw the suspect vehicle, the front end dipped down sharply, and the vehicle quickly decelerated.

Past Tense

Reports should always be written in the past tense as the events you are documenting have already happened. However, when you are quoting someone, the quotation should be in the present tense, as that is how the statement was made. Therefore, the only shifting of tenses should occur in quotations and not in any other place in your report. Consistent writing in the correct tense helps the reader to understand the sequence of events.

Active Voice

In addition, you should always write your report in an active, rather than passive, voice. An active voice is when the subject of the sentence does the action. A passive voice is when the subject of the sentence has an action done to it. The active voice is preferable because it clearly identifies the person who does the action or who can testify to the fact. Using a passive voice creates an ambiguity where the reader is forced to guess who the actor is. Compare:

Active	Passive
I found a bloody knife on the kitchen counter.	A bloody knife was found in the kitchen.

Report Length

Do not confuse the length of a report with the quality of a report. Use as few words as possible to record the necessary facts, but do not use so few words that some necessary facts are omitted. The words that are written in the report are the words that must stand. If you testify to facts not included in your report, the defense will challenge their validity, why your report was incomplete, and your competence. Remember, communicate professionally.

Report Sections/Headings

While agency formatting varies, most reports have similar components.

Face Sheet

Includes data on people, vehicles, stolen items, or other recovered evidence. Face sheet format differs from department to department, depending on the agency's needs for record-keeping and data entry purposes.

Common information:

- Exact Date and time of occurrence or a date range
- Location of occurrence
- Type of occurrence (crime, collision, runaway, etc.)
- Involved parties (Suspect, Victim, Witness, etc.)

Narrative (Body of Report)

The headings discussed here are possible headings. Your agency may use all or some of these and/or may use different heading titles. Your agency may also use a different order of headings than set forth below. Regardless of headings used, the purpose is to allow the reader to jump to different sections quickly.

Summary

An introduction or paraphrasing of events in the report. This is similar to a PC statement but maybe less detailed. Any summary should be a summary of the incident, not a summary of the investigation.

- Begin with "On" the date and time; or "Between" the time frame of the significant event(s).

- Include the following when possible:
  - What- Name of the crime or significant event
  - Who- Name of the suspect or description if unidentified
  - Who- Name of the victim and any injuries
  - Where- State the location

- In the end, include the status of the case (i.e., arrest vs. open case)

Mentioned

A list of people in the report (note: this may be different agency to agency).

- Name every person discussed during the investigation
- Your agency may include a brief description (i.e., role identifier) after each name as to how that person was related to the case (e.g., victim, witness, suspect, information, assisting officer, etc.)
- Include contact information (name, address, phone number, and e-mail address)
- Not necessary to place the person on the face sheet and in the mentioned section unless agency policy requires it

Action Taken / Narrative

A chronological list of the things the investigating officer did, plus the reasons for the activity.

- Sequence of events – the narrative must be in chronological order to describe events in a logical sequence.
  - It helps the reader develop a clear picture of what you did, saw, and heard
  - It allows the reader to follow the investigation in a progressive manner
  - It documents all critical information regarding the elements of the crime

- Listed in the order in which the officer conducted the investigation

- Not necessarily the order that the events first occurred

- Statements in the narrative:
  - If your agency does not use a separate statement section, include statements as they occurred in chronological order of your investigation.
  - If your agency uses a separate statement section, do not include what people said during their interviews unless it is necessary to explain the reasons for the officer's next investigative activity. If so, be brief.

- Narrative Content: The WHO, WHAT, WHERE, WHEN, WHY, and HOW represent the basic information a report should contain.

If suggested by your facts, clearly describe or document the following:

- Circumstances of initial contact, including probable cause or reasonable suspicion
- Justification for entry into building, residence, vehicle
- Identification of suspect and all other persons involved in the incident
- Miranda time and suspect's response (voluntariness)
- Statements and specific quotes when possible
- Clearly identify who did what to whom
- Legal basis for the search for and seizure of evidence (e.g., consent, search incident to arrest, automobile exception, exigent circumstances, etc.)
- Description of evidence processing and disposition
- Time, date, and location of arrest
- If force was used: a full description of the force, the circumstances necessitating the use of force, the suspect's actions, any contributing factors, your verbal commands, all injuries, and any post-care (suspect, officer, others)
- Probable cause or elements of each charge
- Disposition of suspect, suspect's property, and/or suspect's vehicle

- Statements – Interviews with witnesses and suspects
  - Write the person's name, followed by "told me" or "stated," followed by that person's statement.
  - Include the giving of Miranda warnings and responses

- Action Recommended / Case Status – Suggestions for what the next investigative step(s) should be.
  - It can be a simple statement (e.g., cleared by arrest, referred to detectives, etc.)
  - If not closed, what are the next steps in the investigation?
  - Do not include any opinions as to what the ultimate disposition of the case should be.

Review

Clear | Concise | Complete | Accurate

Summary- Contains the **Who, What, Where, and When** in a brief 1 – 2 sentences. More complex reports maybe 1 – 2 paragraphs. Should include information on the outcome if possible (i.e., Smith was charged with Assault IV).

Narrative- Contains not just the **Who, What, Where,** and **When** but also includes the **Why and How** in every report.

Remember the five components of a good report:

- Chronological Order
- First Person
- Active Voice
- Past Tense
- Professional

PC Statements

Contains the basic elements of the crimes charged, so a judge sees that probable cause exists. This information allows the suspect to be lodged. The prosecutor then uses this information to make a charging decision.

Summarize the facts but do not state legal conclusions. Compare:

The suspect caused physical injury to the victim	I saw a two-inch gash on the victim's forehead that was bleeding profusely. The suspect admitted hitting the victim in the face.

Include enough facts to substantiate the **elements** of **every** charged crime.
If there are insufficient facts:

- The judge may not find probable cause and will release the suspect
- The prosecutor may not be able to charge an offense that will maintain the suspect in custody

Evaluate Your Report

Many officers are in a hurry to submit the report, and because of that, once they finish typing, they hit submit without proofreading or evaluating it before they do. This is a big mistake and can lead to a reputation of poor report writing skills. Before you submit a report, you need to make sure it is correct.

Steps you can take to evaluate your report:

- Proofread
    - Review what you typed to see if you have typos or if it conveys the information you want it to convey.
- Spellcheck
    - Use the tools available within the program you are using or, if they are limited, cut and paste into another program with better spelling/grammar tools.
- Use Another evaluator
    - If you are not sure a section (or the entire report) sounds right, ask another person to read it.

- Read it Aloud
    - Silent proofreading does not catch as many errors as reading aloud.
- Ask yourself critical questions:
    - Is the report clear?
    - Is the report complete?
    - Is the report concise?
    - Is the report accurate?

Commonly Confused Words

If you are uncertain, you should look at online resources for help and assistance. Take responsibility for the quality of your report.

Examples:

- There, their or they're
- Too, to or two
- Affected vs. effected
- Cite vs. Sight

Punctuation

If you are uncertain about the usage of common punctuation, you should consult online resources.

Examples:

- Commas
- Apostrophes
- Semicolons
- Question Marks

Video Report & Report Writing Lab

Directions:

- Submit the report electronically per your training coordinator's instructions. You will have received instructions from your Class Coordinator on how to title and save all reports.

- Use the scenario provided by your instructor as the basis for your report.

- The report must be on the DPSST template and format provided, then saved as a "Word" document.

- Any information you include should be written with attention to detail.
    - e.g., don't write "a neighbor's house"; instead, use "the house at 123 Main Street.

- The report must include:
    - A Summary
    - Complete Narrative of all observations and actions
    - Collection and logging of ALL physical evidence;
    - A "Probable Cause Statement." You will find a template for the PC statement at the bottom of the report template. This allows it to be saved as just one document.

- A finding of "Meets Standards" is required for a passing grade; however, a finding of "Does Not Yet Meet Standards" on the report will result in a need to remediate the report.

- A copy of this report, the instructor critique/s, and any remediation reports may be provided to your hiring agency. This will be standard procedure for all reports you write while here at the Academy.

You may be asked to testify in Mock Trial on any of the reports you write at the Academy.

	Excellent	Average	Developing	Beginning
Clear	All of the report is easily understandable to the reader.	Most of the report is easily understandable to the reader.	Some of the report is easily understandable to the reader.	Few parts of the report are easily understandable to the reader.
	Includes all 10 of the following: • Appropriate Word Choice • Proper Format • Chronological Order • Plain Language • Appropriate Names, Numbers, and Times • Correct Spelling • Correct Grammar • Past Tense • First Person • Active Voice	Includes 7-9 of the following: • Appropriate Word Choice • Proper Format • Chronological Order • Plain Language • Appropriate Names, Numbers, and Times • Correct Spelling • Correct Grammar • Past Tense • First Person • Active Voice	Includes 4-6 of the following: • Appropriate Word Choice • Proper Format • Chronological Order • Plain Language • Appropriate Names, Numbers, and Times • Correct Spelling • Correct Grammar • Past Tense • First Person • Active Voice	Includes 3 or fewer or none of the following: • Appropriate Word Choice • Proper Format • Chronological Order • Plain Language • Appropriate Names, Numbers, and Times • Correct Spelling • Correct Grammar • Past Tense • First Person • Active Voice
Concise	The report contains only pertinent facts.	The report contains mostly pertinent facts with little extraneous material.	The report contains some pertinent facts, with some extraneous material.	The report contains few pertinent facts, with much extraneous material.
Complete	The report includes all relevant facts, observations, and actions taken.	The report includes most of the relevant facts, observations, and actions taken.	The report includes some of the relevant facts, observations, and actions taken.	The report includes few or none of the relevant facts, observations, and actions taken.
	Includes all of the following: • Elements of the Crime • Who, What, When, Where, Why, and How	Includes most of the following: • Elements of the Crime • Who, What, When, Where, Why, and How	Includes some of the following: • Elements of the Crime • Who, What, When, Where, Why, and How	Includes few or none of the following: • Elements of the Crime • Who, What, When, Where, Why, and How
Accurate	The report includes all specific, correct information.	The report includes most of the correct information.	The report includes some of the correct information.	The report includes any information that is not correct. The report contains assumptions.

Remediation Required: _____ Yes _____ No

Instructor _____ Date _____

OPSA Police Department CAD Event

PRIMARY UNIT:	59	**OTHER UNIT(S):**	52	Officer Andy Bechdolt					
DISP:	0855	**ER:**	0855	**ARR:**	0902	**CLR:**	1059		
CALL TIME:	0852			**DATE:**	Today's Date				
TYPE:	ASSLT - Assault								
LOCATION:	313 Harry Minto Court, Salem, OR 97317								
CALLER:	Michael Williams								
CALLER ADDRESS:	319 Harry Minto Court			**PHONE:**	503-555-1217				
CALL NOTES:									
TMA - 0852:	Neighbor being assaulted by an unknown male.								
TMA - 0853:	Unknown subject has left the scene in a grey Jeep, unknown direction of travel.								
RAI - 0855:	2nd caller, reporting to be the victim, is refusing medical attention								
TMA - 0940:	Follow up at 490 Jack Williams Ave, suspect contact								
TMA - 0947:	One in custody, transporting to the jail								
TMA - 0952:	Subject lodged at the jail								
LIC:	ZWE783	**COLOR:**	GREY	**MAKE:**	JEEP	**MODEL:**	CHEROK	**YEAR:**	2004

ASSOCIATED PERSONS

ROLE:	Victim/Complainant			**NAME:**	Myers, Corban Dean			**DOB:**	10/15/1979
RACE:		**SEX:**		**HGT:**		**WGT:**		**AGE:**	
ADDRESS:	313 Harry Minto Court			**CITY:**	Salem	**STATE:**	OR	**ZIP:**	97317
PHONE:	(503) 555-1424								

ROLE:	Suspect			**NAME:**	Read, Michael			**DOB:**	1/1/1988
RACE:	W	**SEX:**	M	**HGT:**	6'1"	**WGT:**	177	**AGE:**	
ADDRESS:	490 Jack Williams Ave			**CITY:**	Salem	**STATE:**	OR	**ZIP:**	97317
PHONE:	(503) 555-3141								

ROLE:	Witness/Complainant			**NAME:**	Williams, Michael			**DOB:**	9/11/1977
RACE:		**SEX:**		**HGT:**		**WGT:**		**AGE:**	
ADDRESS:	319 Harry Minto Court			**CITY:**	Salem	**STATE:**	OR	**ZIP:**	97317
PHONE:	(503) 555-1217								




INCHES
METRIC


the Gate
youth association
PO Box 455
Independence, OR 97351
www.TheGateYouth.org
Michael Read
490 Jack Williams Ave
Salem, OR 97317



Department of Public Safety Standards and Training
Probable Cause Statement and Data Sheet

□ Reliable Eyewitness □ Confession /Admission / Provable Lie □ Physical Evidence Connecting Defendant to Crime

I offer the following information based upon my information and belief:

Name of Arrestee _____ DOB _____

Crime(s) Alleged _____

Date of Crime(s) _____ Date of Arrest _____

Location of Crime(s) _____ Location of Arrest _____

Victim(s) of Crime _____ DOB _____

Injury _____ Loss/Damage _____ Value _____

Summary of Probable Cause:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Submitted by _____(Sign and Print Name, Print DPSST#, Department and Date Completed)

State of Oregon,) Under penalty of perjury, I declare that I have examined this statement and

) ss. To the best of my knowledge and belief, it is true, correct, and complete, and _____

County of _____) is based on all information of which the preparer has any knowledge.

Subscribed and sworn to before me this _____ day of _____, 20____

_____(Deputy Clerk of the Court)

□ I find that probable cause exists to believe the arrestee committed the crime(s).

□ I find that insufficient probable cause exists, so the defendant must be released on this charge.

□ No decision is needed because the defendant has been released.

Judge _____ Date _____ Time _____

Summary:

Narrative / Action Taken:

Basic Police Academy
Resiliency



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Resiliency 1

Instructional Goals:

This course is designed to:

1. Enhance a new officer's awareness of job-related stressors
2. Develop a new officer's understanding of potential strategies for addressing stressors to maintain their emotional, physical and mental health
3. Develop a new officer's ability to self-assess or reflect on their self-care strategies

Learning Outcomes:

Upon completion of instruction, students will be able to:

1. Recognize symptoms of trauma and job-related stress
2. Identify factors that contribute to the stress and associated trauma of a career in public safety
3. Articulate healthy ways to address potential trauma or stress to maintain whole health

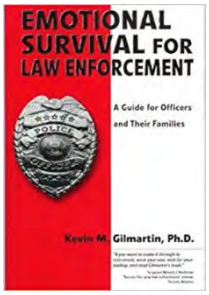
Content Outline

- Overview
    - What is Resiliency?
    - Setting the Stage for 16 weeks
- Developing awareness for 16 weeks
    - Vicarious Trauma
    - Triggers
    - Recognizing Tactical Thinking Errors
    - Developing Stress Reduction
- Developing Strong Resiliency Factors
    - Creating a Resiliency Log

Congratulations on your decision to be part of the law enforcement profession. For some, this will be their first exposure to the profession, while others will have been involved as cadets, reserves, military police, or law enforcement from another state. What everyone shares is their commitment to make our communities safer and to protect those who are at risk for harm.

> Resiliency
>
> An ability to recover from or adjust easily to misfortune or change (Merriam Webster dictionary)

The law enforcement profession is a helping profession, and as other helping professions (doctors, nurses, therapists), you will be exposed to trauma. You will receive training on trauma and how to have a trauma-informed approach in your interactions. One of the skills that you will develop as part of your training is the ability to have empathy for people you encounter. One of the strengths of empathy is being genuine with a person that is experiencing distress or pain. When you practice empathy, you are taking on the emotion the person is experiencing, and your brain records the emotion, not distinguishing it as belonging to you or another person. Your training here will incorporate the development of resiliency as an essential part of your profession. When you know you are prepared for what to expect, you can develop resiliency that will increase your effectiveness as a law enforcement professional and help you have longevity in your career.



You have received a copy of Kevin Gilmartin's book *Emotional Survival for Law Enforcement*. You are strongly encouraged to read this book and share it with your family and friends that are part of your support system. In this book, Gilmartin talks about developing a resilience plan. During your sixteen weeks in the academy, you will have many learning experiences. The basic practices that you establish at the academy you will find you implement and sustain when you return to your agency. We would like you to develop a resiliency plan to focus on the next 16 weeks that you can practice. You will be receiving information throughout the academy (classes on Stress First Aid, Resiliency, Trauma, Nutrition, and Exercise), which will enhance your plan. Your ability to include a resiliency plan into your professional growth will increase your success, satisfaction, and longevity in this exciting career.

Developing Awareness for 16 Weeks

Vicarious trauma is defined as a transformation in the helper's inner sense of identity and existence that results from utilizing empathy when listening to clients' trauma-content narratives. Vicarious trauma is what happens to your neurological (or cognitive), physical, psychological, emotional, and spiritual health when you listen to traumatic stories day after day or respond to traumatic situations *while having to control your reaction*. A transformation occurs to your inner-self as well as your perception of the world around you, which can cause severe impairment—depression, anxiety, addiction. (Vicarious Trauma Institute)

Vicarious Trauma

A transformation in the helper's inner sense of identity and existence that results from utilizing empathy when listening to clients' trauma-content narratives.

Vicarious Traumatization

One additional aspect of traumatic exposure affects primarily the workers who help trauma and disaster victims. These people include psychologists and other mental health professionals, but also the emergency workers -- EMTs, physicians, fire, police, search & rescue, etc. -- exposed to an overdose of victim suffering. These professions are at-risk for secondary traumatization. Known by various names -- compassion fatigue, secondary or vicarious traumatization, and "burn out," the symptoms here are usually less severe than PTSD-like symptoms experienced by direct victims in a disaster. But they can affect the livelihoods and careers of those with considerable training and experience working with disaster and trauma survivors. Individuals who experience vicarious traumatization should seek appropriate professional help.

What are some examples of incidents that can cause vicarious traumatization in policing?

Triggers

There are many reasons that individuals chose to enter into law enforcement. It is not unusual for someone who has experienced adverse events in their life either personally or as a witness to want to make a difference. A law enforcement career may be the way an individual can feel empowered to have an impact on change in a positive way.

We bring our experiences, positive and negative, into our professional life. As a law enforcement professional, you are dealing with people who may be at their most vulnerable, and the situations may be negative. We are human, and we may identify with a situation from personal experience, and this may invoke a response in us. We all have triggers that are psychological stimuli (may be smell, sound, sight) that connects us to a personal experience. Being aware of the vulnerabilities that you bring can help you anticipate experiencing an emotional response. As an example, you may have lost someone close to you to a terminal illness, and engaging with a person in the field who has a terminal illness may invoke an emotional response in you.

You will be getting information during your time in the academy about trauma and our responses to it. Being aware of triggers can help you to start incorporating into your resiliency plan how you can best process them.

Tetris

As we talk about triggers, there will be times during the academy experience where you may have a triggered response, or you may have a negative experience. Research has shown that one method to reduce potential trauma response is to have the survivor play the game Tetris. This is a game where you place different shape blocks together without gaps. It is easily accessed through app stores. The process of playing Tetris involves using analytical skills and keeps a trauma memory from getting seated in the limbic system of the brain. If you have an opportunity to try playing Tetris if you are triggered or have a negative experience, try this and see if you find it helpful.

Recognizing Tactical Thinking Errors

Law Enforcement is an exciting, rewarding profession, and it has challenges with the responsibility officers have to protect the safety of our communities and enforce the law. It is not uncommon to develop negative thinking patterns that may influence how we perceive ourselves, the people we work with, and our world view. You may hear the term "stinking thinking" at some point in your career. You may recognize some of these thinking errors emerging while you are at the academy. Being aware of tactical thinking errors may help you avoid them by incorporating a strategy into your resiliency plan.

All or Nothing Thinking	Black and white thinking. Only two extremes can exist. Example: Something/someone is either "all good" or "all bad" or only one person is "right," and everyone else is "wrong."
Overgeneralizing	A single negative gets applied to all situations. Terms like "I never, you never, it always, I always" may indicate. Example: "I always get the runaway calls."
Magical Thinking	Making an unrealistic connection between two ideas. Example: "If I had left 10 minutes later ...."
Disqualifying the Positive	Seeing the negative and minimizing the positive. Example: "My grade on the test was just okay and probably won't be that high again."
Super Powers	Mind Reading – believing you know what other people are thinking, "He doesn't like me." Fortune Telling – predicting how things will turn out before they happen, "He will never pass agility."
Emotional Reasoning	Your emotions are the truth – because I feel it, it must be true. Example: "I don't feel confident, so I must be a failure."
Labeling	Applying a negative label to yourself. Examples: "I'm lazy" or "I'm a loser."
Self-blame/Blame Others	You see yourself as the reason for an adverse event that you did not have any control over. Example: "It happened because I was not able to stop it from happening." Or you blame others. Example: "We are in debt because my spouse is irresponsible."

Source: Adapted from Counseling Cops, 2014

Developing Resiliency Protective Factors

Being in the academy is hopefully a rich learning experience for you; however, there can be many stresses you experience while you are here. One stress that is universally felt by students is the time away from family and friends. Being able to develop a resiliency plan in the academy will help you to cope with stress and grow with the experience. In your workbook for weeks 1-9, you have a weekly Resiliency Log. You will make brief entries weekly in three different areas: Health Eating, Sleeping and Stress. Starting in week 10 two additional areas will be added: Tactical Thinking and Support/Resources. These areas are the building blocks for a resiliency plan that will support you throughout your career. There will be two additional classes on resiliency, and you will review your log during each of these classes.

Healthy Eating

You will receive classes on nutrition during your time at the academy. Many times, healthy eating is one of the first areas that is sacrificed when people are under stress. Having a good understanding of the importance of nutrition and practicing healthy eating will provide a good foundation for sustainability in this area. You will keep a nutrition log in your nutrition classes, which you will be able to also use in this area of your resiliency log.

Sleeping

Sleep is an essential part of a healthy lifestyle. This is one area where the majority of students notice a significant change from their pre-academy life. You may find some changes/challenges with sleep over the next sixteen weeks. Increased physical stress from ORPAT, PT, DT, and some possible minor (hopefully not major) injuries can have an impact on sleep. Increased mental exercise in learning a large amount of new and diverse information can affect sleep. Studying for exams late into the night or early in the morning increases sleep needs. Driving home and getting back to the academy late or very early to maximize time at home, unfamiliar surroundings, and sharing a living space with a person you did not know before the academy decrease sleep opportunities. All of these factors have an impact on sleep, and the opposing needs and opportunities can cause a "double whammy"!

Sleep deprivation can have a direct impact on your ability to learn, process, and retain information. It can decrease your ability to problem-solve. When we are sleep deprived, our ability to control our appetite is reduced, and we can eat foods that are high in sugar and fats, which harms our bodies. We are not as alert when we are sleep deprived and may experience spatial disorientation resulting in slower reaction times and increase the potential for injury. Sleep deprivation also increases the risk of heart disease. In your career, you will experience various working shifts. Working the night shift can have an impact on your sleep by disrupting the circadian clock and making quality sleep difficult. Please review the handout "The Effects of Sleep Deprivation" from the International Association of Chiefs of Police at the end of this section.

With all this information, it becomes clear why having sleep included in the log is essential. Some strategies can have a positive impact on getting quality sleep. Sleep hygiene is a term used to describe what a person could do to improve their sleep. Some sleep hygiene practices are:

- Reduce caffeine- Don't consume caffeine in the afternoon or evening. Everyone has an individual sensitivity level for caffeine. If you are a caffeine drinker, experiment with what time is best for you to stop drinking caffeine so it will not interfere with your sleep.
- Limit alcohol- Drinking late at night can disturb your sleep. Alcohol may feel like it can help you relax, but it can interfere with your REM sleep. Reliance on alcohol to help you sleep can lead to alcohol dependence.
- Eliminate nicotine- Nicotine is a stimulant and can make it difficult to relax.
- Avoid narcotics and other sedative drugs. Narcotics can include muscle relaxers and sedatives, as they may interfere with your sleep and dream cycles.
- Spend less time in bed- If you find you are not able to sleep, get out of bed, and do something else until you become sleepy. You are creating the association in your brain that the bed is for sleeping.
- Keep a regular schedule- Try to have a routine bedtime and morning rising time.

- Limit naps during the day if it interferes with going to sleep or staying asleep. Limit naps to no more than two 15 minutes naps per day. This may change in the future if/when you work graveyard shifts. Napping or splitting sleep is a very successful strategy for officers on a graveyard shift.
- Create a "sleeping" environment- Have a good comfortable mattress. Use curtains or blinds to create a dark room and have the room temperature cooler than daytime temperature. If your sleep is being disturbed by noise, create a "white noise" with a machine or by turning a radio dial between two FM stations. Take a lukewarm, NOT HOT, bath, or shower before bed. You want to have a reduced body temperature when you go to bed. Have a light snack (no sugar or caffeine) or warm herbal tea or milk.
- Have interesting things to do during the day. (This will not be a problem when you are at the academy).
- Find a "wind" down routine that works for you. Read a book (avoid activating or exciting themes), do a crossword puzzle, draw, pray, meditate. Find what will work for you.
- Exercise. The recommended amount is 20 minutes of exercise that increases your heart rate at least three times a week. (This will not be a problem while at the academy).
- Use visualization. This is discussed below.
- Avoid bright white light (especially daylight) and light from phones and tablets.
- Keep a constant routine when possible.

Stress Management Techniques

Breathing

You will receive information on diaphragmatic breathing in the Fitness and Nutrition course. This will be an essential skill for you to develop for stress management.

Visualization

Visualize putting away your interactions from the day. This technique can be used at the end of the day. Picture the events of the day or the people you interacted with as individual objects and then put them in their "place."

For example:

Picture sailboats on the water	Picture books
Each sailboat has a different colored sail, and each sailboat represents an event you had during the day. Picture each sailboat moving through the water and being tied up at a dock. When you have tied up all the sailboats to the dock, you have closed the events for the day.	Think about the people you had a significant interaction with today. Picture each person like a book – different colors, sizes, thickness, hardcover, paperback. Take each person in the image of a book and place them on a shelf in a library. In the end, all the books will be on a shelf.

You can use any visualization that works for you with the idea that each item has an assigned image that is put into a final resting place to close your day.

Some additional visualizations that promote relaxation and stress reduction could include:

- Favorite place. Picture yourself in your favorite place. What do you see, what are you wearing, do you feel the wind or the sun?
- Creating. Imagine painting a picture, the colors, the details. Some people picture building a house or arranging furniture in a room.

Reflection

Another technique that people find helpful is doing a reflection at the end of the day. A positive reflection is suggested. An example would be to name three things at the end of the day that was positive or that you enjoyed.

Mental Grounding

There are several different ways to do mental grounding. Some examples include:

- Connecting to your current environment. Look around the area you physically are in. Observe the area in detail: different colors in the room, what are the materials in the room (tile floor, wood podium), what is the furniture in the room, how many windows in the room, how many doors, are there clocks in the room, exit signs, fire extinguishers, etc.
- Distraction: think of a category and name as many things in that category as you can. Examples: cities in Oregon, state capitals, teams in a specific sport, presidents, TV shows, names of different candy bars.
- Numbers. Start at 100, subtract 5, take the new number and subtract 5, keep going until you reach 0.

Physical Grounding

This technique focuses on your physical body. Some examples include:

- Focus on the sense of touch. Wiggle your toes and focus on what they are touching. Do they feel warm, cold, constricted? Sit in a chair. What part of your body is in contact with the chair (back of upper legs, buttocks, lower back)? Is the chair hard, soft? Pick up something in your hand (pen, book, phone). What does the object feel like in your hands? Hard, soft, rigid, flexible, warm, cold? Think about the air in the room, what is the temperature – warm, cold, do you feel the air moving?
- Progressive Muscle Relaxation. Start at your feet. Tighten the muscles in your toes and feet. Hold for 5 seconds and release. Tighten the muscles in your calves, hold for 5 seconds, and release. Tighten the muscles in your glutes and hold for 5 seconds and release. Tighten the muscles in your abdomen and hold for 5 seconds and release. Tighten muscles in your upper back and shoulders, hold for 5 seconds, and release. Tighten the muscles in your upper arms, hold for 5 seconds and release. Tighten the muscles in your hand/make a fist,

hold for 5 seconds, and release. Tighten the muscles in your jaw, hold 5 seconds, and release. Tighten the muscles in your forehead, hold for 5 seconds, and release.

Soothing Grounding

This technique focuses on things in our life that we find comforting, relaxing. Some examples may include:

- Favorites. Think of your favorite things – favorite color, a favorite song, favorite TV show, favorite movie, favorite sport, favorite car, favorite person, favorite celebrity, favorite historical person.
- Places. Think of a place where you would feel completely relaxed. It can be a real or imaginary place. Think of the place in detail – what does it look like, what are the colors, what are the features, what would the temperature be, what are the sounds you would hear.

Building Strong Support Systems

One of the cornerstones of having a successful resiliency strategy is to have strong support systems. Support systems can include:

Spouse
Children
Other Family Members
Friends: Non-Law Enforcement
Friends: Law Enforcement
Peer Support
Faith Community

What support systems did you use during the week? This is an opportunity to see if you have a pattern of the same support system and think about growing your support system.

Resources

We reach for resources during a time of need. As Law Enforcement professionals, you will be expected by your community to have or be aware of how to find a resource. You must have good resources for yourself. The best way to develop resources is to identify them at a time of least stress/need. You are going to hear a lot of resource information during your time at the academy. Many of the instructors are former law enforcement, and they will share resources with you that they have developed over their professional careers. We suggest you may want to start creating a resource directory while at the academy that will follow you in your career.

We will start you off with one resource suggestion:
Safe Call Now – a resource for someone in the field of law enforcement to talk anytime, 24/7 www.safecallnow.org



References and Resources

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Seeking Safety
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Early Interventions Following Exposure to Traumatic Events: Implications for Practice From Recent Research
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The Body Keeps The Score: Brain, Mind, and Body in the Healing of Trauma
Author: Bessel van der Kolk M.D.

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International Critical Incident Stress Foundation https://icisf.or

Resiliency 2

Instructional Goals:

This course is designed to:

1. Enhance a new officer's awareness of job-related stressors
2. Develop a new officer's understanding of potential strategies for addressing stressors to maintain their emotional, physical and mental health
3. Develop a new officer's ability to self-assess or reflect on their self-care strategies

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Recognize symptoms of trauma and/or job-related stress
2. Identify factors that contribute to the stress and associated trauma of a career in public safety
3. Articulate healthy ways to address potential trauma or stress to maintain whole health

Content Outline

Review 16 Week Log

- Insights
- Challenges
- Resources developed

Overview of Stress

- Physiological Reactions to Stress
- Emotional Reactions to Stress
- Cognitive Reactions to Stress
- Cumulative Stress

Review 16-week log

You are halfway through the academy – congratulations! You have received a lot of information in a short period. You can see the light at the end of the tunnel – GRADUATION and beginning your law enforcement career with your agency. This has been a lot of work, and you should feel a sense of pride and growing confidence that you have entered into the second phase of the academy.

Over the last nine weeks, you have had the opportunity to keep a log in three areas. Now is the time to reflect on the information you have recorded to date. You may remember from the Resiliency 1 class that an essential part of having a long professional career AND a good quality of life is having a strong foundation. A strong foundation increases your resiliency when you are challenged with both the daily stress you experience at work and home, as well as during times of intense stress. Starting in week 10 you will add two more areas: Tactical Thinking and Support/Resources.

What is the information from the log telling you? Let's take a closer look:

Healthy Eating

In Week 1 you had a Nutrition class. In the Nutrition class, you kept a ten-day nutrition journal. Some questions to think about:

What was one piece of new information that you learned from the class and/or the nutrition journal that you did not know before?

Were you able to apply that knowledge over the last nine weeks?

Sleeping

Which of the sleep hygiene practices did you use in the last nine weeks?

Is there an additional one that you would be willing to try in the next nine weeks? If yes, indicate which one.

Stress

During the last nine weeks, the topic of stress has been discussed in several classes. Today, we will look at stress in more detail. Below are some questions for you to review as you reflect on the last nine weeks in the area of stress:

What part of your daily life did you notice you experienced stress (academic, physical, home, relationships, financial)?

When you review the positive technique/skill that you used every week, is there one that you used the most? Did you try different techniques/skills?

What insight do you have about your stress over the last nine weeks, and your ability to identify it and apply a stress-reduction technique?

What adjustments will you make in the next nine weeks based on the insight(s) you have?

Thinking Errors

In Resiliency 1, we looked at thinking errors that can have a significant impact on us. Everyone experiences one or more of these thinking errors, and it is the ability to recognize them and adjust the thinking that keeps us from getting into a downward spiral. The thinking errors we discussed were:

All or Nothing Thinking	Super Powers	Labeling
Overgeneralizing	Jumping to conclusions or	Self-blame/Blame
Magical Thinking	catastrophizing	Others/Guilt
Disqualifying the Positive	Emotional Reasoning	

Starting in week 10, you will include Thinking Errors in your Resiliency Log.

Support Systems/Resources

Having a support system and building resources are two of the most powerful protective factors you can have for resiliency. The support systems you brought with you to the academy are the ones that will be there for you when you leave. Starting in week 10 you will add Support Systems and Resources to your Resiliency Log.

Overview of Stress

Stress is no new experience for you. Attending the academy is expected to be stressful, and in some areas, it is designed to create stress. As you know, stress is not a bad thing. When you physically stress a muscle, it causes the muscle to get stronger, and depending on the amount of stress; the muscle can grow. It is when stress causes a negative impact that you need to make adjustments.

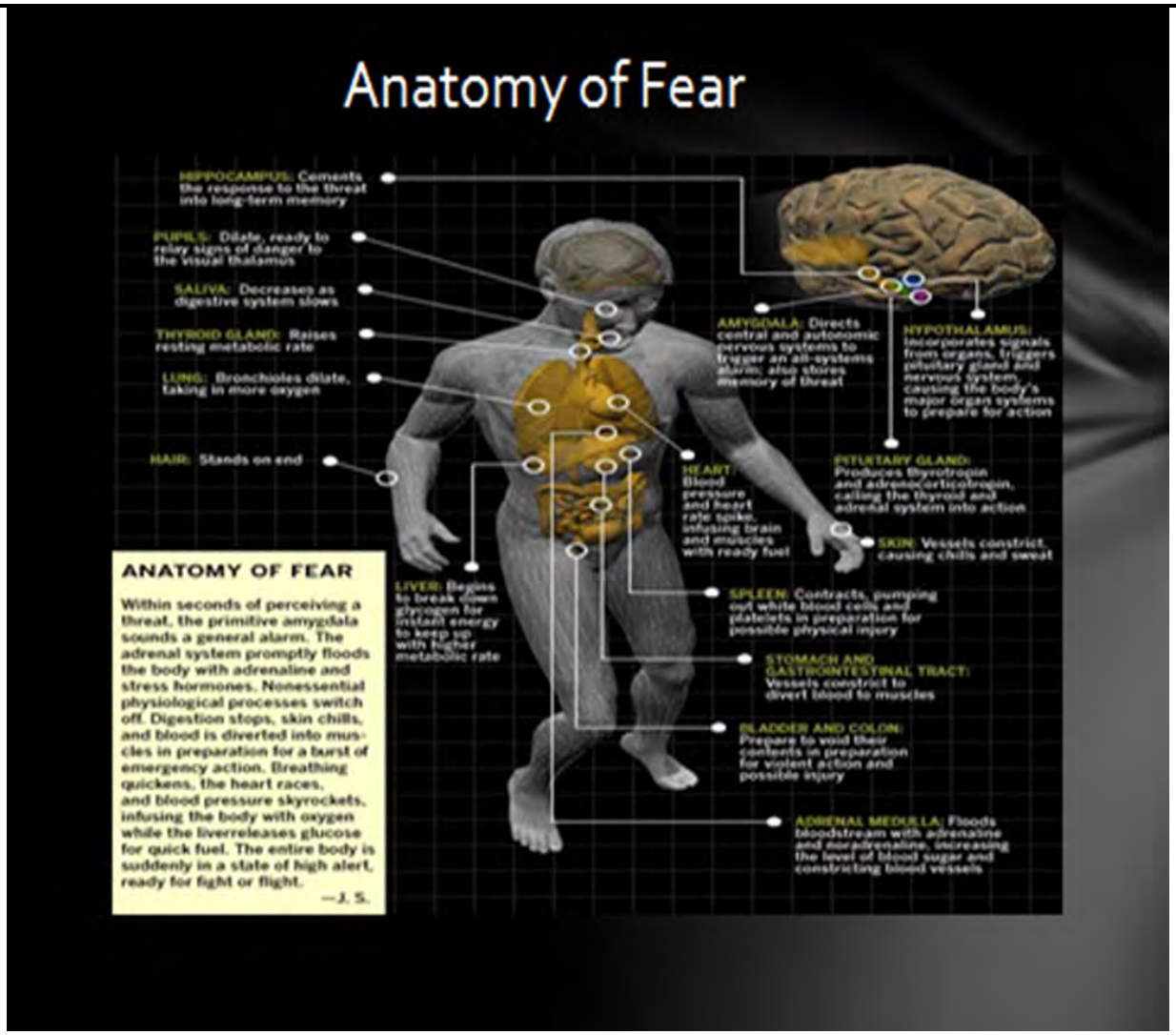
Here is a brief list of how stress affects people:

- Apathetic
- Angry
- Decision Making
- Disillusioned
- Erratic Behavior
- Fatigue
- Health Effects: Tension/Headaches, Blood Pressure, Cardiovascular Health, GI Problems,
- Substance Abuse, Illness/Suicide
- Increased Conflict
- Loss of Coordination
- Malcontent/Disgruntled
- Performance
- Personal/Family Issues
- Quality of Life
- "Us vs. Them"

Stress has an impact in all areas of our lives, physiological, emotional, and cognitive. We will take a more in-depth look at these three areas.

Physiological Reactions to Stress

Our bodies will physically experience stress. When the brain receives signals that we are in an immediate stress situation, it may interpret it as a danger signal to your safety and respond. Review the visual below and note all the areas that can be impacted when you have a stressful experience.



You can see the extent of the body's response to a stressful experience that it interprets as causing a potential threat to your safety. In the Behavioral Health Awareness class, you learned how a person responds to a crisis. When you experience elevated stress exposure, your body interprets that as a crisis.

When you continue to have stress responses to stressful situations, we can develop prolonged stress. Some of the symptoms of prolonged stress include:

- Loss of coordination
- Erratic Behavior
- Fatigue

These are signs we can be aware of in ourselves and our co-workers. The sooner we can identify signs of possible maladaptive responses, the easier it will be to neutralize them and return to a normal baseline.

Emotional Reactions to Stress

We can experience a full range of emotions when we react to a stressful situation.

- Agitation
- Apprehension
- Anger
- Anxiety
- Delayed Response to Calls for Service (Last One to Arrive)
- Depression
- Denial
- Emotional Outbursts
- Feeling Abandoned
- Feeling Lost
- Feeling Isolated
- Feeling Numb
- Fear
- Grief
- Guilt
- Inappropriate Emotional Response
- Irritability
- Loss of Emotional Control
- Panic
- Sadness
- Shame
- Startled
- Worry About Others
- Wanting to Hide
- Wanting to Limit Contact with Others

Source: Adapted from the International Critical Incident Stress Foundation

Stress can have an impact on our thinking (cognitive) reactions:

Cognitive Reactions to Stress

- Blaming Someone
- Change in Awareness of Surroundings
- Confusion
- Difficulty Calculating
- Difficulty Concentrating
- Difficulty Making Decisions
- Difficulty Problem Solving
- Disorientation (especially time and place)
- Heightened or Lowered Alertness
- Hypervigilance
- Intrusive Images
- Memory problems
- Nightmares/Distressing Dreams
- Poor Abstract Thinking
- Poor Attention Span
- Slowed thinking
- Seeing the event over and over
- Suspiciousness
- Uncertainty

Critical Incident Stress Reactions

A definition of a **"critical incident"** is that it can be any event that has a stressful impact sufficient enough to overwhelm the usually effective coping skills of an individual. Critical incidents are abrupt, powerful events that fall outside the range of ordinary human experiences. These events can have a strong emotional impact, even on the most experienced officer or deputy. (Officer.com October 15, 2007)

Critical Incident Stress Reactions, in many cases, can be less intensive when a person is aware of what to expect. The stress reactions you have listed above can be part of critical incident stress reactions. Please review the handout in your resource on Critical Incident Stress Reactions. Review the "things to try" portion of the list. Each department will have policies and procedures in place that you will learn about if you are involved in a critical incident.

Cumulative Stress

Cumulative stress is the stress that builds up over time. This stress may be caused by repeated exposure to crises and traumatic events on the job as well as events that occur in our personal life. While law enforcement officers are trained professionals, it is expected they will experience times in their professional careers when stress levels will exceed basic stress. Cumulative stress can have a significant impact on an officer's resiliency and productivity. Cumulative stress is challenging since it is hard to recognize. Something that seems minor to others may cause a severe stress reaction in someone who is experiencing cumulative stress.

Work/Life Balance

In the last unit on resiliency, we will look at creating a work/life balance at the start of your career. If you have a strong work/life balance, you will have a healthier and better quality of life both professionally and personally. You will also have a strong foundation to transition to retirement or your "next" career at the end of your law enforcement profession. Over the next seven weeks, think about how you are balancing the demands of the academy, your agency, and your personal life. In the next unit, you will be able to use your insights to help develop a long term resiliency plan moving forward.

Resiliency 3

In week 16, you will have Resiliency 3. At that time, you will have the opportunity to do a final review of your 16-week log. You will get a chance to reflect on the skills you have practiced and identify which ones worked best for you that you can take forward. We will get to meet some amazing people who will share their experiences around resiliency and how important it is to actualize the information into practice for your career. You will develop a plan for you and your family that you can take with you. You will have an opportunity to use your experience at the academy for future students and "pay it forward."

Resiliency 3

Instructional Goals:

This course is designed to:

1. Enhance a new officer's awareness of job-related stressors
2. Develop a new officer's understanding of potential strategies for addressing stressors to maintain their emotional, physical and mental health
3. Develop a new officer's ability to self-assess or reflect on their self-care strategies

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Recognize symptoms of trauma and/or job-related stress
2. Identify factors that contribute to the stress and associated trauma of a career in public safety
3. Articulate healthy ways to address potential trauma or stress to maintain whole health

Content Outline

- Awareness of Five Personality Characteristics
- Police Suicide
- Coping with Stress
- Grounding
- Work/Life Balance
- 16-Week Log
- Success Plan

Congratulations! You have completed the academy and will soon be recognized for your achievement in your upcoming graduation. This is a significant accomplishment, and it is essential to continue the positive momentum as you transition full time to your agency. You have constructed the foundation for a strong resiliency plan that you can implement and build on to ensure you will have a long and satisfying career in your chosen profession.

Awareness of 5 Potential Characteristics that can Occur

There are many reasons someone may choose the field of law enforcement. The common thread that connects all the reasons is the desire to help others and to make a difference. When Law Enforcement gets involved in a person's life, it is usually because the person is experiencing a crisis or creating an unsafe situation by violating the law. The daily exposure to the negative side of our world will take a toll on an individual. Five negative responses have been identified as the most common and can be a sign that an officer may be at risk for a stress reaction. Being aware of these negative responses can help an officer, their family, and their support system develop protective factors that will increase their resiliency.

Being aware of some of the frequently seen warning signs. Awareness can help officers and their families or support systems build protective factors to increase resiliency. The five most common warning signs that officers may experience are:

- Loss of Innocence
    - "The primary price that I think I've paid was something of a loss of innocence, seeing things that I never wanted to see and doing things that I never wanted to do. That loss of innocence has been devastating."

- Cynicism
    - "Society's social problems are much worse than we can repair."
    - "We are just here to pick up the pieces time and time again."
    - "Cops aren't the ones that are going to fix the system. It has to be someone else."
    - "We're screwed!"

- Constricted Affect
    - "The only emotion that you can show effectively is anger. That's acceptable. All others are weak, so you live on the anger, and you live on the jokes, you adopt gallows humor that keeps you going."
    - "You drink over it, have sex over it, party over it, buy more toys, or work a lot, rather than face our feelings."

- Loneliness
    - "I was the loneliest man in the world. I felt like there was nowhere to go but down. It was just like life was just too hard to live."

- Isolation
    - "I feel like I'm alone in a room full of people because I don't have anything in common with them."
    - "Can only hang out with other cops because nobody else understands" This may be true, but "civilians" have a lot to offer in our quest to be "normal."

Police Suicide

Suicide rates for law enforcement are higher than the general population. The impact of trauma exposure, cumulative stress, and Post Traumatic Stress Disorder can potentially lead to suicide. Awareness of the risk to law enforcement officers is increasing, and agencies are responding. Providing education and resources to officers starting at the academy and continuing when the officer returns to their agency is an essential part of reducing suicide. Peer support is a critical component in creating a robust and healthy environment for officers. Recognizing the warning signs of suicide raises awareness for an officer, for their co-workers, and provides information to the officer's family.

In the Mental Health Awareness class, we learned about suicide and warning signs. As we review the signs, put them in the context of a law enforcement setting. How might these signs look if you were experiencing them or observed them in a co-worker?

- Threaten to harm self
- Prior suicide attempt(s)
- Disturbance in sleep/appetite/weight
- Constricted thinking, all or nothing, black or white
- Increased risk-taking behavior
- Has plan and means for suicide
- Emotionless/numb
- Angry/agitated
- Sad/depressed
- Hopeless, not future-oriented, giving away valued possessions
- Problems at work/home
- Recent loss (status, loved one)
- Under investigation
- Socially isolated/withdrawn
- Increased consumption of alcohol/drugs

Post-Traumatic Growth

Over the last sixteen weeks, we have looked at the impact trauma, and trauma exposure has on an individual. In the Resiliency series, we have looked at the impact trauma exposure can have directly on law enforcement. You have been provided information to help you build skills and develop strong resiliency plans for a solid foundation. There is relatively recent research that suggests that individuals who experience trauma may also report positive change and growth that has resulted as part of their trauma exposure.

Post-traumatic growth is defined as the "experience of individuals whose development, at least in some areas, had surpassed what was present before the struggle with crises occurred. The individual has not only survived, but has experienced changes that are viewed as important, and that goes beyond the status quo" (Tedeschi and Calhoun, 2004). Individuals have described profound changes in their view of "relationships, how they view themselves, and their philosophy of life (Joseph and Linley, 2006).

Coping with Stress

As we have learned over the past 16 weeks, stress has an impact on all areas of your life. In class, we will have a facilitated discussion on what coping can be applied to the three main areas of stress. Below is a section for each area of stress that will be discussed, and you may want to use this area to record suggestions of coping skills that you may be interested in utilizing.

Physical

I would use the following coping methods for physical stress:

Cognitive

I would use the following coping methods for cognitive stress:

Emotional

I would use the following coping methods for emotional stress:

Stress Coping Techniques and Grounding Skills

In Resiliency 2, you were introduced to several different types of grounding. In the Veterans Awareness class, you were able to practice five senses (physical) grounding. In your weekly log over the past 16 weeks, did you use a grounding technique in the Stress column? Is there a grounding technique that you found felt natural and was most helpful?

List of Grounding Techniques:

- Breathing
- Mental Grounding
- Physical Grounding
- Soothing Grounding
- Reflection
- Visualization

List three grounding techniques below that you are able to incorporate into your life as you move forward:

1. _____
2. _____
3. _____

Work/Life Balance

When you start to work full time as a law enforcement officer, it is exciting. It is not dull, and each new day brings new experiences. There are "highs" in your days that produce adrenalin, and you are building close relationships with your peers who are sharing your experiences. You will develop a sense of humor and connection to specific circumstances that you share only with a select few individuals that also experience them. This is part of a professional phase known as The Academy and Probation and the Honeymoon Phases. These are fun and rewarding times. These are also the most critical time for you to establish a work/life balance. If you have a strong work/life balance, you will have a healthier and better quality of life both professionally and personally. You will also have a strong foundation to transition to retirement or your "next" career at the end of your law enforcement profession.

In your sixteen-week log, you identified your support systems. It is essential to have support systems outside the profession of law enforcement. You will naturally develop support systems within the profession. When you are outside of work, it is important to be fully present in your life. Set up a clear boundary with yourself that when you are not at work, you will not be distracted by work and focus on engaging in your life. If you are on an on-call status, let the people in your life know that you may need to respond to work. This will help you to engage and stay connected to your life and respond to work if and when required.

Part of a work/life balance is attending to the needs you have in a balanced way so that no one area takes over. You already have work covered in this wonderful career you have chosen. Let's take a look at the Life side.

- Family – how are you connected to your family? If you have a relationship, what can you do to ensure that you have open communication and experiences you share outside of your work life? Working on projects, sharing interests (books, movies, and physical activity), social interactions with friends all are areas that you and your relationship can share. If you have children, taking an interest in their stage of development and being involved in their lives is important and rewarding. Having regular contact with your parents and siblings and other family members helps keep the connections strong and valued. Everyone's family will look different, but think of ways that you can stay involved in the relationships with family members.

- Friends – Having friends outside of law enforcement is an essential strategy that helps us with our perspective and can keep things in context. One way of balancing desensitization is having people in our lives that are not part of the profession. It helps us keep an eye on our barometer and recognize there aren't "bad guys" around every corner or behind every closed door.

- Interests/Hobbies – Think about what you liked to do before you entered into law enforcement. Is that something that you can re-activate and keep in place? Are there new hobbies/interests that you would like to begin?

- Personal Care – What can you do just for yourself for personal care? When we can have some time just for ourselves, it allows us to "recharge." We are better able to engage in our lives and our responsibilities when we have had some time to take care of ourselves.

Success Plan

The one thing that you have learned over the last 16 weeks is that you will change as you enter and grow in your law enforcement career. Having a Resiliency Success Plan is a proactive way of anticipating what you will need. Please look at the Resiliency Success Plan template at the end of this section. You can start to make entries into the sections that you want in place for a Resiliency Success Plan. You have the log you have been working on and the experiences you brought with you to inform what you want to put into this plan. The plan is meant to and will change over time as you grow. Who do you want to share the plan with? Think of the support system you have developed to date. Who would you feel safe and confident would be able to talk to you if they see an area of the Resiliency Success Plan that was in jeopardy? Select at least one and up to three people you want to give a copy of the plan.

When you look at the template for the Resiliency Success Plan here is what a sample entry could look like:

Physical

- What I will do:
    - Enroll in a gym membership and go three times a week.
- How will I know it is working?
    - I will work out at the gym three times a week
- How will I know it is NOT working?
    - I will start missing days at the gym and go less than three times a week. I will have different excuses for why I am not able to go.
- What do I want my support person to say?
    - You wanted to go to the gym three times a week, and it looks like you may have changed that plan? Did you decide to do something else for physical activity? Is there anything I can do to help?

Summary

Over the last sixteen weeks, you have received three Resiliency courses. You have been provided information on the profession, areas where there are strengths, and where there may be some challenges. You have been offered a variety of different skill suggestions that you can personalize to your use. The most important learning is that you have a plan for resiliency so that you will have a healthy and quality career and life after the academy. Congratulations again on your accomplishment!

Resiliency Success Plan

Physical

What I will do:

1.

2.

How will I know it is working?

1.

2.

How will I know it is NOT working?

1.

2.

What do I want my support person to say to check in on this area with me?

1.

2.

Cognitive

What I will do:

1.

2.

How will I know it is working?

1.

2.

How will I know it is NOT working?

1.

2.

What do I want my support person to say to check in on this area with me?

1.

2.

Emotional

What I will do:

1.

2.

How will I know it is working?

1.

2.

How will I know it is NOT working?

1.

2.

What do I want my support person to say to check in on this area with me?

1.

2.

Additional Resources

Books:

- Bulletproof Spirit
  Captain Dan Willis

- Emotional Survival For Law Enforcement
  Kevin M. Gilmartin, Ph.D.

- I Love A Cop
  Ellen Kirschman, Ph.D.

- Increasing Resilience in Police and Emergency Personnel
  Stephanie M. Conn

Supporting Officer Safety Through Family Wellness:

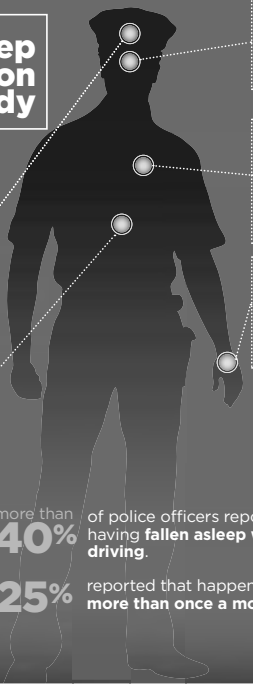
The Effects of Sleep Deprivation

While sleep deprivation is not exclusive to law enforcement, it is often amplified due to the unique stressors of the job and shift work. Sleep is essential to maintain and repair bodily functions and systems. Sleep, or lack of, has effects on all functions of the mind and body, which not only affects an officer's job, but also family wellness.

Awake for **19** hours — comparable to a blood alcohol concentration of... **0.05%**

Awake for **24** hours — comparable to a blood alcohol concentration of... **0.10%**[viii]

Effects of Sleep Deprivation on the Body



Decreased Cognitive Processes, Problem-Solving, Concentration, and Reasoning

Lack of sleep inhibits decision making, interferes with forming sound judgements, and induces poor assessments due to increased irritability.[i]

Lack of Appetite Control

Sleep deprivation has shown to increase feelings of hunger and affect a person's ability to judge portion size.[ii]

Impaired Alertness

Sleep deprivation impairs an individual's ability to remain focused and alert for long periods of time.[iii]

Increased Risk for Heart Disease

Sleep deprived persons are at a higher risk for heart disease and high blood pressure when only sleeping five to six hours a night.[iv]

Spatial Disorientation

Sleep deprived persons are more likely to become disoriented when navigating, and often report slower reaction times.[v]

Sleep deprivation can be dangerous

more than **40%** of police officers reported having **fallen asleep while driving**.

25% reported that happened **more than once a month**.[vi]



More than half of all police officers don't get enough sleep[vii]

What about working the night shift?

Our bodies naturally relax and cool down when it gets dark outside and become alert when then sun is up. **Working second or third shift can disrupt the circadian clock and make sleep more difficult.** Working against the natural rhythms of the body can cause sleep disorders and fatigue.

Law enforcement is a 24-hour job and for many, working the night shift is unavoidable. Learning how to adapt to the schedule and demands of the job can help combat some of the potentially dangerous symptoms of working the night shift.

If you work a permanent night shift:

- It is best to slowly shift your circadian clock enough to still be able to function on days off.
- The best way to do this is on days off, go to sleep as late as possible and sleep as late as possible.
- On a workday, minimize the sunlight exposure on the drive home by wearing sunglasses and utilize blackout curtains when trying to sleep.[ix]

If you work rotating night shifts:

- The circadian clock can't shift fast enough to keep up with a rotation.
- The American Psychological Association recommends avoiding symptomatic relief; caffeine to stay awake at night and sedatives to sleep during the day. These methods can be dangerous and only temporarily disrupt your circadian clock.[x]

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next page >

The Effects of Sleep Deprivation, continued...

What can officers do?



Practice a healthy lifestyle.

- Maintain balanced eating habits
- Refrain from tobacco use
- Limit alcohol consumption
- Exercise regularly
- Have an annual physical



Exercise proper sleep hygiene.

- Get seven to nine hours of sleep every night[xi]
- Limit caffeine intake close to sleep time
- Minimize screen time before bed

Talk to your doctor about sleep disorders.

- Law enforcement officers are **twice as likely** to have a sleep disorder as non-law enforcement[xii]



How can family help?

Assist in making the sleeping space **more comfortable and appealing**.

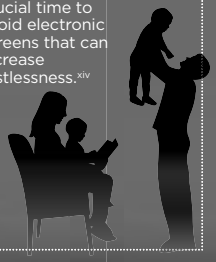
- Black out curtains, minimal electronics, supportive pillows and mattress, and a comfortable temperature are all ways to help with sleep.
- Ideal temperature for a room to sleep in is **60°-67°F**. [xiii]
- Suggested addition: minimize activity in the house when the officer is trying to sleep.



Encourage your partner to talk to a doctor about his/her sleeping habits, particularly if s/he snores frequently, has trouble falling asleep or staying asleep, or begins to show other health concerns.

Create a family bedtime ritual. Calming and relaxing environments help decrease stress and anxiety making falling asleep and staying asleep easier.

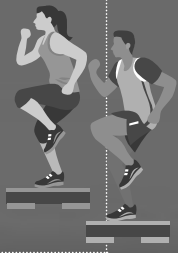
- One hour before you go to sleep have a 'wind down' hour. Do calming activities such as reading or taking a relaxing bath or shower. This is the crucial time to avoid electronic screens that can increase restlessness.[xiv]



Get into a routine as much as possible. Eating on a regular schedule and going to sleep and waking up on a regular schedule, no matter what the schedule is, all decrease the effects of sleep deprivation.

Communicate with family and friends to help distribute family responsibilities, such as sports practices, carpools, and grocery shopping.

Exercise regularly. Vigorous exercise can make it easier to fall asleep. Make it fun for the whole family. Think of creative family exercise opportunities like hiking, ice skating, dancing, and/or swimming.



- For more information about the Institute for Community-Police Relations, please visit: http://www.theiacp.org/ICPR.
- This publication is one in a series. For more family support resources please visit: http://www.theiacp.org/ICPRlawenforcementfamily

[i] Rajaratnam, Shantha MW, Laura K. Barger, Steven W. Lockley, Steven A. Shea, Wei Wang, Christopher P. Landrigan, Conor S. O'Brien et al. "Sleep disorders, health, and safety in police officers." *Jama* 306, no. 23 (2011): 2567-2578.

[ii] Hogenkamp, Pleunie S., Emil Nilsson, Victor C. Nilsson, Colin D. Chapman, Heike Vogel, Lina S. Lundberg, Sanaz Zarei et al. "Acute sleep deprivation increases portion size and affects food choice in young men." *Psychoneuroendocrinology* 38, no. 9 (2013): 1668-1674.

[iii] Rajaratnam, Shantha MW, Laura K. Barger, Steven W. Lockley, Steven A. Shea, Wei Wang, Christopher P. Landrigan, Conor S. O'Brien et al. "Sleep disorders, health, and safety in police officers." *Jama* 306, no. 23 (2011): 2567-2578.

[iv] https://www.nhlbi.nih.gov/health/health-topics/topics/sdd/signs. Updated June 2017.

[v] Valera, Silvana, Veronica Guadagni, Edward Slone, Ford Burles, Michele Ferrara, Tavis Campbell, and Giuseppe Iaria. "Poor sleep quality affects spatial orientation in virtual environments." *Sleep Science* 9, no. 3 (2016): 225-231.

[vi] Rajaratnam, Shantha MW, Laura K. Barger, Steven W. Lockley, Steven A. Shea, Wei Wang, Christopher P. Landrigan, Conor S. O'Brien et al. "Sleep disorders, health, and safety in police officers." *Jama* 306, no. 23 (2011): 2567-2578.

[vii] Rajaratnam, Shantha MW, Laura K. Barger, Steven W. Lockley, Steven A. Shea, Wei Wang, Christopher P. Landrigan, Conor S. O'Brien et al. "Sleep disorders, health, and safety in police officers." *Jama* 306, no. 23 (2011): 2567-2578.

[viii] Dawson, Drew, and Kathryn Reid. "Fatigue, alcohol and performance impairment." *Nature* 388, no. 6639 (1997): 235.

[ix] http://www.apa.org/monitor/2011/01/night-work.aspx. American Psychological Association, 2011.

[x] http://www.apa.org/monitor/2011/01/night-work.aspx. American Psychological Association, 2011.

[xi] National Sleep Foundation Memorandum released February 2015

[xii] Pearsall, Beth. "Sleep disorders, work shifts and officer wellness." *National Institute of Justice Journal* 270 (2012): 36-39.

[xiii] https://sleep.org/articles/temperature-for-sleep/

[xiv] https://sleepfoundation.org/sleep-tools-tips/healthy-sleep-tips/page/0/1

This publication is one in a series. For more family support resources please visit: www.theiacp.org/ICPRlawenforcementfamily

The IACP's Institute for Community Police Relations (ICPR) is designed to provide guidance and assistance to law enforcement agencies looking to enhance community trust, by focusing on culture, policies, and practices.

For more information, contact us at...

ICPR@theIACP.org theIACP.org/ICPR 800.THE.IACP



Sleep Hygiene

There are things we can do to prepare for bed that will increase our success at getting good sleep.

- Reduce caffeine- Don't consume caffeine in the afternoon or evening. Everyone has an individual sensitivity level for caffeine. If you are a caffeine drinker, experiment with what time is best for you to stop drinking caffeine so it will not interfere with your sleep.

- Limit alcohol- Drinking late at night can disturb your sleep. Alcohol may feel like it can help you relax, but it can interfere with your REM sleep. Reliance on alcohol to help you sleep can lead to alcohol dependence.

- Eliminate nicotine- Nicotine is a stimulant and can make it difficult to relax.

- Avoid narcotics and other sedative drugs. Narcotics can include muscle relaxers and sedatives, as they may interfere with your sleep and dream cycles.

- Spend less time in bed. If you find you are not able to sleep, get out of bed, and do something else until you become sleepy. You are creating the association in your brain that the bed is for sleeping.

- Keep a regular schedule. Try to have a routine bedtime and rising time.

- Limit naps during the day if it interferes with going to sleep or staying asleep. Limit naps to no more than two 15 minutes naps per day. This may change in the future if/when you work graveyard shifts. Napping or splitting sleep is a very successful strategy for officers on a graveyard shift.

- Create a "sleeping" environment

    - Have a good comfortable mattress. It is recommended to replace your mattress every 7-10 years, depending on the wear. It is recommended to replace your pillow every 1 to 2 years.

- Use curtains or blinds to create a dark room.

    - Have the room temperature cooler than daytime temperature. Recommended room temperature for sleeping is 60-67 degrees.

    - If your sleep is being disturbed by noise, create a "white noise" with a machine or by turning a radio dial between two FM stations. Do not turn on the TV as it generates sleep interfering light and talking will interfere with sleep. There are apps that have music, sleep stories, meditations (Calm, Insight are a few).

- Take a lukewarm, NOT HOT, bath, or shower before bed. You want to have a reduced body temperature when you go to bed.

- Have a light snack (no sugar or caffeine) or warm herbal tea or milk.
- Have interesting things to do during the day.
- Find a "wind" down routine that works for you. Read a book (avoid activating or exciting themes), do a crossword puzzle, draw, pray, meditate. Find what will work for you.
- Exercise. The recommended amount is 20 minutes of exercise that increases your heart rate at least three times a week.
- Avoid bright white light (especially daylight) and light from phones, computers, tablets and TV.
- Keep a constant routine when possible.
- Keep a sleep diary SleepFoundation_SleepDiary.pdf.

Critical Incident Stress Reactions

Over the next month you may experience normal reactions to the kind of experience you have had which may include:

Physical Reactions	Cognitive Reactions	Emotional Reactions	Behavioral Reactions
Fatigue/exhaustion Insomnia Sleep disturbances Over/Under activity Nightmares Change in appetite Digestive problems Physical problems Headaches Nausea	Lack of concentration Flashbacks Difficulty with decisions Memory disturbance Amnesia Confusion Poor problem solving Disturbed thinking Poor abstract thinking Change in alertness	Fear Guilt Emotional numbing Over sensitivity Anxiety Depression Feeling helpless Anger Irritability Frustration	Change in activity Change in communication Withdrawal Suspiciousness Hyperalertness Startle reflex Change in sexual behavior Emotional outbursts Scapegoating Pacing

These reactions are normal and, although painful, are part of the normal healing process. There is not a lot anyone can do to make you not experience these uncomfortable feelings but there are some things you can do to feel more whole.

Things to try:

- Within the first 24 - 48 hours, periods of strenuous physical exercise alternated with relaxation will alleviate some of your physical reactions.
- Structure your time - keep busy.
- You're normal and having normal reactions - don't label yourself as crazy.
- Talk to people - talk is the most healing medicine.
- Beware of numbing the pain with drugs or alcohol. You don't need to complicate this with a substance abuse problem. Reach out - people do care.
- Keep your lives as normal as possible.
- Spend time with others.
- Help those around you as much as possible by sharing feelings and checking out how they are doing. Give yourself permission to feel rotten.
- Keep a journal - write your way through those sleepless hours.
- Do things that feel good to you.
- Realize that those around you are under stress.
- Accept offered help.
- Eat nutritious, well-balanced meals high in carbohydrates and low in sugar.
- Avoid excessive use of caffeine.
- Don't make any big life changes.

Critical Incident Stress

Information Sheet for Significant Others

Your loved one has been involved in an emotion-charged event, often known as a critical incident. He/she may be experiencing normal stress responses to such an event (critical incident stress). No one is immune to critical incident stress, regardless of past experiences or years of service. Your loved one may experience critical incident stress at any time during his/her career.

Important things to remember about critical incident stress:

- The signs of critical incident stress are physical, cognitive, emotional and behavioral. Your loved one has received a handout outlining these signs. Please ask him/her to share it with you
- Critical incident stress response can occur at the time of the incident, within days, or even within weeks.
- Your loved one may experience a variety of signs/symptoms of a stress response or he/she may not experience any of the reactions at this time.
- Suffering from the effects of critical incident stress is completely normal. Your loved one is not the only one suffering; other personnel shared the event and are probably sharing the reaction.
- The symptoms will normally subside and disappear in time if you and your loved one do not dwell upon them.
- All phases of our lives overlap and influence each other: personal, professional, and family. The impact of critical stress can be intensified, influenced or mitigated by our own personal, family, and current developmental issues.
- Encourage, but do NOT pressure, your loved one to talk about the incident and his/her reaction to it.
- Talk is the best medicine. Your primary "job" is to listen and reassure. Remember that is an event is upsetting to you and your loved one, your children may be affected, also. They may need to talk, too.
- You may not understand what your loved one is going through at this time, but offer your love and support. Don't be afraid to ask what you can do that he/she would consider helpful.
- Accept the fact that life will go on: his/hers, yours, and your children. Maintain or return to a normal routine as soon as possible.
- If the signs of stress your loved one is experiencing do not being to subside within a few weeks, or if they intensify, consider seeking further assistance.

Things to Do: Family Members and Friends

- Listen carefully.
- Spend time with the traumatized person.
- Offer your assistance and a listening ear even if they have not asked for help.
- Reassure them that they are safe.
- Help them with everyday tasks like cleaning, cooking, caring for the family, minding children.
- Give them some private time.
- Don't take their anger or other feelings personally.

- Don't tell them that they are "lucky it wasn't worse." Traumatized people are not consoled by those statements. Instead, tell them that you are sorry such an event has occurred and you want to understand and assist them.

Basic Police Academy

Roles and Responsibilities



Roles and Responsibilities

Instructional Goals:

This course is designed to:

1. Develop a new officer's understanding of sources of authority and legitimacy in their role as a law enforcement officer.
2. Develop a new officer's understanding of various police functions, the corresponding authority, and mindset for effective policing.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify sources of authority and legitimacy.
2. Articulate responsibilities and duties as a law enforcement officer.
3. Explain the significance of building partnerships with the community for a law enforcement officer.
4. Identify proactive policing techniques that can help build partnerships or solve problems in the community.

Content Outline:

Role/Responsibility/Authority/Duty

Primary Categories of Police Functions
- Service Delivery
- Order Maintenance
- Law Enforcement

Mindset-The Warrior and The Guardian

The Role of Community in Policing
- Community Partnerships
- Organizational Transformation
- Problem-Solving

Part 1

Policing is complex; ordinary humans are given a role and tasked with responsibilities that exceed ordinary. In this role, you are trusted with a tremendous amount of power, the power to arrest, the power to use force (even deadly force). You are trusted to be an ethical and effective decision-maker. You are often given the discretion to decide how to handle a situation. That same discretion impacts perceptions of fairness. You will learn more about discretion when you cover implicit bias. You are expected to manage all of these responsibilities in a particular way, and every decision you make will be scrutinized by others (media, courts, communities, your peers, and your superiors). You must undertake these tasks in a manner that is legal and respectful to community members and is in keeping with local priorities.

> Discretion-
>
> The decision-making power afforded to police officers that allows them to decide a course of action.

Before you can get started learning about all the various tasks that you will need to become proficient in, you must first develop a strong foundation for who you are as a person and a strong understanding of your role and responsibilities in law enforcement.

Role	Responsibility	Authority	Duty
The function assumed or part played by a person in a particular situation.	The state or fact of having a duty to deal with something or having control over someone. The state or fact of being accountable or blameworthy for something. The opportunity or ability to act independently and make decisions without authorization.	The power or right to give orders, make decisions, and enforce obedience.	A moral or legal obligation, a responsibility. A task or action that someone is required to perform.

How do you know what your roles and responsibilities are in policing? Where is your instruction manual? Who dictates these?

The first source dictating your roles and responsibilities is the law (Federal and State). Both the United States Constitution, as well as the Oregon State Constitution, provides you the framework by which you operate. You will need to develop a comprehensive understanding of both as well as stay informed of case law as it is generated. You are responsible for performing your various roles and responsibilities in a way that protects everyone's constitutional rights. You will cover more about this in your law classes, in particular Civil Rights and Liabilities.

> The public's perceptions about the lawfulness and legitimacy of law enforcement are an important criterion for judging policing in a democratic society. Lawfulness means that police comply with constitutional, statutory and professional norms. Legitimacy is linked to the public's belief about the police and its willingness to recognize police authority.
>
> National Institute of Justice

The second (and related) source is that the community dictates your roles and responsibilities. As an officer, you are a servant of the community, all of the community, not just the favorable sections. This relationship is more than the "I pay your salary" bit; public trust and cooperation are critical to effective policing and are lost when police engage in unconstitutional or unprofessional conduct. Your actions impact officers everywhere.

> Legitimacy is a quality possessed by an authority, a law, or an institution that leads others to feel obligated to obey its decisions and directives.

Always remember that it is a privilege to serve in this role. You were called out of many to serve your community. Serve with humility.

Let's begin by examining three primary categories of police functions.

Service Delivery/ Customer Service	Order Maintenance/ Peacekeeping	Law Enforcement
Police are public servants, and this carries a huge weight of responsibility. Some duties include: • Non-enforcement based conversations • Providing education • Helping stranded motorists • Giving directions • Locating missing persons • Aid Community Caretaking (ORS 133.033)	Police establish order in two ways, including: 1. Preventing disorder 2. Restoring order when it has been disrupted. Some duties include: • Intervening in situations that threaten public order • Enforcing civil ordinances • Directing traffic • Settling disputes • Patrol	Enforcing a law means to ensure the law is followed. Some general duties include: • Detect • Investigate • Apprehend • Detain

Strategies to accomplish these objectives will vary by agency. One way to distinguish between the strategies is to compare reactive vs. proactive policing.

Reactive Policing	Proactive Policing
Police respond to citizen calls for assistance Patrol is routine and unstructured 911 calls drive police activity Dispatch section dictates police activity Emphasis on solving crimes	Police seek crime solutions before the crimes occur Targeted patrol Crime patterns drive police activity Records Management/Research dictates police activity Emphasis on preventing crimes

Mindset- Warrior vs. Guardian

Even within a shared understanding of policing responsibilities, there is considerable debate over the mindset that goes into the role. You have likely heard at least murmurings about a discussion: Warrior or Guardian mindset? Both mindsets seek to protect the communities they serve, but they go about it in different ways. Does it matter? Is it one or the other? How can you have an emotionally intelligent discussion about this topic?

The Warrior	
What is the warrior mindset? It refers to the mental tenacity and attitude that officers, like soldiers, are taught to adopt in the face of a life-threatening struggle. In this context, the warrior mindset refers to a bone-deep commitment to survive a bad situation no matter the odds or difficulty, to not give up even when it is mentally and physically easier to do so. *Harvard Law Review*	
Supporters Say	**Critics Say**
There is no such thing as a routine call. Any encounter can turn violent. Training should emphasize safety and tactics. Moving away from this mindset puts officers at risk.	The warrior mindset has morphed into mentality. Officers are demonstrating an attitude (that should be displayed in physically dangerous situations) in every aspect of the job. Encounters with the public don't often turn violent. Training focusing too heavily on the risk (that anyone can kill you) creates fear and affects the way officers interact with civilians and is a barrier to true community policing. An aggressive approach in individual interactions can exacerbate underlying social tensions. The assertive manner in which officers set the tone of encounter can also set the stage for a negative response or a violent interaction that was, from the start, avoidable. An officer who needlessly aggravates a situation doesn't just increase the risk he faces in that encounter. He also increases the risk that other officers face in other encounters.

The Guardian	
The guardian mindset takes both a broader view and a longer view of how to achieve the goal of protecting the community. The guardian mindset prioritizes service over crime-fighting, and it values the dynamics of short-term encounters as a way to create long-term relationships. *Harvard Law Review*	
Supporters Say	**Critics Say**
Officers should be instructed that their interactions with community members must be more than legally justified; they must also be empowering, fair, respectful, and considerate. The guardian mindset emphasizes communication over commands, cooperation over compliance, and legitimacy over authority. In the use-of-force context, it emphasizes patience and restraint over control, stability over action. Defensive tactics are essential, but police should be trained in ways to defuse conflict without force.	Critics of "guardian" see the concept as a challenge to the fundamental role of the police. They often associate "guardians" with politics and agendas that detract from their ability to do their job. Critics see an officer's safety concern when minimizing the dangers of policing in training. They express officer safety concerns when a training emphasis is placed on implicit bias and cultural diversity, whereas the "anyone can have a plan to kill you" training creates the best chance for officer survival.

What goes on in our head impacts our actions; our thoughts and feelings influence how we react. You may recall this from Emotional Intelligence. Understanding the many dynamics of your role and developing a solid understanding of yourself, including your default mindset, will help you navigate the challenges of this career. There is no expectation that you know this today, but throughout this Academy, you will strengthen your mindset towards the goal of being an effective officer.

You need to be able to think critically about your role and responsibilities. It is also your responsibility to become educated on current matters regarding your profession. DPSST promotes the use of research and data in policing, and throughout this Academy, you will be encouraged to look at the research and make informed decisions.

Part 2

The Role of the Community in Policing

Several times now, the role of the community has been brought up. Why? What role does the community play in public safety?

It is the job of the police to cope with problems, not just respond to incidents.

Community Policing | National Police Foundation.
https://www.policefoundation.org/projects/community-policing/

As previously covered, those problems include community livability issues and disorder as well as crime. Police must work cooperatively with the community to improve livability and reduce crime and disorder.

The support of the community is a critical factor in the ability of the police to do their job effectively. Whether there will be support or not is dependent on the relationship between the police and the communities they serve. These relations are strengthened or weakened by every police-community interaction.

The importance of police-community relations was first articulated with the "Nine Principles of Policing," made famous by Sir Robert Peel and the London Metropolitan Police Department in 1829. These principles are still widely accepted as the foundation for professional policing.

This philosophy is called community policing. It is not a program delegated to a special team and ignored by the rest. It is a philosophy embodied, valued, and encouraged by an organization. Community policing is what policing is; it is not an "extra" duty. As previously covered in part 1, you work for the people. You are part of the community. Every interaction by every member of an organization impacts the relationship between that organization and the community. Every member of that organization is responsible for community policing.

What does it look like? It varies from one community to the next. Community policing includes aspects of traditional law enforcement as well as prevention, problem-solving, community engagement, and partnerships. Whereas a large metropolitan agency may utilize foot patrols as a means of officers

interacting with its community, that isn't feasible for a rural agency. Some agencies may use crime analysts to help with problem-solving, but for others, it is up to the officers themselves. Community policing will take different forms depending on the context and the involvement of the community.

So who has time for this when calls are stacked up? Community policing balances reactive responses to calls for service with crime prevention and proactively addressing the root causes of crime and disorder (reactive vs. proactive policing). Make the time; you cannot be effective without community support. Community policing comprises three key components:

- Community Partnerships:
  Collaborative partnerships between the law enforcement agency and the individuals and organizations they serve to develop solutions to problems and increase trust in the police

- Organizational Transformation:
  The alignment of organizational management, structure, personnel, and information systems to support community partnerships and proactive problem solving

- Problem Solving:
  The process of engaging in the proactive and systematic examination of identified problems to develop and evaluate effective responses



Source: Community Policing Defined - Community Oriented Policing ....
https://cops.usdoj.gov/RIC/Publications/cops-p157-pub.pdf

Community Partnerships	Police rarely can solve public safety problems alone. Community Policing encourages interactive partnerships with relevant stakeholders. The range of potential partners is broad, and these partnerships can accomplish the two interrelated goals of developing solutions to problems through collaborative problem solving and improving public trust. In community policing, citizens are viewed by the police as partners who share responsibility for identifying priorities and developing and implementing responses. Accurate surveying of customer needs and priorities is required under community policing to determine the problems that drive police services and give the public ownership of the problem-solving process. The police are only one of the many local government agencies responsible for responding to community problems. Under community policing, other government agencies are called upon and recognized for their abilities to respond to and address crime and social disorder issues. Community-based organizations are also brought into crime prevention and problem-solving partnerships with the police. Vital to the success of these efforts is the support and leadership of elected officials and coordination of the police department at all levels. Stakeholders: ● Other Government Agencies ● Community Members/Groups ● Nonprofits/Service Providers ● Private Businesses ● Media Think about non-traditional partnerships as well.

Organizational Transformation	The community policing philosophy focuses on the way that departments are organized and managed and how the infrastructure can be changed to support the philosophical shift behind community policing. Community policing emphasizes changes in organizational structures institutionalize its adoption and infuse it throughout the entire department. Including: • Culture • Leadership • Policies • Transparency • Geographic Assignment of Officers • De-specialization • Resources • Recruitment, Hiring, and Selection • Personnel Supervision/Evaluations • Training • Communication/Access to Data • Quality and Accuracy of Data
Problem Solving	Community policing emphasizes proactive problem-solving systematically and routinely. Rather than responding to crime only after it occurs, community policing encourages agencies to proactively develop solutions to the immediate underlying conditions contributing to public safety problems. Infuse problem-solving into all police operations and guide decision-making efforts. Agencies are encouraged to think innovatively about their responses and view making arrests as only one of a wide array of potential responses. You will cover more about this in Problem-Oriented Policing, which will include a model for helping you think about problem-solving in a structured and disciplined way (the SARA: scanning, analysis, response, and assessment) model.

Source: Problem Solving | COPS OFFICE. https://cops.usdoj.gov/problemsolving

Some people criticize community policing because several studies have found that its impact on crime prevention is limited and that it has little effect on reducing citizens' fear of crime. Community policing was initially intended to emphasize the non-crime-fighting roles of the police, such as build community trust and to increase citizen satisfaction with and confidence in the police. Studies have found that community policing is associated with significant increases in citizen ratings of satisfaction with the police and also has positive benefits for police legitimacy and citizen perceptions of disorder.

SOURCE: Evidence Assessment on 21st Century Policing Report

Engaging Diverse Communities

Community Policing in the United States appeared in the 1960s as a result of race riots and concerns that police had lost contact with minority groups. Unfortunately, police/minority relationships are still an issue of interest today. You will learn more about why this is, as well as explore strategies to try and help improve this later in your Community Competency Class.

IACP produced the following steps which can be found in the Communities of Color Toolkit- Bridging the Gap http://www.theiacp.org/Communities-of-Color/steps-to-build-trust

- Treat every member of the community with respect and treat non-enforcement engagements as an opportunity to build trust.

- Get out of your patrol vehicle. Build relationships through non-enforcement interactions.
    - Participate in community events, seek out mentorship opportunities with youth, serve as a community coach for youth sports. Look for opportunities, particularly in areas where police enforcement is ever-present.

- Use favorable discretion by issuing verbal warnings to low-level offenders
    - Traffic offenses or criminal activity.

- Articulate why actions are being taken to make the public aware and create trust.

- Engage the youth in high-crime areas.

- Use community festivals, sporting events, and holiday celebrations to engage in dialogue with diverse community members and increase cultural competencies.

- Encourage community stakeholders to participate in programs that increase community trust.

Community Policing Summary

- Community policing emphasizes having the police engage the community in the policing process.

- Community policing implies that responses to problems will involve some sort of collaborative or cooperative working relationship between the police and the community.

- Community policing strongly emphasizes organizing and mobilizing the community.

Sources

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Basic Police Academy

Sexual Assault



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Sexual Assault

Instructional Goal:

This series is designed to introduce a new officer to basic factors related to sexual assault response and investigations using a victim centered and trauma informed approach.

Learning Outcomes:

Upon completion of instruction, student will be able to:

1. Demonstrate victim centered and offender focused interactions.
2. Analyze a situation and determine if there is an applicable ORS offense represented.

Content Outline:

- Module 1: Introduction and what is Sexual Assault?
- Module 2: Media and Culture
- Module 3: Neurobiology of Trauma
- Module 4: Victim Interviewing and Report Writing
- Module 5: Medical Forensics and SARTS

Introduction

The mission of the Oregon Attorney General's Sexual Assault Task Force (OAGSATF) is to facilitate support for a collaborative, victim-centered approach to the prevention of and response to adolescent and adult sexual violence.

The Oregon Attorney General's Sexual Assault Task Force is a private, non-profit, non-governmental statewide agency operating three programs and coordinating over 100 multi-disciplinary members who serve as advisors on our task force committee: Campus, Criminal Justice, Legislative & Public Policy, Medical-Forensic, Men's Engagement, Offender Management, Prevention Education, and Victim Response.

In organizing and maintaining a membership body, the Oregon Attorney General's Sexual Assault Task Force seeks to facilitate cross-discipline collaboration and cultivate victim-centered approaches to sexual assault primary prevention, victim advocacy, medical forensic care, criminal prosecution, and sex offender management and treatment.

This course content was developed by OAGSATF law enforcement faculty and staff.

Module 1: Introduction and what is Sexual Assault?

Law Enforcement's Role in Violence Prevention

Law enforcement's role in the prevention of sexual violence is to create systems that allow victims to feel safe and supported when coming forward to report crimes. Consider what you have already learned about supporting victims, communication, emotional intelligence, and more. What are some specific actions you as an officer can take to help a victim feel safe and supported when reporting?

- Make the criminal justice system accessible for everyone in your community.
- Develop relationships with community partners to have a collaborative, consistent response for survivors.
- On-going education and training on community outreach.

In Class Activity: Shifting Focus

What are some specific actions that an officer can take to help a victim feel safe and supported when reporting?

Victim Centered/Offender Focused

Victim Centered	Offender Focused
Giving time and consideration to the victim's needs and wants throughout the medical, advocacy, and criminal justice process.	Paying attention to the behaviors and actions of the offender, not the victim. Investigate the offender, not the offense.

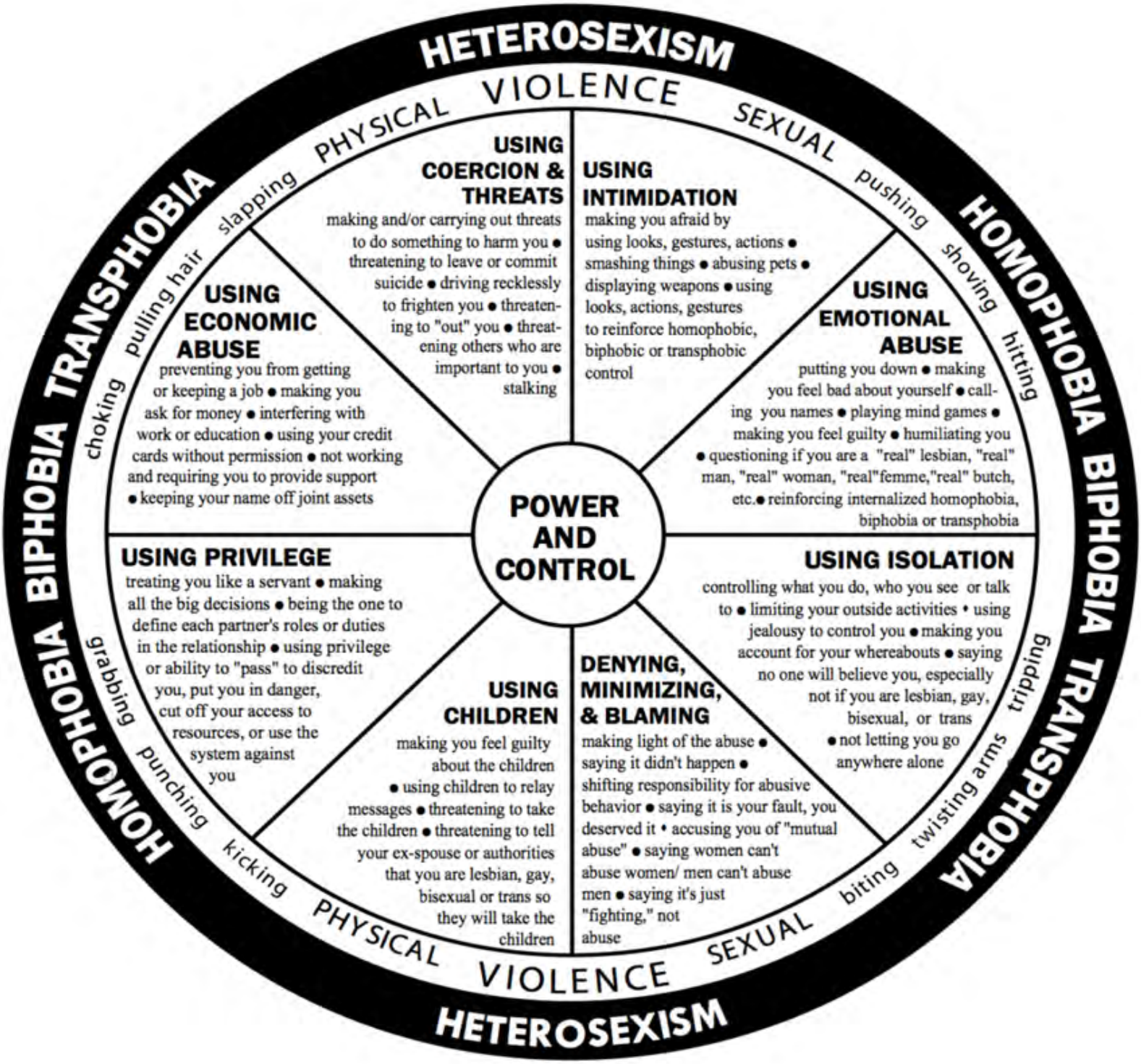
In-Class Activity: What Did You Hear?

Please Listen to the 911 call and answer the following questions:

- How did the dispatcher do:
- What did the caller remember? What did she not remember?
- Was she alone?
- When did she seem the most emotionally overwhelmed?

What is Sexual Assault?

Just as you learned in the Domestic Violence series, sexual assault is about power and control.



Consent

Consent is an agreement between participants to engage in sexual activity. Consent also plays an important role in determining if act is legally considered a crime.

In-Class Activity: What is Consent?

What is consent? We often discuss consent in the context of physical or sexual interactions. But we give and gain consent for activities every day in many different places and situations. In this activity we ask you to think about consent.

Part 1- Think of a non-sexual situation where you give consent. Please complete the following questions and discuss them with your small group.

- What does consent sound like?
- What does consent feel like?
- What does consent look like?

Part 2- Think of a sexual situation where you give consent. Please complete the following questions and discuss them with your small group.

- What does consent sound like?
- What does consent feel like?
- What does consent look like?

Justice Gap

Of 100 rapes committed, an estimated 5 - 20 are reported to police, 0.4 - 5.4 are prosecuted, 0.2 - 5.2 result in a conviction, ND 0.02 - 2.8 lead to incarceration.

Source: The 'Justice Gap' for Sexual Assault Cases: Future Directions for Research and Reform, K.A. Lonsway & J. Archambault, Violence Against Women, 2012, 18(2), 145-168.

Who are Victims of Sexual Assault?

Victims are chosen because they are

- Vulnerable, or can be made to seem so.
- Accessible, or can be made to seem so
- Seeming to lack in credibility, or can be made to seem so.

Examples:

- Children
- Adolescents
- Women, especially women of color
- People with developmental & physical disabilities
- People with communication impairments
- People who have a mental illness
- ANY dependent, institutionalized or incarcerated person
- Non-English speaking people
- People who are undocumented
- Sex workers
- People who are poor, especially the homeless
- People on the fringe of crime
- People who are drunk or on drugs
- Sexual minorities
- People with non-dominant gender identity and/or expression
- Nonwhite people/racial minorities

In-Class Activity: What Do Perpetrators Look For?

Part 1

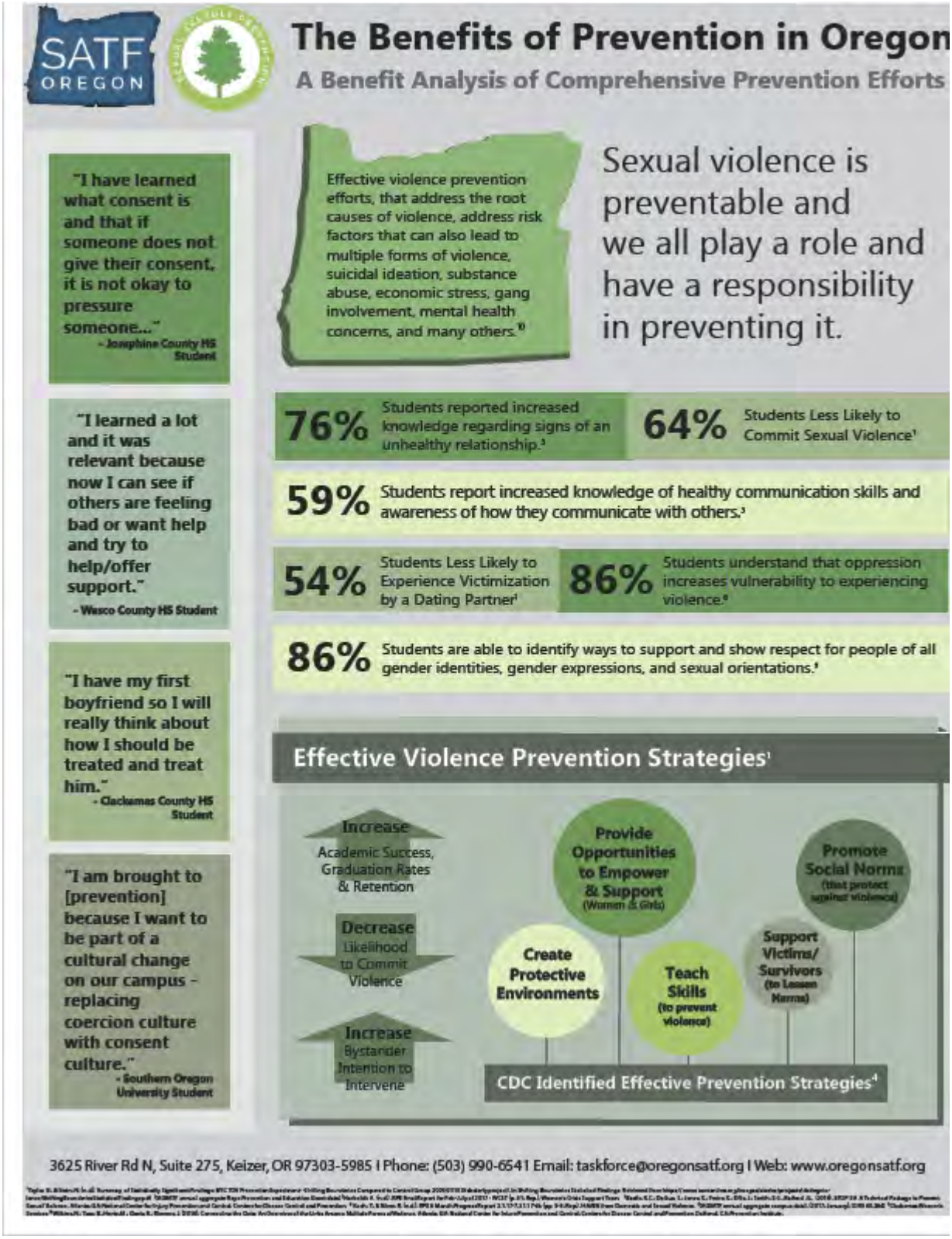
Perpetrators target certain individuals. In this activity we take a closer look at what makes certain populations vulnerable, accessible and appear to lack credibility. Your small group will be assigned a particular population that experiences sexual assault at higher rates than the general public. Please complete the worksheet below for this population.

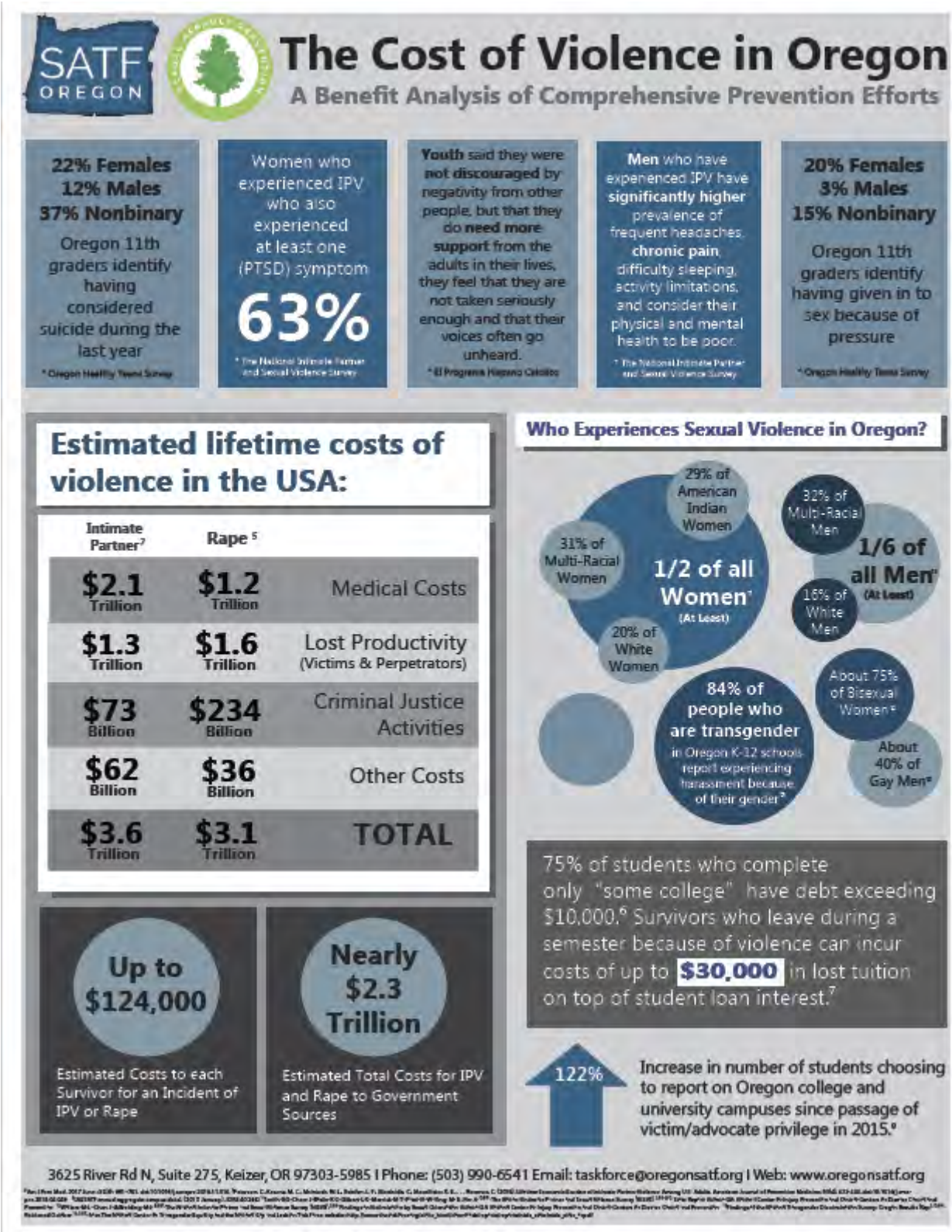
- Vulnerable:
- Accessible:
- Appear to Lack Credibility:

Part 2

Individuals can experience multiple identities at once. With your group please consider a person who is experiencing the overlapping identities provided to you by the facilitators. How might these overlapping identities make this person vulnerable, accessible, and appear to lack credibility?

- Vulnerable:
- Accessible:
- Appear to Lack Credibility:


SATF OREGON
The Benefits of Prevention in Oregon
A Benefit Analysis of Comprehensive Prevention Efforts
"I have learned what consent is and that if someone does not give their consent, it is not okay to pressure someone..."
- Josephine County HS Student
"I learned a lot and it was relevant because now I can see if others are feeling bad or want help and try to help/offer support."
- Wasco County HS Student
"I have my first boyfriend so I will really think about how I should be treated and treat him."
- Clackamas County HS Student
"I am brought to [prevention] because I want to be part of a cultural change on our campus - replacing coercion culture with consent culture."
- Southern Oregon University Student
Effective violence prevention efforts, that address the root causes of violence, address risk factors that can also lead to multiple forms of violence, suicidal ideation, substance abuse, economic stress, gang involvement, mental health concerns, and many others.[1]
Sexual violence is preventable and we all play a role and have a responsibility in preventing it.
76% Students reported increased knowledge regarding signs of an unhealthy relationship.[3]
64% Students Less Likely to Commit Sexual Violence[1]
59% Students report increased knowledge of healthy communication skills and awareness of how they communicate with others.[3]
54% Students Less Likely to Experience Victimization by a Dating Partner[1]
86% Students understand that oppression increases vulnerability to experiencing violence.[2]
86% Students are able to identify ways to support and show respect for people of all gender identities, gender expressions, and sexual orientations.[3]
Effective Violence Prevention Strategies[1]
Increase Academic Success, Graduation Rates & Retention
Decrease Likelihood to Commit Violence
Increase Bystander Intention to Intervene
Provide Opportunities to Empower & Support (Women & Girls)
Promote Social Norms (that protect against violence)
Create Protective Environments
Teach Skills (to prevent violence)
Support Victims/ Survivors (to Lessen Harms)
CDC Identified Effective Prevention Strategies[4]
3625 River Rd N, Suite 275, Keizer, OR 97303-5985 I Phone: (503) 990-6541 Email: taskforce@oregonsatf.org I Web: www.oregonsatf.org


SATF OREGON
The Cost of Violence in Oregon
A Benefit Analysis of Comprehensive Prevention Efforts
22% Females
12% Males
37% Nonbinary
Oregon 11th graders identify having considered suicide during the last year
Women who experienced IPV who also experienced at least one (PTSD) symptom
63%
Youth said they were not discouraged by negativity from other people, but that they do need more support from the adults in their lives, they feel that they are not taken seriously enough and that their voices often go unheard.
Men who have experienced IPV have significantly higher prevalence of frequent headaches, chronic pain, difficulty sleeping, activity limitations, and consider their physical and mental health to be poor.
20% Females
3% Males
15% Nonbinary
Oregon 11th graders identify having given in to sex because of pressure
Estimated lifetime costs of violence in the USA:
Intimate Partner[7]
Rape[5]
$2.1 Trillion
$1.2 Trillion
Medical Costs
$1.3 Trillion
$1.6 Trillion
Lost Productivity (Victims & Perpetrators)
$73 Billion
$234 Billion
Criminal Justice Activities
$62 Billion
$36 Billion
Other Costs
$3.6 Trillion
$3.1 Trillion
TOTAL
Up to $124,000
Estimated Costs to each Survivor for an Incident of IPV or Rape
Nearly $2.3 Trillion
Estimated Total Costs for IPV and Rape to Government Sources
Who Experiences Sexual Violence in Oregon?
29% of American Indian Women
31% of Multi-Racial Women
1/2 of all Women* (At Least)
20% of White Women
32% of Multi-Racial Men
1/6 of all Men* (At Least)
16% of White Men
84% of people who are transgender in Oregon K-12 schools report experiencing harassment because of their gender[3]
About 75% of Bisexual Women[4]
About 40% of Gay Men*
75% of students who complete only "some college" have debt exceeding $10,000.[6] Survivors who leave during a semester because of violence can incur costs of up to $30,000 in lost tuition on top of student loan interest.[7]
122%
Increase in number of students choosing to report on Oregon college and university campuses since passage of victim/advocate privilege in 2015.[8]
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Non-Stranger Sexual Assaults

According to 2010 National Intimate Partner and Sexual Violence Survey, only 15% of all sexual assaults are perpetrated by someone that is a stranger to the victim.

Perpetrator Dynamics

Sexual violence is about Power and Control over the victim. It is not about sex, attractiveness, uncontrolled desire. Fifty-one percent of survivors, reported being sexually assaulted by their intimate partner.

Sexual Assault Protection Orders (SAPOs)

SAPO's are an order that a victim of sexual assault can apply for as long as the respondent is over 18 years of age, and is not subject to any other protective order (FAPA, APPWDPA, Stalking Order, or Restraining Order). The victim can apply by themselves if they are 12 and over. If they are under 12, they need a parent/guardian or guardian ad litem. See addendum "Sexual Assault Protection Orders" (SAPO).

Module 2: Media and Culture

The purpose of this module is to develop awareness of the role of culture and media in yourself as well as how it impacts victims of sexual assault.

Vicious Assault Shakes Texas Town

By James C. McKinley Jr.

March 8, 2011

CLEVELAND, Tex. The police investigation began shortly after Thanksgiving, when an elementary school student alerted a teacher to a lurid cellphone video that included one of her classmates.

The video led the police to an abandoned trailer, more evidence and, eventually, to a roundup over the last month of 18 young men and teenage boys on charges of participating in the gang rape of an 11-year-old girl in the abandoned trailer home, the authorities said.

Five suspects are students at Cleveland High School, including two members of the basketball team. Another is the 21-year-old son of a school board member. A few of the others have criminal records, from selling drugs to robbery and, in one case, manslaughter. The suspects range in age from middle schoolers to a 27-year-old.

The case has rocked this East Texas community to its core and left many residents in the working-class neighborhood where the attack took place with unanswered questions. Among them is, if the allegations are proved, how could their young men have been drawn into such an act?



The exterior of an abandoned trailer where an 11-year-old girl was assaulted. Eighteen suspects were held. Michael Stravato for The New York Times

"It's just destroyed our community," said Sheila Harrison, 48, a hospital worker who says she knows several of the defendants. "These boys have to live with this the rest of their lives."

The attack's details remained unclear. The police have declined to discuss their inquiry because it is continuing. The whereabouts of the victim and her mother were not made public.

The allegations first came to light just after Thanksgiving, when a child who knows the victim told a teacher she had seen a videotape of the attack on a cellphone, said Stacey Gatlin, a spokeswoman for the Cleveland Independent School District.

The school district's security department interviewed the girl, 11, who is a student at Cleveland Middle School, and her mother. The security department determined that a rape had taken place, but not on school property, and then handed the matter over to the police, Ms. Gatlin said.

On Dec. 9, the police obtained a search warrant to go through a house on Travis Street and a nearby trailer that had been abandoned for at least two years. An affidavit filed to support the search warrant said the girl had been forced to have sex with several men in both places on Nov. 28 and cited pictures and videos as proof, according to The Houston Chronicle.

The affidavit said the assault started after a 19-year-old boy invited the victim to ride around in his car. He took her to a house on Travis Street where one of the other men charged, also 19, lived. There the girl was ordered to disrobe and was sexually assaulted by several boys in the bedroom and bathroom. She was told she would be beaten if she did not comply, the affidavit said.



The interior of the trailer. Michael Stravato for The New York Times

A relative of one of the suspects arrived, and the group fled through a back window. They then went to the abandoned mobile home, where the assaults continued. Some of those present recorded the sexual acts on their telephones, and these later were shown among students.

Residents in the neighborhood where the abandoned trailer stands known as the Quarters said the victim had been visiting various friends there for months. They said she dressed older than her age, wearing makeup and fashions more appropriate to a woman in her 20s. She would hang out with teenage boys at a playground, some said.

"Where was her mother? What was her mother thinking?" said Ms. Harrison, one of a handful of neighbors who would speak on the record. "How can you have an 11-year-old child missing down in the Quarters?"

Cleveland, a town of 9,000, lies about 50 miles northeast of Houston in the pine country, near the picturesque Sam Houston National Forest. The town's economy has always rested on timber, cattle, farming and oil. But there are pockets of poverty, and in the neighborhood where the assault occurred, well-kept homes sit beside boarded-up houses and others with deteriorating facades.

The abandoned trailer where the assault took place is full of trash and has a blue tarp hanging from the front. Inside there is a filthy sofa, a disconnected stove in the middle of the living room, a broken stereo and some forlorn Christmas decorations. A copy of the search warrant was on a counter in the kitchen next to some abandoned family pictures.

The arrests have left many wondering who will be taken into custody next. Churches have held prayer services for the victim. The students who were arrested have not returned to school, and it is unclear if they ever will. Ms. Gatlin said the girl had been transferred to another district. "It's devastating, and it's really tearing our community apart," she said. "I really wish that this could end in a better light."

In-Class Activity: NY Times Article

Please read the NY Times article. After reading the article, please answer the following questions individually then discuss with your whole group.

- Who was assigned blame in this article?
- What is the article's primary concern?
- Does any specific language or phrases catch your attention?

In-Class Activity: What Do Victims See?

In this activity we are going to look at the implicit and explicit messages about sexual assault shared by the media with our community. Please look at the two images on the screen and answer the following questions.

- What is the explicit message of this image?
- What is the implicit message of this image?
- How would these images resonate with victims?

Impact of Culture

Bias

You have covered the potential impact of bias throughout the academy. It is also possible to carry some biases into investigations of sexual assault cases. Consider some beliefs one might hold about "true" victims, such as how they should look, act, and react.

Myths and Victim Blaming

1. True victims are chaste, pure, non-sexual, without life experience, and they definitely do not drink.
2. True victims fight their attacker (because there is always physical force involved).
    a. There will always be physical and/or visible injury to the victim.
3. True victims report what happened to them right away and tell everything that happened to them.

To mitigate harm, take steps to interrupt any victim blaming that occurs. Additionally, normalize the impact of trauma for the victim. Remember back to your Supporting Victims of Crime class, that first interaction is important.

Barriers to Reporting

In your Domestic Violence series, you covered reasons a person might not report being the victim of abuse. These barriers are similar in sexual assault cases. The closer the relationship, the less likely someone is to report. Other barriers include:

- Self-Blame/Shame – "I am the only one"
- Doesn't want to be responsible for destroying family
- The victim loves the perpetrator
- Victim doesn't identify as a victim/that what happened was sexual assault

Module 3: Neurobiology of Trauma

You have covered trauma throughout the academy. In Behavioral Health, you learned that trauma is anything that overwhelms one's ability to cope. SAMHSA explains individualized trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or threatening, and that have lasting adverse effects on the individual's functioning and physical, social, emotional, or spiritual well-being.

In Behavioral Health, you learned responses to trauma exposure might include fight, flight, freeze, or faint. Here we add the concept of mental defeat. Mental defeat is characterized by the perceived loss of all physiological autonomy, accompanied by the sense of not being human any longer (Ehlers et al, 1998). This could appear as the person seeming:

- Uncertain
- Inconsistent
- Tense
- Disjointed
- Having closed off body language
- To have a lack of eye contact
- That their emotions don't match the experience

Module 4: Victim Interviewing and Report Writing

In-Class Activity: Ava- What Did You Hear?

Please watch the Ava video and answer the following questions.

- How does the interviewer compare to the interviewer we would want or our loved one?
- Who decided what happened?
- Based on what we discussed regarding trauma, what do you think of this interview?
- What stood out to you?

Assumptions that Are Barriers to a Good Interview

- "Good victim"
  - What makes a good victim for the perpetrator, makes a challenging victim for the criminal justice system.
  - Accessible, vulnerable, and lacking in credibility.
- Do you want a female officer?
  - What does this say to the victim?
  - What are we assuming?

In-Class Activity: Impact of Culture on Disclosures of Sexual Violence?

In this activity, we are comparing how behavior and attributes are treated differently for perpetrators and victims. Culture can affect the way we view same and similar behaviors of the victim and perpetrator, often to different outcomes.

Please compare these individual activities/attributes effect on victims and perpetrators. How might this impact the investigation? How might this impact their experience in the criminal justice system?

Victim	Perpetrator
Alcohol	**Alcohol**
Conventional Attractiveness	**Conventional Attractiveness**
Sexual History	**Sexual History**
Sexual Assault Accusations	**Sexual Assault Accusations**

Types of Questions

- Probing: Who, What, Where, When, How
- Closed: Invites "Yes" or "No" response
- Open ended "Tell..." "Describe..." "Talk to me about..."
- Leading: "You were drunk, right?"
- Forced choice: "Did you fight back, or did you just tell him no?"
- Opinion: "I wonder..." "I believe..."
- Multiple/Compound: More than one question at the same time.
- Clarification: For understanding

Ask	Don't Ask
Where would you like to start? Tell me what you are able to about your experience? Tell me more about.... Please help me to understand... What were you feeling when.... What were your thoughts when....	And then what happened? Explain to me... Why?

In-Class Activity: Reframing Our Questions

In this worksheet we are going to ask you to reframe typical interview questions. Without using Who, What, Where, When, How, or Why, how would you phrase the question to learn more about:

- The suspect description
- Delay in reporting
- Any injuries the victim or suspect sustained
- The lack of physical resistance
- The details of the assault
- Possible witnesses

Report Writing Language

Just as the words we use during an interview are important, so are the words used when writing reports. Consider the following:

- Use trauma-informed words
- Use the victim's language
- Document what the victim was thinking/feeling
- Use accurate and appropriate descriptive wording
- Avoid the language of consensual sex
- Use the statutory language
- Describe what the body parts did and in what manner

Thorough Report Writing

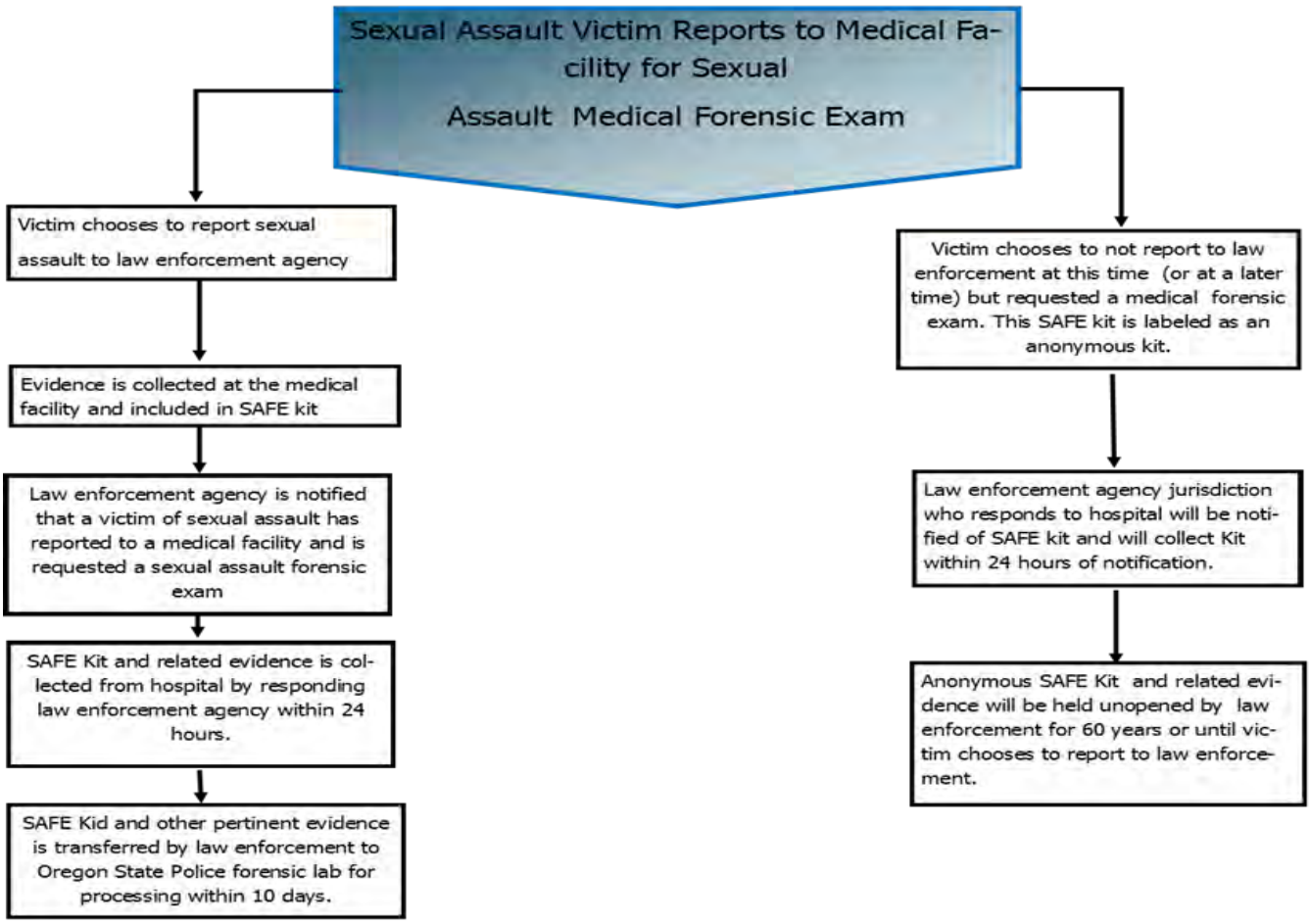
- If you didn't write it down, it didn't happen.
- What you write down, becomes fact.
- Let your interviews and investigative work speak for itself, do not include opinions/assumptions.
- Don't rely on the reader to put the pieces together, we have to connect the dots.
- Summarize all evidence, this is the only place the evidence can be placed in context.

Module 5: Medical Forensics and Sexual Assault Response Teams

Recommended Law Enforcement Policy

Sexual Assault Forensic Examination Kits

The Criminal Justice Committee of the Attorney General's Sexual Assault Task Force, comprised of law enforcement officers, prosecutors, advocates, and representatives of the Oregon Department of Public Safety Standards an Training, Oregon State Police Forensic Services Division, Oregon Youth Authority, Oregon Department of Justice, and the Oregon Crime Victims Law Center, developed the following policy for law enforcement agencies to successfully comply with the requirements of HB 25154 (2007), HB 2154 (2016), SB 1600 (2016) and SB 960 (2017). This is a accompanying document to the Sexual Assault Forensic Examination



For questions please contact us at web: oregonsatf.org I phone: 503-990-6547 I email: taskforce@oregonsatf.org

ORS 147.401 Sexual Assault Response Teams

ORS states that each county shall have a designated Sexual Assault Response Team (SART) organized by the District Attorney. The statute defines the membership makeup, meeting requirements, and requires each team to develop and adopt protocols for the response to adult and adolescent sexual assault victims.

Getting a Sexual Abuse Protective Order (SAPO) Version 11/2019

INSTRUCTIONS

Procedures vary from court to court. Check with your local court for filing instructions.

WHAT IS A SEXUAL ABUSE PROTECTIVE ORDER (SAPO)?

A Sexual Abuse Protective Order (SAPO) is a court order that tells the person who hurt you (Respondent) to leave you, your children, and your family alone. It can order the Respondent not to enter a reasonable area around your residence. You can ask the judge to add other conditions (listed in the protective order) that you think will help keep you safe.

WHO CAN HELP ME DECIDE WHETHER TO ASK FOR A SAPO?

You can call your local Victims' Assistance Program (VAP) or community-based (non-profit) sexual assault or domestic violence program to get help in deciding whether to ask the court for a SAPO and to do safety planning. Advocates can discuss information that may be important for you to consider in deciding whether to seek a SAPO. Advocates can also provide you information about what to expect during a SAPO hearing, which is open to the public. For information regarding sexual violence resources, please ask court staff for information about resources or visit the following websites:

Sexual Violence Resources and Programs: http://oregonsatf.org/help-for survivors/

Victims' Assistance Programs: https://www.doj.state.or.us/crime-victims/

Nonprofit Advocacy Programs: http://www.ocadsv.org/find-help

If you have questions about how the law works or what it means, you should talk to a lawyer. For help finding a lawyer, call the Oregon State Bar's Lawyer Referral Service at 503.684.3763 or 800.452.7636. If you believe you cannot afford a lawyer, ask court staff if your area has a legal services (legal aid) program that might help you. You also can go to: www.oregonlawhelp.org.

WHAT ARE THE REQUIREMENTS FOR GETTING A SEXUAL ABUSE PROTECTIVE ORDER?

1. Relationship (If you are an Adult, 18 or older):

- You and Respondent cannot be "family or household members" as defined by ORS 107.705. This means that the person who abused you is NOT:
- your husband, wife, or Registered Domestic Partner,
- your former husband, wife, or Registered Domestic Partner,
- an adult with whom you are living (or did live) in a sexual relationship,
- an adult with whom you have been in a sexual relationship in the last two years,
- an adult related to you by blood, marriage, or adoption, or
- the parent of your child.

Sexual Assault Investigations Checklist		
Case #:		Date:
Location:		Time:
Investigator #1:		Investigator #2:

CRIME SCENE ACTIONS	
☐	Make sure the scene is safe
☐	Secure the scene. Set up physical barriers (e.g., ropes, cones, crime scene tape, available vehicles, personnel, other equipment) or use existing boundaries (e.g., doors, walls, gates).
☐	Protect the scene. Control the flow of personnel and animals entering the scene to maintain integrity of the scene. Use a crime scene entry log to record the persons present at a crime scene for investigative and prosecutorial purposes
☐	Perform a “walk through" of the crime scene to identify valuable and/or fragile evidence and determine investigative procedures.
☐	Review the assessment of the scene to determine the type of documentation needed (e.g., photography, video, sketches, measurements and notes).
☐	Determine and request additional investigate resources as required (e.g., personnel/ specialized units, legal consultation/prosecutors/equipment).
☐	Photograph Evidence
☐	Video crime scene
☐	Draw diagram
☐	Prioritize Collection of Evidence to prevent loss, destruction, or contamination.
☐	Establish a secure area for temporary evidence storage in accordance with rules of evidence / chain of custody
☐	Collect, package and label evidence (e.g., panties, weapons, condoms, bed linens, victim’s clothing) and place in the proper packaging (if an item is wet allow to dry prior to placing in a paper evidence bag)
☐	Seal evidence
☐	Establish crime scene debriefing to ensure that the crime scene investigation is complete and to verify post-scene responsibilities.
☐	Compile reports and other documentation pertaining to the crime scene investigation into a “case file”. This provides a record of the actions taken and evidence collected at the scene.
☐	Examine crime scenes: victim, suspect, location of reported assault, transportation, suspect's residence, etc.
☐	Avoid cross contamination of items.
☐	Gather, protect, and package all evidence, using paper as much as possible.
☐	Record evidence collected and take photographs of the scenes.
☐	Submit physical evidence to appropriate agency (lab) for analysis.

VICTIM ACTIONS	
☐	Make contact with the victim. Assess the victims emotional and physical state, provide immediate medical attention if necessary
☐	Forensic Examination for Victim (SANE)
☐	Preliminary Victim Interview
☐	Identify suspect(s)
☐	Identify Outcry witness (s)
☐	Identify other Witnesses
☐	Interview witnesses (Obtain field statements if necessary)
☐	Prepare a photo line up
☐	In depth interview with victim
☐	Ensure that victim, witnesses and suspect(s) are separated (sight and sound).
☐	Record the victim's emotional and physical condition.
☐	Treat the victim with dignity and respect and ensure the victim is safe.
☐	Document any drug or alcohol use by the victim or symptoms or behaviors that may indicate the victim was drugged.
☐	Arrange for a Victim Advocate to assist the victim.
☐	Advise the victim of victims' rights; explain follow-up interviews; confirm that support services information has been given to the victim.
☐	Assess victim's safety and discuss it with the victim (safety plan)
☐	Evaluate the need for protection order or stalking order.
☐	Obtain victim's signature on medical release, tag and place into evidence.
☐	Have Victim Advocate and/or Police Officer transport the victim to the hospital, if not an emergency.
☐	Ensure proper medical examination is completed.
☐	Photograph injuries and make appointment with the victim for follow-up photos in 2 to 3 days.
☐	Conduct canvass in area or location of the assault. Find out what the witnesses saw or heard, who has been in the area, and whether there was anyone they did not recognize.
☐	Interview anyone who had contact with the victim after the assault and after the reporting of the assault.
☐	Interview all witnesses that can either corroborate or negate suspect's statements.

WITNESS ACTIONS	
☐	Interview all possible witnesses. Include any witnesses who could speak to victim's state of mind, emotional state or spontaneous statements made.

SUSPECT ACTIONS	
☐	Suspect Interview (Audio and Video if possible)
☐	Obtain a written statement
☐	Arrest(s)
☐	Obtain a complete description of suspect and vehicle.
☐	Document suspect's alcohol or drug use.
☐	Take time to obtain victim and witnesses information first.
☐	Let the suspect tell what he/she thinks happened. Do not stop suspect from talking.
☐	If you have probable cause, arrest the suspect.
☐	Obtain evidence from suspect, using the Sexual Assault Evidence Collection Kit. ☐ Done by Consent ☐ Done by Warrant
☐	Collect all of suspect's clothing and everything on the body.
☐	Take photos of the suspect and any injuries.

PROSECUTION ACTIONS	
☐	Collect SANE Exam kit for evidence
☐	Prepare Probable Cause affidavit
☐	Make contact with the District Attorney's Office
☐	Arrest warrant signed by the judge
☐	Search Warrants for evidence (cell phone, home, car, etc...)
☐	Consent to Search Forms
☐	Grand Jury subpoena for medical records (SANE Exam results)

WRITTEN REPORT ACTIONS	
☐	*Type Of Force Used:*
_____coercion (verbal pressure/arguments) _____threats _____physical force _____intimidation (implied threat/power relation)	
☐	*Forced Intercourse*
_____vaginal	
____oral	
____anal	
☐	*Physical Incapacity*
_____asleep	
_____physical violence or restrained	
_____threatened, intimidated, coerced	
☐	*Non-Consensual Sexual Contact*
Explain	
☐	*Alcohol Related*
How much was consumed by victim?	

What types of alcohol were ingested?
How much was consumed by suspect?
What types of alcohol were ingested?
Did victim consume willingly?
Condition/result of ingestion (check all that apply):
_____conscious
_____unconscious
_____physical sickness
_____blackout
☐ *Drug Related*
date rape drug induced
Type known
Lab results
What types of drugs were ingested?
How much was consumed by suspect?
What types of drugs were ingested?
Did victim consume willingly?
Condition/result of ingestion (check all that apply):
_____conscious
_____unconscious
_____physical sickness
_____blackout

CAMPUS REALTED ISSUES	
☐	**Notifications Made to (by and when):**
☐	Student Affairs
☐	Health Services
☐	Counseling Center
☐	Student Activities
☐	Campus Housing
☐	ODOP
☐	Hospital
☐	District Attorney
☐	Other:
☐	Record Clery Act Statistic

IF LOCAL POLICE DEPARTMENT HAS JURISDICTION OVER A CASE INITIALLY REPORTED TO UTPD	
☐	_____Local Jurisdiction Determined By Chief:
☐	_____Report To Local Police Sexual Assault Unit
☐	Who Is Report Made To?
☐	Officer Name:_____
☐	Badge #: _____
☐	Type Of Assistance Needed From Local Police:
☐	_____Entire Investigation
☐	_____Interviews Only
☐	_____Crime Scene
☐	_____Search Warrant
☐	_____Response Time
☐	_____Log Entry
☐	_____Record Clery Act Statistic

Sexual Assault Investigations Checklist		
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☐	Photograph Evidence
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☐	Draw diagram
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☐	Student Activities
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☐	District Attorney
☐	Other:
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☐	Who Is Report Made To?
☐	Officer Name:_____
☐	Badge #: _____
☐	Type Of Assistance Needed From Local Police:
☐	_____Entire Investigation
☐	_____Interviews Only
☐	_____Crime Scene
☐	_____Search Warrant
☐	_____Response Time
☐	_____Log Entry
☐	_____Record Clery Act Statistic

Sexual Assault Investigations

614.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the investigation of sexual assaults. These guidelines will address some of the unique aspects of such cases and the effects that these crimes have on the victims.

Mandatory notification requirements are addressed in the Child Abuse and Adult Abuse policies.

614.1.1 DEFINITIONS

Definitions related to this policy include:

Sexual assault - Any crime or attempted crime of a sexual nature, to include, but not limited to, offenses defined in ORS 163.305 et seq.

Sexual Assault Response Team (SART) - A multidisciplinary team generally composed of advocates; law enforcement officers; forensic medical examiners, including sexual assault forensic examiners (SAFEs) or sexual assault nurse examiners (SANEs) if possible; forensic laboratory personnel; and prosecutors. The team is designed to coordinate a broad response to sexual assault victims.

614.2 POLICY

It is the policy of the Medford Police Department that its members, when responding to reports of sexual assaults, will strive to minimize the trauma experienced by the victims, and will aggressively investigate sexual assaults, pursue expeditious apprehension and conviction of perpetrators, and protect the safety of the victims and the community.

614.3 RULES

2016 Oregon Laws, c.89,§ 4

Section 4, chapter 89, Oregon Laws 2016 requires each law enforcement agency within the state to have policies and procedures concerning the collection, submission for testing, retention, and destruction of SAFE kits.

(a) A sexual assault forensic evidence kits shall be obtained from a medical facility within 7 days after the medical facility notifies the Department that the kits has been collected.

(b) The sexual assault forensic evidence kit shall be submitted to the Oregon State Police (OSP) for testing within 14 days after the Department receives the kits from the medical facility and accompanied with information sufficient to allow OSP to prioritize testing. Sexual assault kits shall not be submitted in cases where the victim has chosen to remain anonymous.

(c) All sexual assault forensic evidence kits, including anonymous kits, shall be retained for no less than 60 years after the collection of the evidence.

(d) When a victim who did not previously participate with a law enforcement agency in the creation of a report of a sexual assault later chooses to participate in the creation of

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a report of the sexual assault at a later time, the sexual assault forensic evidence kit associated wih the report must be reclassified as a non-anonymous kit.

(e) When an anonymous sexual assault forensic kit is reclassified as a non-anonymous kit, the law enforcement agency in possession of the kit shall submit it to Oregon State Police for testing within 14 days of the reclassification.

614.4 QUALIFIED INVESTIGATORS

Qualified investigators should be available for assignment of sexual assault investigations. These investigators should:

(a) Have specialized training in, and be familiar with, interview techniques and the medical and legal issues that are specific to sexual assault investigations.

(b) Conduct follow-up interviews and investigation.

(c) Present appropriate cases of alleged sexual assault to the prosecutor for review.

(d) Coordinate with other enforcement agencies, social service agencies and medical personnel as needed.

(e) Provide referrals to therapy services, victim advocates and support for the victim.

(f) Participate in or coordinate with the SART or other multidisciplinary investigative teams as applicable (ORS 147.401).

614.5 INVESTIGATION AND REPORTING

In all reported or suspected cases of sexual assault, a report should be written and assigned for follow-up investigation. Any case deemed to require additional follow up will be assigned to a Detective. Report screening and assignment will be the responsibility of the Detective Sergeant.

614.6 VICTIM INTERVIEWS

The primary considerations in sexual assault investigations, which begin with the initial call to ECSO, should be the health and safety of the victim, the preservation of evidence, and preliminary interviews to determine if a crime has been committed and to attempt to identify the suspect.

The sexual assault victim should be provided the opportunity to have a member of SART or a personal representative in the initial interview.

An in-depth follow-up interview should not be conducted until after the medical and forensic examinations are completed and the personal needs of the victim have been met (e.g., change of clothes, bathing). The follow-up interview may be delayed to the place and time of the victim's choosing.Whenever practicable, the follow-up interview should be conducted by a qualified investigator. Victims choosing to provide their statement at a later time should be made aware the importance of evidence collection. Officers should make every effort to obtain evidence of the assault as quickly as possible.

Victims are often reluctant or embarrassed to discuss details. Recanting or changing one or more aspects of a prior statement is not necessarily an indication of false reporting or that the case is

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unfounded. If the responding officer has reason to believe the incident may be without merit, (s)he should document the evidence and inconsistencies. Due to physical and emotional trauma, and the myths and stereotypes associated with sexual assault, inconsistencies in the victim's report are not uncommon. No opinions of whether the case is unfounded shall be included in the report.

614.6.1 POLYGRAPH EXAMINATION OF VICTIMS

Victims and any complaining witness in a case involving the use of force, violence, duress, menace or threat of physical injury in the commission of any sex crime under ORS 163.305 through ORS 163.575, shall not be required to submit to a polygraph examination as a prerequisite to filing criminal charges (34 USC § 10451; ORS 163.705).

614.6.2 VICTIM RIGHTS

Victims should be apprised of applicable victim's rights provisions, as outlined in the Victim and Witness Assistance Policy, and provided with a **You Are In Control** pamphlet.

Victims have the right to select a person, 18 years of age or older, to be the victim's personal representative to accompany the victim during the phases of investigation, including medical examinations. The personal representative may only be excluded if there is a belief that the representative would compromise the process (ORS 147.425).

Information will be provided to victims of sexual assault upon their request. Designated personnel will be responsible for receiving calls and providing information with the following procedures:

(a) The Medford Police Department Property Control personnel will receive all telephone inquiries concerning sexual assault forensic evidence kits and serve as a liaison between Medford Police Department and Department of State Police.

(b) Victims shall be provided with the public phone number to the Medford Police Department Property Control facility at the time that a sexual assault forensic evidence kit is collected. Victims may call to request and receive information concerning sexual assault forensic evidence kits, including but not limited to location, testing date and testing results of a kit, whether a DNA sample was obtained from the kit, whether or not there are matches to DNA profiles in state or federal databases, and the estimated destruction date for the kit.Responses to victim inquiries of this nature shall be handled as soon as possible and within 30 days of inquiry, unless the Medford Police Department declines to provide the information. Property control should refer inquiries regarding test results of a kit to the CID Sergeant.

(c) The Medford Police Department may decline to provide information that interferes with the investigation or prosecution of the case.

(d) A sexual assault victim may provide the Medford Police Department with written authorization for a designee to access information on the victim's behalf.

(e) A sexual assault victim may contact the Medford Police Department in order to request that an uncontested non-anonymous kit be reclassified as an anonymous kit, or an untested anonymous kit be reclassified as a non-anonymous kit and to participate with

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the law enforcement agency in the creation of a report of sexual assault associated with the sexual assault forensic evidence kit.

614.7 COLLECTION AND TESTING OF BIOLOGICAL EVIDENCE

Whenever possible, a SART member should be involved in the collection of forensic evidence from the victim. When a victim agrees to participate in a medical assessment, the officer shall contact a victim advocate and make reasonable efforts to ensure that the advocate is present and available at the medical facility if such notification has not already been made by medical personnel (ORS 147.404).

When the facts of the case indicate that collection of biological evidence is warranted, it should be collected regardless of how much time has elapsed since the reported assault.

If a drug-facilitated sexual assault is suspected, urine and blood samples should be collected from the victim as soon as practicable.

Unless the victim has chosen to remain anonymous, sexual assault kits or biological evidence from all sexual assault cases, including cases where the suspect is known by the victim, shall be submitted for biological testing (ORS 181A.325).

Victims who choose not to assist with an investigation, do not desire that the matter be investigated or wish to remain anonymous may still consent to the collection of evidence under their control. In these circumstances, the evidence should be collected and stored appropriately.

614.7.1 DNA TEST RESULTS

Members investigating sexual assault cases should notify victims of any DNA test results as soon as reasonably practicable. Investigating members should work with the crime victim liaison as provided in the Victim and Witness Assistance Policy.

A SART member should be consulted regarding the best way to deliver biological testing results to a victim so as to minimize victim trauma, especially in cases where there has been a significant delay in getting biological testing results (e.g., delays in testing the evidence or delayed DNA databank hits). Members should make reasonable efforts to assist the victim by providing available information on local assistance programs and organizations as provided in the Victim and Witness Assistance Policy.

Members investigating sexual assaults cases should ensure that DNA results are entered into databases when appropriate and as soon as practicable.

614.8 DISPOSITION OF CASES

If the assigned investigator has reason to believe the case is without merit, the case may be classified as unfounded only upon review and approval of the Investigation Division supervisor.

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Classification of a sexual assault case as unfounded requires the Investigation Division supervisor to determine that the facts have significant irregularities with reported information and that the incident could not have happened as it was reported. When a victim has recanted his/her original statement, there must be corroborating evidence that the allegations were false or baseless (i.e., no crime occurred) before the case should be determined as unfounded.

614.9 RELEASING INFORMATION TO THE PUBLIC

In cases where the perpetrator is not known to the victim, and especially if there are multiple crimes where more than one appear to be related, consideration should be given to releasing information to the public whenever there is a reasonable likelihood that doing so may result in developing helpful investigative leads. The Investigation Division supervisor should weigh the risk of alerting the suspect to the investigation with the need to protect the victim and the public, and to prevent more crimes.

614.10 TRAINING

Subject to available resources, periodic training should be provided to:

(a) Members who are first responders. Training should include:

1. Initial response to sexual assaults.
2. Legal issues.
3. Victim advocacy.
4. Victim's response to trauma.

(b) Qualified investigators, who should receive advanced training on additional topics. Advanced training should include:

1. Interviewing sexual assault victims.
2. SART.
3. Medical and legal aspects of sexual assault investigations.
4. Serial crimes investigations.
5. Use of community and other federal and state investigative resources, such as the Violent Criminal Apprehension Program (ViCAP).
6. Techniques for communicating with victims to minimize trauma.

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Basic Police Academy
Special Programs



OREGON
DEPARTMENT OF PUBLIC SAFETY
STANDARDS AND TRAINING

Criminal Intelligence

According to the International Association of Chiefs of Police (IACP), information gathering is a fundamental and essential element in any law enforcement agency's all-encompassing duties. When acquired, information is used to prevent crime, pursue and apprehend offenders, and obtain evidence necessary for conviction. While criminal intelligence may be assigned to specific personnel within the agency, all agency members should be responsible for reporting information that may help identify criminal conspirators and perpetrators.

What is Criminal Intelligence?

IACP defines criminal intelligence as information compiled, analyzed, and/or disseminated to anticipate, prevent, or monitor criminal activity.

Criminal intelligence is first, in its raw form, information. Basic information, whether collected by the intelligence unit, patrol officers, investigators, or others, is not intelligence in the literal or practical sense until it has undergone a series of analytical processes that determine its utility for tactical or strategic law enforcement purposes.

Intelligence in its useable form consists of reasoned conclusions, suppositions, and informed judgments based on a collection and analysis of reasonably reliable information. Intelligence is, or should be, more than speculation but may not always constitute a certainty. In most cases, criminal intelligence consists of evaluations of a wide variety of raw pieces of information that provide the basis for informed judgments and, as a whole, create enough information from which to draw reasonable inferences and conclusions.



Intelligence and Proactive Policing

Early in the academy, you covered the concept of proactive policing, including the benefits and potential risks. Law enforcement intelligence operations are one important means of developing more proactive means of policing. For example, intelligence allows officers to intervene more effectively in on-going criminal enterprises and ferret out criminal activity. But criminal intelligence gathering, if not organized properly and subjected to internal and external controls, can form an unwarranted or even illegal intrusion upon individuals' rights.

Who is Subject to Intelligence Gathering?

How can law enforcement use criminal intelligence effectively while not harming individuals or communities? Who is subject to intelligence gathering and who is not?

Includes	Does Not Include
Identifying persons who are reasonably suspected of being engaged in or preparing to engage in some form of criminal activity.	Although they may be considered troublesome, or otherwise objectionable, actions of persons do not reasonably constitute a criminal threat. These persons are not legitimate subjects of criminal intelligence gathering.

Criminal Activity Related to Intelligence Gathering

Criminal activity that may be subject to intelligence gathering includes organized and violent crime, gang activity, drug activity, terrorism, violent extremism, human trafficking, identity theft, cybercrime, and other regional priorities.

Intelligence Resources

One element of criminal intelligence is the concept of deconfliction. There are two general types; event and target deconfliction.

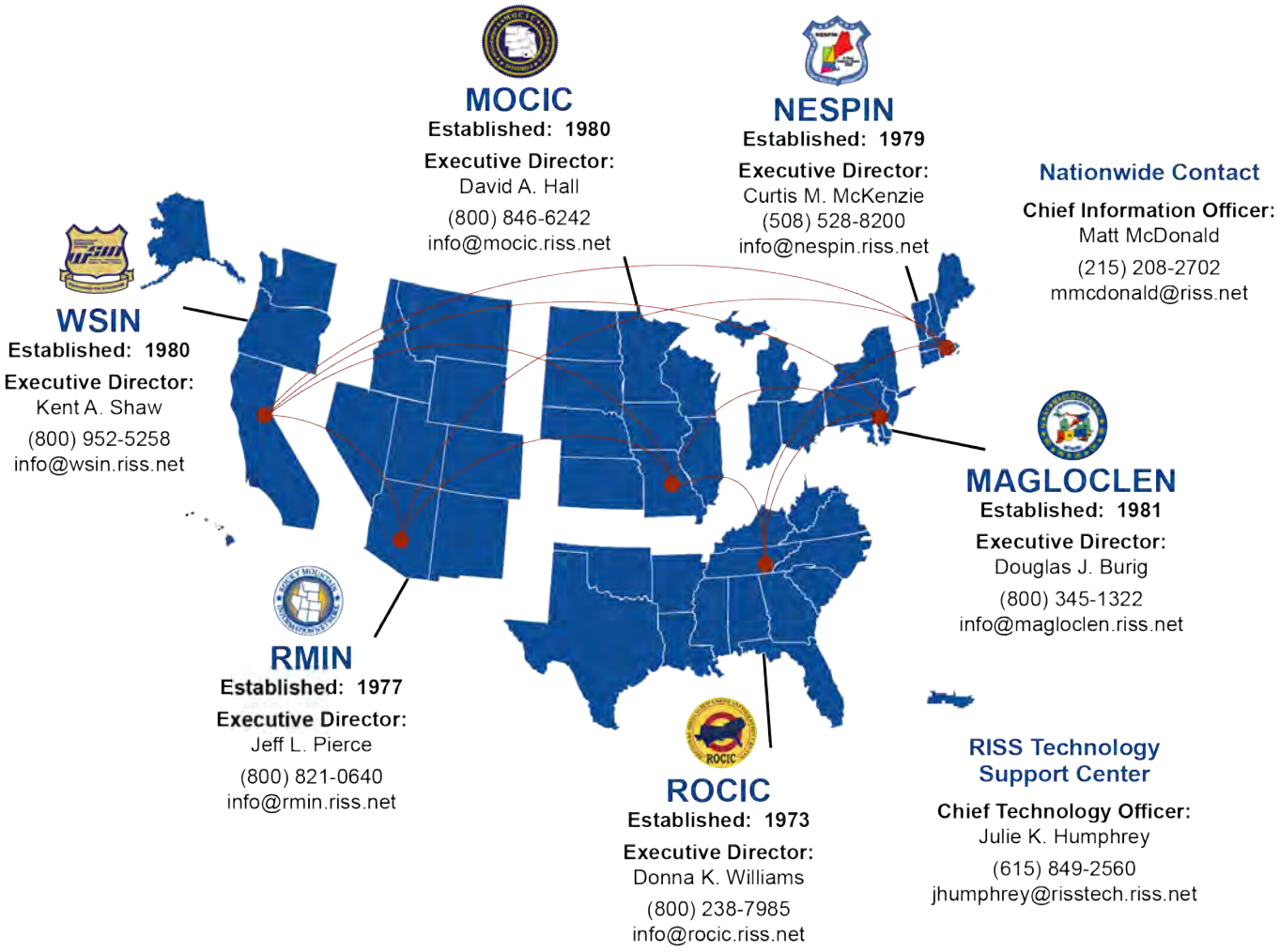
Event Deconfliction	Target (Subject or Case) Deconfliction
Event deconfliction is the process of determining when law enforcement personnel are conducting an event in close proximity to one another at the same time. Events include law enforcement actions such as raids, undercover operations, surveillance, or executing search warrants. When certain elements (e.g., time, date, or location) are matched between two or more events, a conflict results.	Target deconfliction applies to subjects, gangs, locations, telephone numbers, vehicles, and other information about criminal activity. Target deconfliction helps increase the ability to link investigations, connect suspects and cases, maintain the integrity of investigations, and strengthen information sharing.
Focused on officer safety	Focused on improving investigative outcomes

While the everyday patrol officer may not have use for event deconfliction, linking investigation information can be a useful tool.

There are three nationally recognized deconfliction systems:

- Case Explorer
- SAFETNet
- RISSafe

Each of these systems has different users and stakeholders. The systems are not duplicative but rather work together to help ensure nationwide event deconfliction coverage. The remainder of this course will focus on one system, the Regional Information Sharing Systems (RISS).



Western States Information Network/Regional Information Sharing Systems

The Western States Information Network (WSIN) is one of six Regional Information Sharing Systems (RISS) through the U.S. Department of Justice. WSIN systems include RISSintel and RISSafe.

The WSIN mission is to provide the most secure, accurate, and timely criminal intelligence and assistance to its participating agencies to enhance the investigation, arrest, prosecution, and conviction of criminal offenders. The use of RISSintel and RISSafe assists investigators to see the big picture of what criminal targets are involved in.

The executive board of WSIN is made up of two top cops from five states (Oregon, Washington, California, Hawaii, and Alaska). All resources provided from WSIN are free to participating agencies.

Services Include:

- Investigative Deconfliction
- Officer Safety Event Deconfliction
- Analytical Case Support (ORDOJ and WSIN)
- Law Enforcement Coordinators (2 in Oregon)
- Specialized Equipment
- Publications and Bulletins
- Several Online Resources

RISS Officer Safety Event Deconfliction System (RISSafe)

RISSafe stores and maintains data on planned law enforcement events—such as raids, controlled buys, and surveillances—to identify and alert affected agencies and officers of potential conflicts impacting law enforcement efforts. However, RISSafe is not a database; the events disappear six hours after the end date as identified by the officer. After the time elapses, there is no record in the system.

Operational deconfliction may include serving a search warrant, making an arrest, utilizing a pole cam, knock and talks, etc. RISSafe can be used by everyone in an agency, even for non-criminal deconfliction. For example:

ATF non-criminal investigations of licensed firearms dealers should be deconflicted with local law enforcement to ensure their visit to the residence will not impact a law enforcement operation going on in the area.	OLCC inspections at dispensaries, growers- Their compliance checks may impact a law enforcement function occurring in or around that location/person.

RISSafe is used in conjunction with mapping software to verify data on event locations when an event is entered into the system. When entering an event, a geofence is established around the target for as long as it is reported to the watch center. A conflict occurs when another agency has an operation that penetrates the geofence previously established around a target location. If a conflict is identified, immediate notification to the submitting officer occurs and notification to the officers involved by a RISSafe Watch Center.

RISS Criminal Intelligence Database (RISSIntel)

The RISSIntel user interface provides a real-time, online federated search of more than 60 RISS and partner intelligence databases. Millions of intelligence records are available via RISSIntel and between connected partner systems. Records include individuals, organizations and gangs, and associates, as well as locations, vehicles, weapons, and telephone numbers. RISSIntel is designed to encourage the exchange of information and coordination among member agencies investigating the same individuals (subject/target) or organizations.

The database is subject to 28 CFR 23 (Code of Federal Regulations). It strikes a balance between law enforcement's need-to-know and a citizen's constitutional rights. If 28 CFR 23 is not followed, an agency can be sued civilly and criminally (example: Calgang database).

Targets entered stay in the criminal intelligence database for five years. This can be extended if additional criminal activity is entered. After five years, the entry is purged automatically. Comprehensive data entered will connect the officer to other officers, potentially targeting the same subjects.

To use the criminal intelligence database, there must be reasonable suspicion of criminal activity. Agencies will be audited, and documentation must be on hand outlining the reasonable suspicion for submitting a target into the system.

Database Inquiries and Submissions

Connectivity depends on law enforcement officers making both inquiries and submissions to the database.

An inquiry might include subject name, moniker, scars/marks/tattoos, addresses, vehicles, vessels, boats, phone numbers, and social media sites.

Connections will be lost if submissions are incomplete or no submission is made.

Example: LEO arrested a person with $60k of gift cards on the person. An inquiry was made at the ORDOJ watch center, but there was nothing in RISSintel, and no submission was made. The next day, another officer from a different agency called on the same subject for a $100k investigation into gift card laundering. The connection would have been lost due to the first officer not submitting their data into the system. However, they got lucky and happened to talk to the same analyst who put the officers in touch with each other.

Disclosure of Intelligence Data

Data received through an inquiry cannot be disclosed outside your agency without the submitting agency's approval. When writing the report, do not list "WSIN" as a source of data. Instead, list the agency who submitted the data on reports/affidavits. WSIN is a third party to data and does not own the data. Data belongs to the submitting agency, and they must be the ones to approve the disclosure.

When submitting data to WSIN, leave the default to OPEN release of data. This is most helpful to other officers looking for intelligence. There are two other restrictions (Limited and Restricted), but they should be used sparingly.

Resources- ORDOJ and WSIN Free Services

Oregon DOJ (M-F 730-5) – 800-442-6248

Subject background packets, DMV photos, OFIN, accruint, epic, and other database checks.

WSIN 24/7/365 – 800-952-5258

Make inquiries and submissions of criminal intelligence, request CA DMV photos, bulletins, other specialized equipment and analysis, target packages.

- Carfax for police – both ORDOJ and WSIN have access to run car histories through Carfax for Police. If your agency has access, you can put in a VIN alert on any vehicle and receive a notification if it pops into the system (oil change, sale, new registration, etc.).
- OSP – mobile sex offender's program, check level 1-3 offenders, update photos and reports online egordon@osp.oregon.gov
- Specialized equipment – your case, any crime, free equipment to include cameras, audio and video transmitters, night vision goggles, etc.
- Publications - topics of relevance for law enforcement to include narcotics, human trafficking, task force directory
- Bulletins – attempt to locate, attempt to identify, officer safety bulletins

Examples of Successful Use of Bulletins (2020)

- Tillamook: theft of firearms, suspect arrested in Tigard off bulletin, and some firearms recovered.

- Cannon Beach: Sent a bulletin to ID a suspect in some theft charges. Within 7 minutes of the bulletin going out on email, four other agencies contacted Cannon Beach with the identity and additional crimes.

Disrupting and Preventing Crime

Instructional Goal:

This course is designed to introduce a new police officer to research-based crime prevention and deterrence strategies.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

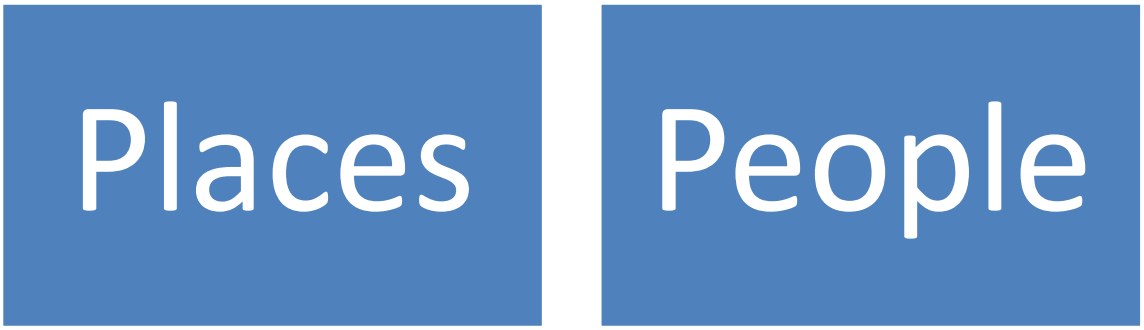
1. Describe how the concentration of crime can be used to implement crime prevention strategies in a community.

Content Outline:

- Concentration of Crime
- Deterrence

Concentration of Crime

Developing effective crime prevention strategies for a community requires some understanding about the nature of crime itself. Crime is not random. Research consistently shows that crime concentrates across places (geographic areas, neighborhoods, street segments, addresses, or households are the locations for the majority of crime), across victims (a large proportion of victimizations happen to a relatively small portion of the population, a small proportion of those affected are victimized more than once), and offenders (few offenders are responsible for the majority of the crime).



Places

A relatively small proportion of all places contain most crime. These micro places, commonly referred to as "hot spots" of crime, have been defined as clusters of street addresses, groupings of street blocks, and particular street intersections and street segments. High-activity crime places have been found in neighborhoods characterized by both low and high levels of social disadvantage.

From: The Law of Crime Concentration at Places (2017) by Anthony Braga, Martin Andersen, and Brian Lawton in the Journal of Quantitative Criminology.

Some findings:

- Calls for services are more concentrated than crime incidents.
- Property crime is more concentrated than violent crime.
- Crime is more concentrated at addresses than other units, including street segments.
    - The worst 5% of households or addresses accounted for about 55% of the crime.
    - The worst 5% of the street segments accounted for around 42% of the crimes.
    - The worst 5% of the neighborhoods accounted for around 20% of the crimes.

From: How Concentrated is Crime at Places? (2017) by YongJei Lee, John Eck, SooHyun O, and Natalie Martinez in Crime Science.

Victims

Two measures of crime concentration among victims are commonly used. The first measure is "prevalence," or the number of people with at least one victimization divided by the total number of people in a population. The second measure is "frequency," or the total number of victimizations divided by the total number of victims. These two measures suggest different crime prevention approaches. The higher the prevalence of victimization, the greater the proportion of the population at risk for being victimized. If a high prevalence of victimization is driving crime rates, crime can be reduced by focusing efforts on preventing a non-victim from becoming a victim. However, if crime rates are mainly due to a high frequency of victimization, crime prevention strategies should concentrate on keeping victims from being revictimized.

From: How Concentrated is Crime Among Victims? (2017) by SooHyun O, Natalie Martinez, YongJei Lee, and John Eck in Crime Science.

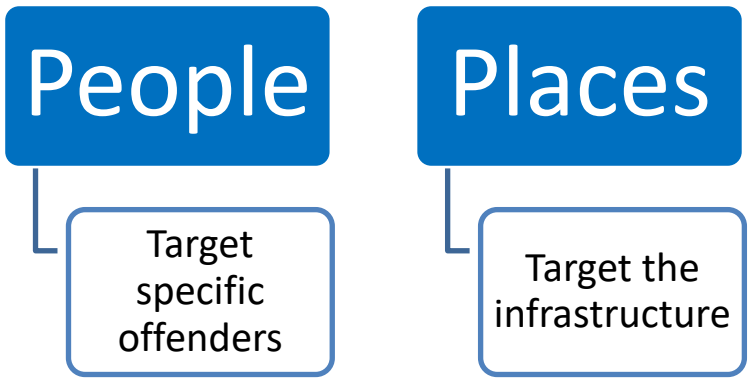
Offenders

If crimes were equally distributed in society, then 10% of all offenders would account for 10% of all crimes, 20% of offenders would account for 20% of all crimes, and so on. Decades of research on offenders has shown that this is not the case. In fact, those studies have repeatedly found that the distribution of offending is skewed and that crime is highly concentrated among a small proportion of offenders. In multiple studies it was found that 10% of offenders accounted for about 40% of all offenses. Crime prevention strategies include focusing resources on those who commit the most crime, such as selective incapacitation (jail/prison sentences), rehabilitation programs, and changing perceptions of risk and reward.

From: Ravenous Wolves Revisited: A Systematic Review of Offending Concentration (2017) by Natalie Martinez, YongJei Lee, John Eck, and SooHyun O in Crime Science.

Crime Prevention Strategy- Deterrence

Some law enforcement strategies for disrupting crime are effective. For example, through approaches targeting the people and/or the places where crime concentrates.



Targeting People: Police can often impact crime by directly interacting with offenders and communicating clear incentives for compliance and criminal activity consequences. These approaches focus on high-rate offenders, often gang members or drug sellers.

Targeting Places: Crime networks extend beyond the specific address where crime occurs. Where are the places where criminal networks meet? Are there businesses supporting these endeavors?

According to the Center for Problem-Oriented Policing, the deterrence theory of crime asserts that people are discouraged from committing crimes if they believe they are likely to be caught and punished certainly, severely, and swiftly. These three punishment elements theoretically work best in concert. If any one of the elements is weak, the threat of punishment is diminished, and the person is less deterred from committing the crime. Deterrence can be general or specific.

General Deterrence	Specific Deterrence
When other people become aware of an individual's punishment and are discouraged from committing similar offenses.	Refers to instances when the individual punished is discouraged from offending again.
A message conveyed by Person A to Person B influences Person C (or Person N).	A message conveyed by Person A to Person B influences Person B.

Focused-deterrence is a crime reduction strategy in which carefully selected high-risk offenders receive concentrated law enforcement attention and, simultaneously, offers of concentrated social services through direct, persuasive communication and rigorous follow-up of these commitments. Focused-deterrence initiatives (FDIs) aim primarily to deter high-risk offenders from re-offending, but if properly publicized to offenders' associates and the wider public, general deterrence can occur as well.

Note, these are not merely enforcement crackdowns or a method of making life difficult for selected individuals.

FDIs commonly include such aspects as:

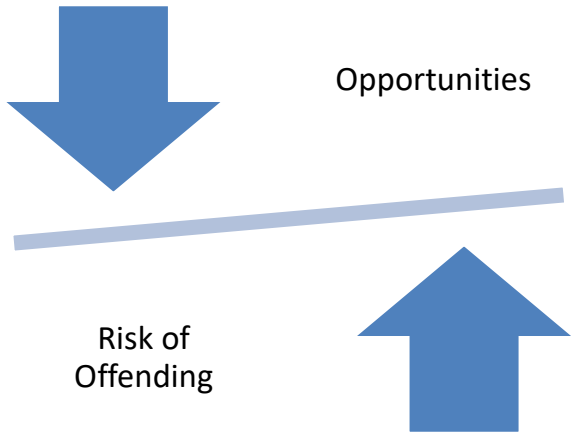
- Identification of prolific offenders
- Scripted offender notification meetings
- Coordinated and strategic prosecution
- Provision of social services to individuals willing to accept them, and
- Careful monitoring of individuals' actions

Focused Deterrence Example: Operation Ceasefire

In Boston, gangs were notified at call-in meetings that violence would no longer be tolerated. Every available legal lever would be pulled to bring an immediate and certain response if violence did occur. This "hard" message delivered by police and prosecutors was accompanied by a "soft" message that emphasized the community's willingness to help in these change efforts and the availability of services (e.g., job training, drug treatment) for gang members interested in engaging in more pro-social behavior. These call-in meetings or forums followed from a multi-agency team carefully analyzing Boston's youth violence problem and concluding that violence was primarily concentrated among a small group of gang-involved offenders.

Focused deterrence is considered a sub-group of the problem-oriented policing interventions introduced earlier in the academy. Exact strategies should vary by city and tailored to the specific gang, gun, or drug problem facing a community.

Increasing the likelihood of detection can be combined with other program components such as situational crime prevention (to reduce opportunities), social service programs (to deflect offenders away), engaging with the community (to build collective efficacy), and using procedural justice in communications with offenders.



In addition to crime prevention, when carefully and properly implemented, FDIs can enhance the perceived legitimacy of the police and the public's trust in them in communities where these have often been lacking.

Gangs

This course serves to build upon previous lessons on crime prevention, criminal law, investigations, and tactics while introducing the problem of criminal networks. How can law enforcement deter and disrupt criminal activity when it is part of a larger problem? First we must develop awareness of the various criminal networks operating, perhaps invisibly, in our communities. What signs should police be attentive to? Next, what resources exist to support law enforcement efforts? Finally, what strategies have shown to be effective?

Criminal Networks

While the idea of criminal networks may bring about thoughts of a movie or television series, these networks exist, and they create crime and crime-related problems in our communities. Consider, for example, the impacts of identity theft, drug trafficking, human trafficking, prostitution, or gangs, to name a few.

> Criminal Network: A set of actors that are connected by ties, which in some way support the commission of illegal acts.

While there are numerous types of criminal networks that could be introduced in this course, we will focus primarily gangs. However, the concepts in this course can be applied to networks introduced in other courses, such as drug trafficking.

Gang Activity

The presence of gangs and gang-related activity can create fear and concern in local communities, impacting the quality of life of neighborhoods and cities. To confront these concerns, law enforcement is often considered the first line of defense through prevention, intervention, and suppression efforts.

There are over 75 documented gangs in Oregon, according to the Western States Information Network (WISN). The impact of gangs in Oregon is not limited to large metropolitan jurisdictions such as Portland or Multnomah County. Incidents ranging from thefts, credit card fraud, and deadly shootings have occurred across the state. A simple Google News search yields dozens of recent stories, most of which are violent crime-related. A 2019-2020 search yielded reports from Ontario (546 gang-related crimes), Salem, Medford, Portland, Klamath, and Jackson counties. Jackson County notes 16 separate gang affiliations alone. Portland has had a substantial increase in shootings that are believed to be related to gang activity in July 2020.

Oregon currently has no felony gang laws other than graffiti or vandalism. ORS 336.109 is the POLICY to Reduce Gang Involvement. In this policy, a "gang" means a group that identifies itself through the use of a name, unique appearance, or language, including hand signs, the claiming of geographical territory, or espousing of a distinctive belief system that frequently results in criminal activity. While there is no universally accepted definition of a gang, the U.S. Department of Justice defines a gang as:

1. An association of three or more individuals;

2. Whose members collectively identify themselves by adopting a group identity which they use to create an atmosphere of fear or intimidation frequently by employing one or more of the following:
    - Common name
    - Slogan
    - Identifying sign/symbol
    - Identifying tattoo or other physical markings
    - Style or color of clothing and/or hairstyle
    - Identifying hand sign
    - Graffiti

3. The association's purpose, in part, is to engage in criminal activity, and the association uses violence or intimidation to further its criminal objectives;

4. Its members engage in criminal activity, or acts of juvenile delinquency that if committed by an adult would be crimes;

5. With the intent to enhance or preserve the association's power, reputation, or economic resources;

6. The association may also possess some of the following characteristics:
    - The members employ rules for joining and operating within the association;
    - The members meet on a recurring basis;
    - The association provides physical protection of its members from other criminals and gangs;
    - The association seeks to exercise control over a particular location or region, or it may simply defend its perceived interests against rivals; or
    - The association has an identifiable structure.

The U.S. Department of Justice categorizes gangs into street gangs, prison gangs, and motorcycle gangs.

Role of Law Enforcement

According to the National Gang Center, communities should adopt a comprehensive, multifaceted, collaborative approach that involves prevention strategies for youth at risk of gang joining, intervention strategies for youth and young adults who are gang-involved, and suppression (investigation and enforcement) strategies in areas where gang violence threatens the public safety of a community.

Prevention	Intervention	Suppression
• High-Risk/High-Crime Communities • High-Risk Youth	Services in the community • Drug and alcohol treatment • Mental health and anger-management counseling • Job training and placement • Transportation assistance • Tattoo removal • Legal assistance • Transitional/reentry services	• Participating in joint police/probation activities, including conducting probation searches of homes, vehicles, and gang-involved probationers. • Targeting enforcement to the times, places, and events in which data and historic gang enforcement patterns indicate that gangs are active. • Designing investigative strategies to address specific gang-related crimes. • Executing directed patrols of locations where gang members congregate. • Conducting community forums to address incidents. • Establishing community prosecution and/or vertical prosecution strategies to prosecute gang crime more effectively. • Making informal contacts with targeted youth and their families.

How Do Gangs and Human Trafficking Go Together?

"Gangs have learned that it's cheaper and less risky to traffic girls than guns or drugs."

What:

- Sex trafficking is the new "drug" of gangs.
- There has been an increase in gang-controlled sex trafficking activity across the country.
- Street and outlaw motorcycle gangs are focusing more on sex trafficking as a business activity.

Why:

- Provides a reusable resource (humans can be sold again and again)
- High profitability with low risk of detection
- Requires minimal to no financial investment (post inexpensive ads)
- Involves fewer resources than drug trafficking
- Law enforcement efforts are less focused (perpetrators are traveling from city to city, but LE fails to recognize the signs in traffic stops)
- The commodity is easily replaced if lost

At-Risk for Victimization:

- Runaways (vulnerable)
- Gang involved females (exploited for revenue)
- "Boyfriend" is a gang member
- Substance abuse (heroin makes victims more compliant and dependent)

Source- National Gang Center, Gangs and Human Trafficking Webinar (2020)
https://www.nationalgangcenter.gov/Resources/Details/17

Basic Police Academy

Standardized Field Sobriety Testing



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Participant Manual

DWI Detection and Standardized Field Sobriety Testing (SFST)







Revised: 02/2018

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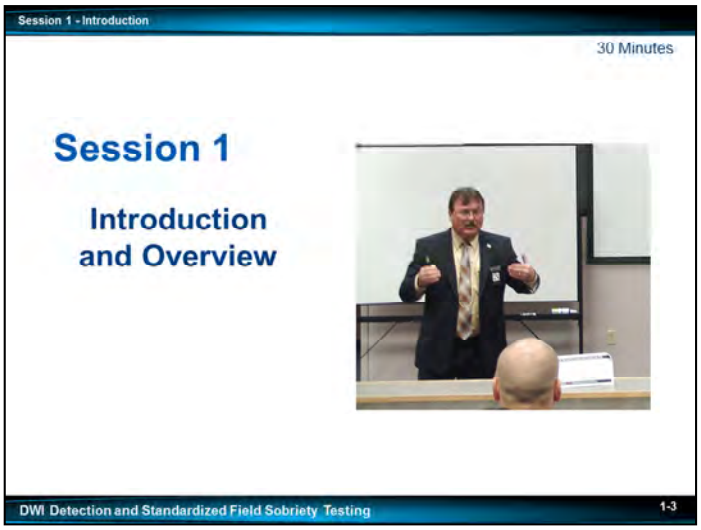
DWI Detection and Standardized Field Sobriety Testing
Session 1 – Introduction and Overview
NHTSA
TSI
February 2018



CONTENT SEGMENTS
A. Welcoming Remarks and Objectives
B. Administrative Details
C. Pre-Test

LEARNING ACTIVITIES
Instructor-Led Presentation
Written Examination

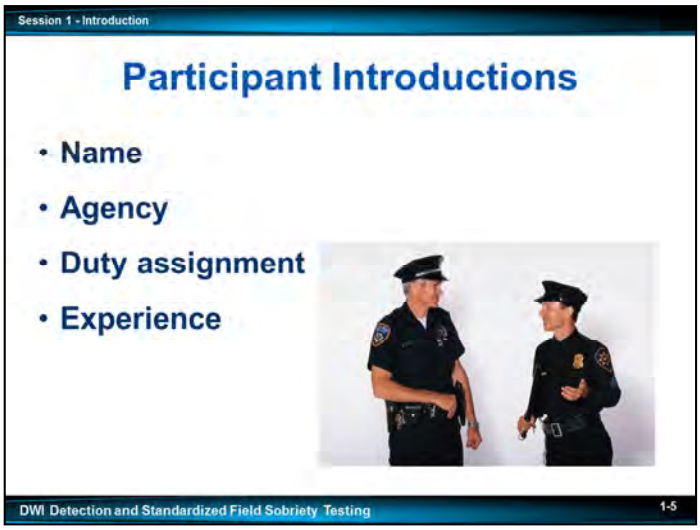


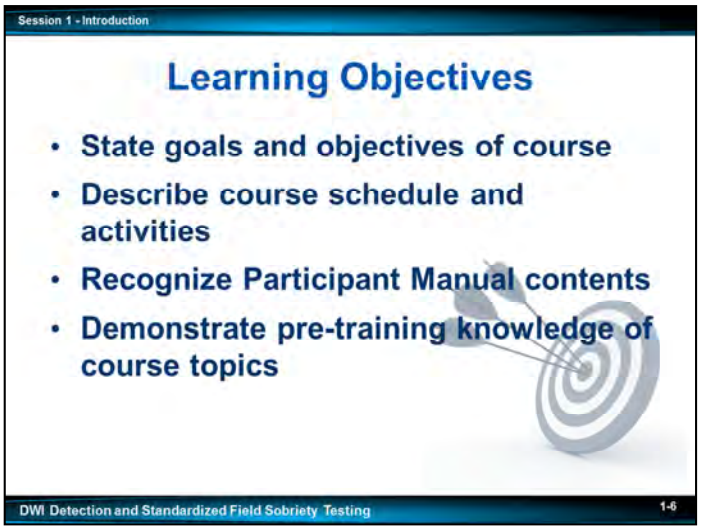
A. Welcoming Remarks

Welcome to the DWI Detection and Standardized Field Sobriety Testing (SFST) Course.
The SFST training focuses on a set of examination procedures that provide officers knowledge and tools for DWI detection. The SFST course provides detailed explanations of the evaluation procedures, careful demonstrations of these procedures (both "live" and via video), and ample opportunities for the participants to practice administering the evaluations.



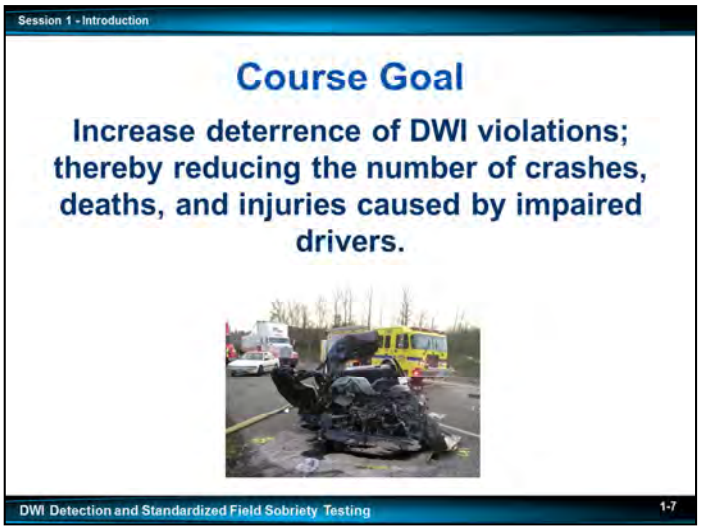
B. <u>Administrative Details</u>


Session 1 - Introduction
Participant Introductions
• Name
• Agency
• Duty assignment
• Experience
DWI Detection and Standardized Field Sobriety Testing
1-5



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

- State the goals and objectives of the course
- Describe the course schedule and activities
- Recognize the Participant Manual contents
- Demonstrate their pre-training knowledge of course topics



The goal of this course is to ultimately increase deterrence of DWI violations; thereby reducing the number of crashes, deaths, and injuries caused by impaired drivers.

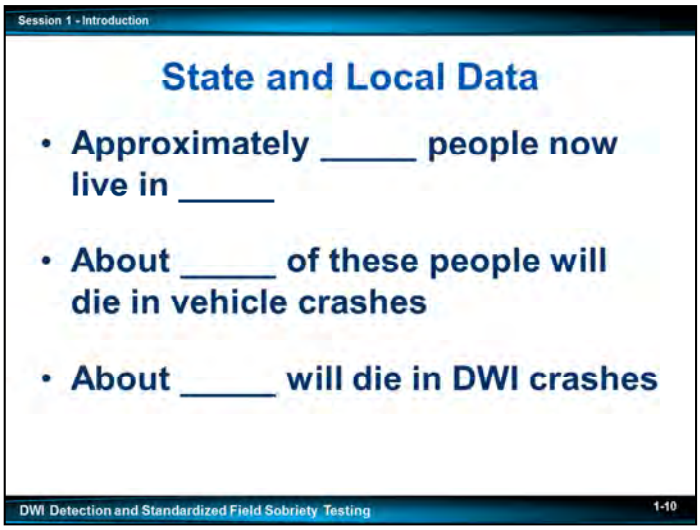


Enforcement goals are to identify:

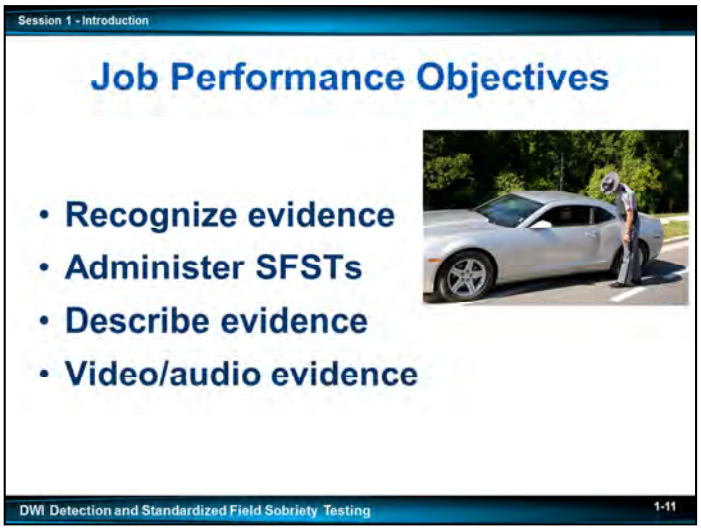
- Enforcement's role in general DWI deterrence
- DWI detection phases, clues, and techniques
- Requirements for organizing and presenting testimonial and documentary evidence in DWI cases



65 deaths and injuries each hour!

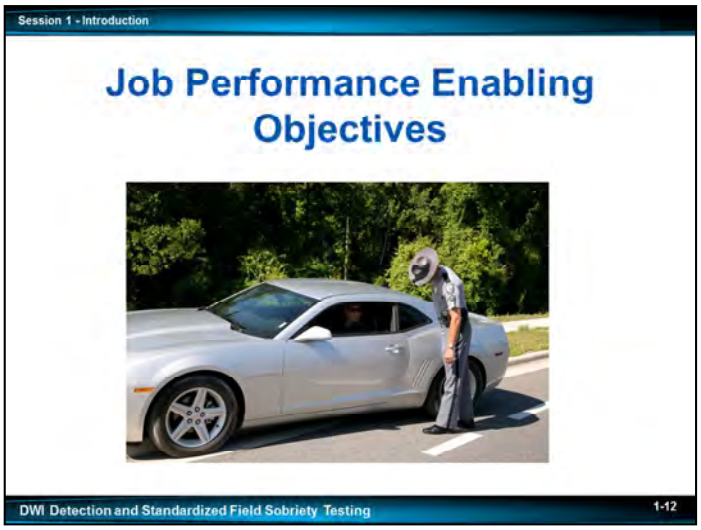


- Approximately _____ people now live in _____
- About _____ of these people will die in vehicle crashes
- About _____will die in DWI crashes



At the conclusion of this training, participants will demonstrate the ability to:

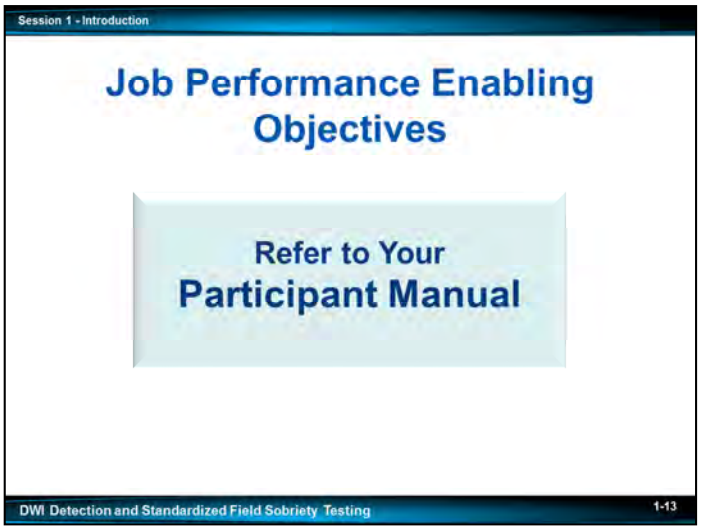
- Recognize and interpret evidence of DWI violations
- Administer and interpret SFSTs
- Describe DWI evidence clearly and convincingly in written reports and verbal testimony
- Ensure video and/or audio evidence, if available, is consistent with other evidence



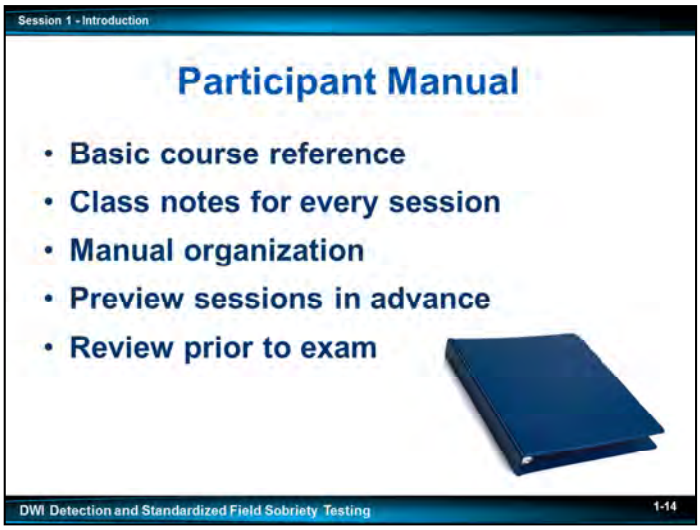
Job Performance Enabling Objectives

Understand the tasks and decisions of DWI detection

- Recognize the magnitude and scope of DWI-related crashes, deaths, injuries, property loss, and other social aspects of the DWI problem
- Understand the deterrent effects of DWI enforcement
- Understand the DWI enforcement legal environment
- Know and recognize typical vehicle maneuvers and human indicators symptomatic of DWI that are associated with initial observation of vehicles in operation
-
- Know and recognize typical reinforcing maneuvers and indicators that come to light during the stopping sequence
- Know and recognize typical sensory and other clues of alcohol and/or other drug impairment that may be seen during face to face contact with DWI subjects
- Know and recognize typical behavioral clues of alcohol and/or other drug impairment that may be seen during the subject's exit from the vehicle

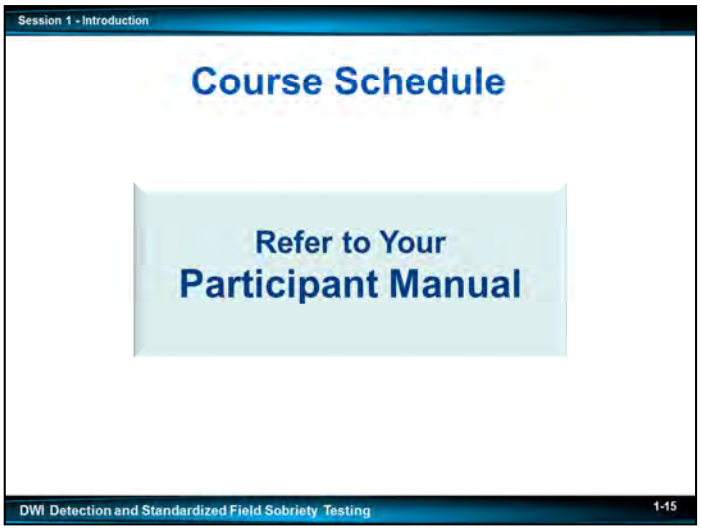


- Understand the role and relevance of psychophysical testing in pre-arrest screening of DWI subjects
- Understand the role and relevance of preliminary breath testing in pre-arrest screening of DWI subjects
- Know and carry out appropriate administrative procedures for the Horizontal Gaze Nystagmus (HGN) test
- Know and carry out appropriate administrative procedures for validated divided attention psychophysical tests
- Know and recognize typical clues of alcohol and/or other drug impairment that may be seen during administration of the SFSTs
- Understand the factors that may affect the accuracy of preliminary breath testing (PBT) devices
- Understand the elements of DWI prosecution and their relevance to DWI arrest reporting
- Choose appropriate descriptive terms to convey relevant observations of DWI evidence
- Write clear, descriptive narrative DWI arrest reports



The Participant Manual is the basic reference document for this course. The manual contains thumbnails of each instructor presentation that includes key messages for each frame. The manual also contains a glossary of terms used in this course.

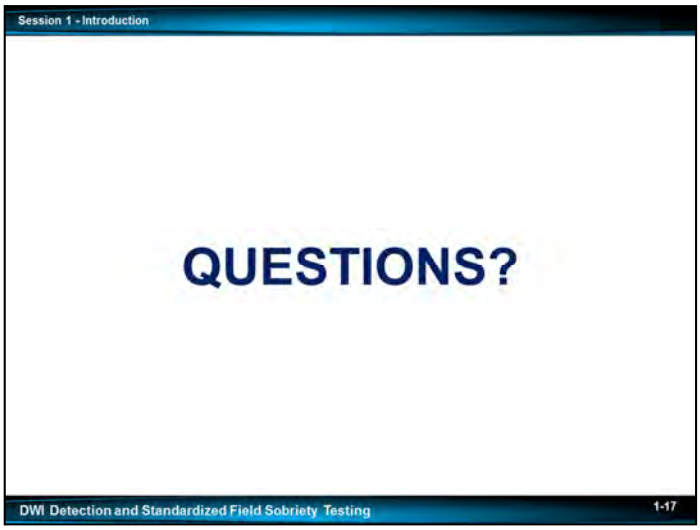
- Read each session prior to class
- Use the manual to review the material prior to taking the final exam



The course schedule is located in the Participant Manual.



The Glossary of Terms used in the course is also located in the Participant Manual.


Session 1 - Introduction
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
1-17

C. <u>Pre-Test</u>

DWI DETECTION AND STANDARDIZED FIELD SOBRIETY TESTING (SFST)
GLOSSARY OF TERMS

ADDICTION

Habitual, psychological, and physiological dependence on a substance beyond one's voluntary control.

ALVEOLAR BREATH

Breath from the deepest part of the lung.

BLOOD ALCOHOL CONCENTRATION (BAC)

The percentage of alcohol in a person's blood.

BREATH ALCOHOL CONCENTRATION (BrAC)

The percentage of alcohol in a person's breath, as measured by a breath testing device.

CLUE

Something that leads to the solution of a problem.

CUE

A reminder or prompting as a signal to do something. A suggestion or a hint.

DIVIDED ATTENTION

Concentrating on more than one thing at a time.

DIVIDED ATTENTION TEST

A test which requires the subject to concentrate on both mental and physical tasks at the same time. The two psychophysical tests Walk and Turn (WAT) and One Leg Stand (OLS) require the suspect to their divide attention.

DRUG RECOGNITION EXPERT (DRE)

An individual who successfully completed all phases of the DRE training requirements for certification established by the IACP and NHTSA. The word "evaluator," "technician," or similar words may be used as a substitute for "expert," depending upon locale or jurisdiction.

DWI/DUI

The acronym "DWI" means driving while impaired and is synonymous with the acronym "DUI", driving under the influence or other acronyms used to denote impaired driving. These terms refer to any and all offenses involving the operation of vehicles by persons under the influence of alcohol and/or other drugs.

DWI DETECTION PROCESS

The entire process of identifying and gathering evidence to determine whether or not a suspect should be arrested for a DWI violation. The DWI detection process has three phases:

- Phase One – Vehicle in Motion
- Phase Two – Personal Contact
- Phase Three – Pre -arrest Screening

EVIDENCE

Any means by which some alleged fact that has been submitted to investigation may either be established or disproved. Evidence of a DWI violation may be of various 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

EXPERT WITNESS

A person skilled in some art, trade, science or profession, having knowledge of matters not within the knowledge of persons of average education, learning and experience, who may assist a jury in arriving at a verdict by expressing an opinion on a state of facts shown by the evidence and based upon his or her special knowledge. (NOTE: Only the court can determine whether a witness is qualified to testify as an expert.)

FIELD SOBRIETY TEST

Any one of several roadside tests that can be used to determine whether a subject is impaired.

GAIT ATAXIA

An unsteady, staggering gait (walk) in which walking is uncoordinated and appears to be "not ordered."

GENERAL INDICATOR

Behavior or observations of the subject that are observed and not specifically tested for. (Observational and Behavioral Indicators)

HORIZONTAL GAZE NYSTAGMUS (HGN)

Involuntary jerking of the eyes occurring as the eyes gaze to the side. The first test administered in the SFSTs.

IMPAIRMENT

One of the several items used to describe the degradation of mental and/or physical abilities necessary for safely operating a vehicle.

IMPLIED CONSENT LAW

Suspected DWI drivers are deemed to have given their consent to submit to chemical testing. If the driver fails to provide a chemical test, they can be subject to license sanctions.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

An Administration within the United States Department of Transportation that exercises primary responsibility for coordinating federal efforts to ensure the safe design and operation of motor vehicles.

NYSTAGMUS

An involuntary jerking of the eyes.

ONE LEG STAND (OLS)

A divided attention field sobriety test. One of the tests administered in the SFSTs.

PER SE

Used to describe a law which makes it illegal to drive while having a certain percentage of alcohol in the blood or breath.

PERSONAL CONTACT

The second phase in the DWI detection process. In this phase the officer observes and interviews the driver face to face; determines whether to ask the driver to step from the vehicle; and observes the driver's exit and walk from the vehicle.

PRE-ARREST SCREENING

The third phase in the DWI detection process. In this phase the officer administers field sobriety tests to determine whether there is probable cause to arrest the driver for DWI. Depending on agency policy, the officer may administer or could arrange to have a preliminary breath test conducted.

PRELIMINARY BREATH TEST (PBT)

A pre-arrest breath test administered during investigation of a possible DWI violator to obtain an indication of the person's blood alcohol concentration.

PROBABLE CAUSE

It is more than mere suspicion; facts and circumstances within the officer’s knowledge, and of which he or she has reasonably trustworthy information, are sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed.

PSYCHOPHYSICAL

"Mind/Body." Used to describe field sobriety tests that measure a person's ability to perform both mental and physical tasks.

PSYCHOPHYSICAL TESTS

Methods of investigating the mental (psycho-) and physical characteristics of a person suspected of alcohol or drug impairment. Most psychophysical tests employ the concept of divided attention to assess a suspect's impairment.

REASONABLE SUSPICION

Less than probable cause but more than mere suspicion; exists when an officer, in light of his or her training and experience, reasonably believes and can articulate that criminal activity is taking, has taken or is about to take place.

RESTING NYSTAGMUS

Jerking of the eyes as they look straight ahead.

STANDARDIZED FIELD SOBRIETY TESTs

There are three SFSTs, namely Horizontal Gaze Nystagmus (HGN), Walk and Turn (WAT), and One Leg Stand (OLS). Based on a series of controlled laboratory studies, scientifically validated clues of alcohol impairment have been identified for each of these three tests. They are the only Standardized Field Sobriety Tests for which validated clues have been identified

TRAFFIC SAFETY RESOURCE PROSECUTOR (TSRP)

Usually a current or former prosecutor who provides training, education and technical support to traffic crimes prosecutors and law enforcement agencies throughout their State. (For the contact information of your TSRP, contact your Highway Safety Office).

VALID

Conforming to accepted principles. Producing accurate and reliable results.

VALIDATED

A documented act of demonstrating that a procedure, process, and/or activity will consistently lead to accurate and reliable results.

VEHICLE IN MOTION

The first phase in the DWI detection process. In this phase the officer observes the vehicle in operation, determines whether to stop the vehicle, and observes the stopping sequence.

VERTICAL GAZE NYSTAGMUS

An involuntary jerking of the eyes (up and down) which occurs when the eyes gaze upward at maximum elevation. The jerking should be distinct and sustained.

WALK AND TURN (WAT)

A divided attention field sobriety test. One of the tests administered in SFSTs.

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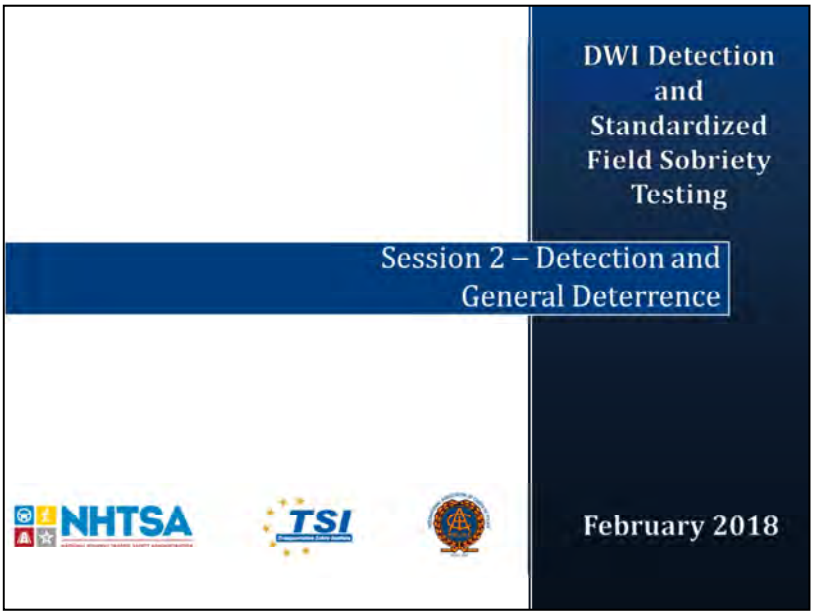
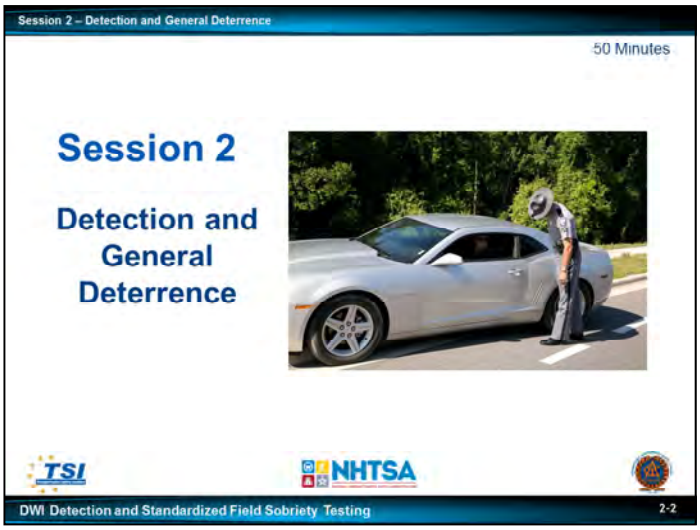

DWI Detection and Standardized Field Sobriety Testing
Session 2 – Detection and General Deterrence
NHTSA
TSI
February 2018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Session 2
Detection and General Deterrence
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DWI Detection and Standardized Field Sobriety Testing
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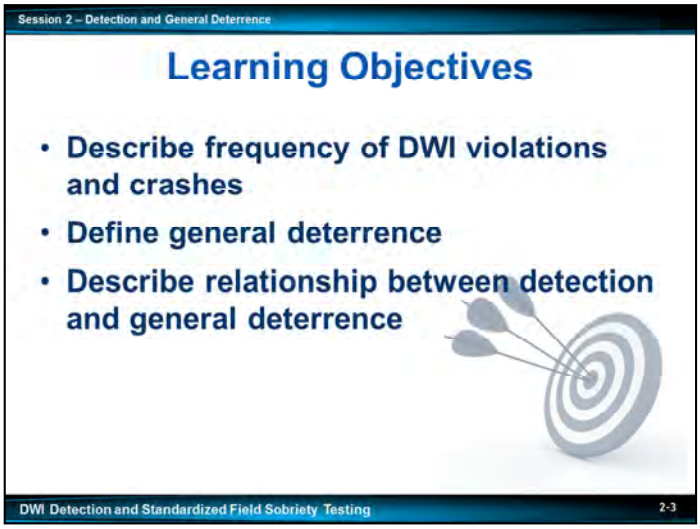


Learning Objectives

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

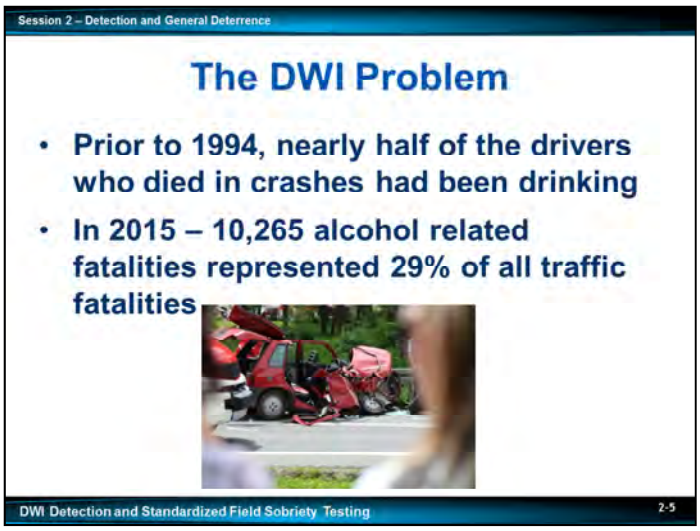
- Describe the frequency of DWI violations and crashes
- Define general deterrence
- Describe the relationship between detection and general deterrence



- Describe a brief history of alcohol
- Identify common types of alcohol
- Describe the physiological processes of absorption, distribution, and elimination of alcohol in the body

CONTENT SEGMENTS
A. The DWI Problem
B. Concept of General Deterrence
C. Relating Detection to Deterrence Potential
D. Evidence of Effective Detection and Effective Deterrence
E. Physiology of Alcohol

LEARNING ACTIVITIES
Instructor-Led Presentation
Video Presentation
Reading Assignments

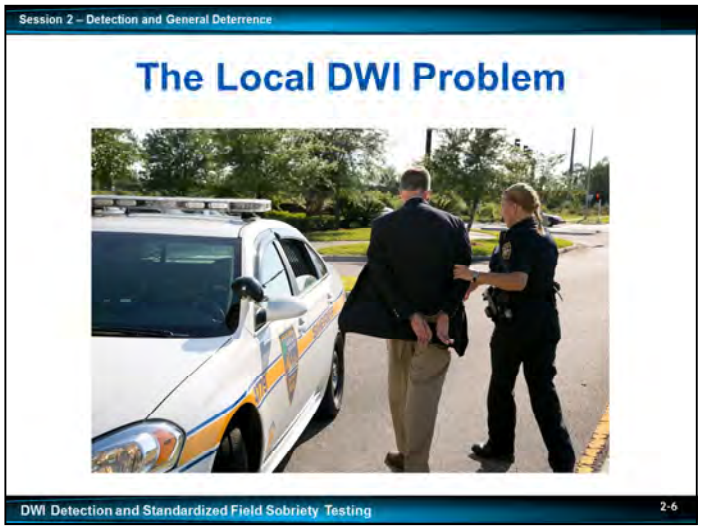


A. <u>The DWI Problem (Local, State and National)</u>

How Widespread Is DWI?
While not all of those who drive after drinking have a Blood Alcohol Concentration (BAC) of 0.08 or higher (the presumptive or illegal per se limit for DWI in all States) some drivers do have BACs in excess of these limits.

Prior to 1994, nearly half of the drivers who died in crashes had been drinking.

Each year, tens of thousands of people die in traffic crashes. Throughout the Nation, alcohol is the major contributor to traffic fatalities. In 2015, there were 10,265 alcohol-related fatalities representing 29% of all traffic fatalities.



Impaired drivers are more likely than other drivers to take excessive risks such as speeding or turning abruptly. Impaired drivers also are more likely than other drivers to have slowed reaction times. They may not be able to react quickly enough to slow down before crashing and are less likely to wear seatbelts. On the average, two percent of drivers on the road at any given time are DWI. DWI violations and crashes are not simply the work of a relatively few "problem drinkers" or "problem drug users." Many people commit DWI, at least occasionally.



Estimates indicate Nationwide about 28 million people the age of 12 and over, self reported they drove under the influence in the past 12 months.

It is also estimated each day in the United States people drive while intoxicated almost 300,000 times but fewer than 3,000 are arrested.



A frequently quoted, and often misinterpreted, statistic places the average incidence of DWI at 1 driver in 50. Averaged across all hours of the day and all days of the week, two percent of the drivers on the road are DWI. The 1 in 50 figure is offered as evidence that a relatively small segment of America's drivers, the so called "problem" group, account for the majority of traffic deaths. There's nothing wrong with that figure as a statistical average, but police officers know at certain times and places many more than two percent of drivers are impaired. The National Highway Traffic Safety Administration (NHTSA) research suggests during the late night, weekend hours as many as 10% of drivers on the roads may be DWI. On certain holiday weekends, and other critical times, the figure may go even higher.

How Many? How Often?

The issue of how many DWIs are on the road at any given time is an important factor in measuring the magnitude of the problem. However, from an overall traffic safety perspective, the more important issue may be the number of drivers who ever commit DWI. Just how widespread is this violation?



Although it may be true, on the average, two percent of drivers are DWI at any given time, it certainly is not the same two percent every time. Not everyone who commits DWI is out on the road impaired every Friday and Saturday night. Some of them, at least, must skip an occasional weekend. Thus, the 10% who show up, weekend after weekend, in the Friday and Saturday statistics must come from a larger pool of violators, each of whom "contributes" to the statistics on some nights, but not necessarily on all nights.

There are some who drive impaired virtually everyday; others commit the violation less often. It is likely at least one quarter of all American motorists drive while impaired at least once in their lives. That figure falls approximately midway between the 55% of drivers who at least occasionally drive after drinking and the 10% of weekend, nighttime drivers who have BACs above the legal limit.



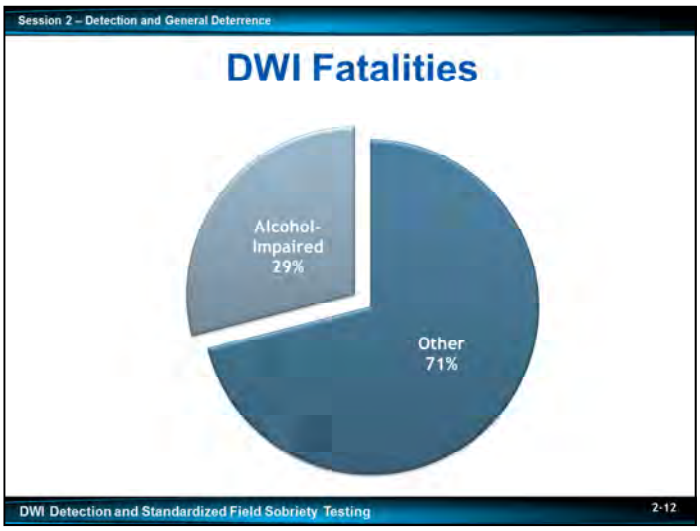
These estimates include everyone who drives impaired everyday, as well as everyone who commits the violation just once and never offends again; and it includes everyone in between. In short, it includes everyone who ever runs the risk of being involved in a crash while impaired.

Society's Problem and the Solution
The fact is far more than two percent of American drivers actively contribute to the DWI problem. DWI is a crime committed by a substantial segment of Americans.

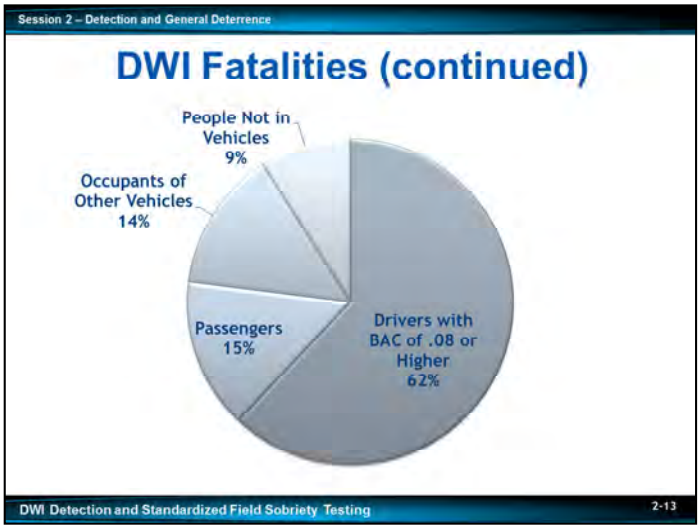
It has been and remains a popular crime; one many people from all walks and areas of life commit. DWI is a crime that can be fought successfully only through a societal approach of comprehensive community-based programs.



- 26% of all fatal crashes on weekends alcohol-impaired
- Alcohol-impaired drivers involved in fatal crashes were 3 times higher at night
- 1.02 million drivers were arrested for DWI in 2016
- These alcohol-related fatalities represent an average of one alcohol-related fatality every 50 minutes
- Based on the most current cost data available, these alcohol-related fatalities cost society approximately $44 billion in lost productivity, medical expenses, property damages, and other related expenditures ***(https://www.nhtsa.gov/risky-driving/drunk-driving, July 12, 2017)***



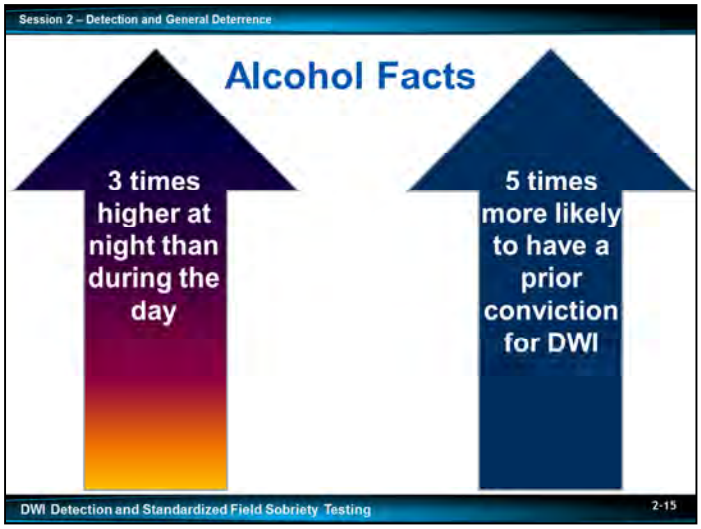
In 2015, 10,265 lives were lost in alcohol-impaired crashes representing 29% of the total motor vehicle fatalities in the U.S.



- In 2016, 10,497 lives were lost in alcohol-impaired crashes representing 28% of the total motor vehicle fatalities in the U.S.
- Drivers with a BAC of .08 or higher accounted for 62% of the fatalities
- 15% were passengers riding with a driver with a BAC of .08 or higher
- 14% of these fatalities were occupants of other vehicles
- 9% were persons not in vehicles



- In 2016, 10,111 lives were lost in speed-related crashes
- 40% of all drivers with a BAC of .08 or higher involved in fatal crashes were speeding
- Between midnight and 3:00 a.m., 66% of speeding drivers involved in fatal crashes on weekdays had a BAC of .08 or higher
- On weekends, it was even higher – 69% of speeding driving involved in fatal crashes had a BAC of .08 or higher

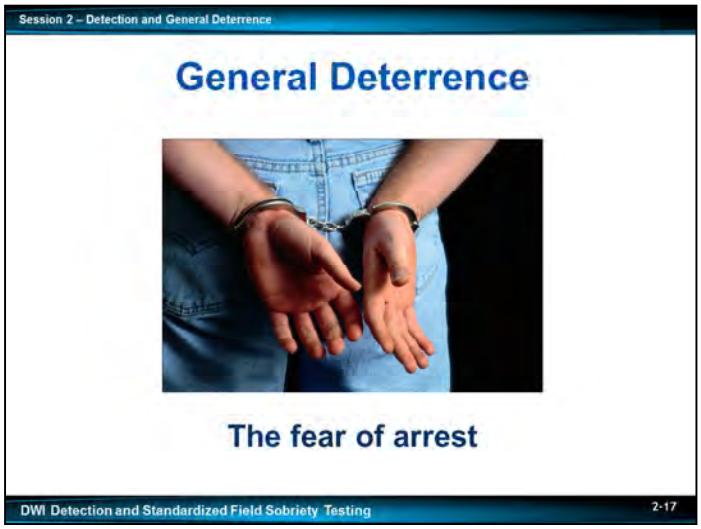


- The rate of alcohol impairment for drivers involved in fatal crashes was three times higher at night than during the day

- Drivers with a BAC of .15 or higher who were involved in fatal crashes were five times more likely to have a prior conviction for driving while impaired as compared to drivers involved in fatal crashes with no alcohol involvement



- In 2016, 7,052 alcohol-impaired drivers (67%) involved in fatal crashes had a BAC of .15 or higher
- Males account for 80% of all alcohol-impaired traffic fatalities
- This means the fatal alcohol-impaired crash involvement rate was four times higher for male drivers than for females



B. <u>Concept of General Deterrence</u>

The fear of arrest is the leading deterrent.

One approach to reducing the number of drinking drivers is general deterrence of DWI. General deterrence of DWI is based in the driving 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 DWI 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 they will get caught, sooner or later, if they continue to drive while impaired.

How many DWI violators must be arrested in order to convince the public there is a real risk of arrest for DWI?

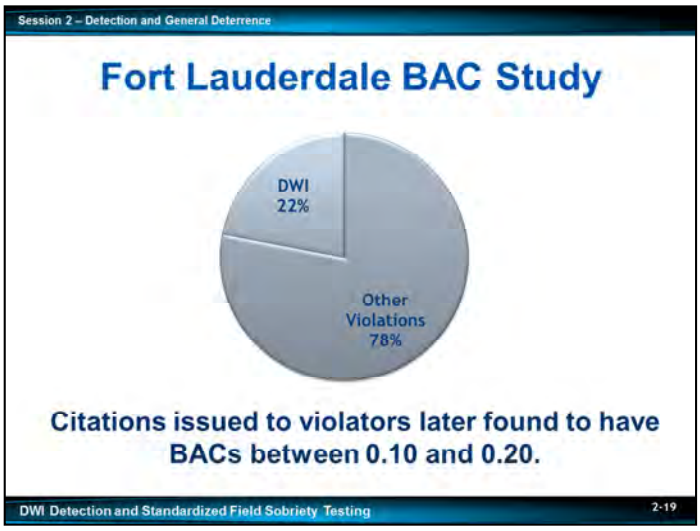
Several programs have demonstrated significant deterrence can be achieved by arresting 1 DWI violator for every 100 DWI violations committed. Currently, however, for every DWI violator arrested, there are between 500 and 2,000 DWI violations committed.



When the chances of being arrested are 1 in 100, the average DWI violator really has little to fear.

There are three noteworthy reasons:

- DWI violators vastly outnumber police officers
  - It is not possible to arrest every drinking driver each time they commit DWI
- Some officers are not highly skilled at DWI detection
  - They fail to recognize and arrest many DWI violators
- Some officers are not motivated to detect and arrest DWI violators



Significant Findings: In a 1975 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 remainder were cited for other violations, even though they were legally impaired. 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.



Implication: For every DWI violator actually arrested, three others are contacted by police officers, face to face, but are released without arrest.

Significant improvement in arrest rate could be achieved if officers were more skilled at DWI detection.



The Solutions
The Ultimate Goal: Changing Behavior

What must the comprehensive community-based DWI programs seek to accomplish? Ultimately, nothing less than fundamental behavioral change on a widespread basis. The goal is to encourage more Americans to:

- Avoid committing DWI either by avoiding or controlling drinking prior to driving or by selecting alternative transportation

- Intervene actively to prevent others from committing DWI (for example, putting into practice the theme "friends don't let friends drive drunk")

- Avoid riding with drivers who are impaired

The final test of the value of DWI countermeasures on the National, State, and local levels is whether they succeed in getting significantly more people to modify their behavior. The programs also pursue other more immediate objectives that support or reinforce the ultimate goal. However, the ultimate goal is to change driving while impaired to an unacceptable form of behavior at all levels.

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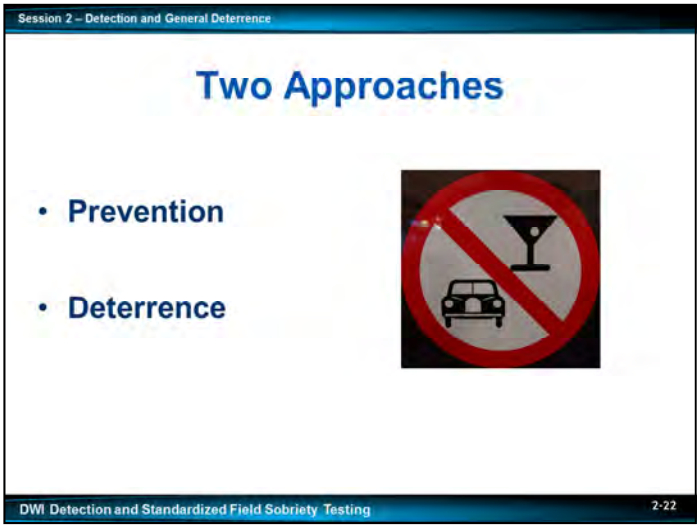
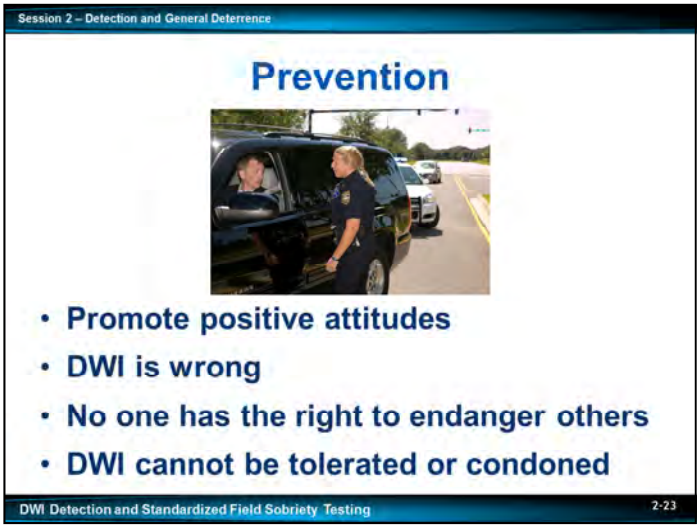


Pursuing the Goal: Two Approaches
How can we bring about these changes in behavior? How can we discourage impaired driving, prevent others from drinking and driving, and avoid becoming passive "statistics" by refusing to ride with drinking drivers?

Basically, there are two general approaches that must be taken to achieve this goal.

One: prevention -- gives promise of the ultimate, lasting solution to the DWI problem; but it will require a substantial amount of time to mature fully.

Two: deterrence -- only offers a partial or limited solution, but it is available right now.



Prevention: the Ultimate Solution

DWI countermeasures that strive for the ultimate achievement of drinking and driving behavioral changes have been grouped under the label “prevention." There are many kinds of DWI preventive activities. Some are carried out by and in our schools, some through the mass media, some through concerned civic groups, and so forth. The various preventive efforts focus on different specific behaviors and address different target groups.

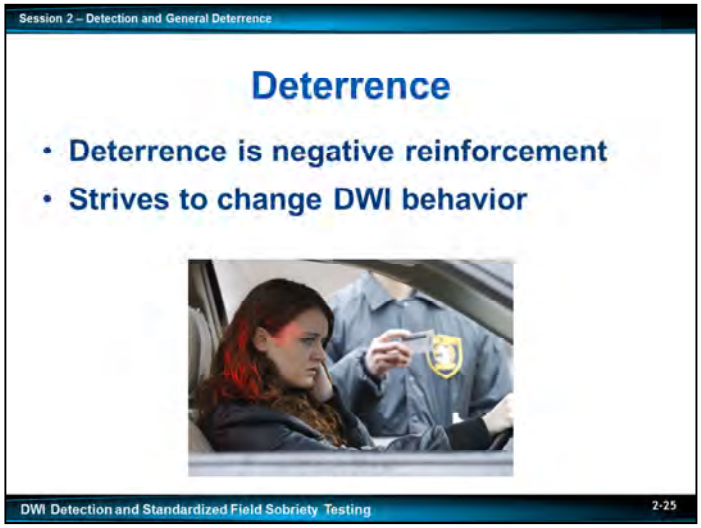
However, they seek to change drinking and driving behavior by promoting more positive attitudes and by fostering a set of values that reflects individual responsibilities toward drinking and driving.

Preventive countermeasures seek society's acceptance of the fact that DWI is wrong. Some people believe drinking and driving is strictly an individual's personal business; it is up to each person to decide whether or not to accept the risk of driving after drinking. Preventive activities try to dispel that outmoded and irresponsible belief. Instead, they promote the idea no one has the right to endanger others by drinking and driving, or to risk becoming a burden (economically and otherwise) to others as a result of injuries suffered while drinking and driving. Realistically, everyone has an obligation not only to control their own drinking and driving, but also to speak up when others are about to commit the violation. Only when all of society views DWI as a negative behavior that cannot be tolerated or condoned, will the public's behavior begin to change. That is the long-term solution.



General deterrence of DWI is based on the driving public's fear of being arrested. If enough violators come to believe there is a good chance they will get caught, some of them (at least) will stop committing DWI at least some of the time.

Unless there is a real risk of being arrested, there will not be much fear of arrest.
Law enforcement must arrest enough violators to convince the public they will get caught if they continue to drive while impaired.



C. <u>Relating Detection to Deterrence Potential</u>

Deterrence: the Interim Solution

DWI countermeasures that seek a shortcut to the ultimate goal of behavioral change usually are labeled “deterrence." Deterrence can be described as negative reinforcement. Some deterrence countermeasures focus primarily on changing individual drinking and driving behavior while others seek to influence people to intervene into others' drinking and driving decisions.

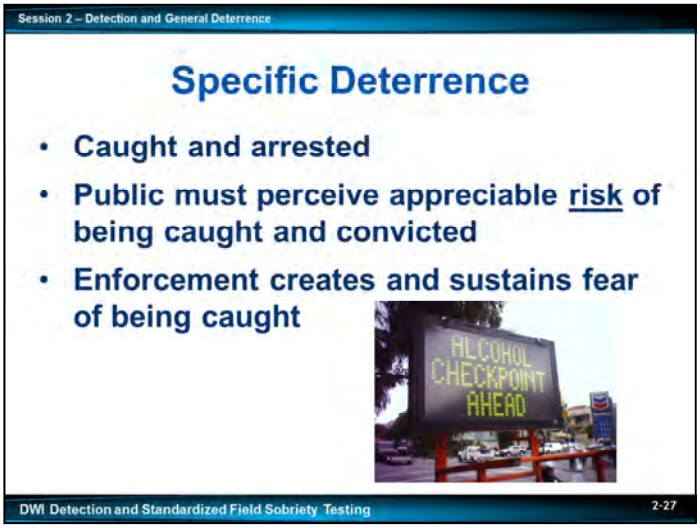
The key feature of deterrence is it strives to change DWI behavior without dealing directly with the prevailing attitudes about the rightness or wrongness of DWI. Deterrence uses a mechanism quite distinct from attitudinal change: fear of apprehension and application of sanctions.



The Fear of Being Caught and Punished

Large scale DWI deterrence programs try to control the DWI behavior of the driving public by appealing to the public's presumed fear of being caught. Most actual or potential DWI 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, it is the prospective punishment (jail, stiff fine, etc.) that causes most of the concern. Still others fear most the long-term costs and inconvenience of a DWI arrest: the license suspension and increased premiums for automobile insurance. For many violators the fear probably is a combination of all of these. Regardless, if enough violators are sufficiently fearful of a DWI arrest, some of them will avoid committing the violation at least some of the time. Fear by itself will not change their attitudes; if they do not see anything inherently wrong with drinking and driving in the first place, the prospect of arrest and punishment will not help them come to this realization. However, fear sometimes can be enough to keep them from putting their anti-social attitudes into practice.

This type of DWI deterrence, based on the fear of being caught, is commonly called general deterrence. It applies to the driving 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.



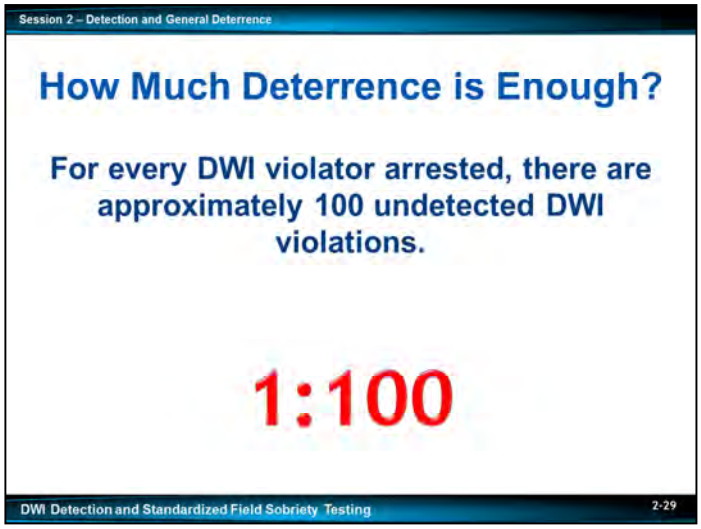
Another type of DWI deterrence, called specific deterrence, applies to those who have been caught and arrested. The typical specific deterrent involves some type of punishment, perhaps a fine, involuntary community service, a jail term, or action against the driver's license. The punishment is imposed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

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

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

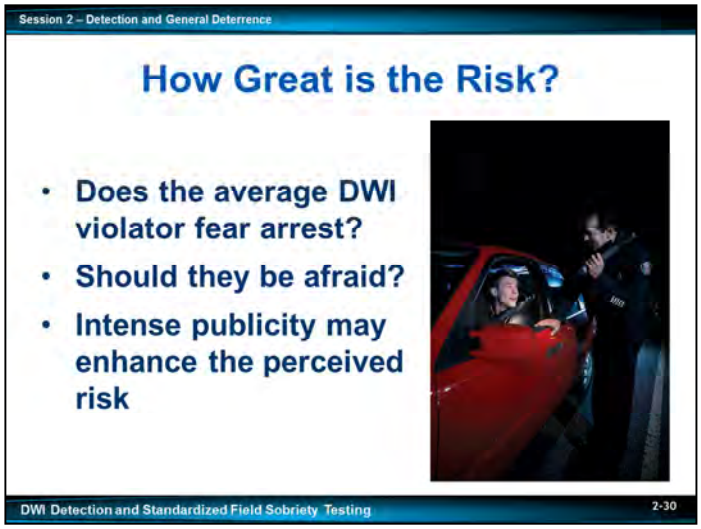


Obviously, the police alone cannot do the job. Legislators must supply laws the police can enforce. Prosecutors must vigorously prosecute DWI violators and the judiciary must adjudicate fairly and deliver the punishments prescribed by law. The media must publicize the enforcement effort and communicate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



How much deterrence is enough?
Estimates from around the country vary. For every DWI violator arrested, there are approximately 100 undetected DWI violations.

According to the CDC (2014), there were 111 million incidents of DWI per year. According to the FBI UCR, 1.08 million DWI arrests were made in 2015, which means law enforcement arrested approximately one out of every 100 DWI episodes.

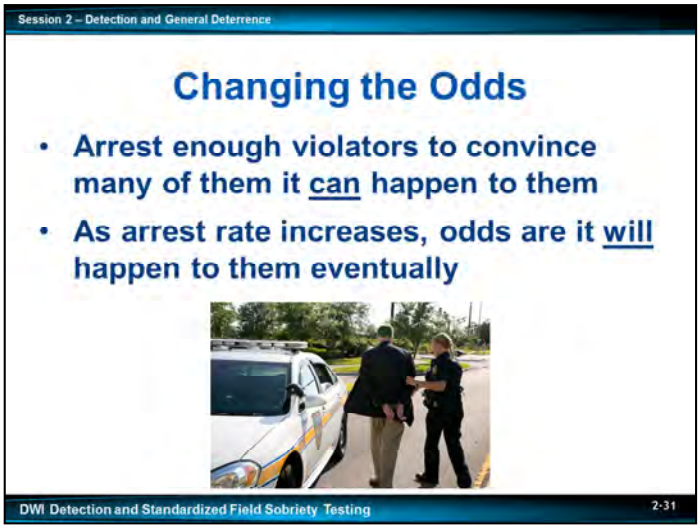


How Great is the Risk?

The question now is, are violators afraid of being caught? More importantly, should they be afraid? Is there really an appreciable risk of being arrested if one commits DWI?

The answer to all of these questions unfortunately is: probably not. In most jurisdictions, the number of DWI arrests appears to fall short of what would be required to sustain a public perception 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" without intensified enforcement has never been enough to maintain the fear of arrest for very long.



Changing the Odds

If an arrest/violation ratio of 1 in 100 is not enough to make deterrence work, is it then reasonable to think we can ever make deterrence work?

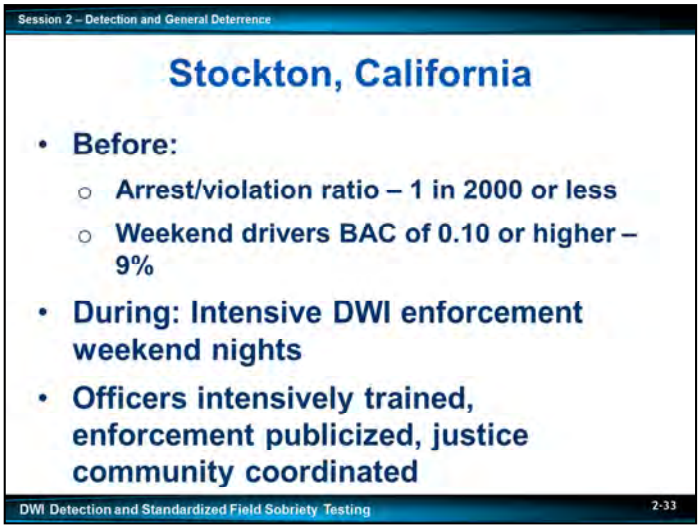
After all, if we doubled DWI arrests to 1 in 50, we would still be missing 49 violators for every one we managed to catch. If we increased arrests tenfold, to 1 in 10, 9 would escape for every one arrested. How much deterrence would that produce?

Surprisingly, it would probably produce quite a bit. We don't have to arrest every DWI offender every time in order to convince them they have something to fear. We only have to arrest enough of them, enough of the time. As the arrest rate increases, the odds are it will happen to them eventually. The law of averages (or cumulative probability) will catch up with them and sooner than we might at first expect.



D. <u>Evidence of Effective Detection and Effective Deterrence</u>

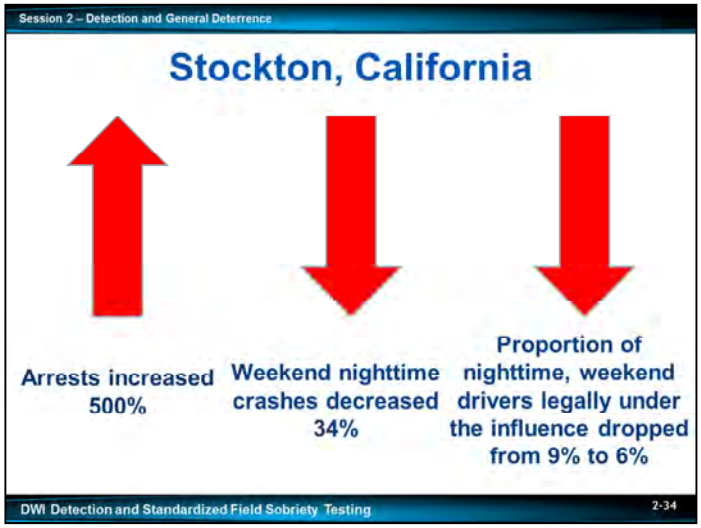
Can it Be Done and Will it Work?
Is there any evidence a practical and realistic increase in DWI enforcement activity will induce a significant degree of general deterrence and a corresponding change in DWI behavior? Yes there is.



Several enforcement programs have succeeded in achieving significant DWI deterrence. Consider, for example, the three-year intensive weekend DWI enforcement program in Stockton, California.

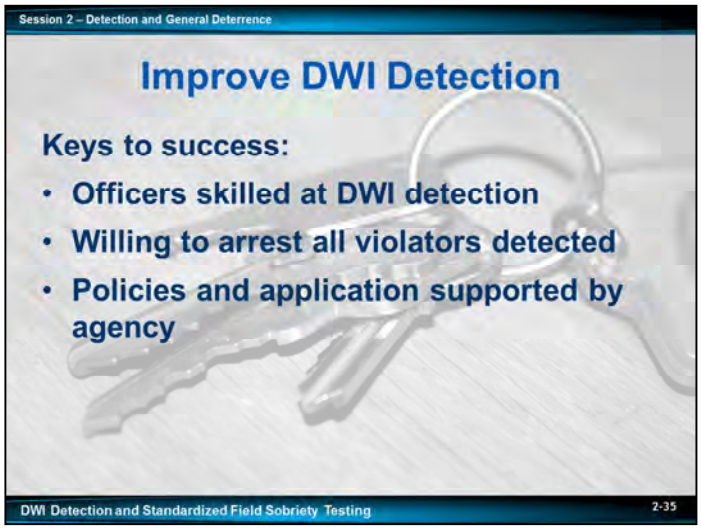
As early as 1975, a study showed the city's total number of DWI arrests (700) were considerably less than one percent of the areas licensed number of drivers (130,000). The implication here was Stockton police were only maintaining the arrest/violation ration of 1:2,000, or less. In addition, roadside surveys on Friday and Saturday nights disclosed nine percent of the drivers were operating with BAC's of 0.10 or higher.

Then things changed. Beginning in 1976, and continuing at planned intervals through the first half of 1979, Stockton police conducted intensive DWI enforcement on weekend nights. The officers involved were extensively trained. The enforcement effort was heavily publicized and additional equipment (PBTs and cassette recorders) was made available. The police effort was closely coordinated with the District Attorney's office, the County Probation office, and other allied criminal justice and safety organizations.



All this paid off. By the time the project came to a close (in 1979), DWI arrests had increased by over 500%, weekend nighttime collisions had decreased by 34%, and the number of operators committing DWI dropped one third.

The implication of the Fort Lauderdale study, and of other similar studies, was for every DWI violator actually arrested for DWI, three others were contacted by police officers but were not arrested for DWI. From the Stockton study it is clear significant improvement in the arrest rate could be achieved if officers were more skilled at DWI detection.

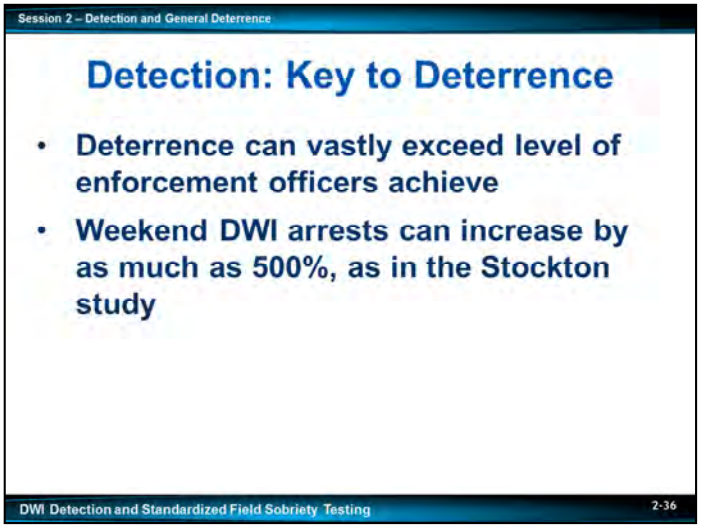


Improved DWI detection can be achieved in virtually every jurisdiction in the country.

The keys to success are police officers who are:
- Skilled at DWI detection
- Willing to arrest every DWI violator who is detected
- Supported by their agencies in all aspects of this program from policy through practical application

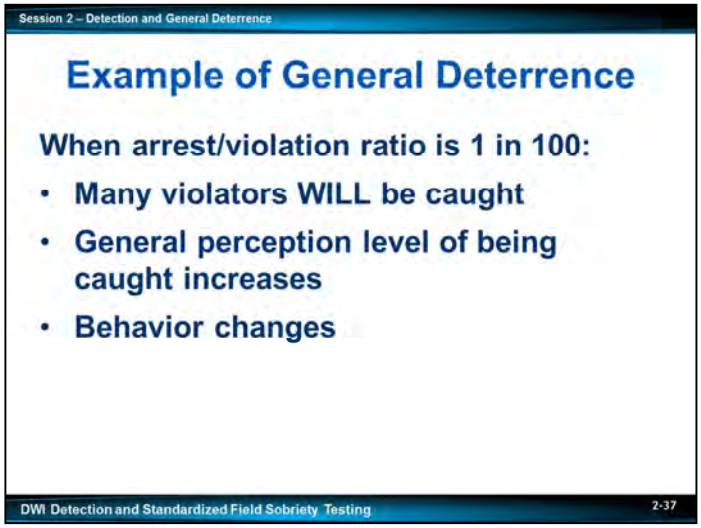
Since the historical Stockton study, numerous States have conducted similar studies to determine the degree of effect DWI arrests would have on alcohol-related fatalities in general and total fatalities in particular. Most of these studies were conducted between 1978 and 1986.

The results of these studies graphically illustrated in each State when the number of arrests for DWI increased the percentage of alcohol-related fatalities decreased. Further, the results of a study conducted in Florida from 1981-1983 showed when DWI arrests per licensed driver increased total fatalities decreased (12 month moving average).



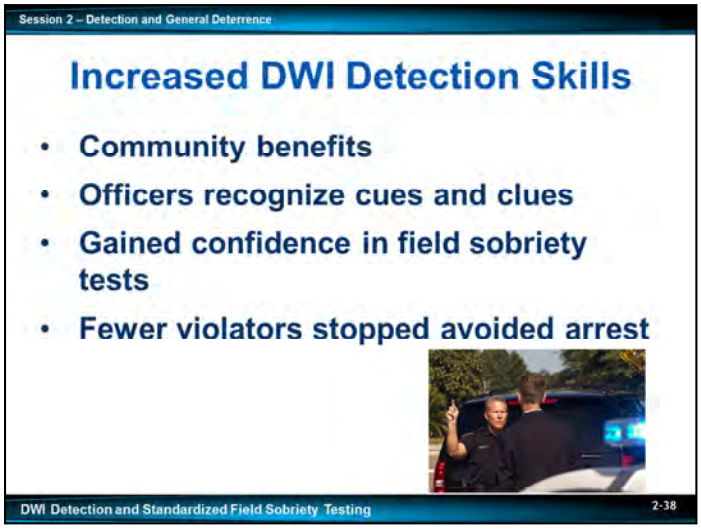
Detection: The Key to Deterrence

It is important to understand how increased DWI enforcement can affect deterrence. Deterrence can vastly exceed the level of enforcement officers achieve on any given night. Weekend DWI arrests can increase by as much as 500%, as in the Stockton study.



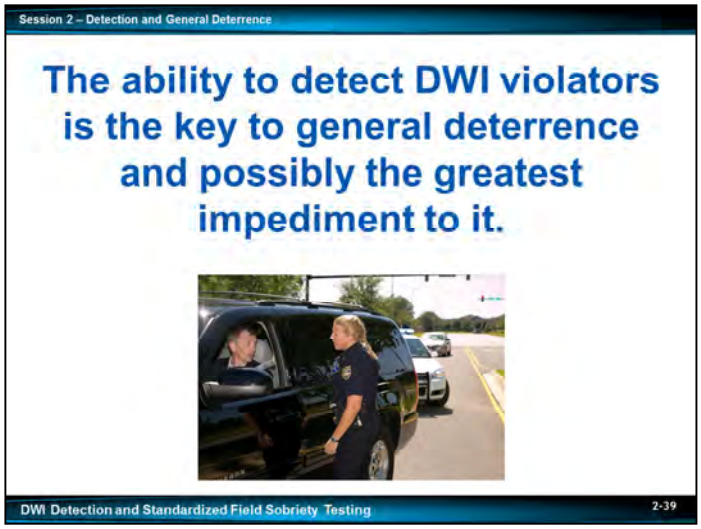
The law of averages quickly starts to catch up with DWI drivers. Unless violators change their behavior, many of them will be caught or at least will have known someone who has been arrested. Coupled with the heavy publicity given to the enforcement effort, those experiences were enough to raise the perception level of apprehension among DWI operators that sooner or later they would be caught. As a result, many of them changed their behavior. This is the best example of general deterrence.

In addition, during the same time DWI arrests went up over 500% in Stockton, citations for other traffic violations increased by a comparatively modest 99%. The implication is Stockton's officers were stopping and contacting only twice as many possible violators as they had before but they were coming up with more than five times as many arrests.



What have the results of these studies shown? Basically, they have shown a community will benefit from their officers' increased skills at DWI detection. Principally, because of their special training, the officers were better able to recognize "cues" of impairment when they observed vehicles in motion and they were more familiar with the "clues" or human indicators of impairment exhibited by violators during personal contact. The officers also had more confidence in the field sobriety tests they used to investigate their suspects. The most important factor was far fewer of the violators being stopped now avoided detection and arrest.

The difficulty in detecting DWI among operators personally contacted by untrained officers has been well documented. Analysis of roadside survey and arrest data suggest for every DWI violator arrested, three others actually have face-to-face contact with police officers but are allowed to go without arrest. Direct support of that inference was found in the Fort Lauderdale BAC study where researchers demonstrated police officers arrested only 22% of the DWI operators they contacted whose BAC levels were subsequently shown to be between 0.10 and 0.20.



The ability to detect DWI violators is the key to general deterrence and possibly the greatest impediment to it. If we accept the three to one ratio of failed detections as being reasonably accurate, the implications are rather alarming. Consider the impact on a DWI violator's subsequent behavior when, after being stopped by the police, the operator is allowed to continue driving. Very likely, these DWI violators and their friends will become even more convinced of their ability to handle drinking and driving. Further, they will come to believe they will never be arrested because police officers can't determine when they are "over the limit." Instead of creating general DWI deterrence, this attitude breeds specific reinforcement. This helps to develop a feeling among DWI violators they have nothing more to fear from police than an occasional ticket for a minor traffic offense.

On the positive side, the ratio of undetected to detected violations suggests much can be accomplished with existing resources if we use those resources as efficiently as possible. By just being able to improve detection skills of law enforcement officers, we could experience an increase in the arrest/violation ratio without any increase in contacts.

This same, or better, degree of effectiveness can happen here.

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E. <u>Physiology of Alcohol</u>

A brief overview of alcohol:

Alcohol is the most abused drug in the United States.

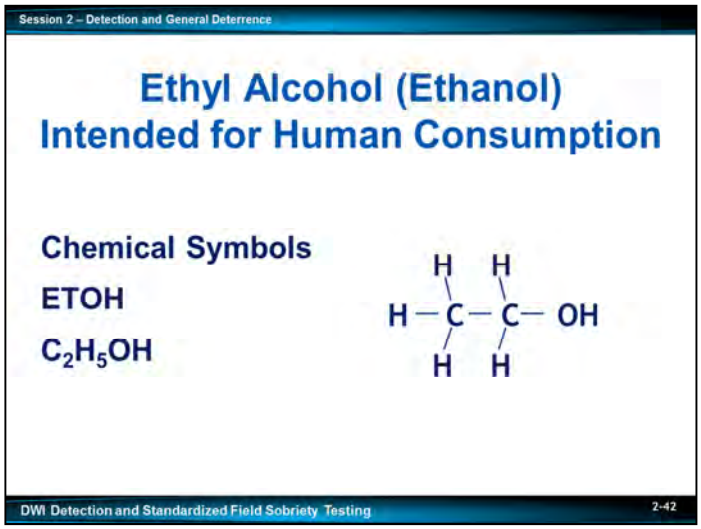
"Alcohol" is the name given to a family of closely-related and naturally-occurring chemicals. Each of the chemicals called an "alcohol" contains a molecule chemists refer to as a "hydroxy radical." This radical contains one oxygen atom and one hydrogen atom bonded together. The simplest alcohol has only one carbon atom, three hydrogen atoms, and one hydroxy radical. The next alcohol has two carbon atoms, five hydrogen atoms, and one hydroxy radical. The third alcohol has three carbon atoms, seven hydrogen atoms, and one hydroxy radical. That is how the alcohols differ from one another.

Alcohols are molecularly very similar and produce similar effects. They produce intoxicating effects 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.

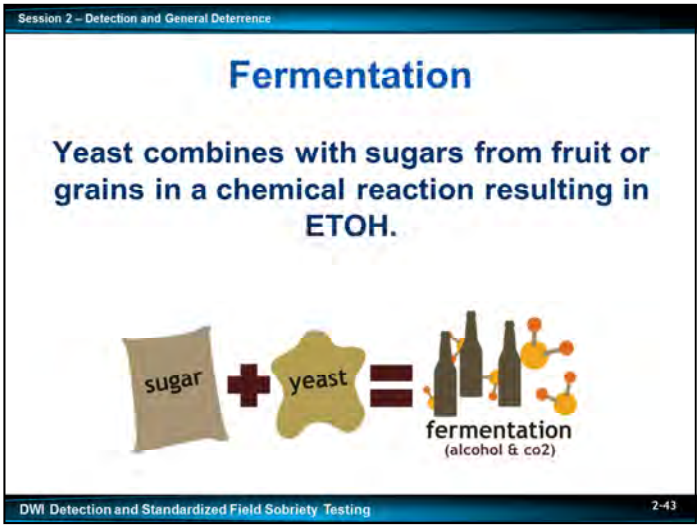


Three of the more commonly known alcohols are Methyl, Ethyl, and Isopropyl.

- Methyl alcohol also known as Methanol or wood alcohol
- Ethyl alcohol also known as Ethanol or beverage alcohol
- Isopropyl Alcohol (Isopropanol) also known as rubbing alcohol



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 bonded to one of the hydrogen atoms ("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".

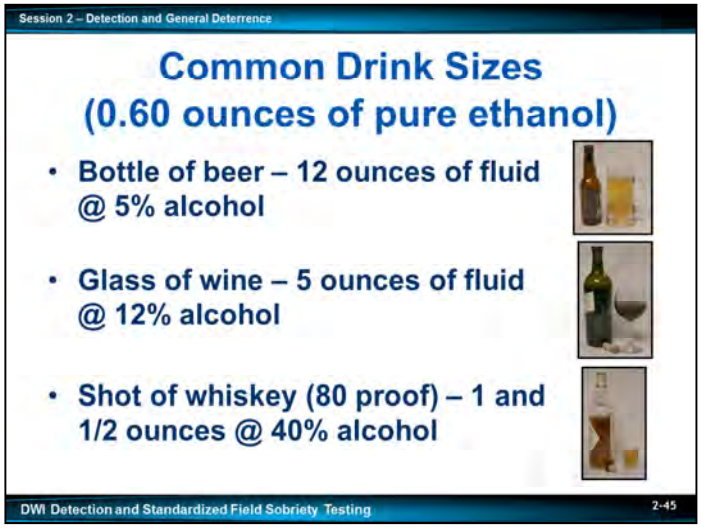


Ethanol is what interests us because it is the kind of alcohol that features prominently in impaired driving. Ethanol is beverage alcohol, the active ingredient in beer, wine, whiskey, liquors, etc. Ethanol production starts with fermentation. That is a kind of decomposition in which the sugars in fruit, grains, and other organic materials combine with yeast to produce the chemical we call ethanol. This can occur naturally, as yeast spores in the air come into contact with decomposing fruit and grains. However, most of the ethanol in the world didn't ferment naturally, but 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 a 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 does water.



Distilled spirits is the name we give to high ethanol concentration beverages produced by distillation. These include 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%.



Over the millennia, during which people have used and abused ethanol, some common-sized servings of the different beverages have evolved.

- Beer is normally dispensed in 12-ounce servings
  - Since beer has an ethanol concentration of about four percent, 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 half ounces of fluid
  - At a typical concentration of 40% ethanol (80 proof), the standard shot of whiskey has approximately one half ounce of ethanol

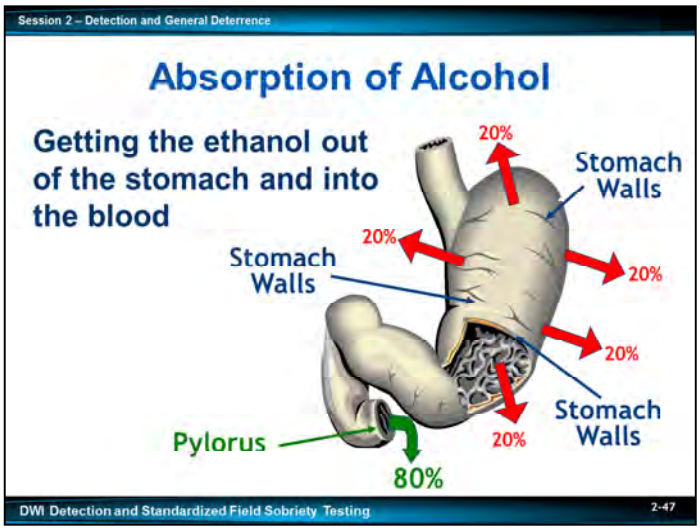
Therefore, as far as their alcoholic contents are concerned, a can of beer, a glass of wine and a shot of whiskey are all the same.



Ethanol is a Central Nervous System Depressant. It doesn't affect a person until it gets into their Central Nervous System, i.e., the brain, brain stem and spinal cord. Ethanol gets to the brain by getting into the blood. In order to get into the blood, it has to get into the body.

There are actually a number of different ways in which ethanol can get into the body. It can be inhaled: Ethanol fumes, when taken into the lungs, will pass into the bloodstream and a positive 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 almost always introduced into the body orally, i.e., by drinking.

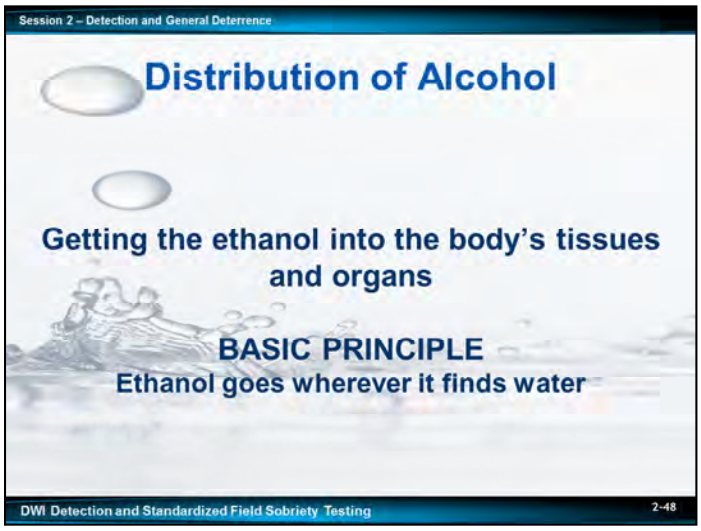


Once the ethanol gets into the stomach it has to move into the blood. The process by which this happens is known as absorption. One very important fact pertaining to alcohol absorption is it doesn't have to be digested in order to move from the stomach to the blood.

Another very important fact is alcohol can pass directly through the walls of the stomach. These two facts, taken together, mean under the right circumstances absorption of alcohol can be accomplished fairly quickly. The ideal circumstance for rapid absorption is to drink on an empty stomach.

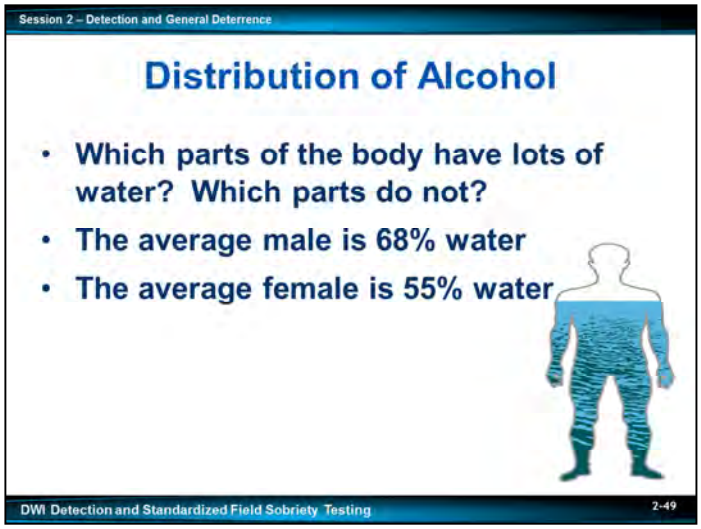
When the alcohol enters the empty stomach, about 20% of it will make its way directly through the stomach walls. The remaining 80% will pass through the stomach and enter the small intestine, from which it is readily absorbed into the blood. Because the body doesn't need to digest the alcohol before admitting it into the bloodstream, the small intestine will be open to the alcohol as soon as it 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 food is in the stomach, it commands a muscle at the base of the stomach to constrict and cut off the passage to the small intestine. The muscle is called the pylorus, or pyloric valve. 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 only slowly gets 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 as it would have if he or she had drunk on an empty stomach.

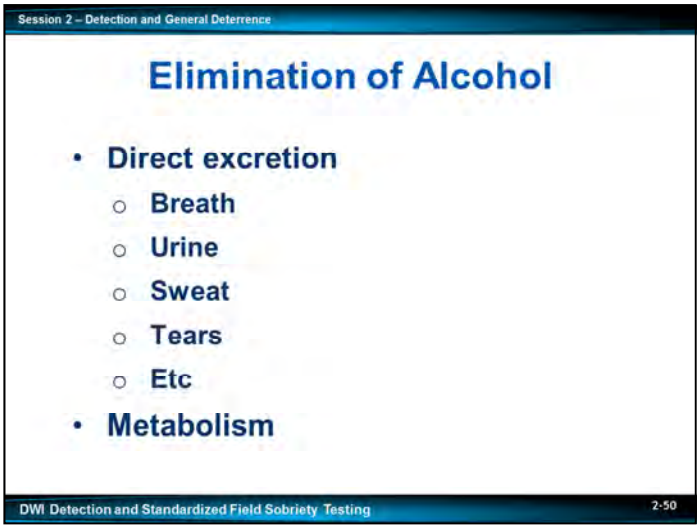


Once the alcohol moves from the stomach into the blood, it will be distributed throughout the body by the blood. Alcohol has an affinity for water. The blood will carry the alcohol to the various tissues and organs of the body and will deposit the alcohol in them in proportion to their water contents.

Brain tissue has a fairly high water content so the brain receives a substantial share of the distributed alcohol. Muscle tissue also has a 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.

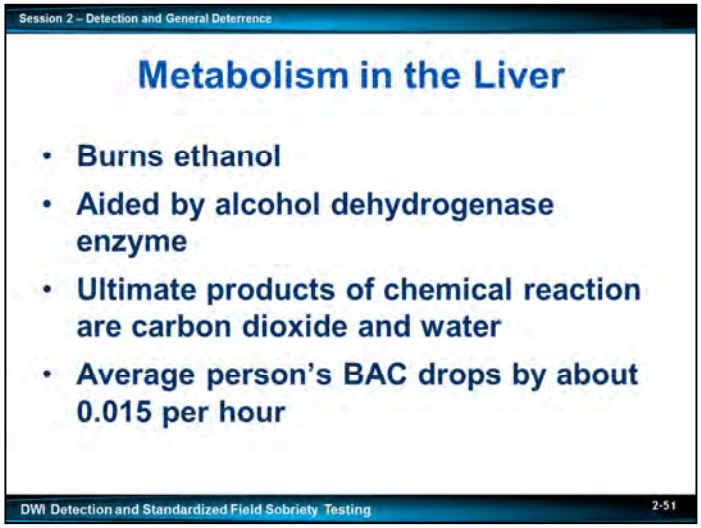


The affinity of alcohol for water, and its lack of affinity for fat, helps explain an important difference in the way alcohol affects women and men. Pound for pound, the typical female's body contains a good deal less water than does the typical man's. This is because women have additional adipose (fatty) tissue designed in part to protect a child in the womb. A Swedish pioneer in alcohol research, E.M.P. Widmark, determined 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.



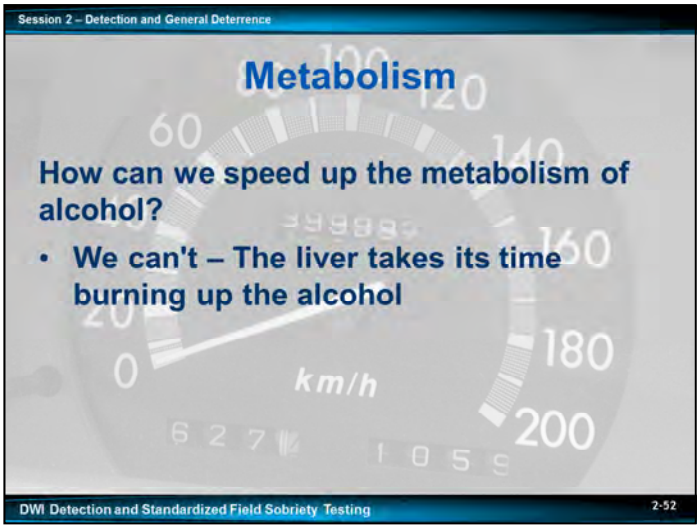
As soon as the alcohol enters the blood stream, the body starts trying to get rid of it. Some of the alcohol will be directly expelled from the body chemically unchanged. For example, some alcohol will leave the body in the breath, urine, sweat, tears, etc. However, only a small portion (about 2-10%)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



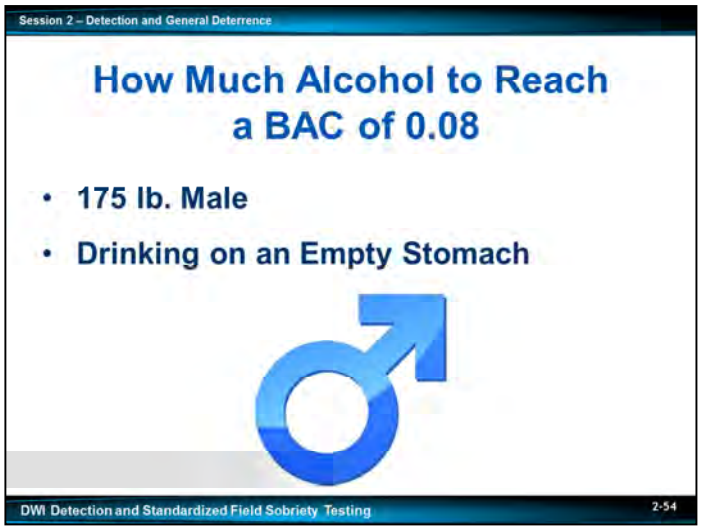
We can control the rate at which alcohol enters our bloodstream. For example, we can gulp down our drinks or slowly sip them. We can drink on an empty stomach or we can take the precaution of eating before drinking. We can choose to drink a lot or a little. But once the alcohol gets into the blood, there is nothing we can do to affect how quickly it leaves. Coffee won't accelerate the rate at which our livers burn alcohol. Neither will exercise, or 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

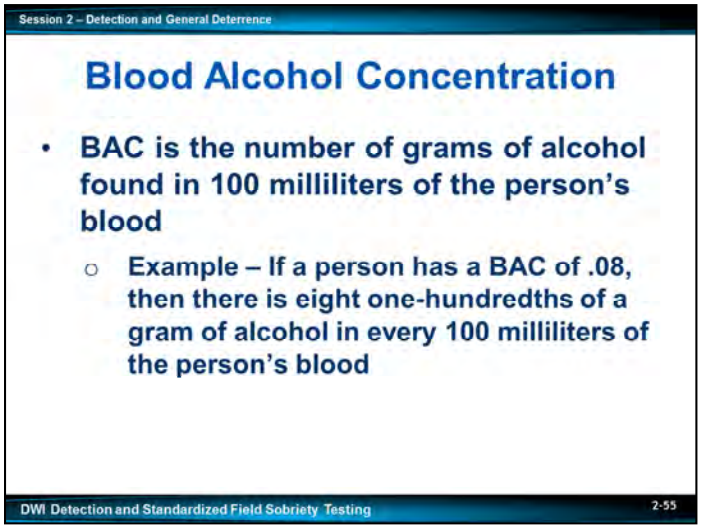
People sometimes ask, "how 'high' is 'drunk'?" What is the "legal limit" for "drunk driving"? How much can a person drink before becoming "impaired"? Depends… Time? Sex? Weight? Drinking on an empty stomach? A couple of beers can do it.

There is no simple answer to these or similar questions except to say any amount of alcohol will affect a person's ability to drive to some degree. It is true the laws of nearly all States establish a BAC limit at which it is explicitly unlawful to operate a vehicle. In those 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 a particular person may be under the influence at much lower BACs.



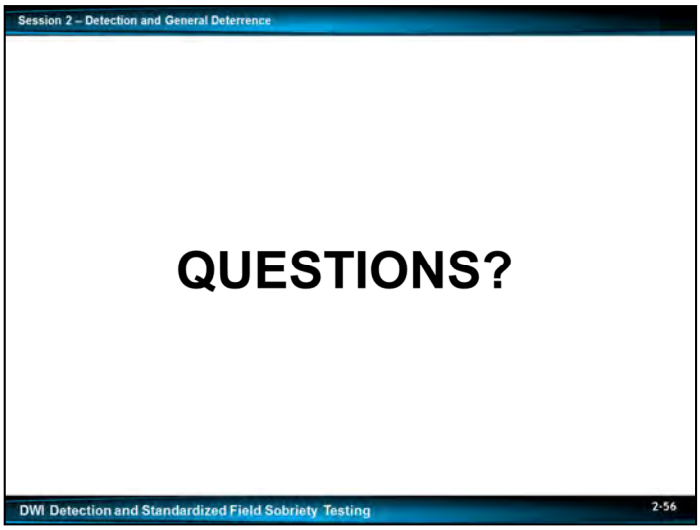
How much alcohol does someone have to drink to reach these kinds of BACs?

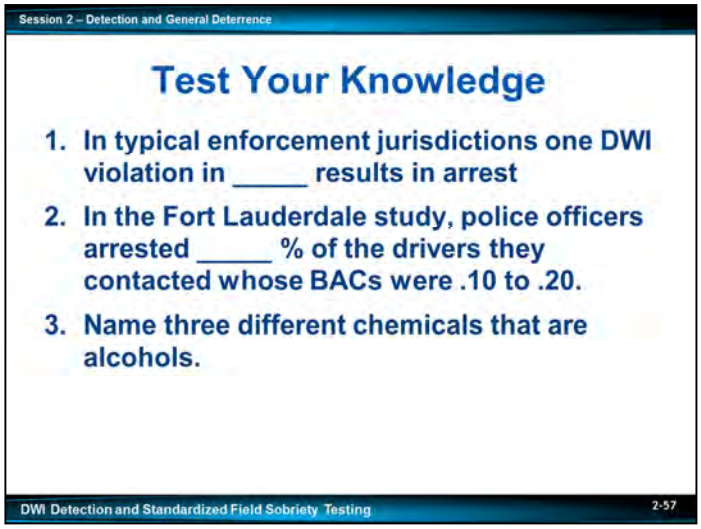
Obviously, as we've already seen, it depends on how much time the person spends drinking, on whether the person is a man or a woman, on how large the person is, on whether the drinking takes place on an empty stomach, and on certain other factors. But let's take as an example a 175 pound man. If he drinks two beers, or two shots of whiskey, in quick succession on an empty stomach, his BAC will climb to 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 impair someone: "a couple of beers" can do it.



But in another respect, when we contrast alcohol with virtually any other drug, we find impairment by alcohol requires a vastly larger dose than does impairment by the others. Consider exactly what a BAC of 0.08 means. BAC is expressed in terms of the "number of grams of ethanol in every 100 milliliters of blood". Therefore, 0.08 means there is 0.08g of ethanol in every 100 milliliters (mL) of blood. You will find BAC results are reported in a variety of units. Two common variations are milligrams/milliliters and percent. There are 1000 milligrams (mg) in one gram; therefore, 0.08g equals 80mg and a BAC of 0.08 would be reported as 80mg of ethanol/100mL of blood. Percent means parts per one hundred. In this example 0.08g/100mL of blood is equivalent to 0.08% BAC.

Note: The term BAC is used in the manual. However, it should be understood to refer to either Blood Alcohol Concentration (BAC) or Breath Alcohol Concentration (BrAC) depending on the legal requirements of the jurisdiction.


Session 2 – Detection and General Deterrence
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
2-56



Test Your Knowledge

1. In typical enforcement jurisdictions one DWI violation in _____ results in arrest.

2. In the Fort Lauderdale study, police officers arrested _____% of the drivers they contacted whose BACs were .10 to .20.

3. Name three different chemicals that are alcohols.

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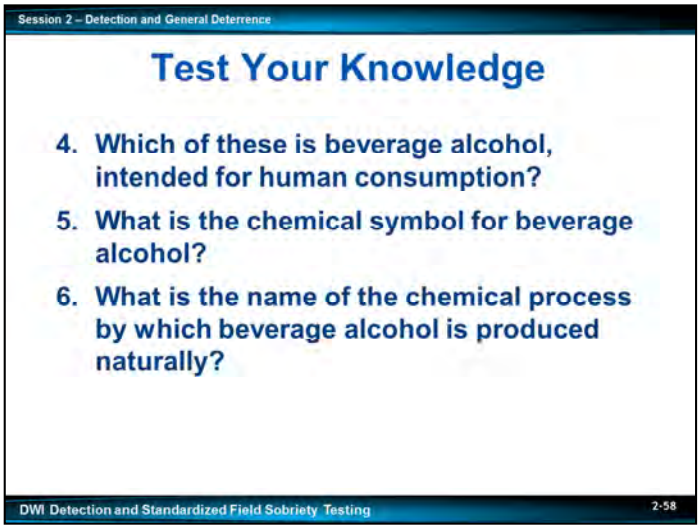
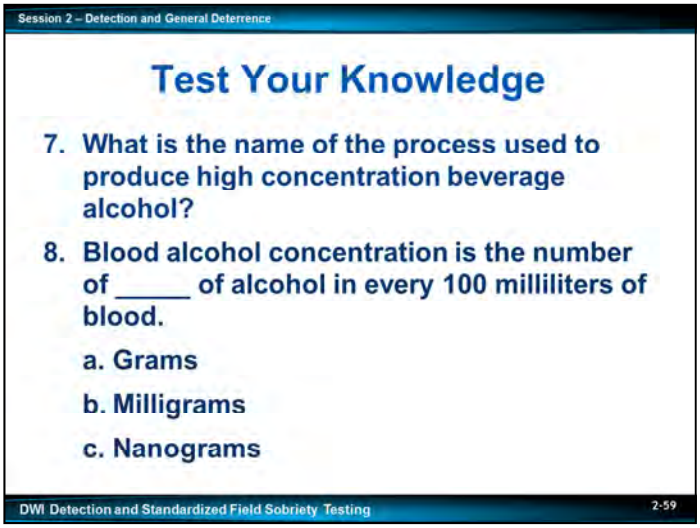


4. Which of these is beverage alcohol, intended for human consumption?

5. What is the chemical symbol for beverage alcohol?

6. What is the name of the chemical process by which beverage alcohol is produced naturally?



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7. What is the name of the process used to produce high concentration beverage alcohol?

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8. Multiple choice: Blood alcohol concentration is the number of alcohol in every 100 milliliters of blood.
   A. Grams
   B. Milligrams
   C. Nanograms

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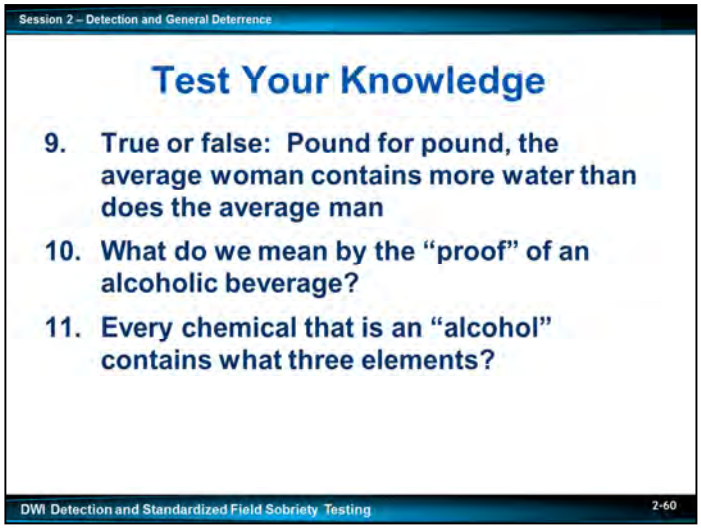

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9. True or false: Pound for pound, the average woman contains more water than does the average man.

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10. What do we mean by the "proof" of an alcoholic beverage?

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11. Every chemical that is an "alcohol" contains what three elements?

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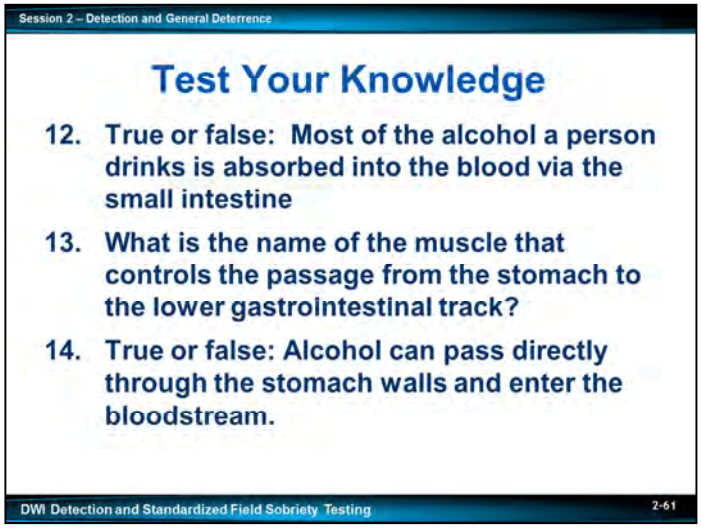
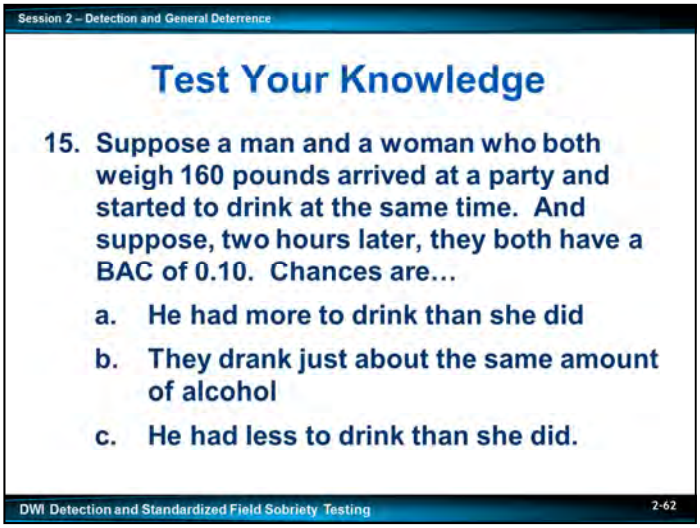


12. True or false: Most of the alcohol a person drinks is absorbed into the blood via the small intestine.

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

14. True or false: Alcohol can pass directly through the stomach walls and enter the bloodstream.



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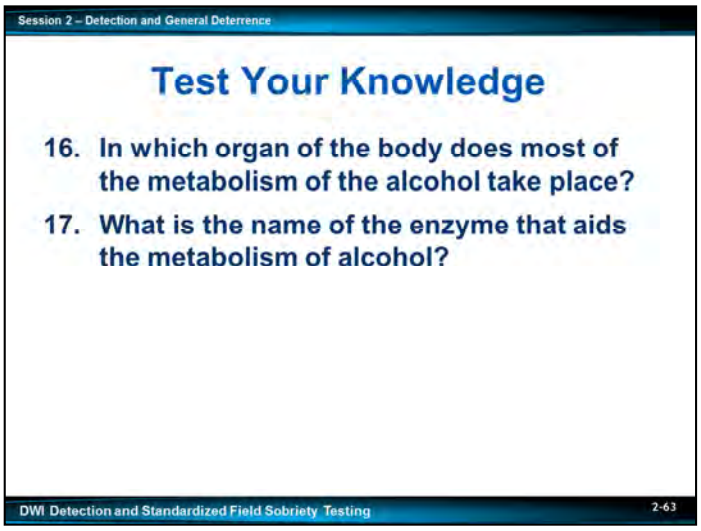
15. Multiple choice: Suppose a man and a woman who both weigh 160 pounds arrived at a party and started to drink at the same time. And suppose, two hours later, they both have a BAC of 0.10. Chances are ....
    A. He had more to drink than she did.
    B. They drank just about the same amount of alcohol.
    C. He had less to drink than she did.



16. In which organ of the body does most of the metabolism of the alcohol take place?

_____

_____

17. What is the name of the enzyme that aids the metabolism of alcohol?

_____

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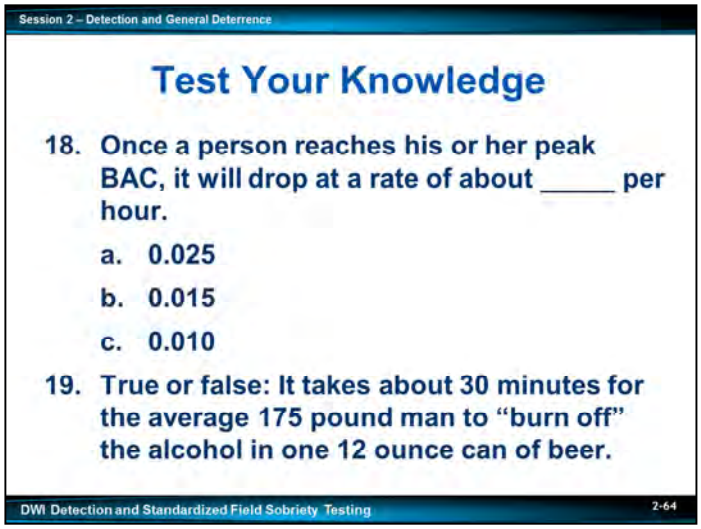


18. Multiple choice: Once a person reaches their peak BAC, it will drop at a rate of about per hour.
    A. a. 0.025
    B. b. 0.015
    C. c. 0.010

19. True or False: It takes about thirty minutes for the average 175 pound man to "burn off" the alcohol in one 12 ounce can of beer.


DWI Detection and Standardized Field Sobriety Testing
Session 3 – The Legal Environment
NHTSA
TSI
February 2018



An understanding of impaired driving laws that apply in your jurisdiction is critical to successful DWI enforcement.

All States (and many local jurisdictions) have their own impaired driving laws. While the specific language of these laws may vary significantly, most include the following provisions:

- DWI Law
- Per Se Law
- Implied Consent
- Preliminary Breath Testing (if applicable)



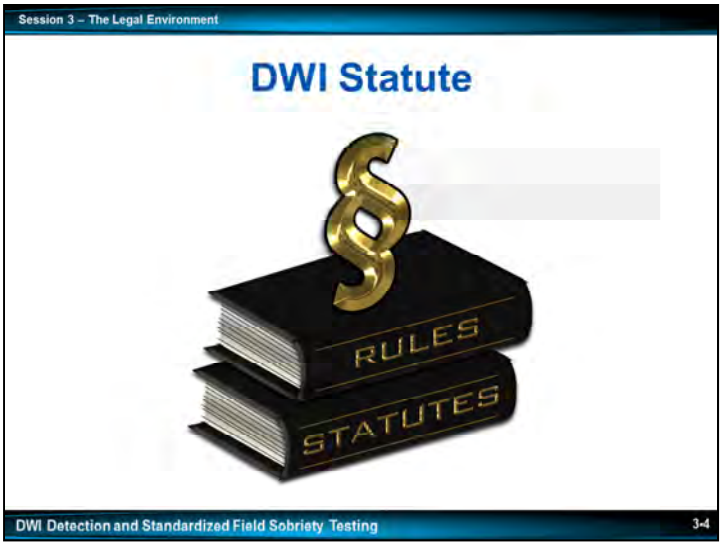
Upon successfully completing this session, the participant will be familiar with:

- Elements of DWI offenses
- Provisions of implied consent
- The relevance of chemical test evidence
- Precedents established through case law

In this session, impaired driving laws are discussed in detail. The illustrations provided are drawn from the Uniform Vehicle Code. You are responsible for learning whether and how each law applies in your jurisdiction.

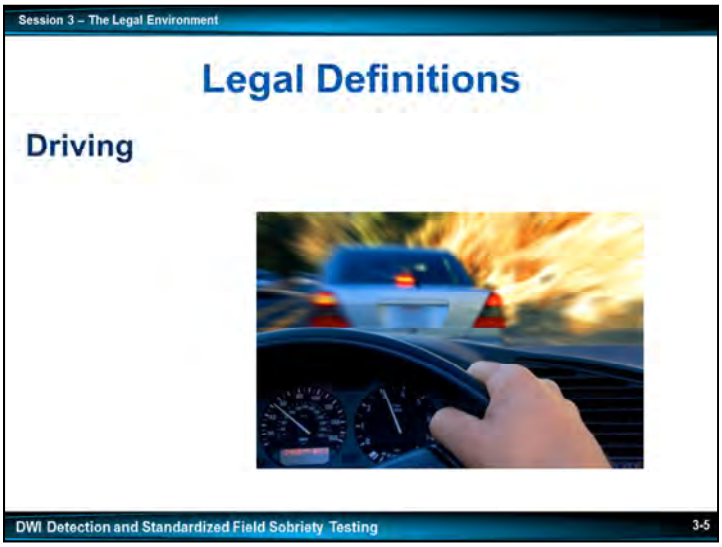
CONTENT SEGMENTS
A. DWI Statute: Driving While Under the Influence
B. Per Se Statute: Driving With a Prohibited Blood Alcohol Concentration
C. Implied Consent
D. Preliminary Breath Testing
E. Case Law Review

LEARNING ACTIVITIES
Instructor-Led Presentations
Reading Assignments



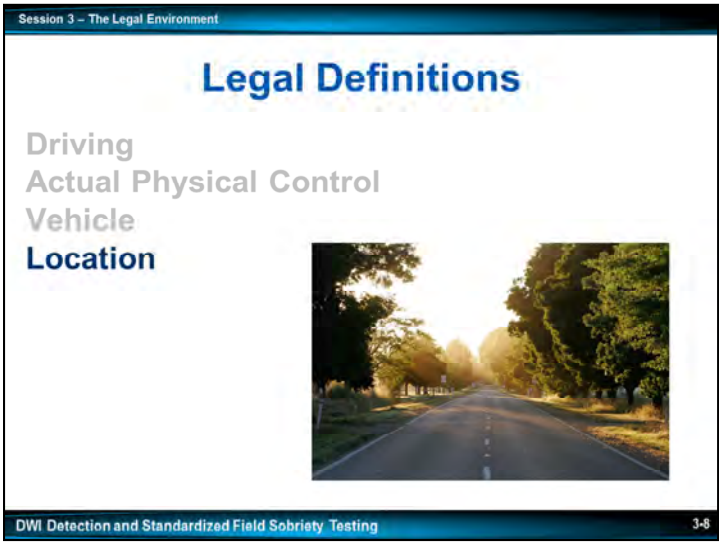
A. <u>DWI Statute: Driving While Under the Influence</u>

A State's DWI statute may be subtitled <u>Driving While Under the Influence</u> or something similar. Typically the statute describes the who, what, where and how of the offense in language.


Session 3 – The Legal Environment
Legal Definitions
Driving
DWI Detection and Standardized Field Sobriety Testing
3-5


Session 3 – The Legal Environment
Legal Definitions
Driving
Actual Physical Control
DWI Detection and Standardized Field Sobriety Testing
3-6


Session 3 – The Legal Environment
Legal Definitions
Driving
Actual Physical Control
Vehicle/Motor Vehicle
DWI Detection and Standardized Field Sobriety Testing
3-7


Session 3 – The Legal Environment
Legal Definitions
Driving
Actual Physical Control
Vehicle
Location
DWI Detection and Standardized Field Sobriety Testing
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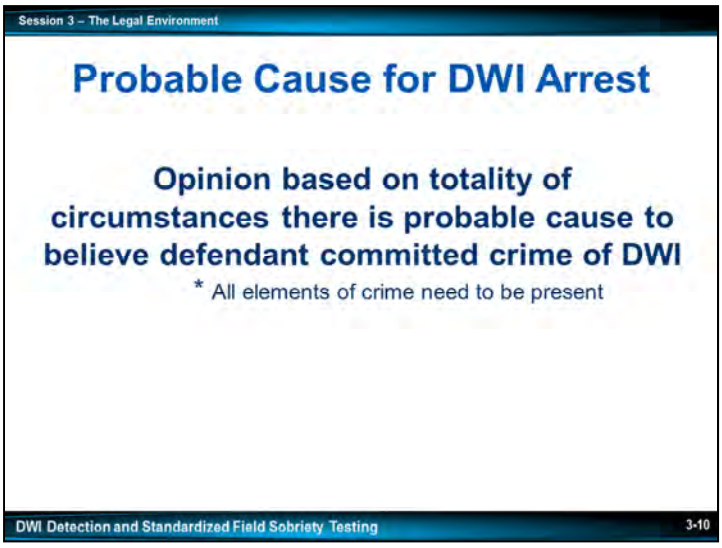
One of the several terms used to describe the degradation of mental and/or physical abilities necessary for safely operating a vehicle.



DWI Violation Arrest

In order to arrest someone for DWI, a law enforcement officer must have probable cause to believe all elements of the offense are present. That is, the officer must believe:

> The person in question was operating or in actual physical control of a vehicle (truck, van, automobile, motorcycle, even bicycle, according to specific provisions in various States) while under the influence of alcohol, another drug, or both.



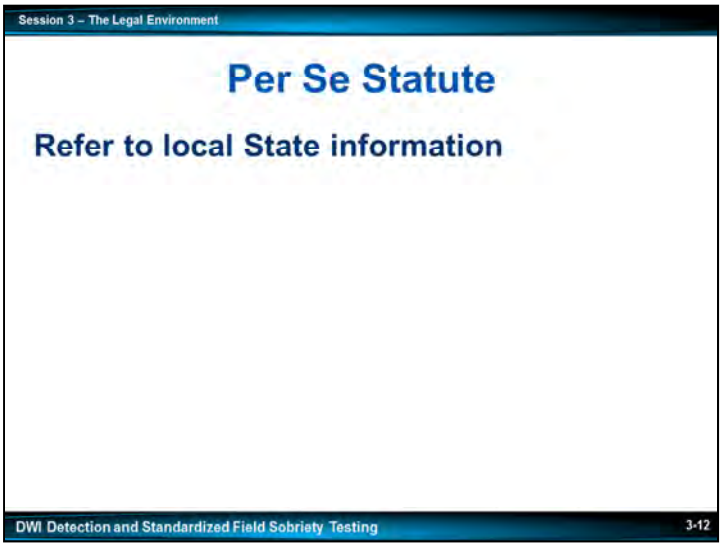
Conviction

In order to convict a person of DWI, it is necessary to establish at all elements were present.

- Operation
- Control
- Vehicle
- Impairment

If DWI is a criminal offense, the facts must be established "beyond a reasonable doubt." If DWI is a violation, the standard of proof may be less. In either case, it is the officer's responsibility to collect and thoroughly document all evidence for use at trial.

In some States, an operator may be charged with a non-criminal alcohol-related violation and the standard of proof may be less.



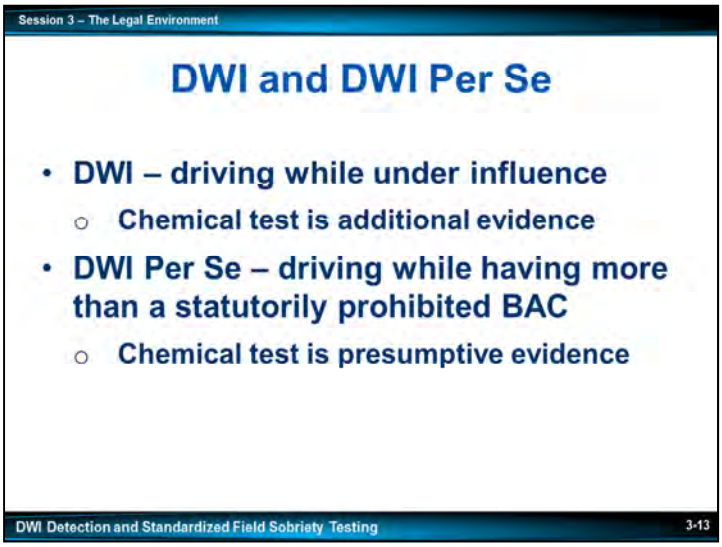
B. <u>Per Se Statute: Driving with a Prohibited Blood Alcohol Concentration (BAC)</u>

All States include in their DWI statutes a provision making it illegal to drive with a statutorily prohibited BAC. This provision, often called a Per Se law, creates another mechanism by which a suspect can be prosecuted for a DWI offense.

Following is a typical Per Se provision.

It is unlawful for any person to:
- Operate or be in physical control
- Of any vehicle
- Within this State
- While having a BAC at or above State's level

These elements may vary from State to State.



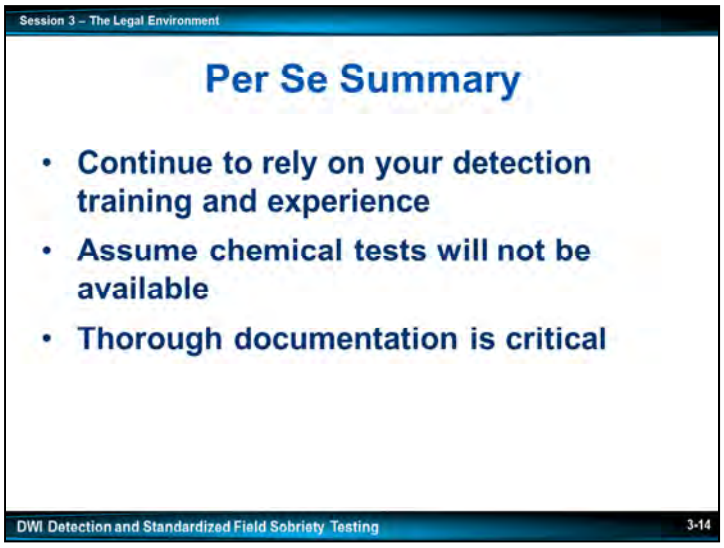
The DWI and DWI Per Se can work simultaneously to prosecute a suspect for DWI:

- The DWI law makes it an offense to drive while under the influence of alcohol and/or any drug
- The DWI Per Se law makes it an offense to drive while having more than a statutorily prohibited BAC

The Per Se law is an additional method of prosecuting DWI. For the DWI, the chemical test result is additional evidence. For the DWI Per Se, the chemical test result is presumptive evidence.

The principal purpose of the Per Se law is to aid in prosecution of DWI offenders. It is not necessary for the prosecutor to show the driver was "under the influence." It is sufficient for the State to show the driver's BAC was at or above the State's level.

Important to remember, an officer must still have probable cause to believe the driver is impaired before making an arrest. Implied consent usually requires the driver be arrested before the request of a chemical test. The law also requires the arrest be made for "acts alleged to have been committed while operating a vehicle while under the influence." Therefore, the officer usually must establish probable cause the offense has been committed and make a valid arrest before the chemical test can be requested.



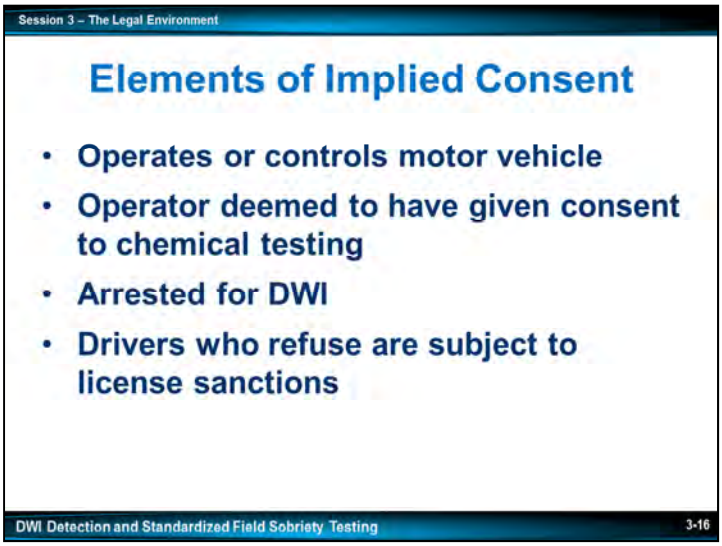
Per Se Summary

Police officers dealing with impaired drivers must continue to rely primarily on their own training and experience in detection to determine whether an arrest should be made. It is impossible to obtain a legally admissible chemical test result until after the arrest has been made. Sometimes drivers will refuse the chemical test after they have been arrested. The case will depend primarily upon the officer's observations and ability to articulate their testimony. When making a DWI arrest, always assume the chemical test evidence will not be available. It is critical you organize, document, and present your observations and testimony in a clear and convincing manner.

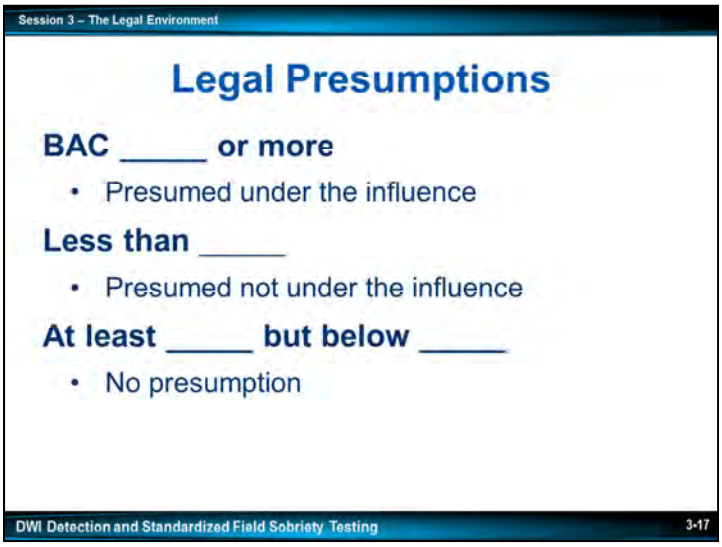


C. Implied Consent

Implied consent law states suspected DWI drivers are deemed to have given their consent to submit to chemical testing. If the driver fails to provide a chemical test, they can be subject to license sanctions.



The law provides penalties for refusal to submit to the testing. These penalties may include the suspension or revocation of the individual's driver's license. The purpose of implied consent is to encourage those arrested for DWI to submit to a chemical test so valuable evidence may be obtained.



Legal presumptions define impairment and emphasize the significance of the scientific chemical test evidence.

For example, if the chemical test shows the person's BAC is .08 or more it shall be presumed the person is under the influence.

In this State, if the test shows the BAC is _____ or less, it shall be presumed the person is not under the influence.

If the test shows the BAC is more than _____ but less than _____, there is no presumption as to whether the person is or is not under the influence. The weight of the chemical test evidence is presumptive of alcohol influence, not conclusive.

The fact finder (court or jury) may accept the legal presumption and conclude the driver was or was not impaired on the basis of the chemical test alone. However, other evidence such as testimony about the defendant's driving, odor of alcohol, appearance, behavior, movements, speech, etc. may be sufficient to overcome the presumptive weight of the chemical test.

_____

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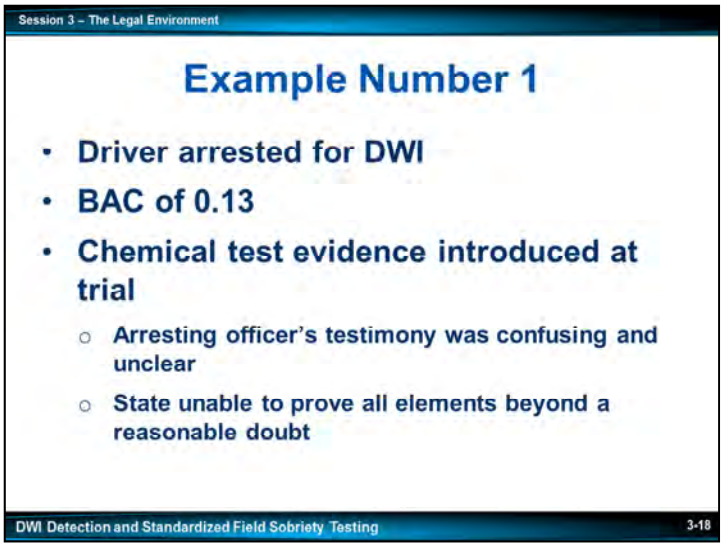
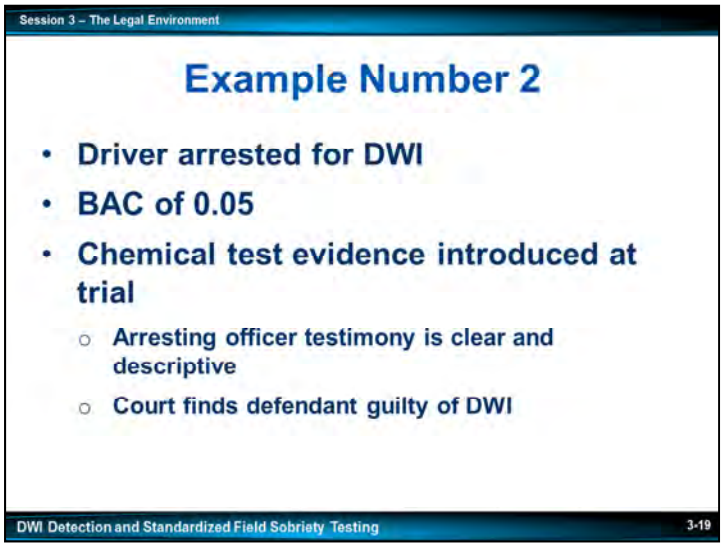


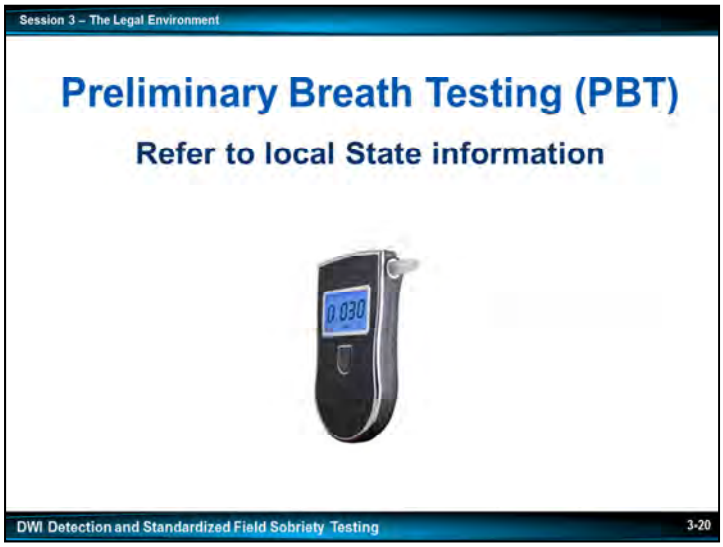
It is possible for a person whose BAC at the time of arrest is above the per se or presumptive level legal limit to be acquitted of DWI. It is also possible for a person whose BAC at the time is below the per se or presumptive level to be convicted of DWI. Consider the following examples:

Example 1
A driver is arrested for DWI. A chemical test administered to the driver shows a BAC of 0.13. At the subsequent trial, the chemical test evidence is introduced. However, the arresting officer's testimony about the defendant's driving, appearance, and behavior was confusing and unclear. Therefore, the State was unable to prove all of the elements of the crime beyond a reasonable doubt.



Example 2
A driver is arrested for DWI. A chemical test administered to the driver shows a BAC of 0.05. At the subsequent trial, the chemical test evidence is introduced. In addition, the arresting officer testifies about the defendant's driving, odor of alcohol, appearance, slurred speech, and inability to perform divided attention field sobriety tests. The testimony is clear and descriptive. The court finds the defendant guilty of DWI.

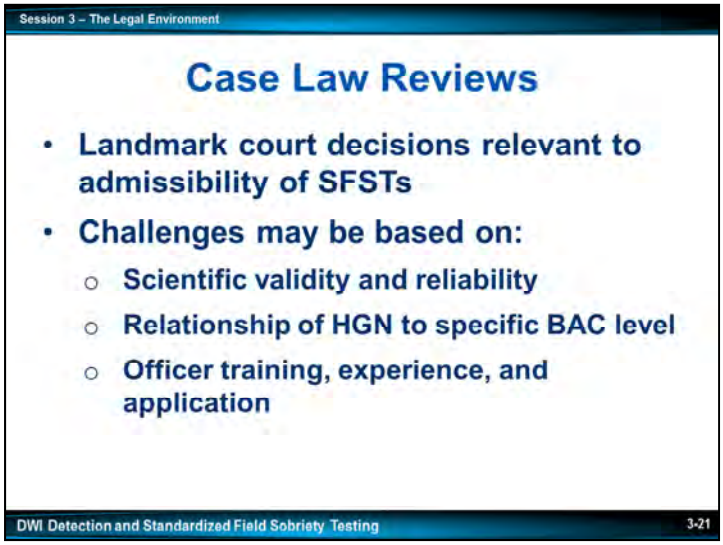
The difference in outcomes in the two examples cited is directly attributable to how well the arresting officer articulates the evidence other than the chemical test. Remember the chemical test provides presumptive evidence of alcohol influence; it does not provide conclusive evidence. While the "legal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



D. <u>Preliminary Breath Testing (PBT)</u>

Description
Many States have enacted PBT laws. These laws permit a law enforcement officer to request a driver suspected of DWI to submit to a roadside breath test prior to arrest. PBT laws vary significantly from one State to another.

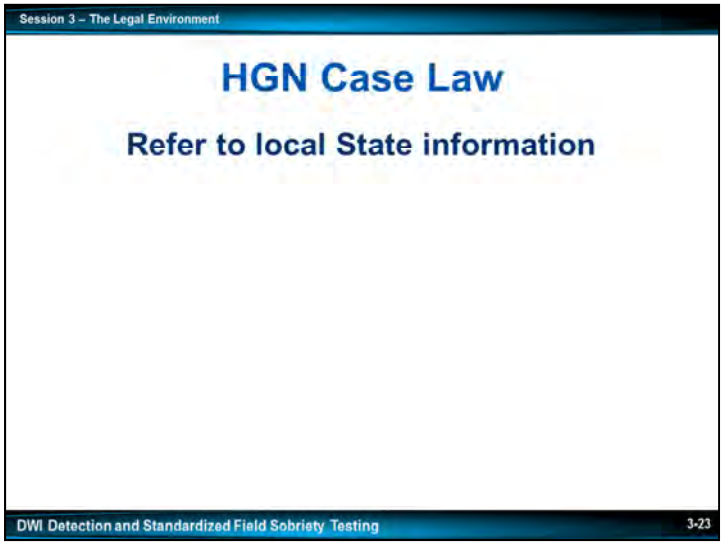
Application
PBT results may be used to assist in determining whether an arrest should be made. The results may not be admissible as substantive evidence against the defendant in court. Discuss State laws regarding admissibility of PBT results. However, PBT laws may provide statutory or administrative penalties if the driver refuses to submit to the test. These penalties may include license suspension, fines, or other sanctions.

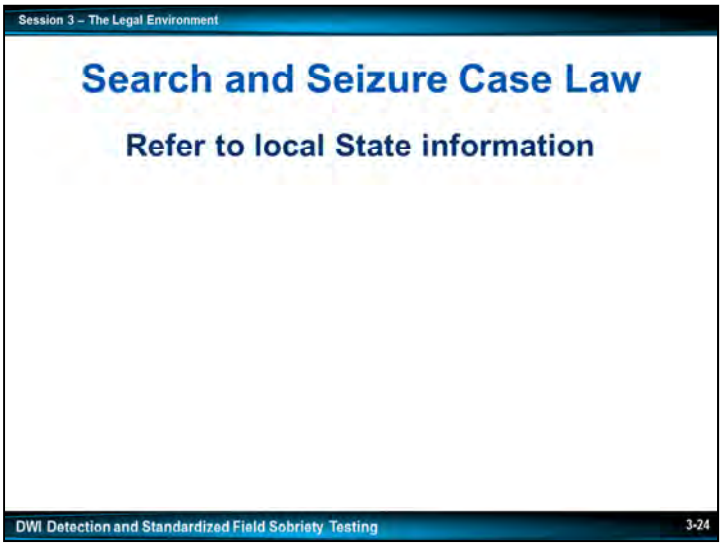


E. <u>Case Law Reviews</u>

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


Session 3 – The Legal Environment
SFST Case Law
Refer to local State information
DWI Detection and Standardized Field Sobriety Testing
3-22


Session 3 – The Legal Environment
HGN Case Law
Refer to local State information
DWI Detection and Standardized Field Sobriety Testing
3-23


Session 3 – The Legal Environment
Search and Seizure Case Law
Refer to local State information
DWI Detection and Standardized Field Sobriety Testing
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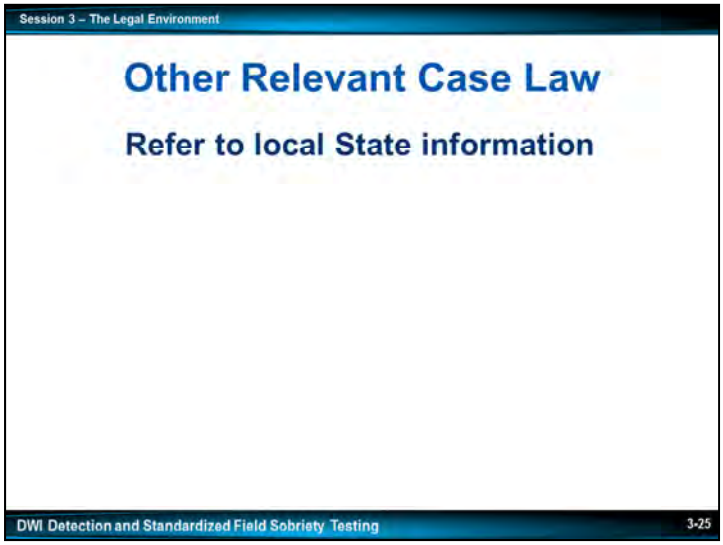
Session 3 – The Legal Environment
Other Relevant Case Law
Refer to local State information
DWI Detection and Standardized Field Sobriety Testing
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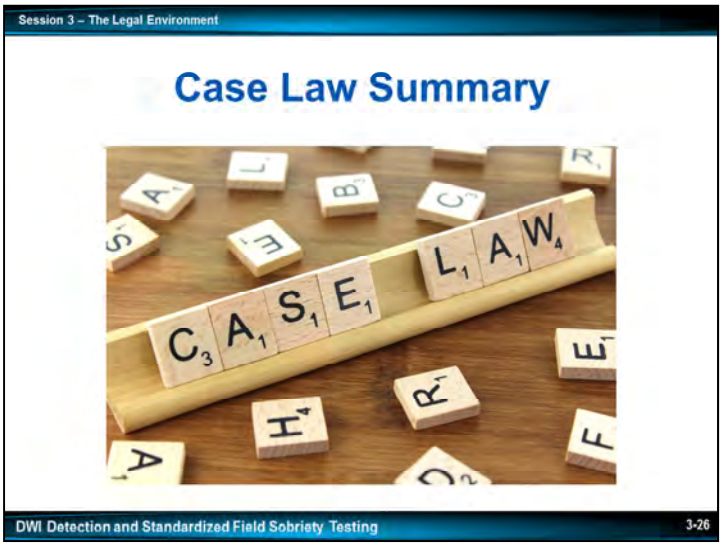
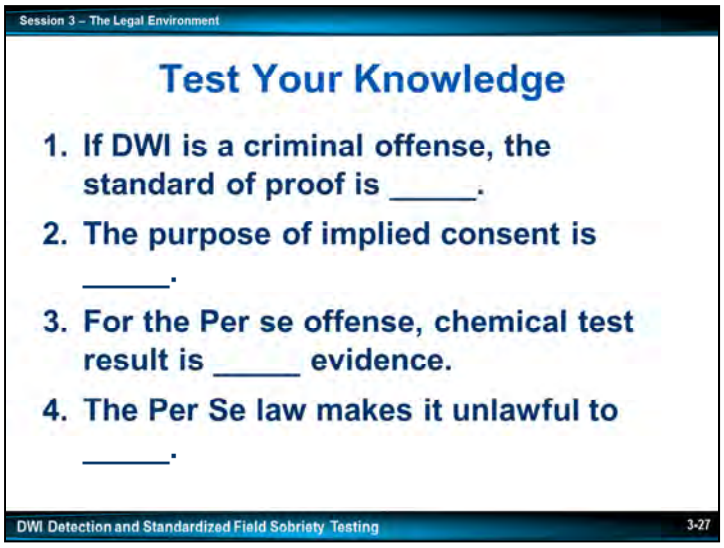


TO SUMMARIZE:
The prevailing trend in court is to accept HGN as evidence of impairment, provided the proper scientific foundation is laid. However, most courts consistently reject any attempt to derive a quantitative estimate of BAC from HGN. Additionally, officers should recognize the relevance of administering the SFSTs in accordance with the NHTSA/IACP guidelines.



Test Your Knowledge

1. If DWI is a criminal offense, the standard of proof is _____

2. The purpose of implied consent is _____

3. For the Per se offense, chemical test result is _____evidence.

4. The Per Se law makes it unlawful to _____

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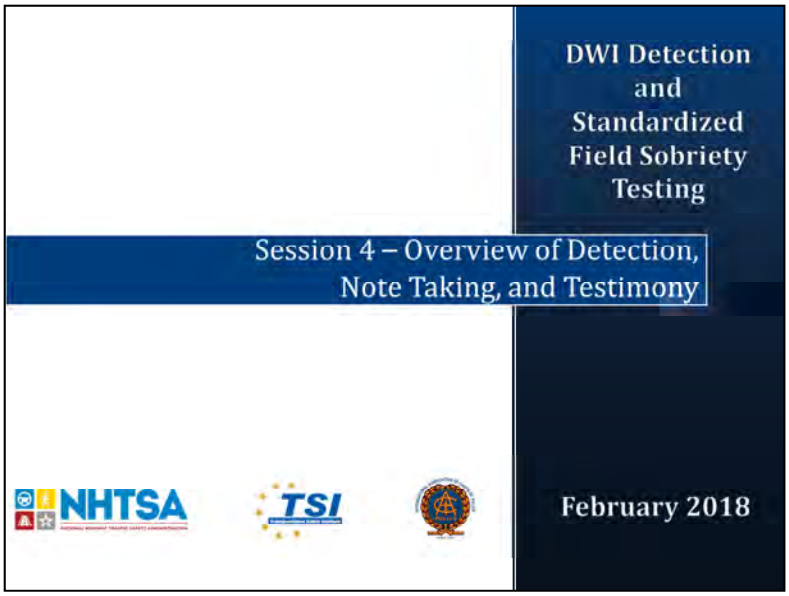
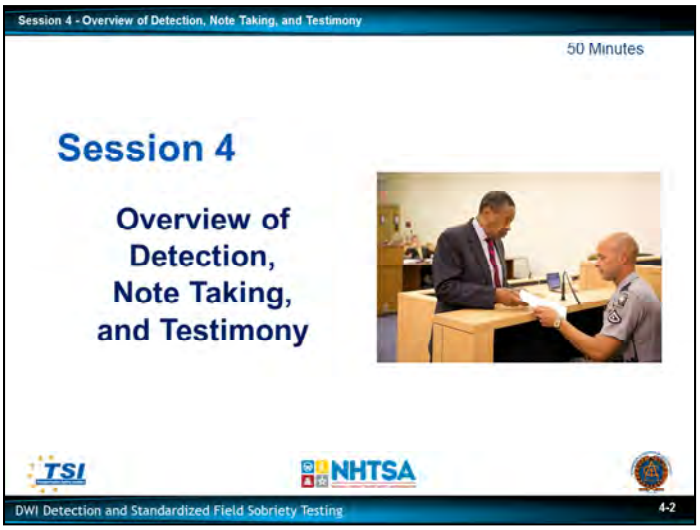

DWI Detection
and
Standardized
Field Sobriety
Testing
Session 4 – Overview of Detection,
Note Taking, and Testimony
NHTSA
TSI
February 2018


Session 4 - Overview of Detection, Note Taking, and Testimony
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Session 4
Overview of Detection, Note Taking, and Testimony
TSI
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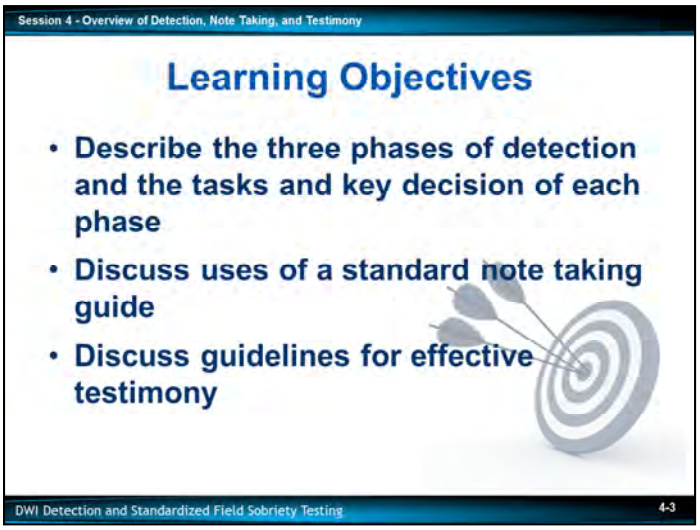
DWI Detection and Standardized Field Sobriety Testing
4-2



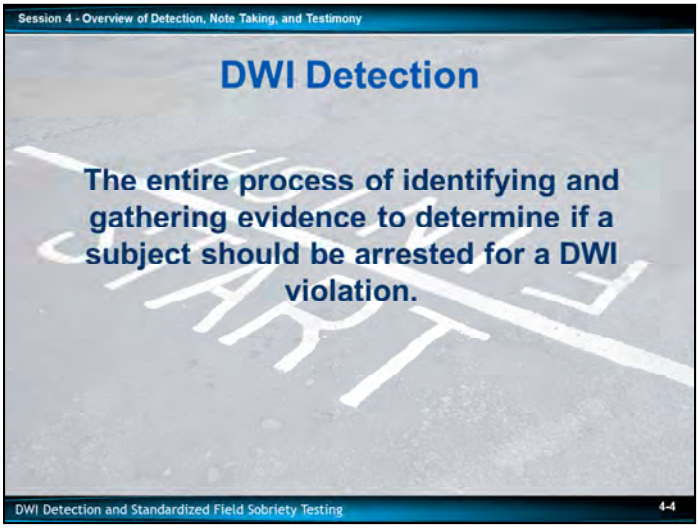
Upon successfully completing this session, the participant will be able to:

- Describe the three phases of detection
- Describe the tasks and key decision of each phase
- Discuss the uses of a standard note taking guide
- Discuss guidelines for effective testimony

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

CONTENT SEGMENTS
A. Three Phases of Detection
B. DWI Investigation Field Notes
C. Courtroom Testimony

LEARNING ACTIVITIES
Instructor-led Presentation
Reading Assignments



The term DWI detection has been used in many different ways. Consequently it does not mean the same thing to all law enforcement officers. For the purposes of this training, DWI detection is defined as: The entire process of identifying and gathering evidence to determine if a subject should be arrested for a DWI violation.

Detection begins when the officer develops the first suspicion of a DWI violation.

Detection ends when the officer decides whether or not there is sufficient probable cause to arrest the driver for DWI. Your attention may be called to a particular vehicle or individual for a variety of reasons. The precipitating event may be a loud noise, an obvious equipment or moving violation, unusual but not necessarily illegal behavior, or almost anything else. Initial detection may carry with it an immediate suspicion the driver is impaired, or a slight suspicion, or even no suspicion at all. In any case, it sets in motion a process wherein you focus on a particular vehicle or individual and have the opportunity to observe that vehicle or individual and to gather additional evidence.

The detection process ends when you decide either to arrest or not to arrest the individual for DWI. That decision is based on all of the evidence that has come to light since your attention was first drawn to the vehicle or individual. Effective DWI enforcers do not leap to the arrest/no arrest decision. Rather, they proceed carefully through a series of intermediate steps, each of which helps to identify the collective evidence.

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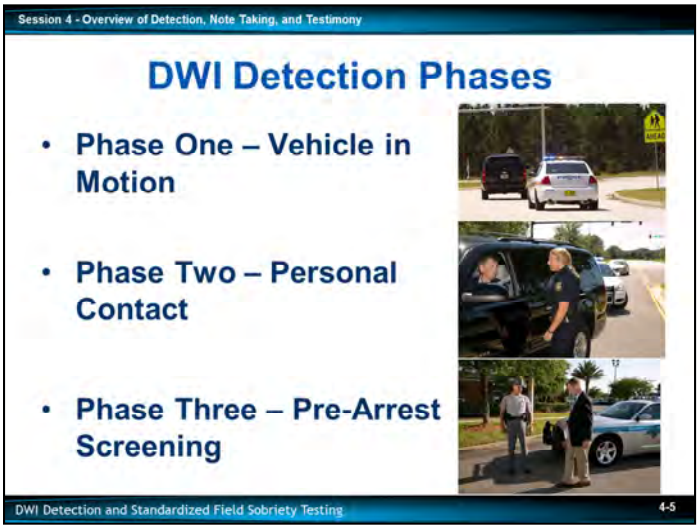

A. <u>Three Phases of Detection</u>

The typical DWI contact involves three separate and distinct phases:
- Phase One: Vehicle in motion
- Phase Two: Personal contact
- Phase Three: Pre-arrest screening

In Phase One, you usually observe the driver operating the vehicle.

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

In Phase Three, you usually have an opportunity to administer Standardized Field Sobriety Tests (SFSTs) to the driver to determine impairment.

In addition to SFSTs, some jurisdictions may allow you to administer other field sobriety tests and/or a preliminary breath test (PBT) to verify alcohol is the cause of the impairment. PBTs can be used to assist in making an arrest decision and should rarely be the only factor in deciding to arrest. PBTs should be used after administering SFSTs.

The DWI detection process does not always include all three phases. Sometimes there are DWI detection contacts in which Phase One is absent. These are cases in which you have no opportunity to observe the vehicle in motion. This may occur at the crash scene, at a roadblock or checkpoint, or when you have responded to a request for motorist assistance. Sometimes there are DWI contacts in which Phase Three is absent. There are cases in which you would not administer formal tests to the driver. This may occur when the driver is grossly impaired, badly injured, or refuses to submit to tests.

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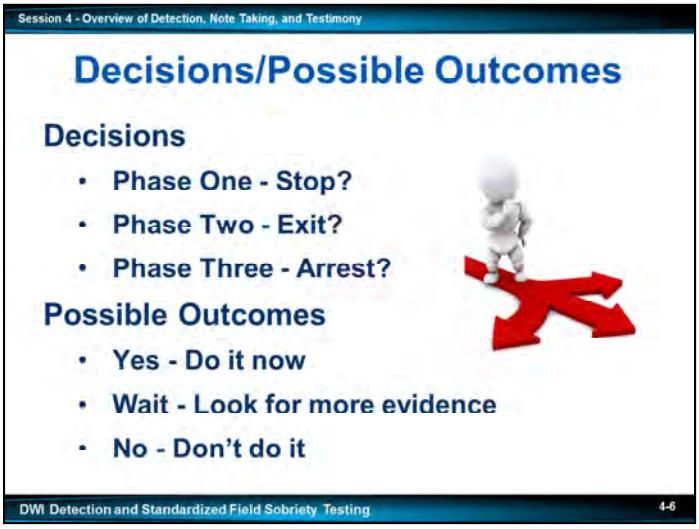
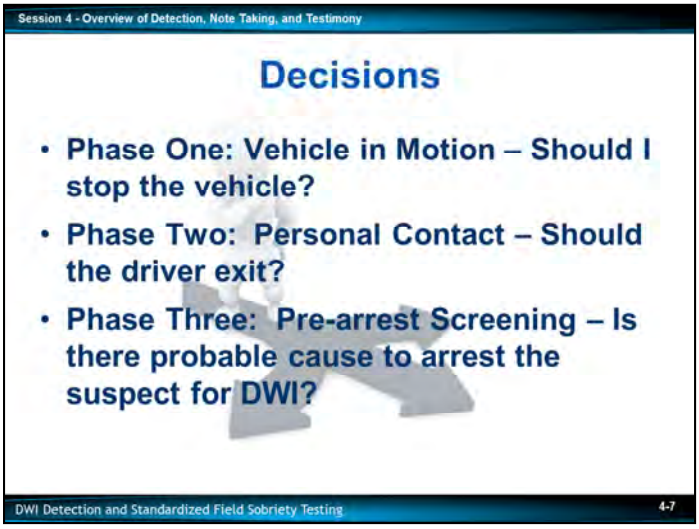


In each of the three phases, there will be decisions and possible outcomes.

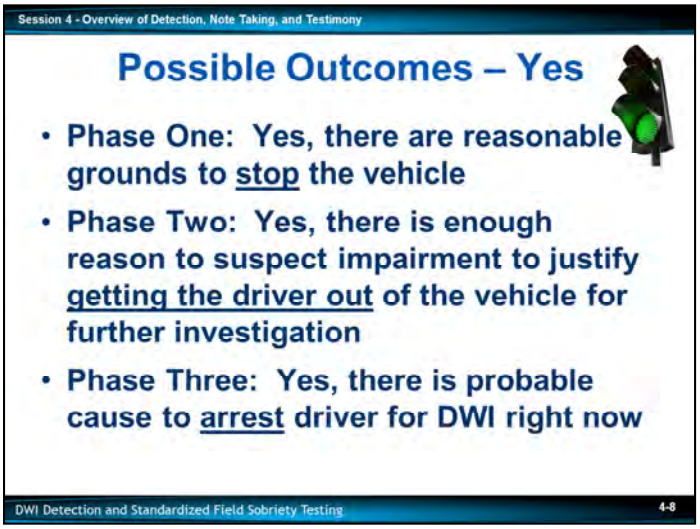
Major Tasks and Decisions
Each detection phase usually involves two major tasks and one major decision.



In Phase One: Your first task is to observe the vehicle in operation. Based on this observation, you must decide whether there is sufficient cause to command the driver to stop. Your second task is to observe the stopping sequence. You may want to take a picture of the vehicle or scene especially if the vehicle was involved in a crash.

In Phase Two: Your first task is to observe and interview the driver face to face. Based on this observation, you must decide whether there is sufficient cause to instruct the driver to step from the vehicle for further investigation. Your second task is to observe the driver's exit and walk from the vehicle. You may want to take a photo of the defendant.

In Phase Three: Your first task is to administer structured, formal psychophysical tests. Based on these tests, you must decide whether there is sufficient probable cause to arrest the driver for DWI. Your second task is then to arrange for (or administer) a PBT.



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

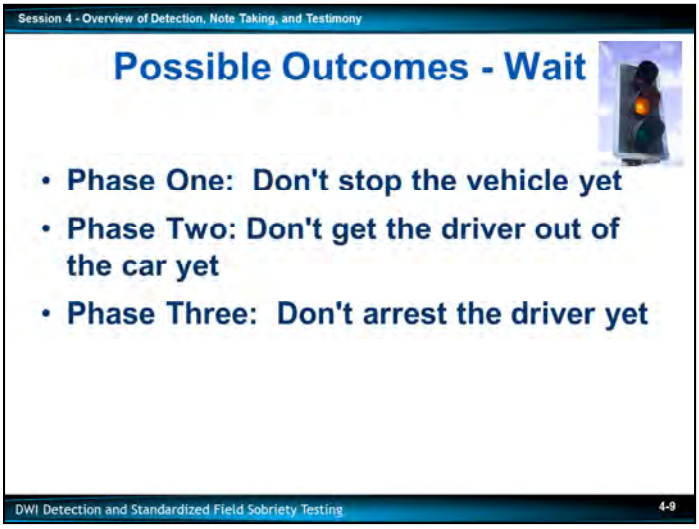
- Yes - Do it Now
- Wait - Look for Additional Evidence
- No - Don't Do It

Consider the following examples.

Yes - Do It Now
Phase One: Yes, there are reasonable grounds to stop the vehicle.

Phase Two: Yes, there is enough reason to suspect impairment to justify getting the driver out of the vehicle for further investigation.

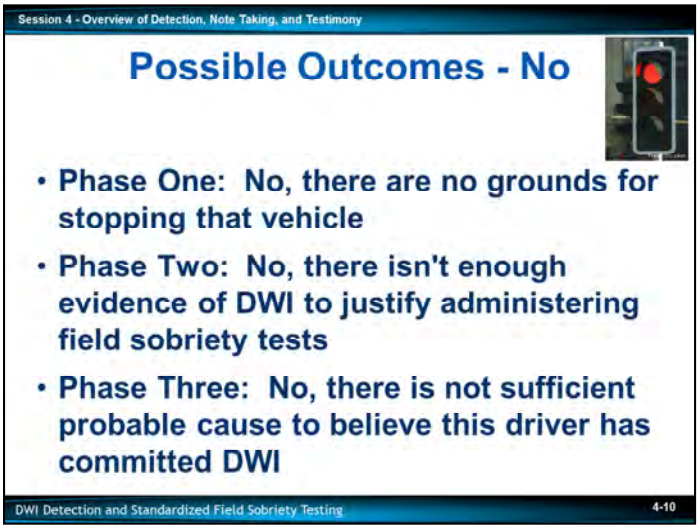
Phase Three: Yes, there is probable cause to arrest the driver for DWI right now.



Wait - Look for Additional Evidence
Phase One: Don't stop the vehicle yet; keep following and observing it a bit longer.

Phase Two: Don't get the driver out of the car yet; keep talking to and observing the driver a bit longer. (This option may be limited if the officer's personal safety is at risk.)

Phase Three: Don't arrest the driver yet; administer another field sobriety test before deciding.



Don't Do It:
Phase One: No, there are no grounds for stopping that vehicle.

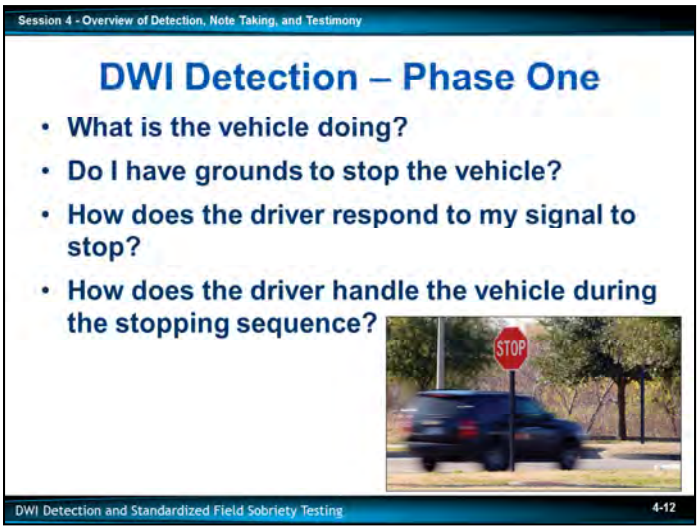
Phase Two: No, there isn't enough evidence of DWI to justify administering field sobriety tests.

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



Officer Responsibility

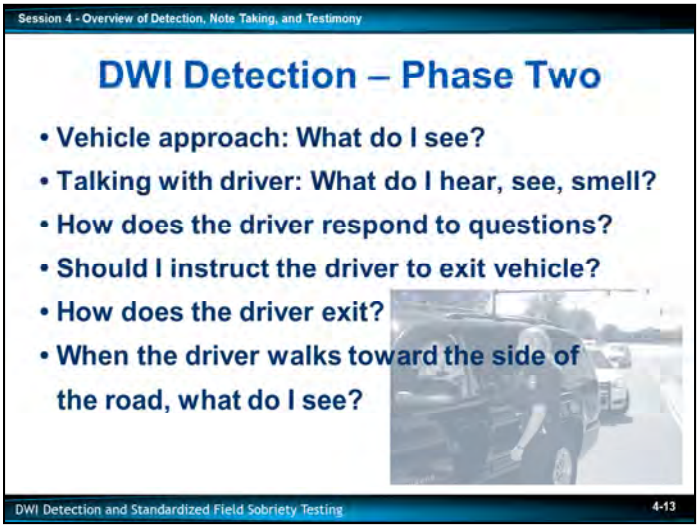
In each phase of detection, you must determine whether there is sufficient evidence to establish the "reasonable suspicion" necessary to proceed to the next step in the detection process. It is always your duty to carry out whatever tasks are appropriate and to make sure ALL relevant evidence of DWI is gathered.



DWI Detection – Phase One

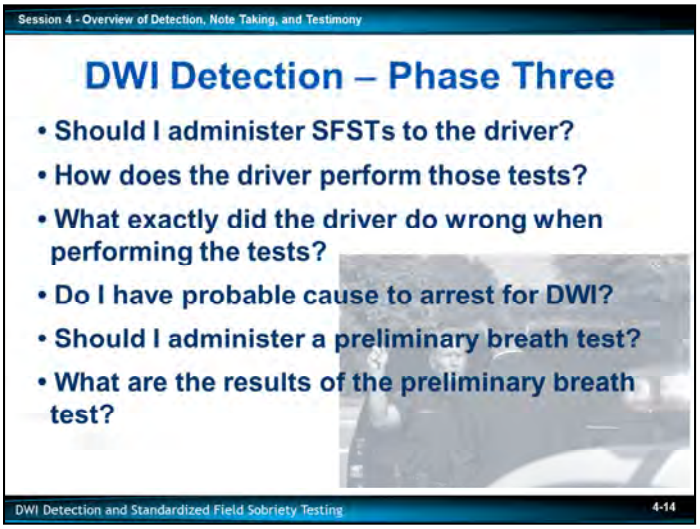
Answers to questions like these can aid you in DWI detection.

Phase One:
- What is the vehicle doing?
- Do I have grounds to stop the vehicle?
- How does the driver respond to my signal to stop?
- How does the driver handle the vehicle during the stopping sequence?



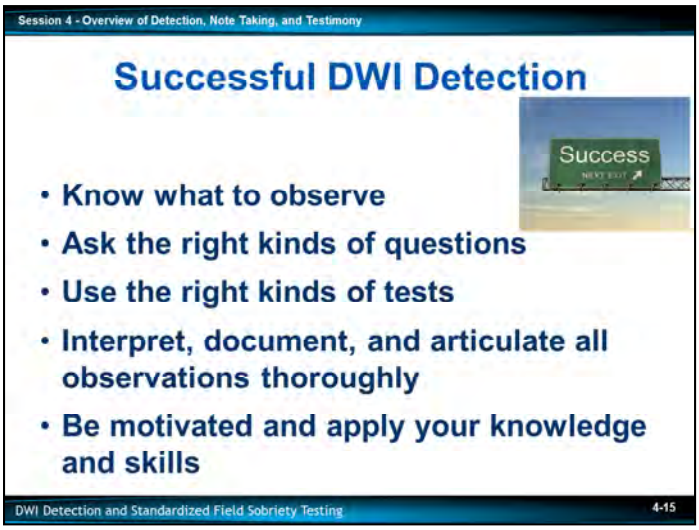
Phase Two:

- When I approach the vehicle, what do I see?
- When I talk with the driver, what do I hear, see, and smell?
- How does the driver respond to my questions?
- Should I instruct the driver to exit the vehicle?
- How does the driver exit?
- When the driver walks toward the side of the road, what do I see?



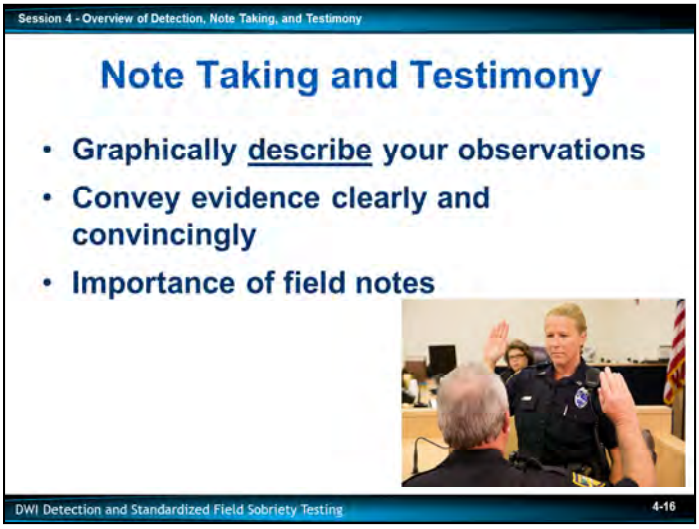
Phase Three:

- Should I administer SFSTs to the driver?
- How does the driver perform those tests?
- What exactly did the driver do wrong when performing the tests?
- Do I have probable cause to arrest for DWI?
- Should I administer a preliminary breath test?
- What are the results of the preliminary breath test?



The most successful DWI detectors are those officers who:

- Know what to observe
- Ask the right kinds of questions
- Use the right kinds of tests
- Interpret, document, and articulate all observations thoroughly
- Be motivated and apply your knowledge and skills

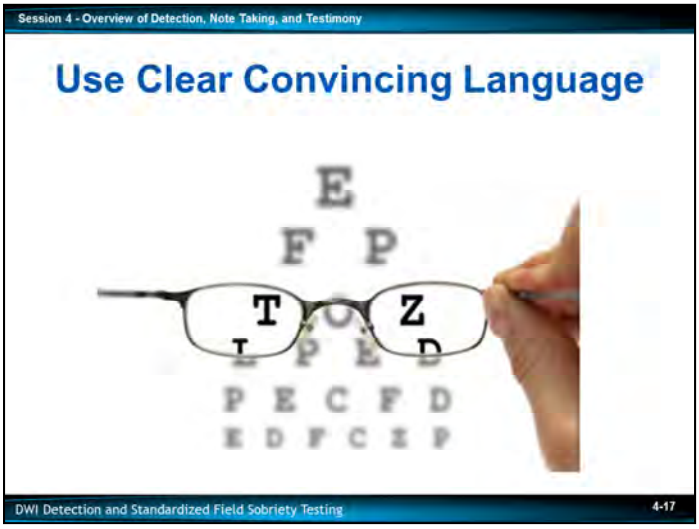


Note Taking and Testimony

A basic skill needed for DWI enforcement is the ability to graphically describe your observations. Just as detection is the process of collecting evidence, description largely is the process of conveying or articulating evidence.

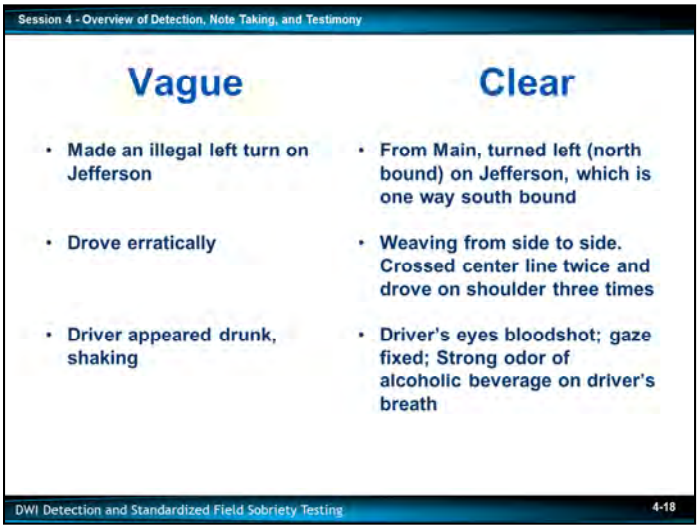
Successful description demands the ability to convey evidence clearly and convincingly. Your challenge is to communicate evidence to people who weren't there to see, hear, and smell the evidence themselves. Your tools are the words that make up your written report and verbal testimony. You must communicate 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 who select the most appropriate terminology for both written reports and courtroom testimony will be better able to communicate clearly and convincingly, making DWI prosecution more successful.



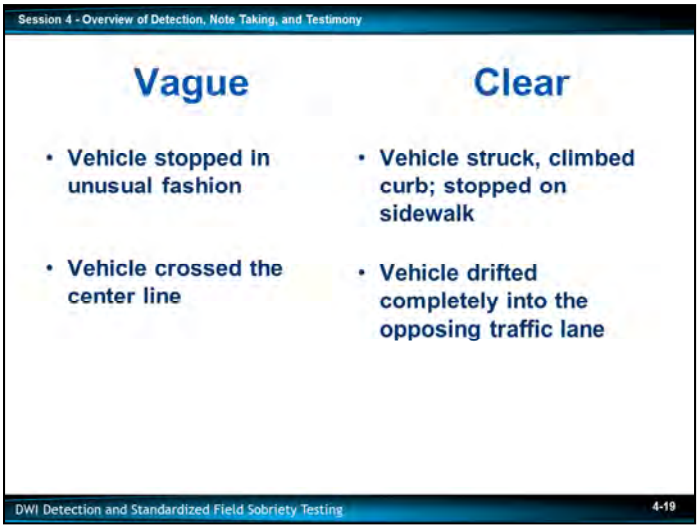
Use Clear and Convincing Language

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 DWI incident reports is the use of vague language to describe conditions, events, and statements. When vague language is used, reports provide an inaccurate picture of what happened. Clear and complete field notes help in preparation for your testimony.



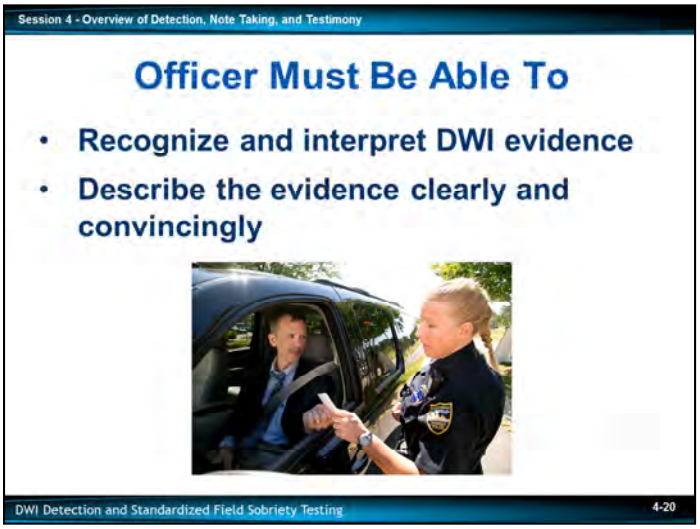
Consider the following examples.

Vague Language	Clear Language
• Made an illegal left turn on Jefferson	• From Main, turned left (north bound) on Jefferson, which is one way south bound
• Drove erratically	• Weaving from side to side. Crossed center line twice and drove on shoulder three times
• Driver appeared drunk, shaking	• Driver's eyes bloodshot; gaze fixed; Strong odor of alcoholic beverage on driver's breath



Consider the following examples.

Vague Language	Clear Language
• Vehicle stopped in unusual fashion	• Vehicle struck, climbed curb; stopped on sidewalk
• Vehicle crossed the center line	• Vehicle drifted completely into the opposing traffic lane



B. <u>DWI Investigation Field Notes</u>

One of the most critical tasks in the DWI enforcement process is the recognition and documentation of facts and clues that establish legal grounds to stop, investigate, and subsequently arrest persons suspected of DWI. The evidence gathered during the detection process must establish the elements of the violation and must be completely documented to support successful prosecution of the defendant. 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 completely document your observations and describe them clearly and convincingly to secure a conviction. You may be inundated with evidence of DWI, i.e., sights, sounds, 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 DWI violation is short-lived, you need a system and tools for recording field notes at scenes of DWI investigations.

_____

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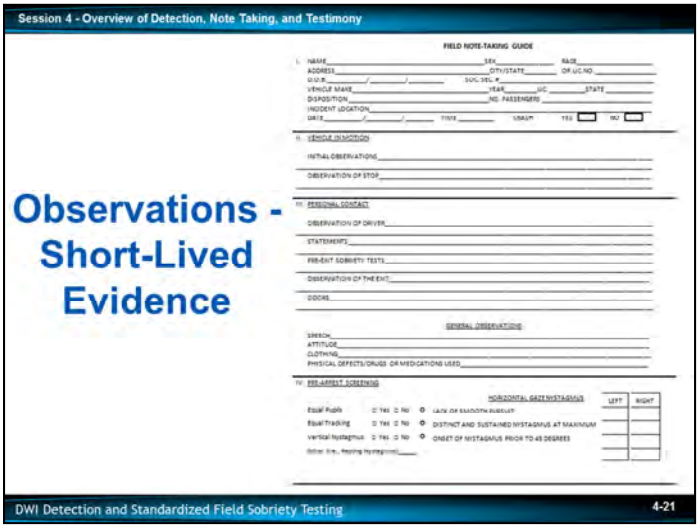
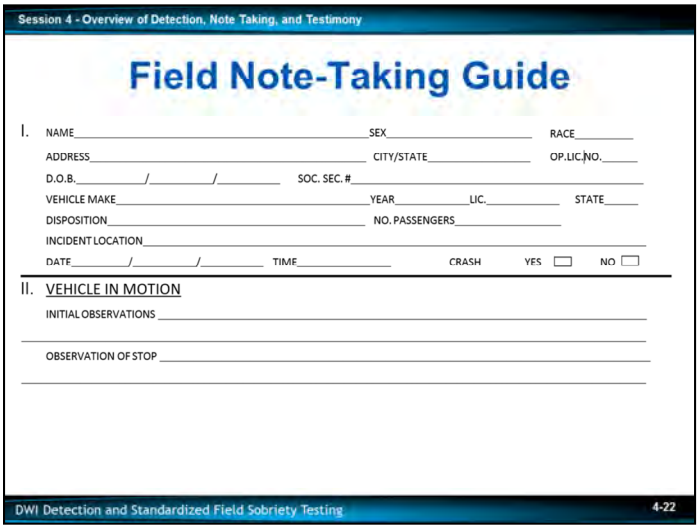


One way to improve the effectiveness of your handwritten field notes is to use a structured note taking guide. The guide makes it easy to record brief "notes" on each step of the detection process and ensures vital evidence is documented.

The field notes provide the information necessary to complete required DWI 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.

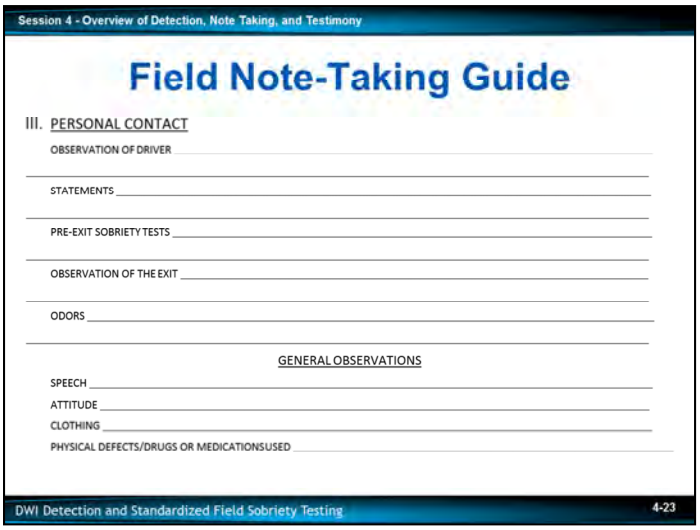
A model note taking guide is provided for your use. A brief description follows. Details are provided in subsequent units.

Note-Taking Guide
Remember you must document those actions which gave you reasonable suspicion or probable cause to justify further investigation of a suspected DWI incident.



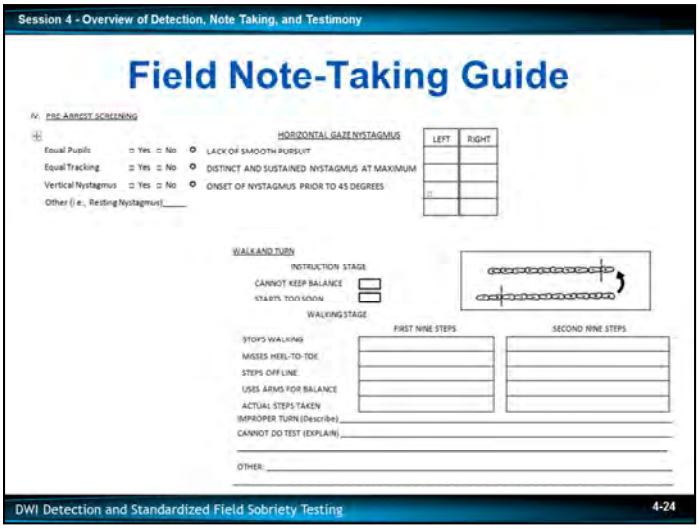
- Section I provides space to record basic information describing the subject, vehicle, location, and date and time the incident occurred.

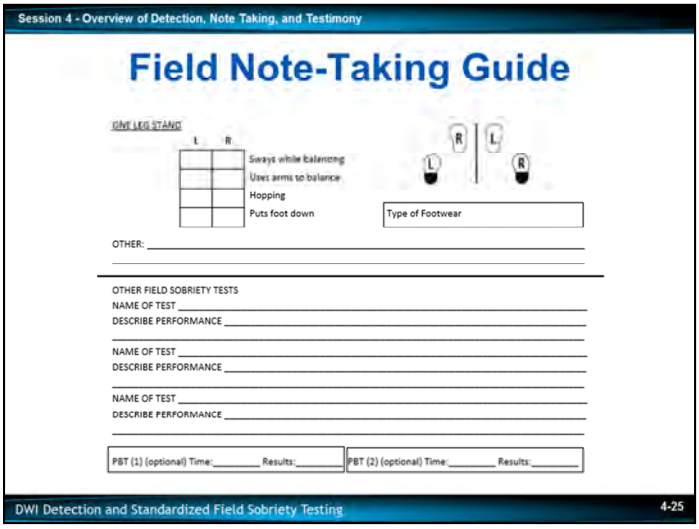
- Section II provides space to record brief descriptions of the vehicle in motion (Detection Phase One), including initial observation of the vehicle in operation and observation of the stopping sequence.



- Section III provides space to record brief descriptions of the personal contact with the subject (Detection Phase Two) including observations of the driver.

General Observations provides space to record the subject's manner of speech, attitude, clothing, etc. Any physical evidence collected should also be noted in this section.


Session 4 - Overview of Detection, Note Taking, and Testimony
Field Note-Taking Guide
IV. PRE ARREST SCREENING
Equal Pupils ☐ Yes ☐ No
Equal Tracking ☐ Yes ☐ No
Vertical Nystagmus ☐ Yes ☐ No
Other (i.e., Resting Nystagmus)_____
HORIZONTAL GAZE NYSTAGMUS
LACK OF SMOOTH PURSUIT
DISTINCT AND SUSTAINED NYSTAGMUS AT MAXIMUM
ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES
LEFT
RIGHT
WALK AND TURN
INSTRUCTION STAGE
CANNOT KEEP BALANCE
STARTS TOO SOON
WALKING STAGE
FIRST NINE STEPS
SECOND NINE STEPS
STOPS WALKING
MISSES HEEL-TO-TOE
STEPS OFF LINE
USES ARMS FOR BALANCE
ACTUAL STEPS TAKEN
IMPROPER TURN (Describe)_____
CANNOT DO TEST (EXPLAIN)_____
OTHER:_____
DWI Detection and Standardized Field Sobriety Testing
4-24

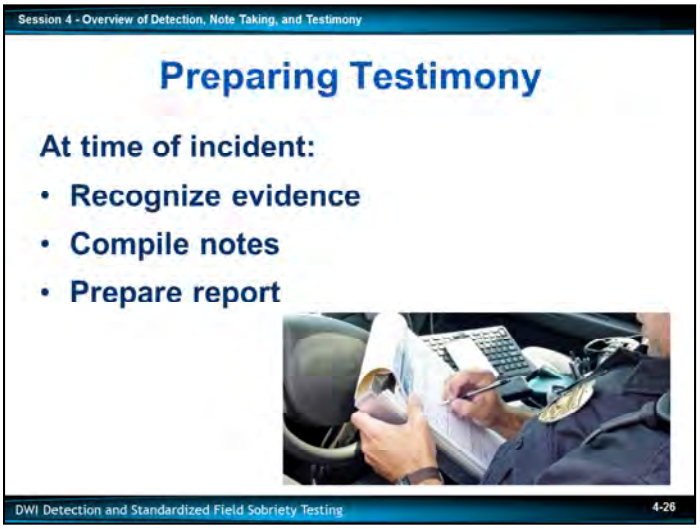


- Section IV provides space to record the results of all field sobriety tests administered and the results of the preliminary breath test (PBT) if such a test was given.

- Section V provides space to record the officer's general observations, such as the subject's manner of speech, attitude, clothing, etc. Any physical evidence collected should also be noted in this section.

Since this is a note-taking guide and space is limited, you will have to develop your own "shorthand" system. Your notes should be detailed and descriptive of the facts, circumstances, or events being described. These notes may be used to refresh your memory and to write the narrative report documenting your observations to testify in court.

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

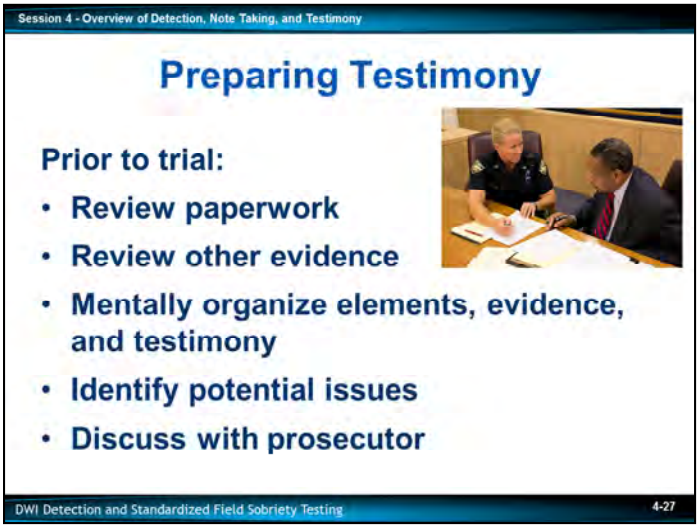


C. <u>Courtroom Testimony</u>

Testimonial evidence in DWI cases establishes the defendant was, in fact, the driver and was under the influence. Your testimony should be clear, detailed, and concise. Preparation for trial is done both at the scene and prior to trial.

To be effective, testimonial evidence must be clear and convincing. The first requirement for effective testimony is <u>preparation</u>. Testimony preparation begins at the time of the DWI incident. From the very beginning of the DWI contact, it is your responsibility to:

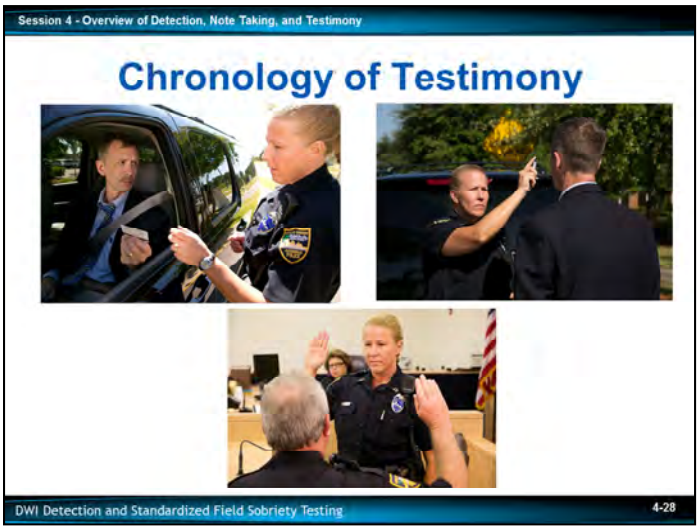
- Recognize significant evidence
- Compile complete, accurate field notes
- Prepare a complete, accurate, detailed report



Testimony preparation continues prior to trial. Just before the trial, you should:

- Review field notes, incident report, narrative, and other paperwork
- Review other evidence, i.e., video, photographs, etc.
- Mentally organize elements of offense and the evidence available to prove each element
- Mentally organize testimony to convey observations clearly and convincingly
- Identify weak spots and/or potential issues with the case and decide how to address those issues
- Discuss the case with the prosecutor

The foundation for preparation and successful testimony is the relationship between the law enforcement officer(s) involved with the arrest and the prosecuting attorney(s) associated with the case. Effective communication and a clear understanding of each groups' objectives and expectations is essential for successful prosecution.



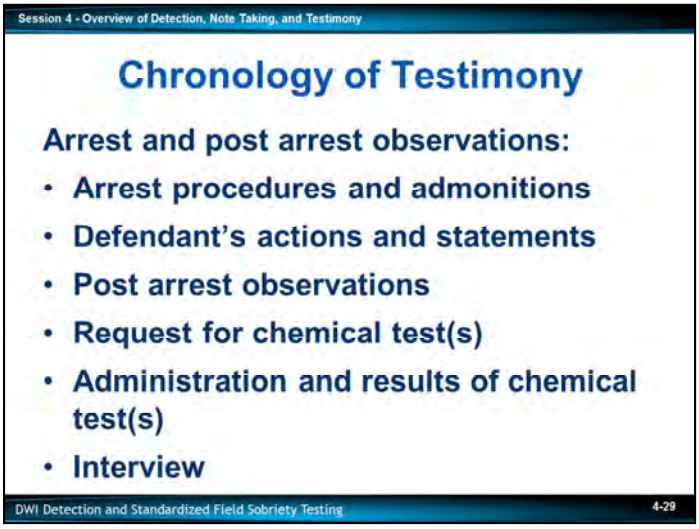
Chronology of Testimony
In court, your testimony should be organized chronologically and should cover each phase of the DWI incident:

Phase One: Vehicle in Motion – initial observation of vehicle, the driver, or both including what first attracted your attention to the vehicle/driver and details about the driving before you initiated the traffic stop.

Reinforcing cues, maneuvers, or actions observed after signaling the driver to stop but before driver's vehicle came to a complete stop.

Phase Two: Personal Contact – face to face observations including personal appearance, statements, and other evidence obtained during your initial contact with driver.

Phase Three: Pre-arrest Screening – sobriety tests administered to the driver and the results of any preliminary breath tests (if applicable).



Arrest and Post Arrest Observations

- The arrest itself including procedures used to inform driver of arrest, admonish subject of rights, and so on
- Defendant's actions, statements, and/or admissions subsequent to the arrest
- Observation of defendant subsequent to the arrest including not just what the defendant said but actions and reactions
- The request for the chemical test including the procedures used, admonition of rights and requirements, and so on
- The conduct, actions, reactions, and results of the chemical test if you were also the testing officer
- The interview of the defendant, including any new observations, statements, and/or admissions.

_____

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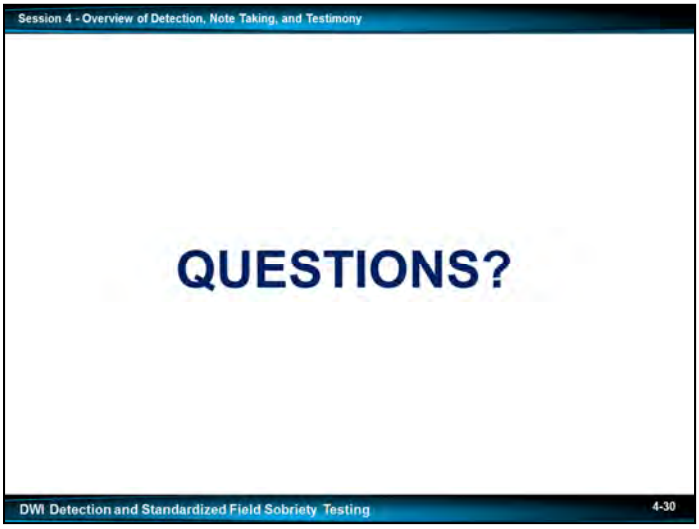
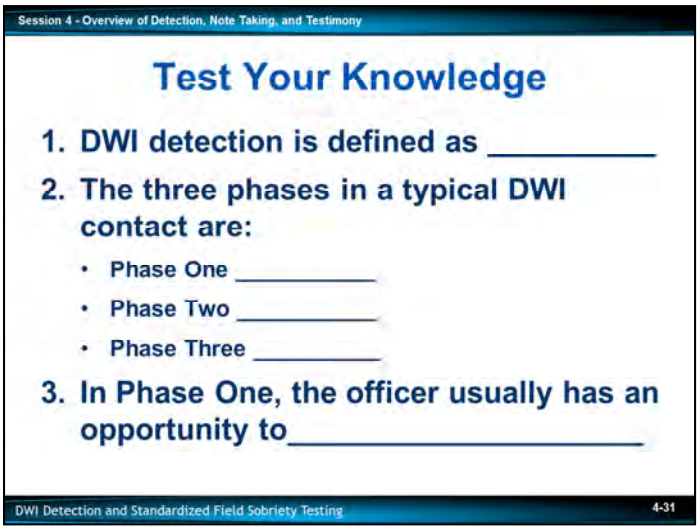

Session 4 - Overview of Detection, Note Taking, and Testimony
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
4-30

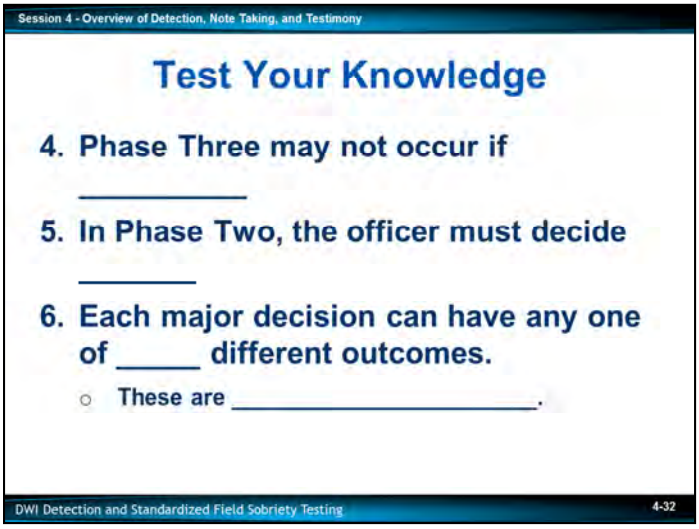


Test Your Knowledge

1. DWI detection is defined as _____

2. The three phases in a typical DWI contact are:
   A. Phase One _____
   B. Phase Two _____
   C. Phase Three _____

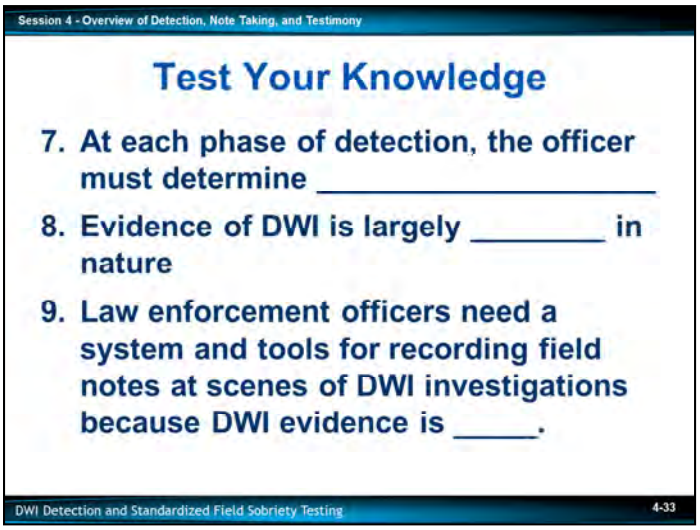
3. In Phase One, the officer usually has an opportunity to _____



4. Phase Three may not occur if _____

5. In Phase Two, the officer must decide _____

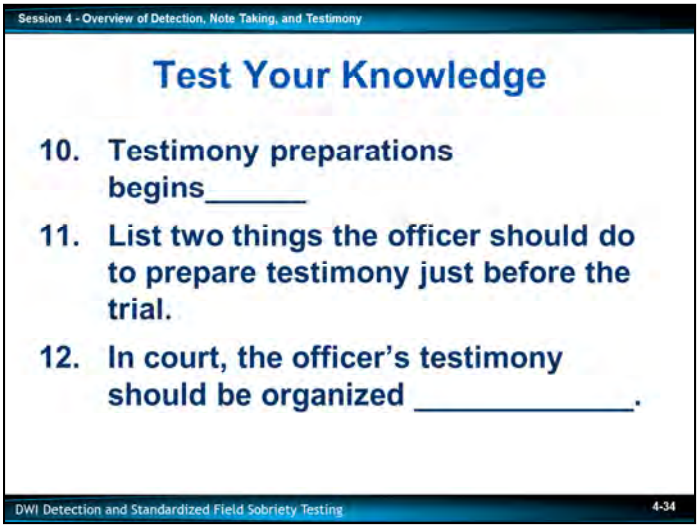
6. Each major decision can have any one of ***3*** different outcomes. These are: _____



7. At each phase of detection, the officer must determine _____

8. Evidence of DWI is largely _____ in nature.

9. Law enforcement officers need a system and tools for recording field notes at scenes of DWI investigations because DWI evidence is _____



10. Testimony preparations begins _____

11. List two things the officer should do to prepare testimony just before the trial.

12. In court, the officer's testimony should be organized _____

FIELD NOTE-TAKING GUIDE

I. NAME_____SEX_____RACE_____
ADDRESS_____CITY/STATE____ OP.LIC.NO._____
D.O.B._____/_____/_____SOC. SEC. #_____
VEHICLE MAKE_____YEAR_____LIC. _____STATE _____
DISPOSITION_____NO. PASSENGERS _____
INCIDENT LOCATION_____
DATE_____/_____/_____ TIME _____CRASH YES ☐ NO ☐

II. VEHICLE IN MOTION

INITIAL OBSERVATIONS_____
_____
OBSERVATION OF STOP_____
_____

III. PERSONAL CONTACT

OBSERVATION OF DRIVER_____
_____
STATEMENTS_____
_____
PRE-EXIT SOBRIETY TESTS_____
_____
OBSERVATION OF THE EXIT_____
_____
ODORS_____
_____

GENERAL OBSERVATIONS

SPEECH_____
ATTITUDE_____
CLOTHING_____
PHYSICAL DEFECTS/DRUGS OR MEDICATIONS USED_____

IV. PRE-ARREST SCREENING

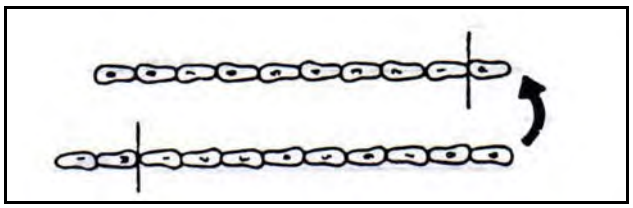
Equal Pupils □ Yes □ No
Equal Tracking □ Yes □ No
Vertical Nystagmus □ Yes □ No
Other (i.e., Resting Nystagmus)_____

HORIZONTAL GAZE NYSTAGMUS

✪ LACK OF SMOOTH PURSUIT
✪ DISTINCT AND SUSTAINED NYSTAGMUS AT MAX DEV
✪ ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES

	LEFT	RIGHT

WALK AND TURN



INSTRUCTION STAGE

CANNOT KEEP BALANCE ☐

STARTS TOO SOON ☐

WALKING STAGE

	FIRST NINE STEPS	SECOND NINE STEPS
STOPS WALKING		
MISSES HEEL-TO-TOE		
STEPS OFF LINE		
USES ARMS FOR BALANCE		
ACTUAL STEPS TAKEN		

IMPROPER TURN (Describe) _____

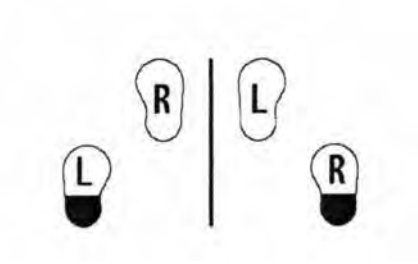
CANNOT DO TEST (EXPLAIN) _____

_____

OTHER: _____

_____

ONE LEG STAND



L	R	
		Sways while balancing
		Uses arms to balance
		Hopping
		Puts foot down

Type of Footwear

OTHER: _____

_____

OTHER FIELD SOBRIETY TESTS

NAME OF TEST _____

DESCRIBE PERFORMANCE _____

_____

NAME OF TEST _____

DESCRIBE PERFORMANCE _____

_____

NAME OF TEST _____

DESCRIBE PERFORMANCE _____

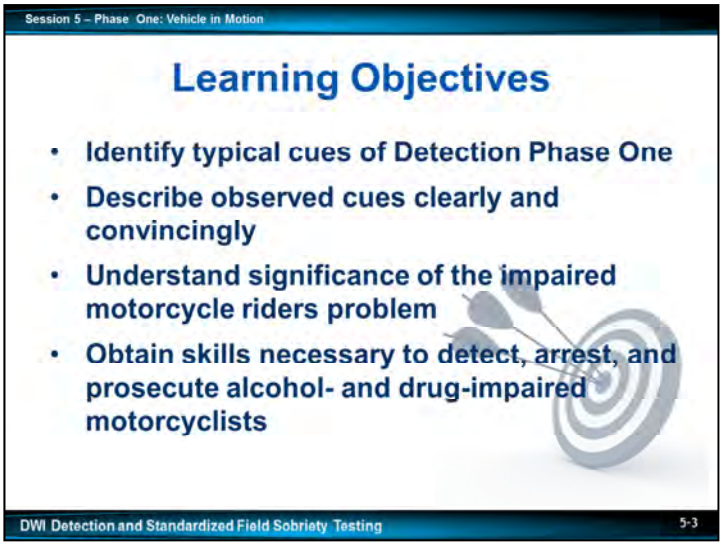
_____

PBT (1) (optional) Time:_____ Results:_____

PBT (2) (optional) Time:_____ Results:_____


DWI Detection and Standardized Field Sobriety Testing
Session 5 – Phase One: Vehicle in Motion
NHTSA
TSI
February 2018


Session 5 – Phase One: Vehicle in Motion
1 Hour 30 Minutes
Session 5
Phase One:
Vehicle in Motion
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
5-2



At the conclusion of this session, participants will be able to:

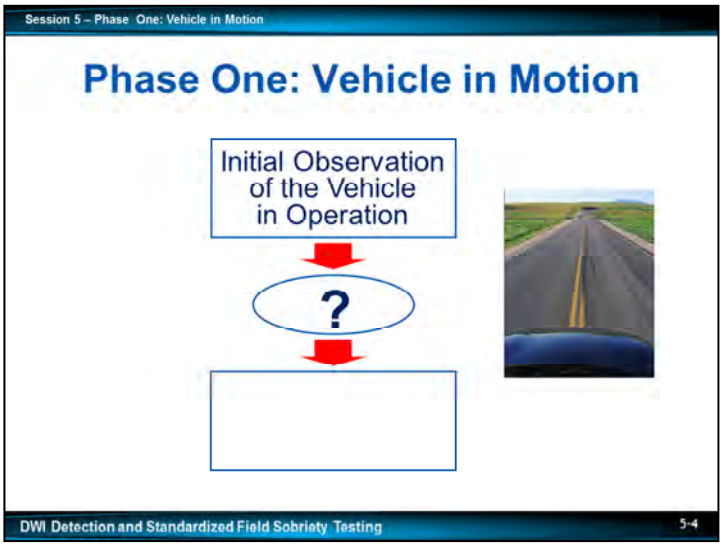
- Identify typical cues of Detection Phase One
- Describe the observed cues clearly and convincingly
- Understand the significance of the problem of impaired motorcycle riders
- Obtain the skills necessary to detect, arrest, and prosecute alcohol- and drug-impaired motorcyclists

CONTENT SEGMENTS

A. Overview: Tasks and Decision
B. Initial Observations: Visual Cues of Impaired Operation (Automobiles)
C. Initial Observations: Visual Cues of Impaired Operation (Motorcycles)
D. Recognition and Description of Initial Cues
E. Typical Reinforcing Cues of the Stopping Sequence
F. Recognition and Description of Initial and Reinforcing Cues

LEARNING ACTIVITIES

Instructor-Led Presentations
Video Presentation
Instructor-Led Demonstrations
Participant Presentations



A. <u>Overview: Tasks and Decision</u>

Your first task in <u>Phase One: Vehicle in Motion</u> is to observe the vehicle in operation and to note any initial cues of a possible DWI violation. At this point you must decide whether there is reasonable suspicion to stop the vehicle; either to conduct further investigation to determine if the driver may be impaired or for another traffic violation. You are not committed to arresting the driver for DWI based on this initial observation, but rather 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 driver responds to your signal to stop and to note any additional evidence of a DWI violation.

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

- A moving traffic violation
- An equipment violation
- An expired registration or inspection sticker
- Unusual driving actions such as weaving within a lane or moving at a slower than normal speed
- Evidence of drinking or drugs in vehicle

If this initial observation discloses vehicle maneuvers or human behaviors that may be associated with impairment, you may develop an initial suspicion of DWI.
Based upon this initial observation of the vehicle in motion, you must decide whether there is reasonable suspicion to stop the vehicle. At this point you have three choices:

- Stop the vehicle
- Continue to observe the vehicle
- Disregard the vehicle

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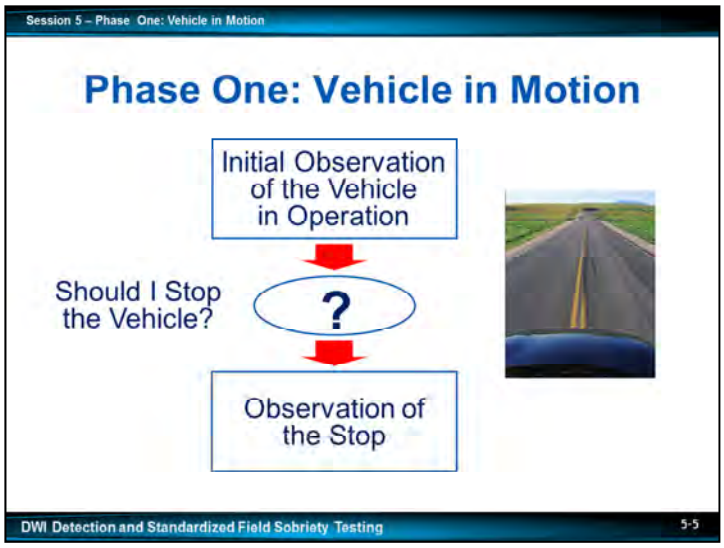


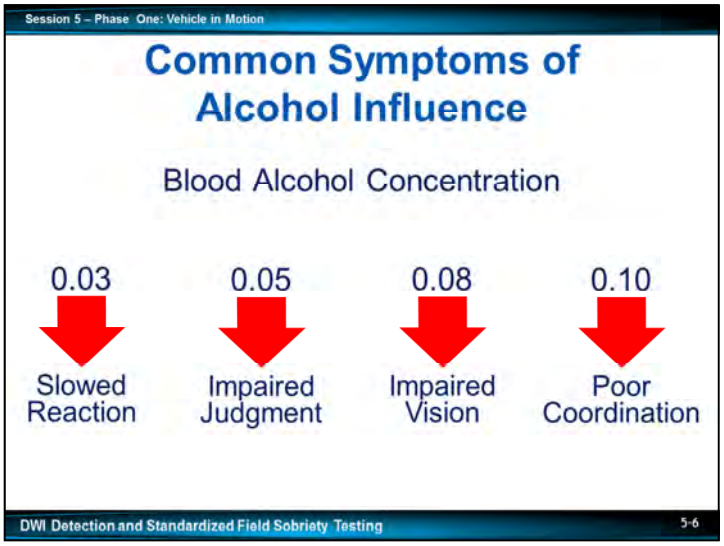
Alternatives to stopping the vehicle include:

- Delaying the stop/no stop decision in order to continue observing the vehicle
- Disregarding the vehicle

Whenever there is a valid reason to stop a vehicle, the officer should be alert to the possibility the driver may be impaired by alcohol and/or other drugs.

Once the stop command has been communicated to the suspect driver, the officer must closely observe the driver's actions and vehicle maneuvers during the stopping sequence.

Sometimes significant evidence of alcohol influence comes to light during the stopping sequence. In some cases, the stopping sequence might produce the first suspicion of DWI. Drivers impaired by alcohol and/or other drugs may respond in unexpected and dangerous ways to the stop command.



B. <u>Initial Observations: Visual Cues of Impaired Operation (Automobiles)</u>

Drivers 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
- Poor coordination

The next page presents common symptoms of alcohol influence.

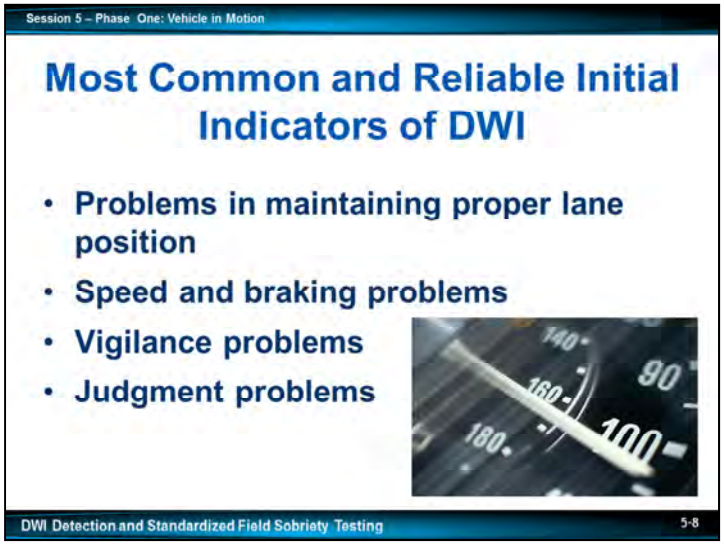
This unit focuses on alcohol impairment because research currently provides more information about the effects of alcohol on driving than it does about the effects of other drugs on driving. Remember whether the driver is impaired by alcohol and/or drugs, the law enforcement detection process is the same and the offense is still DWI.



The common effects of alcohol on the driver's mental and physical faculties lead to predictable driving violations and vehicle operating characteristics. The National Highway Traffic Safety Administration (NHTSA) sponsored research to identify the most common and reliable initial indicators of DWI. This research identified 24 cues, each with an associated high probability the driver exhibiting the cue is *impaired*. These cues and their associated probabilities are described in the NHTSA publication, The Visual Detection of DWI Motorists. They also are discussed in Vehicle in Motion, a video sponsored by NHTSA to assist law enforcement officers to recognize DWI detection cues.

NHTSA sponsored research to identify the most common and reliable initial indicators of DWI. Research identified 100 cues, each providing a high probability indication the driver is *under the influence*.

The list was reduced to 24 cues during three field studies involving hundreds of officers and more than 12,000 enforcement stops.



The driving behaviors are presented in four categories:

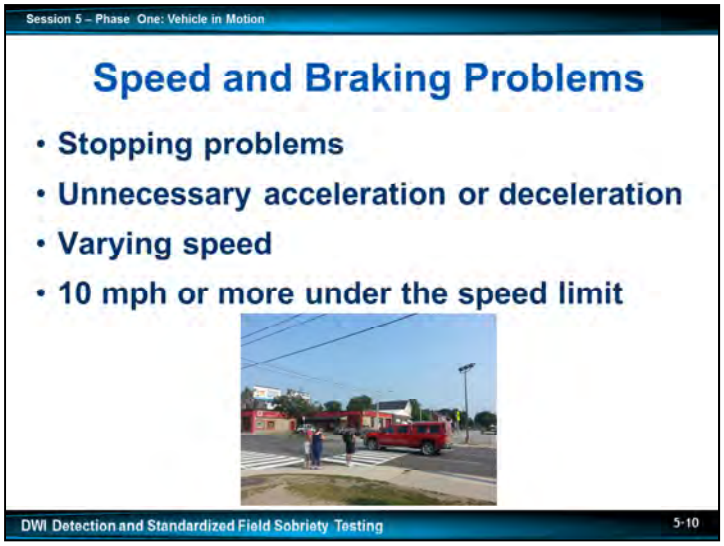
- Problems in maintaining proper lane position
- Speed and braking problems
- Vigilance problems
- Judgment problems



There is a brochure published by NHTSA that contains these cues. The title is "The Visual Detection of DWI Motorists" DOT HS 808 677. See Attachment at the end of this session.

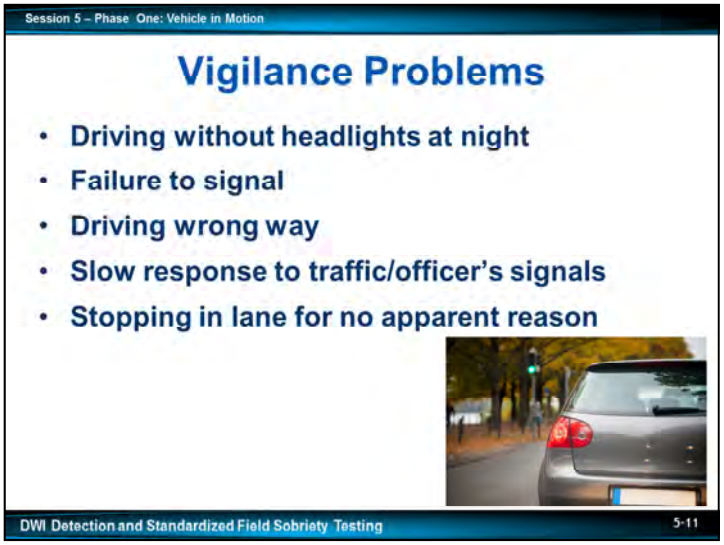
The first category is Problems in maintaining proper lane position. [p=.50-.75]

- Weaving
- Weaving across lane lines (lane departure)
- Drifting
- Straddling a lane line
- Swerving
- Almost striking object or vehicle
- Turning with a wide radius



Speed and braking problems. [p=.45-.70]

- Stopping problems (too far, too short, or too jerky)
- Unnecessary acceleration or deceleration
- Varying speed
- 10 mph or more under the speed limit



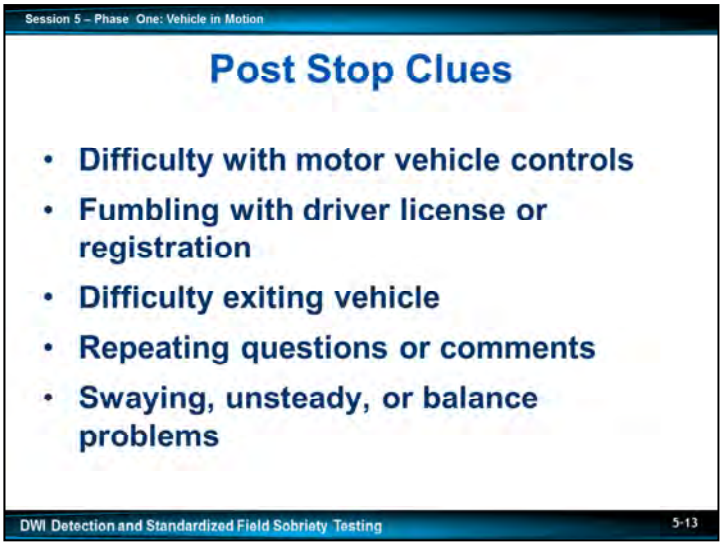
The third problem is vigilance problems. [P=.55-.65] This category includes, but is not limited to:

- Driving without headlights at night
- Failure to signal or signal inconsistent with action
- Driving in opposing lanes or wrong way on one way
- Slow response to traffic signals
- Slow or failure to respond to officer's signals
- Stopping in lane for no apparent reason



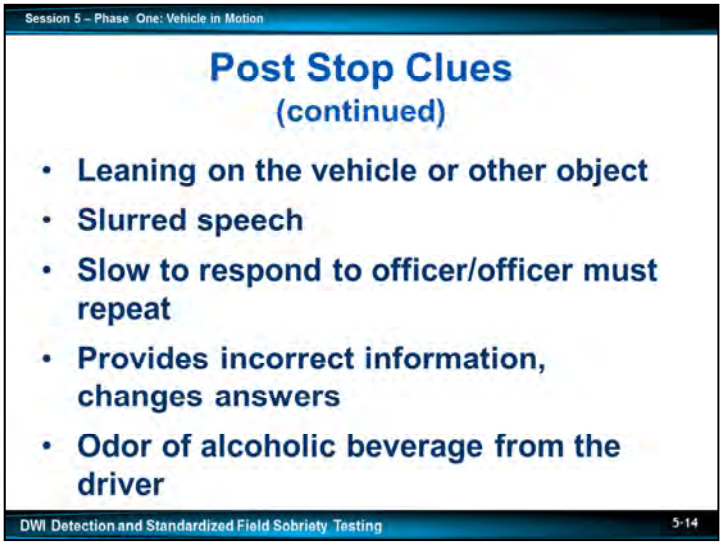
Judgment problems. [P=.35-.90]

- Following too closely (tailgating)
- Improper or unsafe lane change
- Illegal or improper turn
- Driving on other than designated roadway
- Stopping inappropriately in response to officer
- Inappropriate or unusual behavior (throwing objects, arguing, etc.)
- Appearing to be impaired

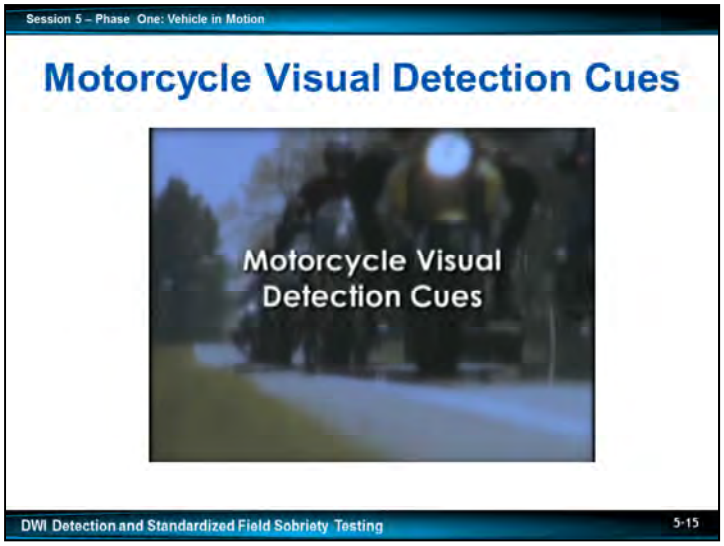


The research also identified 10 post stop clues. [P > .85]

- Difficulty with motor vehicle controls
- Fumbling with driver license or registration
- Difficulty exiting the vehicle
- Repeating questions or comments
- Swaying, unsteady, or balance problems



- Leaning on the vehicle or other object
- Slurred speech
- Slow to respond to officer/officer must repeat
- Provides incorrect information, changes answers
- Odor of alcoholic beverage from the driver

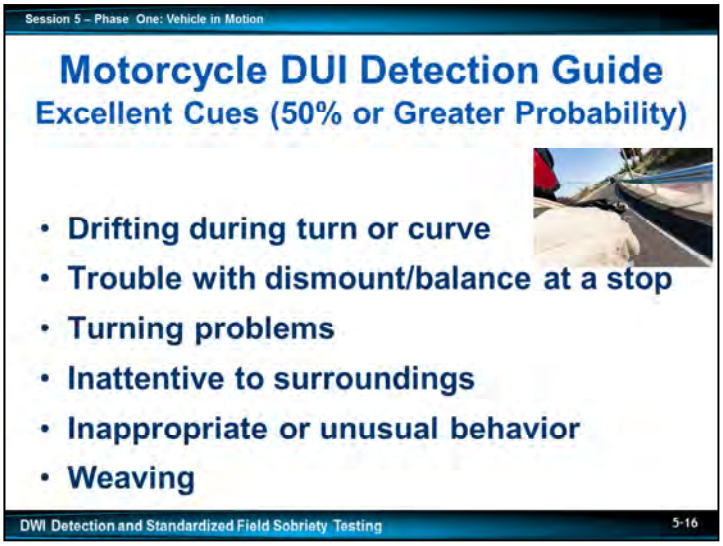


C. <u>Initial Observations: Visual Cues of Impaired Operation (Motorcycles)</u>
Show video. Allow 14 minutes.

NHTSA estimated in 2014, 30 percent of all motorcycle riders killed were impaired by alcohol (BAC .08 or greater).

NHTSA sponsored research to develop a set of behavioral cues to be used by law enforcement personnel to detect motorcyclists who are operating their vehicles while impaired. These cues can be used both day and night. These cues have been labeled as:

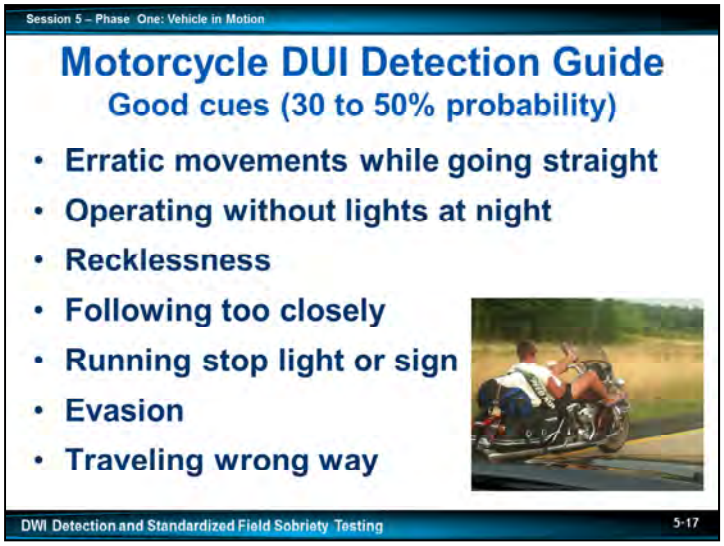
- Excellent Predictors
- Good Predictors



Research has identified driving impairment cues for motorcyclists. See Attachment at the end of this session.

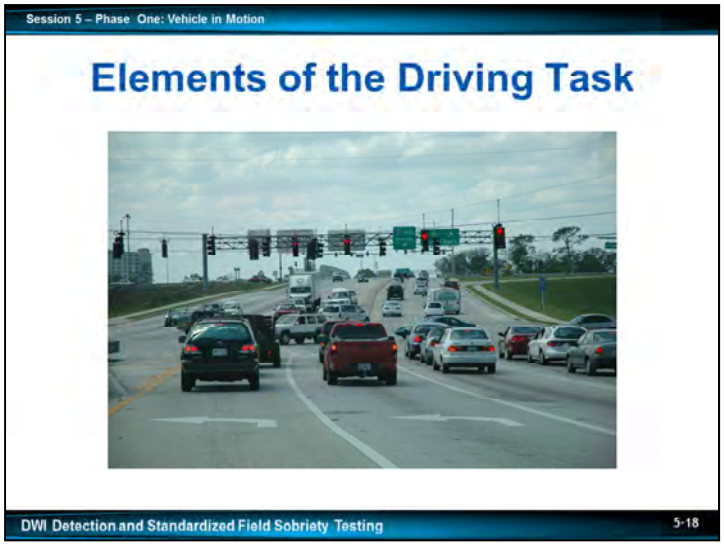
Excellent cues (50% or greater probability).

- Drifting during turn or curve
- Trouble with dismount
- Trouble with balance at a stop
- Turning problems (e.g., unsteady, sudden corrections, late braking, improper lean angle)
- Inattentive to surroundings
- Inappropriate or unusual behavior (e.g., carrying or dropping object, urinating at roadside, disorderly conduct, etc.)
- Weaving



Good Cues (30 to 50% probability)

- Erratic movements while going straight
- Operating without lights at night
- Recklessness
- Following too closely
- Running stop light or sign
- Evasion
- Traveling wrong way



Relationship of Visual Cues to Impaired Divided Attention Capability

Driving is a complex task, composed of many parts:

- Steering
- Controlling accelerator
- Signaling
- Controlling brake pedal
- Operating clutch (if applicable)
- Operating gearshift (if applicable)
- Observing other traffic
- Observing signal lights, stop signs, other traffic control devices
- Making decisions (whether to stop, turn, speed up, slow down, etc.)
- Many other things



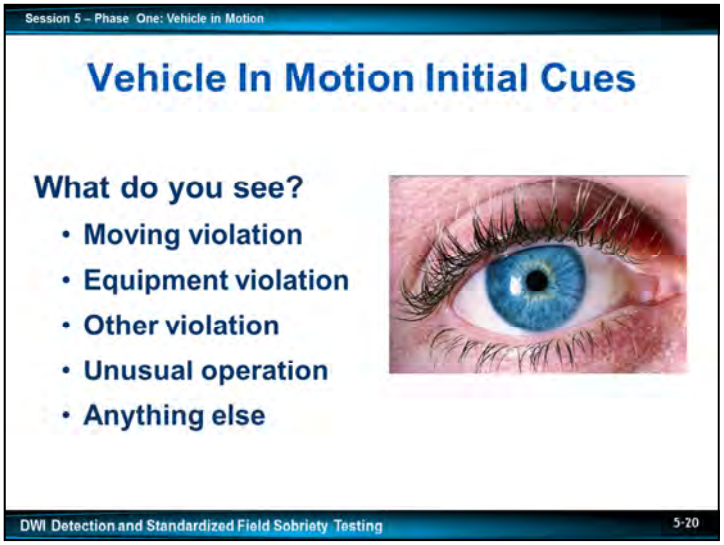
In order to drive safely, a driver must be able to divide attention among all of these various activities.

Under the influence of alcohol or many drugs, a person's ability to divide attention becomes impaired.

The impaired driver tends to concentrate on certain parts of driving and to disregard other parts.

- Alcohol has impaired ability to divide attention
- Driver is concentrating on steering and controlling the accelerator and brake
- Does not respond to the particular color of the traffic light

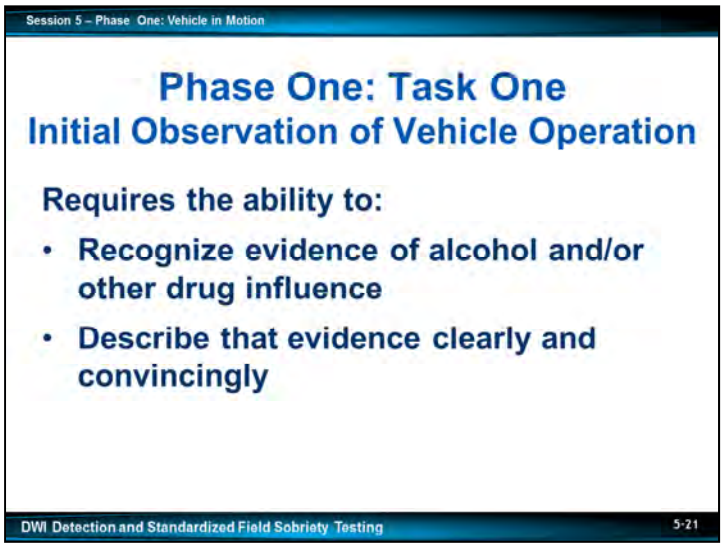
Some of the most significant evidence from all three phases of DWI detection can be related directly to the effects of alcohol and/or other drugs on divided attention ability.



D. <u>Recognition and Description of Initial Cues</u>

What do you see?

- Moving violation
- Equipment violation
- Other violation
- Unusual operation
- Anything else

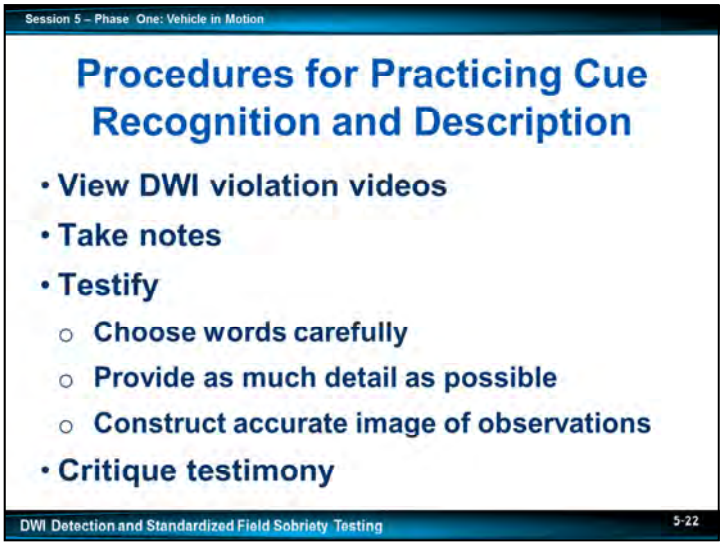


Phase One: Task One Initial Observation of Vehicle Operation
The task of making initial observations of vehicle operation is the first step in the job of DWI detection.

Proper performance of that task demands two distinct but related abilities:
- Ability to recognize evidence of alcohol and/or other drug influence
- Ability to describe that evidence clearly and convincingly

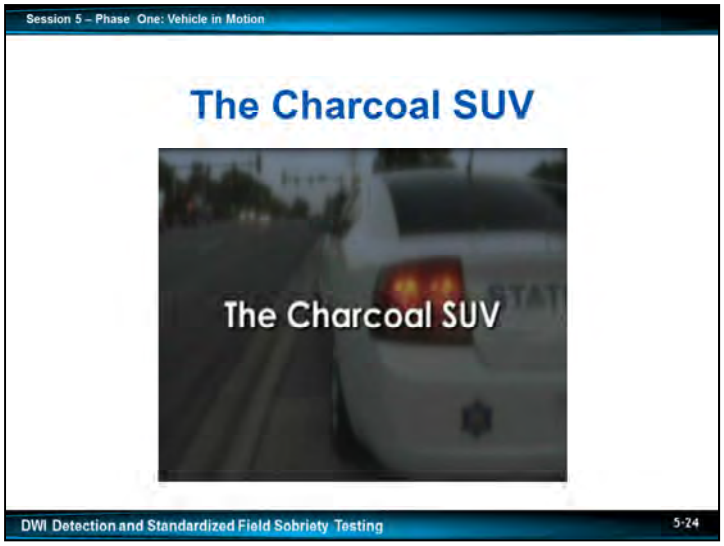
It is not enough a police officer observe and recognize symptoms of impaired driving. The officer must be able to articulate what was observed so a judge or jury will have a clear mental image of exactly what took place.

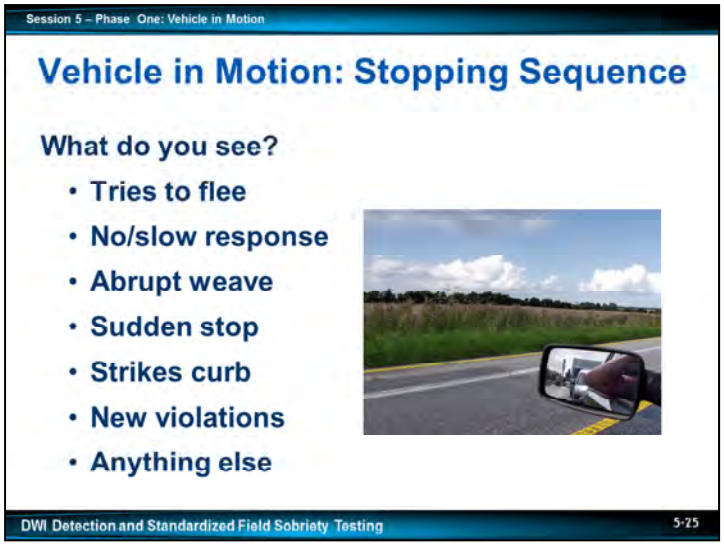
Improving the ability to recognize and clearly describe observational evidence requires practice. It isn't practical to have impaired drivers actually drive through the classroom. The next best thing is to use video to portray typical DWI detection contacts.



Procedures for Practicing Cue Recognition and Description


Session 5 – Phase One: Vehicle in Motion
Leaving the Shopping Center
Leaving the Shopping Center
DWI Detection and Standardized Field Sobriety Testing
5-23


Session 5 – Phase One: Vehicle in Motion
The Charcoal SUV
The Charcoal SUV
DWI Detection and Standardized Field Sobriety Testing
5-24



E. <u>Typical Reinforcing Cues of the Stopping Sequence</u>

After the command to stop is given, the alcohol-impaired driver may exhibit additional important evidence of DWI.

Some of these cues are exhibited because the stop command places additional demands on the driver's ability to divide attention.

The signal to stop creates a new situation to which the driver must devote some attention, i.e., emergency flashing lights, siren, etc., that demand and divert the subject's attention.
Signal to stop requires the driver to turn the steering wheel, operate the brake pedal, activate the signal light, etc.

As soon as an officer gives the stop command, the subject's driving task becomes more complex.

If subject is under the influence, the subject may not be able to handle this more complex driving very well.

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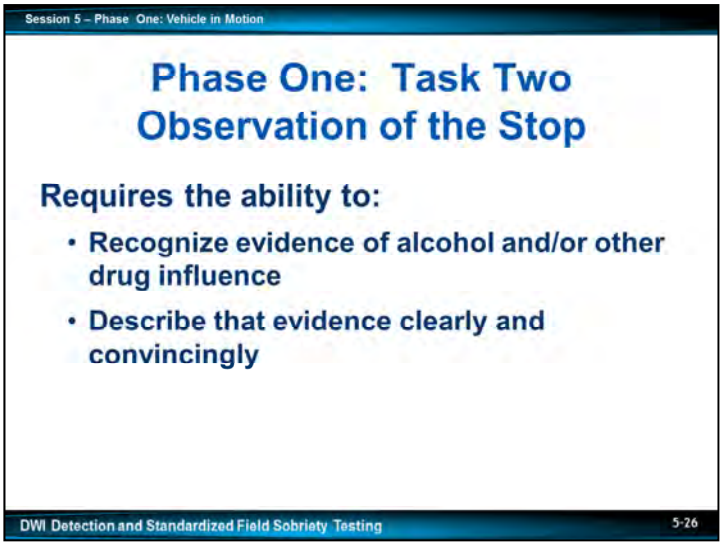


Phase One: Task Two Observation of the Stop
It is the officer's responsibility to capture and convey the additional evidence of impairment that may be exhibited during the stopping sequence.

- Requires ability to recognize evidence of alcohol and/or other drug influence
- Requires ability to describe that evidence clearly and convincingly

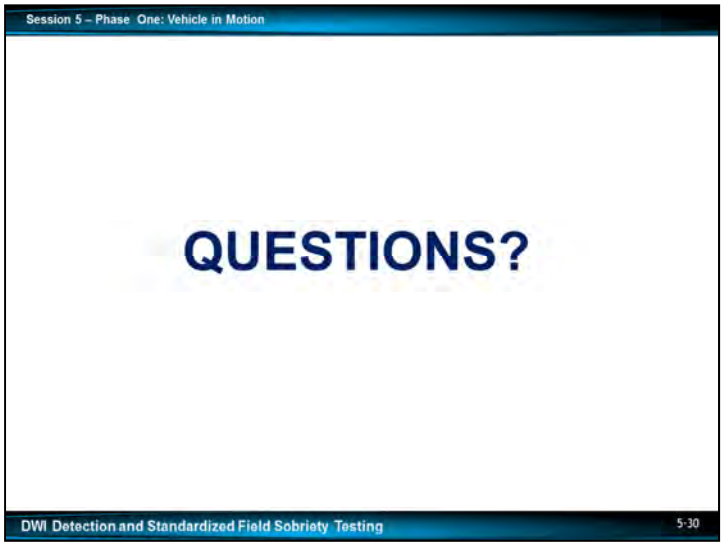
F. <u>Recognition and Description of Initial and Reinforcing Cues</u>

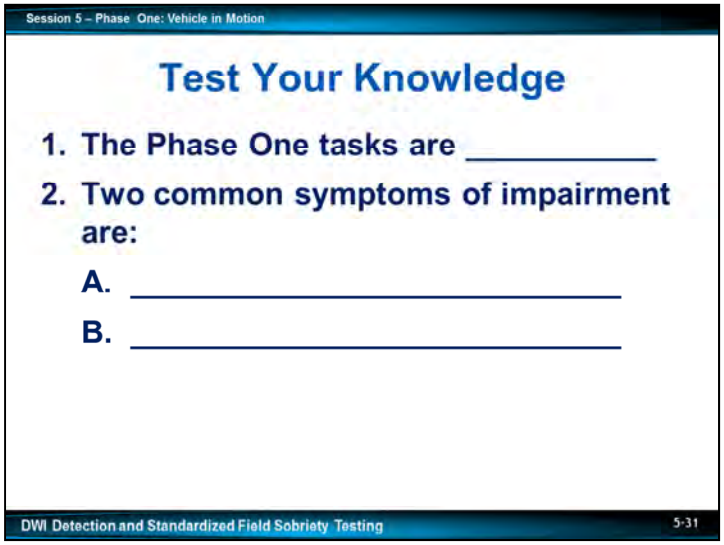
Procedures for practicing cue recognition and description.


Session 5 – Phase One: Vehicle in Motion
The Sliding Sports Car
The Sliding Sports Car
DWI Detection and Standardized Field Sobriety Testing
5-27


Session 5 – Phase One: Vehicle in Motion
The Impatient Driver
The Impatient Driver
DWI Detection and Standardized Field Sobriety Testing
5-28


Session 5 – Phase One: Vehicle in Motion
Half in the Bag
Half in the Bag
DWI Detection and Standardized Field Sobriety Testing
5-29

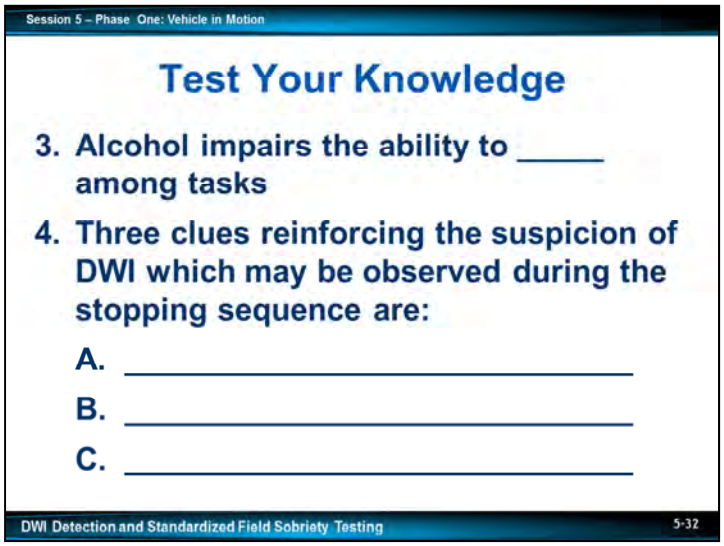

Session 5 – Phase One: Vehicle in Motion
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
5-30



Test Your Knowledge

1. The Phase One tasks are _____

2. Two common symptoms of impairment are: _____



3. Alcohol impairs the ability to _____ among tasks.

4. Three clues reinforcing the suspicion of DWI which may be observed during the stopping sequence are: _____

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The Visual
Detection of
DWI Motorists
DWI
STRICTLY
ENFORCED
Please
DRIVE SAFELY

The Visual Detection of DWI Motorists

U.S. Department of Transportation
National Highway Traffic Safety Administration

NHTSA
www.nhtsa.gov

DOT HS 808 677

INTRODUCTION

More than a million people have died in traffic crashes in the United States since 1966, the year of the National Traffic and Motor Vehicle Safety Act, which led to the creation of the National Highway Traffic Safety Administration (NHTSA).

During the late 1960's and early 1970's more than 50,000 people lost their lives each year on our nation's streets, roads and highways. Traffic safety has improved considerably since that time: the annual death toll has declined substantially, even though the numbers of drivers, vehicles, and miles driven all have increased. When miles traveled are considered, the likelihood of being killed in traffic during the 1960's was three to four times what it is today.

The proportion of all crashes in which alcohol is involved also has declined. The declines in crash risk and the numbers of alcohol-involved crashes are attributable to several factors, including the effectiveness of public information and education programs, traffic safety legislation, a general aging of the population, and law enforcement efforts.

NHTSA research contributed to the improved condition, in part, by providing law enforcement officers with useful and scientifically valid information concerning the behaviors that are most predictive of impairment. Continued enforcement of Driving While Intoxicated (DWI) laws will be a key to saving lives in the future. For this reason, NHTSA sponsored research leading to the development of a new DWI detection guide and training materials, including a new training video. Many things have changed since 1979, but like the original training materials, the new detection guide describes a set of behaviors that can be used by officers to detect motorists who are likely to be driving while impaired.

Building upon the previous NHTSA study, researchers interviewed officers from across the United States and developed a list of more than 100 driving cues that have been found to predict blood alcohol concentrations (BAC) of 0.08 percent or greater. The list was reduced to 24 cues during 3 field studies involving hundreds of officers and more than 12,000 enforcement stops. The driving behaviors identified by the officers are presented in the following four categories:

1) **Problems in maintaining proper lane position**
2) **Speed and braking problems**
3) **Vigilance problems**
4) **Judgment problems**

The cues presented in these categories predict that a driver is DWI at least 35 percent of the time. For example, if you observe a driver to be weaving or weaving across lane lines, the probability of DWI is more than .50 or 50 percent. However, if you observe either of the weaving cues and any other cue listed in this booklet, the probability of DWI jumps to at least .65 or 65 percent. Observing any two cues other than weaving indicates a probability of DWI of at least 50 percent. Some cues, such as swerving, accelerating for no reason, and driving on other than the designated roadway, have single-cue probabilities greater than 70 percent. Generally, the probability of DWI increases substantially when a driver exhibits more than one of the cues.

This booklet contains:

- **The DWI Detection Guide**
- **A summary of the research that led to the guide**
- **Explanations of the 24 driving cues**
- **A description of post-stop cues that are predictive of DWI**

The research suggests that these training materials will be helpful to officers in:

- **Detecting impaired motorists**
- **Articulating observed behaviors on arrest reports**
- **Supporting officers' expert testimony**

DWI DETECTION GUIDE

Weaving plus any other cue: p = at least .65
Any two cues: p = at least .50

Problems Maintaining Proper Lane Position **p = .50–.75**
- Weaving
- Weaving across lane lines
- Straddling a lane line
- Swerving
- Turning with a wide radius
- Drifting
- Almost striking a vehicle or other object

Speed and Braking Problems **p = .45–.70**
- Stopping problems (too far, too short, or too jerky)
- Accelerating or decelerating for no apparent reason
- Varying speed
- Slow speed (10+ mph under limit)

Vigilance Problems **p = .55–.65**
- Driving in opposing lanes or wrong way on one-way
- Slow response to traffic signals
- Slow or failure to respond to officer's signals
- Stopping in lane for no apparent reason
- Driving without headlights at night
- Failure to signal or signal inconsistent with action

Judgment Problems **p = .35–.90**
- Following too closely
- Improper or unsafe lane change
- Illegal or improper turn (too fast, jerky, sharp, etc.)
- Driving on other than the designated roadway
- Stopping inappropriately in response to officer
- Inappropriate or unusual behavior (throwing, arguing, etc.)
- Appearing to be impaired

Post Stop Cues **p ≥ .85**
- Difficulty with motor vehicle controls
- Difficulty exiting the vehicle
- Fumbling with driver's license or registration
- Repeating questions or comments
- Swaying, unsteady, or balance problems
- Leaning on the vehicle or other object
- Slurred speech
- Slow to respond to officer or officer must repeat
- Providing incorrect information, changes answers
- Odor of alcoholic beverage from the driver

p ≥ .50 when combined with any other cue:
- Driving without headlights at night
- Failure to signal or signal inconsistent with action

The probability of detecting DWI by random traffic enforcement stops at night has been found to be about 3 percent (.03).

Problems in Maintaining Proper Lane Position

Maintaining proper lane position can be a difficult task for an impaired driver. For example, we have all, at one time, seen vehicles **weaving**. Weaving is when the vehicle alternately moves toward one side of the lane and then the other. The pattern of lateral movement can be fairly regular, as one steering correction is closely followed by another. In extreme cases, the vehicle's wheels even **cross the lane lines** before a correction is made. You might even observe a vehicle **straddling a center or lane line**. That is, the vehicle is moving straight ahead with either the right or left tires on the wrong side of the lane line or markers.



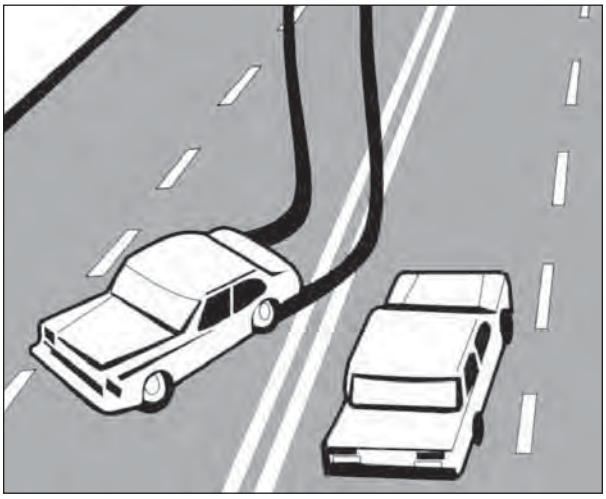
Weaving

Drifting is when a vehicle is moving in a generally straight line, but at a slight angle to the lane. The driver might correct his or her course as the vehicle approaches a lane line or other boundary or fail to correct until after a boundary has been crossed. In extreme cases, the driver fails to correct in time to avoid a collision.



Drifting

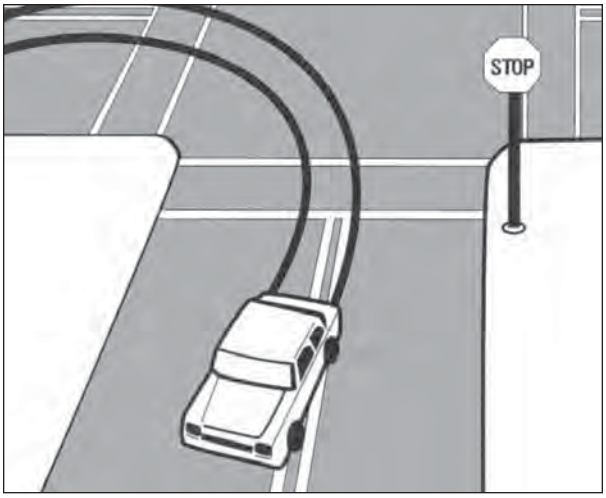
Course corrections can be gradual or abrupt. For example, you might observe a vehicle to **swerve**, making an abrupt turn away from a generally straight course, when a driver realizes that he or she has drifted out of proper lane position or to avoid a previously unnoticed hazard.



Swerving

A related DWI cue is **almost striking a vehicle or other object**. You might observe a vehicle, either at slow speeds or moving with traffic, to pass unusually close to a sign, barrier, building, or other object. This cue also includes almost striking another vehicle, either moving or parked, and causing another vehicle to maneuver to avoid a collision.

Turning with a wide radius or drifting during a curve is the final cue in this category of driver behaviors. A vehicle appears to drift to the outside of the lane or into another lane through the curve or while turning a corner. Watch for this cue, and stop the driver when you see it. Many alcohol-involved crashes are caused by an expanding turn radius or drifting out of lane position during a curve.

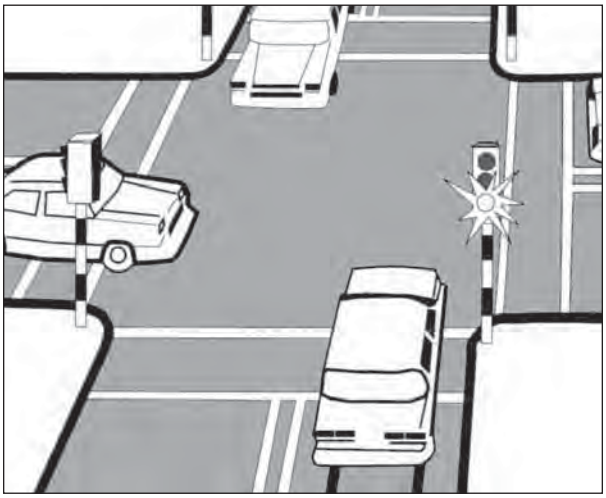


Turning With a Wide Radius

Speed and Braking Problems

The research showed that braking properly can be a difficult task for an impaired driver. For example, there is a good chance the driver is DWI if you observe any type of **stopping problem**. Stopping problems include:

- **Stopping too far from a curb or at an inappropriate angle**
- **Stopping too short or beyond a limit line**
- **Jerky or abrupt stops**



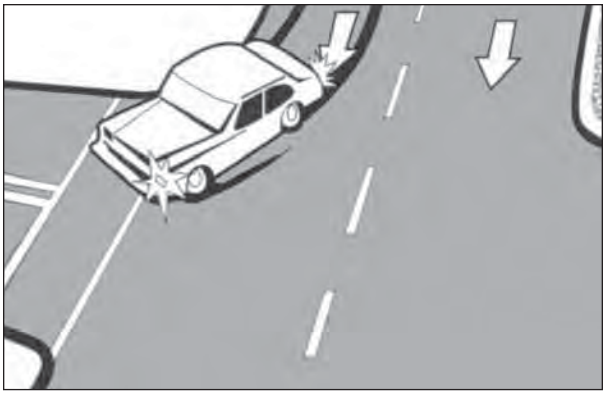
Stopping Beyond a Limit Line

Impaired drivers also can experience difficulty maintaining an appropriate speed. There is a good chance the driver is DWI if you observe a vehicle to:

- **Accelerate or decelerate rapidly for no apparent reason**
- **Vary its speed, alternating between speeding up and slowing down**
- **Be driven at a speed that is 10 miles per hour (mph) or more under the limit**

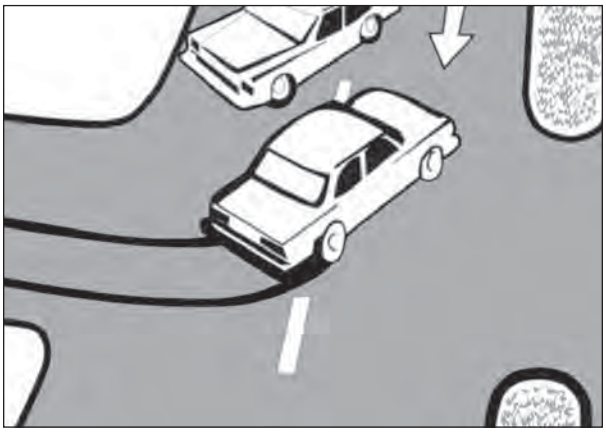
VIGILANCE PROBLEMS

Vigilance concerns a person's ability to pay attention to a task or notice changes in surroundings. A driver whose vigilance has been impaired by alcohol might forget to turn on his or her headlights when required. Similarly, impaired drivers often forget to signal a turn or lane change, or their signal is inconsistent with their maneuver, for example, signaling left but turning right.



Signaling Inconsistent With Driving Actions

Alcohol-impaired vigilance also results in motorists driving into opposing or crossing traffic and turning in front of oncoming vehicles with insufficient headway.



Driving Into Opposing or Crossing Traffic

Driving is a complex task that requires accurate information about surrounding traffic conditions. Failing to yield the right of way and driving the wrong way on a one way street are dangerous examples of vigilance problems.

A driver whose vigilance has been impaired by alcohol also might respond more slowly than normal to a change in a traffic signal. For example, the vehicle might remain stopped for an unusually long period of time after the signal has turned green. Similarly, an impaired driver might be unusually slow to respond to an officer's lights, siren, or hand signals.

The most extreme DWI cue in the category of vigilance problems is to find a vehicle stopped in a lane for no apparent reason. Sometimes when you observe this behavior the driver will be just lost or confused, but more than half of the time the driver will be DWI—maybe even asleep at the wheel.

Judgment Problems

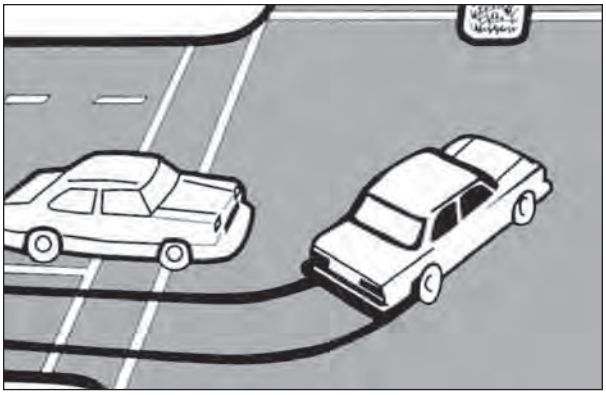
Operating a motor vehicle requires continuous decision making by the driver. Unfortunately, judgment abilities can be affected by even small amounts of alcohol. For example, alcohol-impaired judgment can cause a driver to follow another vehicle too closely, providing an unsafe stopping distance.

Alcohol-impaired judgment also can result in a driver taking risks or endangering others. If you observe a vehicle to make improper or unsafe lane changes, either frequently or abruptly or with apparent disregard for other vehicles, there is a good chance the driver's judgment has been impaired by alcohol.

Similarly, impaired judgment can cause a driver to turn improperly. For example, misjudgments about speed and the roadway can cause a driver

to take a turn too fast or to make sudden corrections during the maneuver. These corrections can appear to the observer as jerky or sharp vehicle movements during the turn.

Alcohol-impaired judgment can affect the full range of driver behaviors. For example, the research found that impaired drivers are less inhibited about making illegal turns than unimpaired drivers.

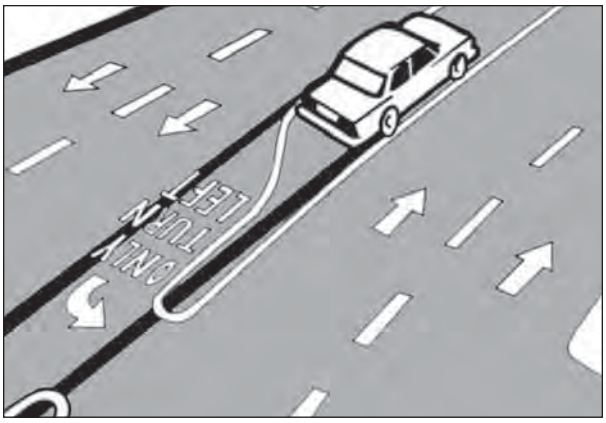


Turning Illegally

Driving on other than the designated roadway is another cue exhibited by alcohol-impaired drivers. Examples include driving at the edge of the roadway, on the shoulder, off the roadway entirely, and straight through turn-only lanes.

In some cases, impaired drivers stop inappropriately in response to an officer, either abruptly as if they had been startled or in an illegal or dangerous manner.

In fact, the research has shown that there is a good chance a driver is DWI if you observe the person exhibit *any* **inappropriate or unusual behavior**. Unusual behavior includes throwing something from the vehicle, drinking in the vehicle, urinating at the roadside, arguing with another motorist, or otherwise being disorderly. If you observe inappropriate or unusual behavior, there is a good probability that the driver is DWI.



Driving on Other Than the Designated Roadway

The final cue is actually one or more of a set of indicators related to the personal behavior or appearance of a driver. These indicators include, gripping the steering wheel tightly, driving with one's face close to the windshield, slouching in the seat, and staring straight ahead with eyes fixed. Some officers routinely scrutinize the faces of drivers in oncoming traffic, looking for the indicators of impairment. If you observe a driver who **appears to be impaired**, the research showed that there is an excellent probability that you are correct in your judgment.



Appearing To Be Impaired

SUMMARY

To summarize, the DWI cues related to **problems in maintaining proper lane position** include:

- **Weaving**
- **Weaving across lane lines**
- **Straddling a lane line**
- **Drifting**
- **Swerving**
- **Almost striking a vehicle or other object**
- **Turning with a wide radius or drifting during a curve**

The DWI cues related to **speed and braking problems** include:

- **Stopping problems (too far, too short, too jerky)**
- **Accelerating for no reason**
- **Varying speed**
- **Slow speed**

The DWI cues related to vigilance problems include:

- **Driving without headlights at night**
- **Failure to signal a turn or lane change or signaling inconsistently with actions**
- **Driving in opposing lanes or the wrong way on a one-way street**
- **Slow response to traffic signals**
- **Slow or failure to respond to officer's signals**
- **Stopping in the lane for no apparent reason**

The DWI cues related to judgment problems include:

- **Following too closely**
- **Improper or unsafe lane change**
- **Illegal or improper turn (too fast, jerky, sharp, etc.)**
- **Driving on other than the designated roadway**
- **Stopping inappropriately in response to an officer**
- **Inappropriate or unusual behavior**
- **Appearing to be impaired**

Post-Stop Cues

In addition to the driving cues, the following post-stop cues have been found to be excellent predictors of DWI.

- **Difficulty with motor vehicle controls**
- **Difficulty exiting the vehicle**
- **Fumbling with driver's license or registration**
- **Repeating questions or comments**
- **Swaying, unsteady, or balance problems**
- **Leaning on the vehicle or other object**
- **Slurred speech**
- **Slow to respond to officer or officer must repeat questions**
- **Providing incorrect information or changes answers**
- **Odor of alcoholic beverage from the driver**

DOT HS 808 677
March 2010



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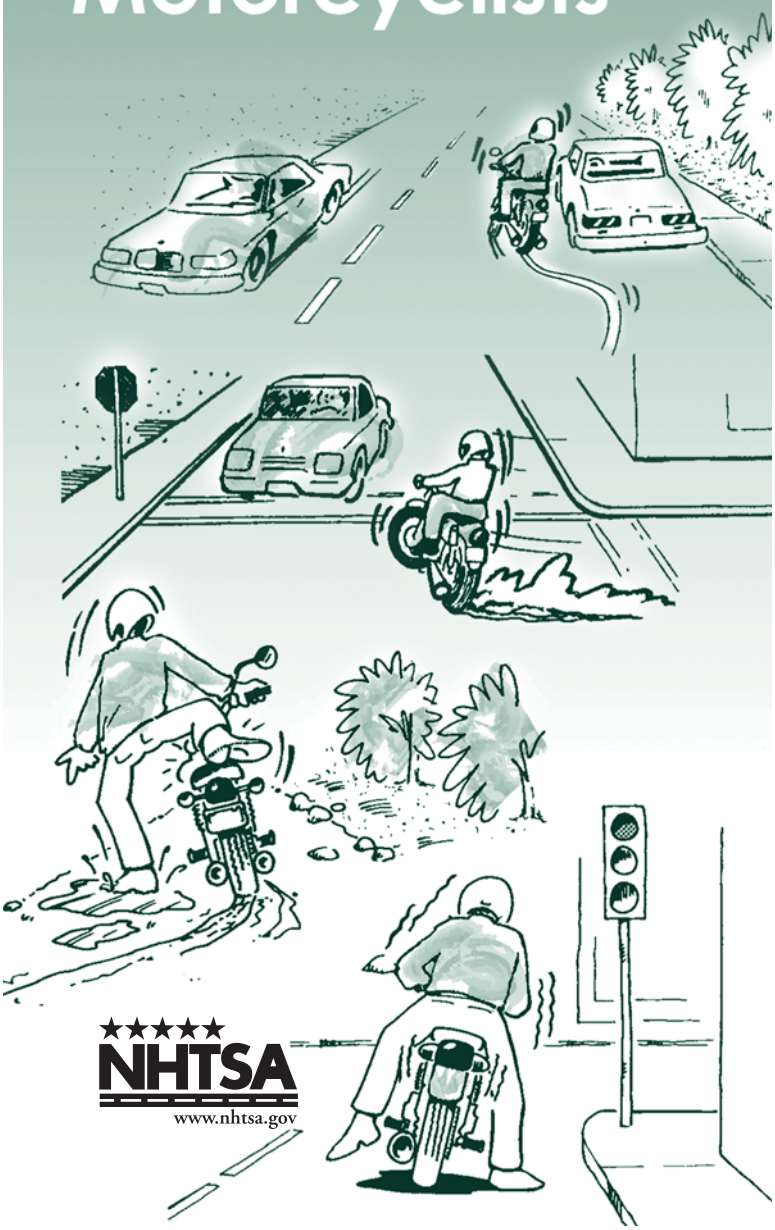
The Detection of DWI Motorcyclists



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Motorcycle DWI Detection Guide

NHTSA has found that the following cues predicted impaired motorcycle operation.

Excellent Cues (50% or greater probability)

- Drifting during turn or curve
- Trouble with dismount
- Trouble with balance at a stop
- Turning problems (e.g., unsteady, sudden corrections, late braking, improper lean angle)
- Inattentive to surroundings
- Inappropriate or unusual behavior (e.g., carrying or dropping object, urinating at roadside, disorderly conduct, etc.)
- Weaving

Good Cues (30 to 50% probability)

- Erratic movements while going straight
- Operating without lights at night
- Recklessness
- Following too closely
- Running stop light or sign
- Evasion
- Wrong way

Introduction

The National Highway Traffic Safety Administration (NHTSA) estimated that in 2011, about 29 percent of motorcycle operators involved in fatal crashes had a blood alcohol concentration (BAC) of .08 grams per deciliter (g/dL) or higher.

Clearly, enforcing impaired driving laws is a key to reducing the number of alcohol-related motorcyclist fatalities. ***But which cues should be used to detect impaired motorcyclists?***

NHTSA sponsored research to develop a set of behavioral cues to be used by law enforcement personnel to detect motorcyclists who are operating their vehicles while intoxicated. The researchers began by interviewing experienced patrol officers from across the country to determine what behavioral cues have been used to detect impaired motorcyclists. A few, primarily motorcycle officers, suggested cues that reflected considerable understanding of the mental and physical requirements of riding a motorcycle. Others believed the cues to be identical to those used to detect impaired drivers. But some officers, even those with many years of experience, reported they believe there are no cues that can be used to distinguish DWI from unimpaired motorcycle operation.

In addition to interviewing law enforcement personnel, the research team developed a database of 1,000 motorcycle DWI arrest reports. The research team focused on officers' narratives and motorcyclists' behaviors that motivated the stops, and correlated those behaviors with BAC. Analysis of the interviews and arrest report data resulted in an inventory of about 100 cues that have been observed by officers in relation to impaired operation of motorcycles.

The researchers, working closely with law enforcement personnel, conducted two major field studies involving more than 50 sites throughout the United

States. Officers recorded information about every enforcement stop they made of a motorcyclist. Those field studies permitted the researchers to identify the most effective cues and to calculate the probabilities those cues were predictive of DWI. This brochure highlights the results of that research.

Fourteen cues were identified that best discriminate between DWI and unimpaired motorcycle operation. These cues have been labeled as "Excellent Cues" and "Good Cues," based on the study's results. The ***excellent*** cues predicted impaired motorcycle operation at least 50 percent of the time. The ***good*** cues predicted impaired motorcycle operation 30 to 49 percent of the time. The special coordination and balance requirements of riding a two-wheeled vehicle provided most of the behaviors in the "Excellent" category of cues.

Important Information

Law enforcement officers across the United States have used the cues described in this brochure to help detect impaired motorcycle operators. The cues can be used at any hour of the day and night, and they apply to all two-wheeled motor vehicles.

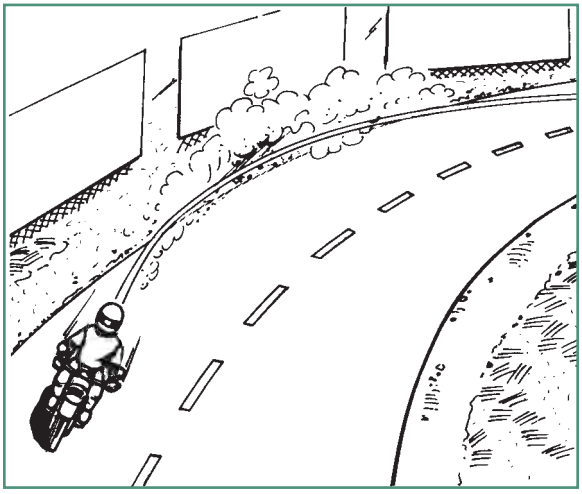
The cues described and illustrated in this brochure (and on a training video) are the behaviors that are most likely to discriminate between impaired and normal operation of a motorcycle. Cases that involve speeding, however, require additional clarification. Motorcyclists stopped for excessive speed are likely to be driving while intoxicated only about 10 percent of the time (i.e., 10 times out of 100 stops for speeding). But because motorcyclists tend to travel in excess of posted speed limits, speeding is associated with a large portion of all motorcycle DWI arrests. In other words, while only a small proportion of speeding motorcyclists are likely to be considered DWI, the large number of motorcyclists who are speeding results in a large number of DWIs, despite the relatively small probability.

This research will be helpful to officers in:

- Detecting impaired motorcyclists
- Articulating observed behaviors on arrest reports
- Supporting officer's expert testimony

Drifting During Turn or Curve

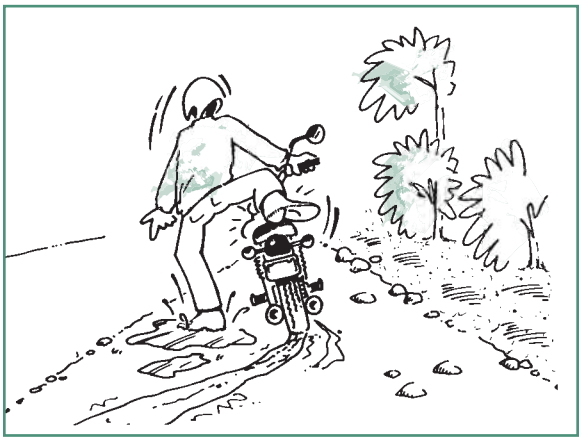
Earlier studies have shown that the most common cause of single-vehicle, fatal motorcycle crashes is the failure to negotiate curves, with the motorcycle continuing in a straight line until it strikes a stationary object. This type of crash is usually caused by alcohol-impaired balance and coordination. In less extreme cases, the motorcycle's turn radius expands during the maneuver. The motorcycle appears to drift outside of the lane or into another lane, through the curve, or while turning a corner. If you see a motorcycle drifting during a turn or curve, do the rider a favor and pull him or her over – our study showed there is a better than average possibility that the motorcyclist is a DWI offender.



Trouble With Dismount

Parking and dismounting a motorcycle can be a useful field sobriety test. The motorcyclist must turn off the engine and locate and deploy the kickstand. The operator must then balance his or her weight on one foot while swinging the other foot over the seat to dismount. But first, the

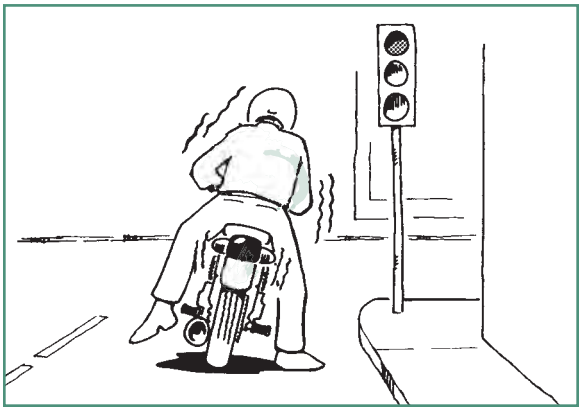
operator must decide upon a safe place to stop the bike. Problems with any step in this sequence can be evidence of alcohol impairment.



Not every motorcyclist you observe experiencing some difficulty with a dismount is riding under the influence, but study results indicated that more than 50 percent of them were DWI offenders. In other words, having a problem dismounting is a reliable cue to DWI.

Trouble With Balance at Stop

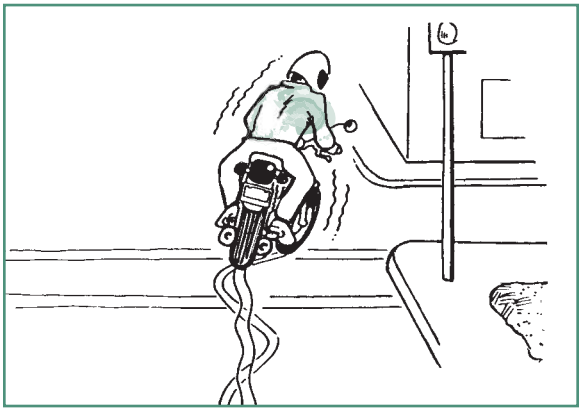
One typical practice for motorcycle riders at a stop is for the motorcyclist to place one foot on the ground to keep the bike upright, while leaving the other foot



covering the brake pedal. Some riders favor placing both feet on the ground for stability. Riders whose balance has been impaired by alcohol often have difficulty with these tasks. They might be observed as having shifted their weight from side-to-side, that is, from one foot to another, to maintain balance at a stop. From a block away, an officer might notice a single taillight moving from side to side in a gentle rocking motion. If you observe a motorcyclist having trouble with balance at a stop, there is a better than average chance that the operator is a DWI offender.

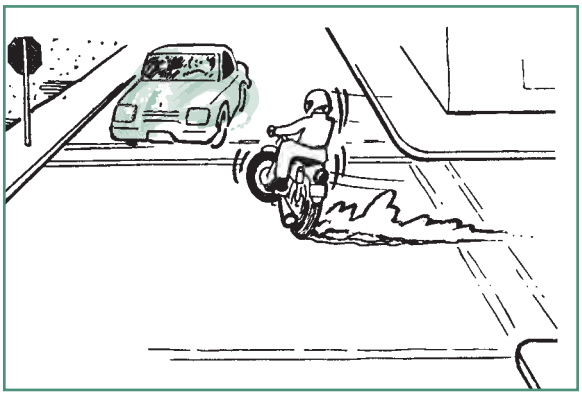
Turning Problems

The research also identified four turning problems that indicate rider impairment:

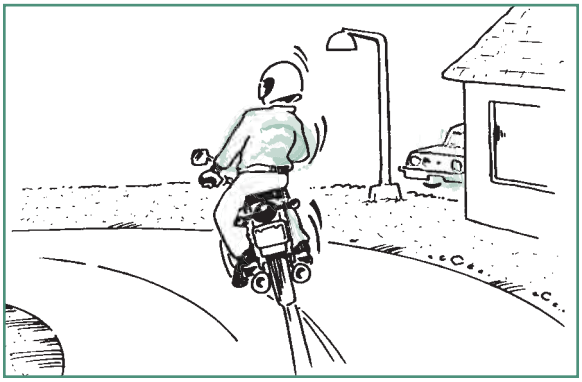


- **Unsteady During Turn or Curve.** The gyroscopic effects of a motorcycle's wheels tend to keep a motorcycle "on track" as long as speed is maintained. As a motorcycle's speed decreases, the demands placed on the operator's balancing capabilities increases. As a result, an officer might observe a motorcycle's front wheels or handlebars wobbling as an impaired rider attempts to maintain balance at slow speeds or during a turn.

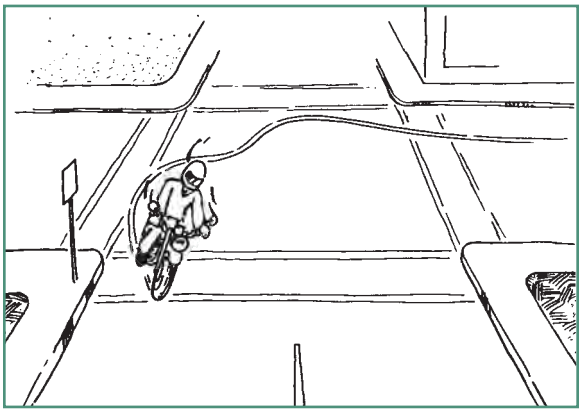
- **Late Braking During Turn.** The next turning problem is "late braking during a turn or on a curve." A motorcyclist normally brakes prior to entering a turn or curve, so the motorcycle can accelerate through the maneuver for maximum control. An impaired motorcyclist might misjudge the speed or distance to the corner or curve, requiring an application of the brakes during the maneuver.



- **Improper Lean Angle During Turn.** A third turning problem occurs when a motorcyclist normally negotiates a turn or curve by leaning into the turn. When a rider's balance or speed decision-making is impaired, the rider frequently attempts to sit upright through the maneuver. As a result, a trained observer can detect an "improper lean angle."

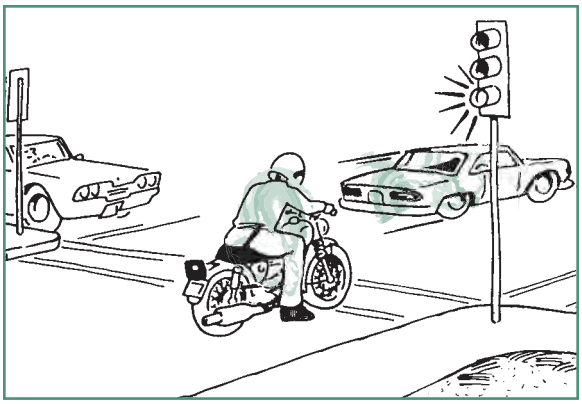


- **Erratic Movements During Turn.** The fourth turning problem is "erratic movements." These are defined as an inconsistent action or a sudden correction of a motorcycle maneuver during a turn or curve that can also indicate impaired driving. If you observe a motorcyclist who is unsteady during a turn or curve, brakes late, assumes an improper lean angle, or makes erratic movements during a turn or curve, there is a better-than-average chance that the motorcyclist is driving while impaired.



Inattentive to Surroundings

Vigilance concerns people's ability to pay attention to a task or notice changes in their surroundings. A motorcyclist whose vigilance has been impaired by



alcohol consumption might fail to notice that the traffic light has changed from red to green.

A vigilance problem also is evident when motorcyclists are inattentive to their surroundings or are seemingly unconcerned with detection by law enforcement. For example, there is cause for suspicion of DWI when a motorcyclist fails to periodically scan the area around the bike when in traffic, a wise defensive riding measure to guard against potential encroachment by other vehicles. There is further evidence of impairment if a motorcyclist fails to respond to an officer's emergency lights or hand signals.

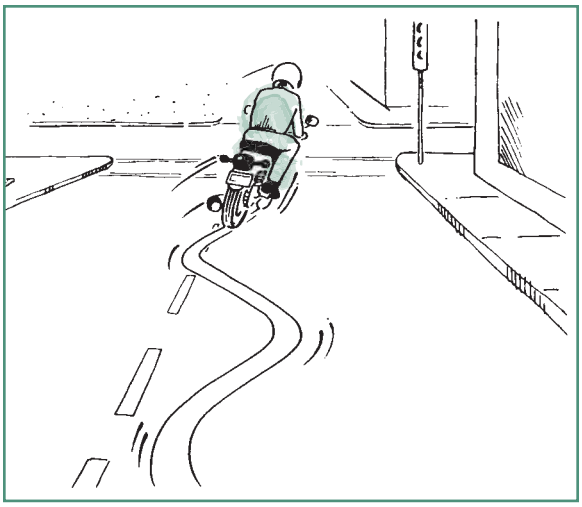
If you observe a motorcyclist to be inattentive to the surroundings, there is a better than average chance that the motorcyclist is a DWI violator.

Inappropriate or Unusual Behavior

There is a category of cues referred to as "inappropriate or unusual behavior." This category of cues includes behaviors such as operating a motorcycle while holding an object in one hand or under an arm, carrying an open container of alcohol, dropping something from a moving motorcycle, urinating at the roadside, arguing with another motorist, or otherwise being disorderly. If you observe inappropriate or unusual behavior by a motorcyclist, there is a better than average chance that the motorcyclist is a DWI offender.

Weaving

You are probably familiar with weaving as a predictor of DWI. If you see an automobile weaving there is a better than average chance the driver has exceeded the legal alcohol limits, but if you observe a motorcycle to be weaving, the probability of DWI is



even greater – weaving is an excellent cue. Weaving involves excessive movement within a lane or across lane lines, but does not include movements necessary to avoid road hazards.

Erratic Movements While Going Straight

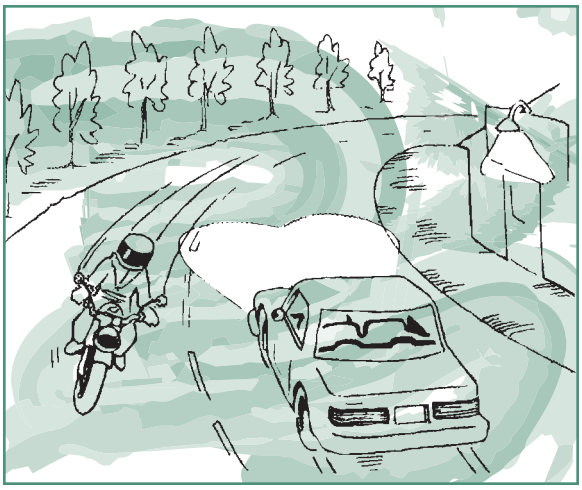
If you observe a motorcyclist making erratic movements or sudden corrections while attempting to ride in a straight line, study results indicated there is



a good probability that the rider is a DWI violator. In fact, during the study erratic movements while going straight were observed 30 to 49 percent of the time in relation to impaired driving.

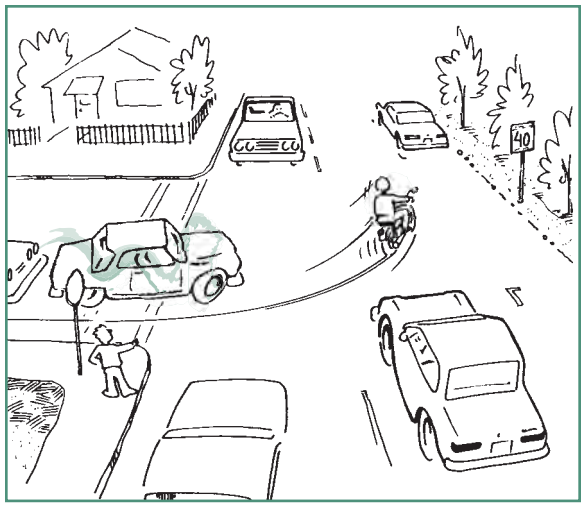
Operating without Lights at Night

Operating a motorcycle without lights at night is dangerous and can be another indicator of operator impairment. Study results showed that if you detect a motorcyclist riding at night without lights, there is a good chance that the operator is a DWI offender.



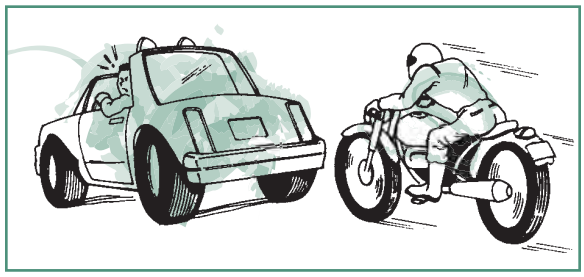
Recklessness

Motorcyclists tend to ride faster than automobiles so speeding is not necessarily a good predictor of DWI for motorcyclists. On the other hand, recklessness or riding too fast for the conditions was found to be a good indicator of operator impairment.



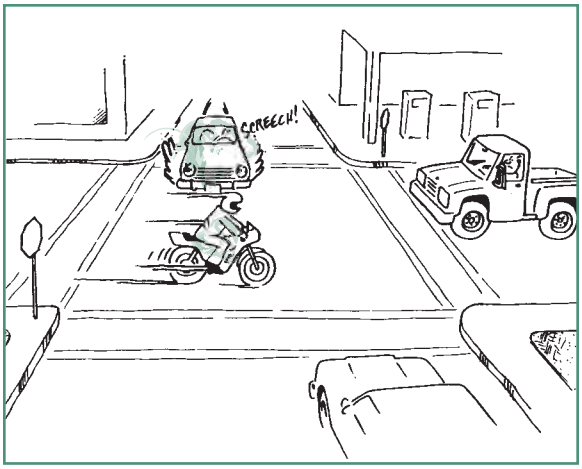
Following Too Closely

Following too closely, which is an unsafe following distance, is another indication of impaired operator judgment. During the study, this cue was found to be a good predictor of DWI by motorcycle riders.



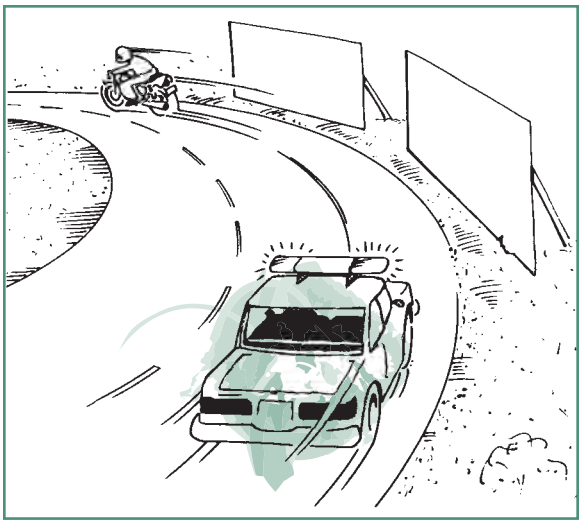
Running Stop Light or Sign

Failure to stop at a red light or stop sign can indicate either impaired vigilance capabilities (i.e., did not see the stop light or sign), or impaired judgment (i.e., decided not to stop). Whatever the form of impairment, if you observe a motorcyclist running a stop light or sign, there is a good chance that he or she is a DWI offender.



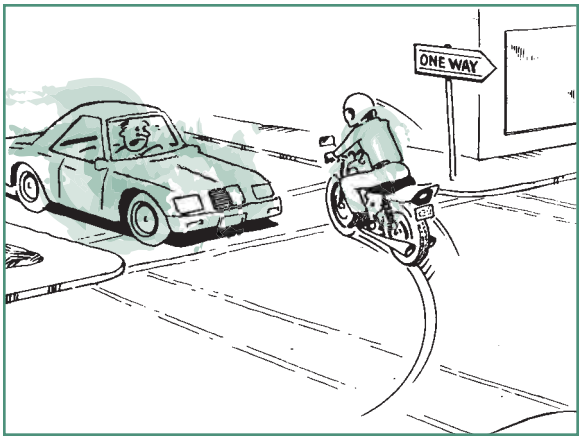
Evasion

Evasion, or fleeing an officer, is a recurring problem. If a motorcyclist attempts to evade an officer's enforcement stop, study results indicate there is a good chance he is a DWI violator as well.



Wrong Way

Obviously, riding into opposing traffic is dangerous. Study results showed that when you find a motorcycle going the wrong way in traffic, there is a good chance that the operator is under the influence. This includes going the wrong way on a one-way street, and crossing a center divider line to ride into opposing traffic.



Motorcycle DWI Detection Guide

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Excellent Cues (50% or greater probability)

- Drifting during turn or curve
- Trouble with dismount
- Trouble with balance at a stop
- Turning problems (e.g., unsteady, sudden corrections, late braking, improper lean angle)
- Inattentive to surroundings
- Inappropriate or unusual behavior (e.g., carrying or dropping object, urinating at roadside, disorderly conduct, etc.)
- Weaving

Good Cues (30 to 50% probability)

- Erratic movements while going straight
- Operating without lights at night
- Recklessness
- Following too closely
- Running stop light or sign
- Evasion
- Wrong way

This brochure and related training materials are based on NHTSA Technical Report DOT HS 807 839, The Detection of DWI Motorcyclists, which is available upon request from NHTSA's Safety Countermeasures Division (NTI-121), 1200 New Jersey Avenue SE., Washington, DC 20590.

DOT HS 807 856
revised March 2013

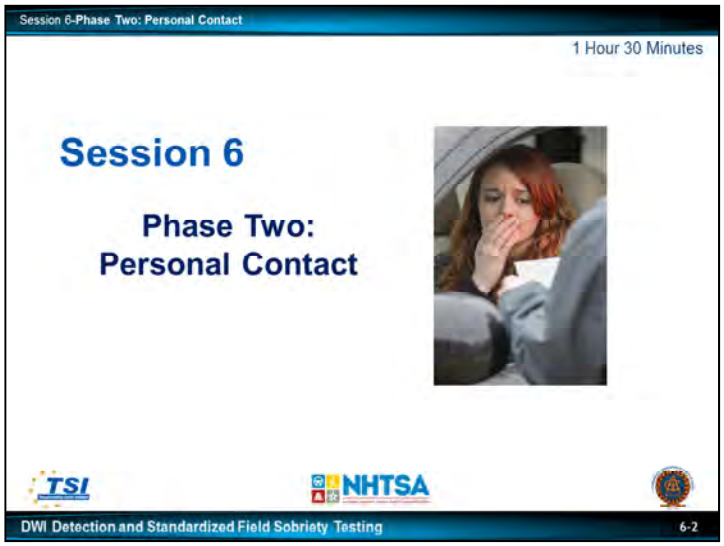


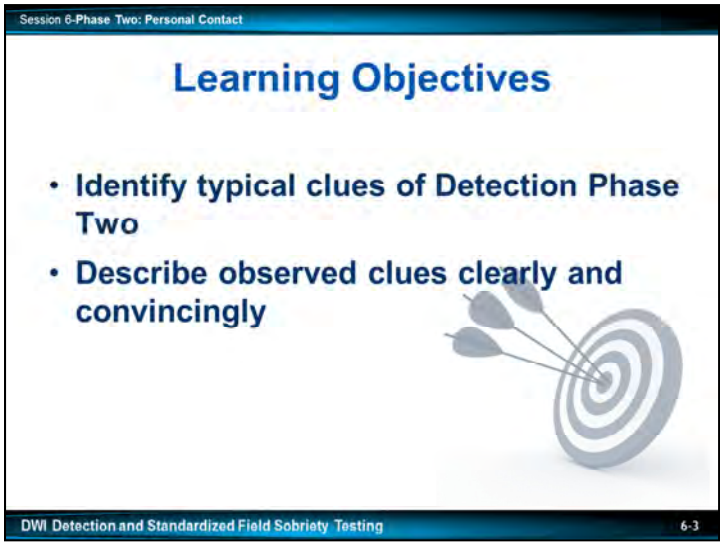
U.S. Department
of Transportation
**National Highway
Traffic Safety
Administration**

NHTSA

9396a-102914-v3


DWI Detection and Standardized Field Sobriety Testing
Session 6 – Phase Two: Personal Contact
NHTSA
TSI
February 2018


Session 6-Phase Two: Personal Contact
1 Hour 30 Minutes
Session 6
Phase Two:
Personal Contact
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
6-2



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

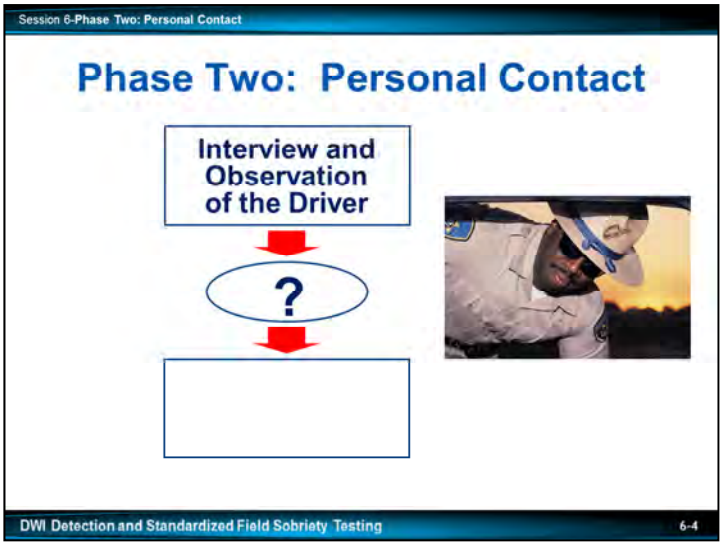
- Identify typical clues of Detection Phase Two
- Describe the observed clues clearly and convincingly

CONTENT SEGMENTS

A. Overview: Tasks and Decision
B. Typical Investigation Clues of the Driver Interview
C. Recognition and Description of Investigation Clues
D. Interview/Questioning Techniques
E. Recognition and Description of Clues Associated with the Exit Sequence

LEARNING ACTIVITIES

Instructor-Led Presentations
Video Presentation
Instructor-Led Demonstrations
Participant Presentations



A. <u>Overview: Tasks and Decisions</u>

DWI Detection Phase Two: Personal Contact, like Phases One and Three, comprise two major evidence-gathering tasks and one major decision. Your first task is to approach, observe, and interview the driver while they are still in the vehicle to note any face-to-face evidence of impairment. During this face-to-face contact you may administer some simple pre-exit sobriety tests to gain additional information to evaluate whether or not the driver is impaired. After this evaluation, you must decide whether to request the driver to exit the vehicle for further field sobriety testing. In some jurisdictions, departmental policy may dictate all drivers stopped on suspicion of DWI be instructed to exit. It is important to note by instructing the driver to exit the vehicle, you are not committed to an arrest; this is simply another step in the DWI detection process. Once you have requested the driver to exit the vehicle, your second task is to observe the manner in which the driver exits and to note any additional evidence of impairment.

You may initiate Phase Two without Phase One. This may occur, for example, at a checkpoint or when you have responded to the scene of a crash.

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

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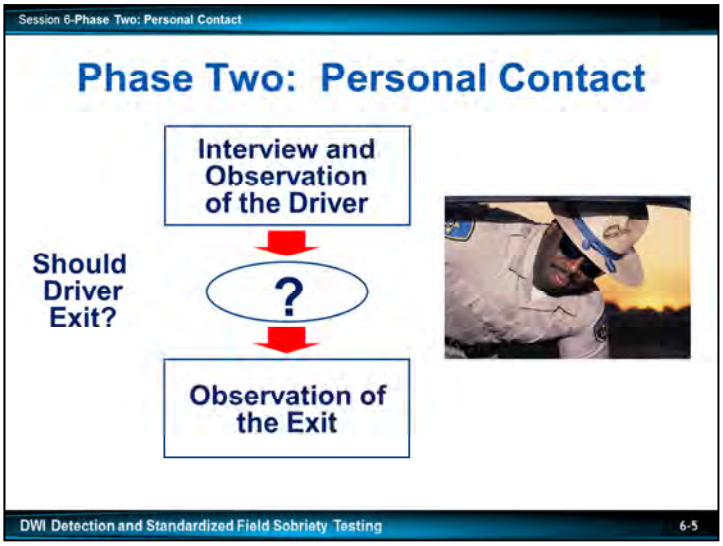

You may have developed a strong suspicion the driver is impaired prior to the face-to-face observation and interview. You may have developed this suspicion by observing something unusual while the vehicle was in motion or during the stopping sequence. You may have developed no suspicion of DWI prior to the face-to-face contact. The vehicle operation and the stop may have been normal; you may have seen no actions suggesting DWI.

For example, you may have stopped the vehicle for an equipment/registration violation or where no unusual driving was evident. In some cases, Phase One will have been absent. For example, you may first encounter the driver and vehicle after a crash or when responding to a request for motorist assistance.

Regardless of the evidence that may have come to light during Detection Phase One, your initial face-to-face contact with the driver usually provides the first definite indications the driver is impaired.

Decision

Based upon your face-to-face interview and observation of the driver, and upon your previous observations of the vehicle in motion and the stopping sequence, you must decide whether there is sufficient reason to instruct the driver to step from the vehicle.

For some law enforcement officers, this decision is automatic since their agency's policy dictates the driver always be told to exit the vehicle, regardless of the cause for the stop. Other agencies, however, treat this as a discretionary decision to be based on what the officer sees, hears, and smells during observation and interview with the driver while the driver is seated in the vehicle.

If you decide to instruct the driver to exit, closely observe the driver's actions during the exit from the vehicle and note any evidence of impairment.



B. <u>Typical Investigation Clues of the Driver Interview</u>

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

- The sense of sight
- The sense of hearing
- The sense of smell

Sight

There are a number of things you might <u>see</u> during the interview that would be describable clues or evidence of alcohol and/or other drug influence. Among them are:

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What do you see?

- Bloodshot eyes
- Soiled clothing
- Fumbling fingers
- Alcohol containers
- Drugs or drug paraphernalia
- Bruises, bumps or scratches
- Unusual actions



Hearing

Among the things you might <u>hear</u> during the interview that would be describable clues or evidence of alcohol and/or other drug influence are these:

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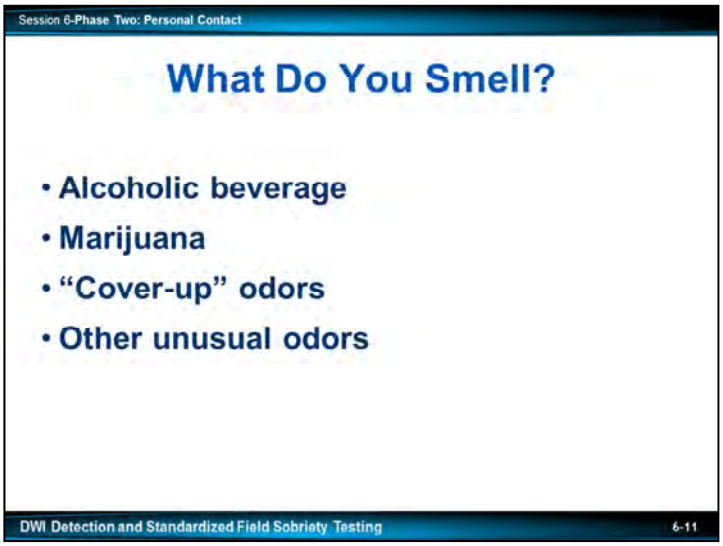
What do you hear?

- Slurred speech
- Admission of drinking
- Inconsistent responses
- Unusual statements
- Abusive language
- Anything else



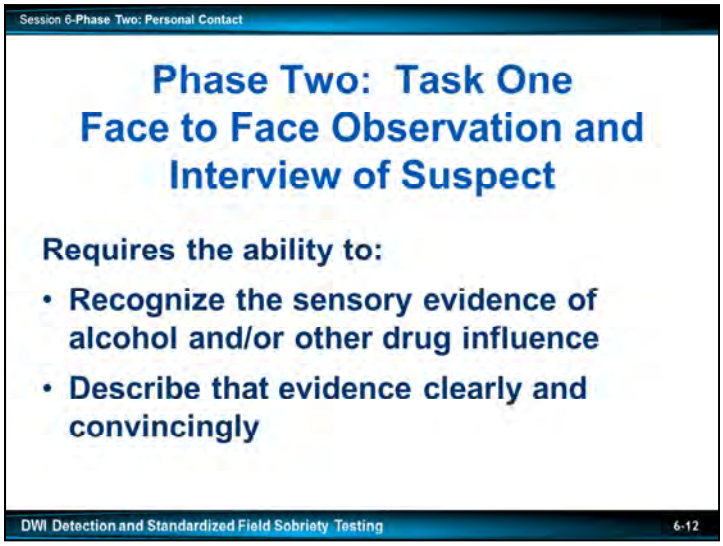
Smell

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



What do you smell?

- Alcoholic beverages
- Marijuana
- Cover up odors
- Other unusual odors



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

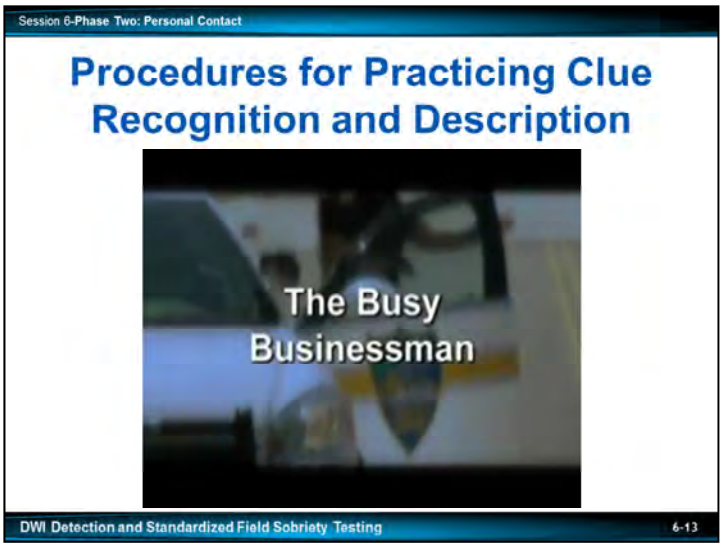
- The ability to recognize the sensory evidence of alcohol and/or other drug influence
- The ability to describe that evidence clearly and convincingly

Developing these abilities requires practice.

C. <u>Recognition and Description of Investigation Clues</u>

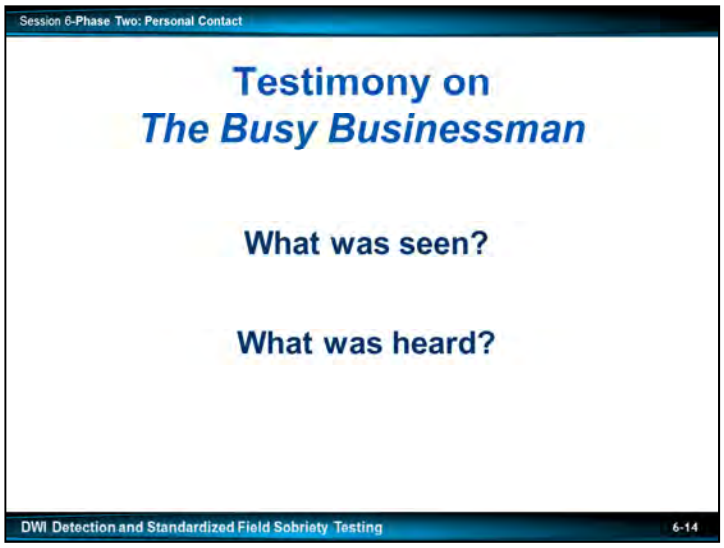
A basic purpose of the face-to-face observation and interview of the driver is to identify and gather evidence of alcohol and/or other drug influence. This is the purpose of each task in each phase of DWI detection.

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

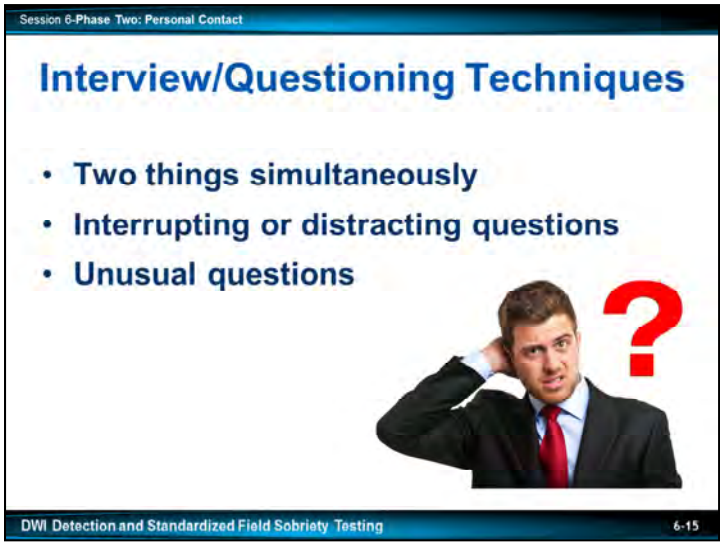


Procedures for Practicing Clue Recognition and Description
You will have to base your description of the driver's possible impairment strictly on what you see and hear during the face-to-face contact.

Both senses provide some critically important evidence, not only in this video segment but in all face-to-face contacts.



Testimony on Video Segment "The Busy Businessman"



D. <u>Interview/Questioning Techniques</u>

There are a number of techniques you can use to assess impairment while the driver is still behind the wheel. Most of these techniques apply the concept of divided attention. They require the driver to concentrate on two or more things at the same time. They include both questioning techniques and psychophysical (mind/body) tasks.

These techniques are not as reliable as the Standardized Field Sobriety Tests but they can still be useful for obtaining evidence of impairment. **THESE TECHNIQUES DO NOT REPLACE THE SFSTs.**

Questioning Techniques

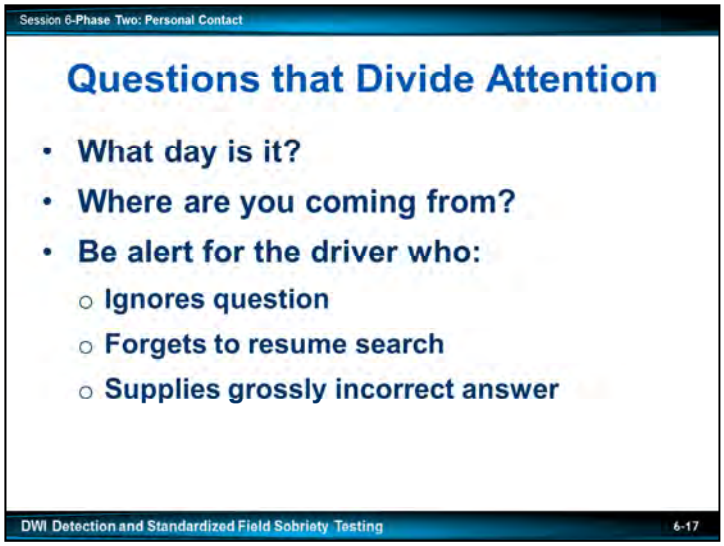
The questions you ask and the way in which you ask them can constitute simple divided attention tasks. Three techniques are particularly pertinent:
- Asking for two things simultaneously
- Asking interrupting or distracting questions
- Asking unusual questions

An example of the first technique, <u>asking for two things simultaneously</u>, is requesting the driver to produce both the driver's license and the vehicle registration. Possible evidence of impairment may be observed as the driver responds to this dual request.



Possible evidence of impairment that might be observed during the production of the license and registration. Be alert for the driver who:

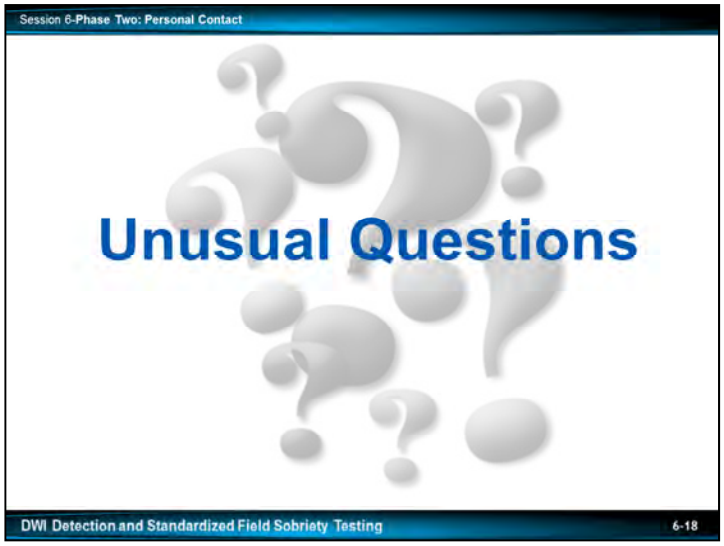
- Forgets to produce both documents
- Produces documents other than the ones requested
- Fails to see the license, registration, or both while searching for them
- Fumbles or drops wallet, purse, license, or registration
- Is unable to retrieve documents using fingertips



The second technique would be to ask questions that require the driver to divide attention between searching for the license or registration and answering a new question. While the driver is responding to the request for license, registration, or both, you ask unrelated questions; "What day is it?" or "Where are you coming from?"

Possible evidence of impairment may be disclosed by the actions of the driver after this question has been posed. Be alert for the driver who:

- Ignores the question and concentrates only on the license or registration search
- Forgets to resume the search after answering the question
- Supplies a grossly incorrect answer to the question



The third technique, asking unusual questions, is employed after you have obtained the driver's license and registration. Using this technique, you seek verifying information through unusual questions. For example, while holding the driver's license, you might ask the driver, "What is your middle name?“ “Where are you going?” “Where are you coming from?” etc.

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



Officers should be alert for potential medical conditions that may mimic drug or alcohol impairment. Some questions may include:

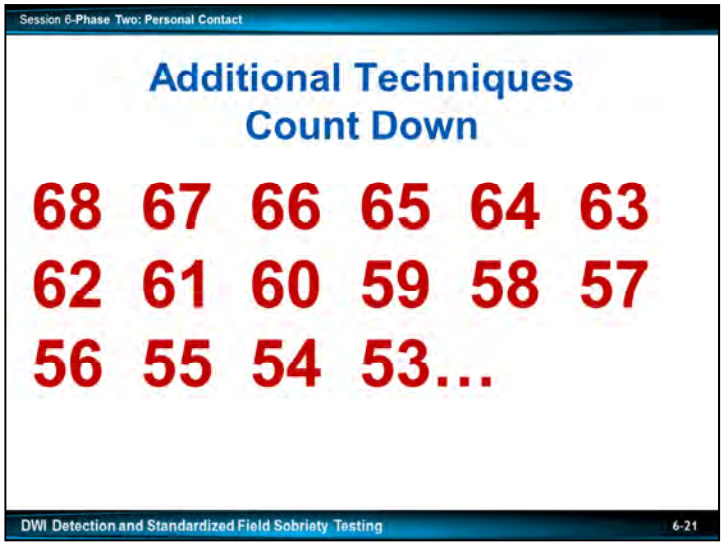
- Do you have any physical disabilities
- Are you sick or injured
- Are you under the care of a doctor or dentist
- Are you diabetic or epileptic?
  - If diabetic, ask if they take insulin
- Are you on any medications



Additional Techniques

Alphabet

This technique requires the driver to recite a part of the alphabet. You instruct the driver to recite the alphabet beginning with a letter other than A and stopping at a letter other than Z. For example, you might say to a driver, "Recite the alphabet, beginning with the letter E as in Edward and stopping with the letter P as in Paul." This divides the driver's attention because the driver must concentrate to begin at an unusual starting point and recall where to stop.



Count Down

This technique requires the driver to count out loud 15 or more numbers in reverse sequence. For example, you might request a driver to, "Count out loud backwards, starting with the number 68 and ending with the number 53." This, too, divides attention because the driver must continuously concentrate to count backwards while trying to recall where to stop.

This technique should never be given using starting and stopping points ending in 0 or 5 because these numbers are too easy to recall. For example, do not request the driver count backwards from 65 to 50. Instead, ask the driver to count backwards from 68 to 53.



Finger Count
In this technique, the driver is asked to touch the tip of the thumb to the tip of each finger on the same hand while simultaneously counting up one, two, three, four; then to reverse direction on the fingers while simultaneously counting down four, three, two, one.

In each instance, note whether and how well the driver is able to perform the divided attention task.



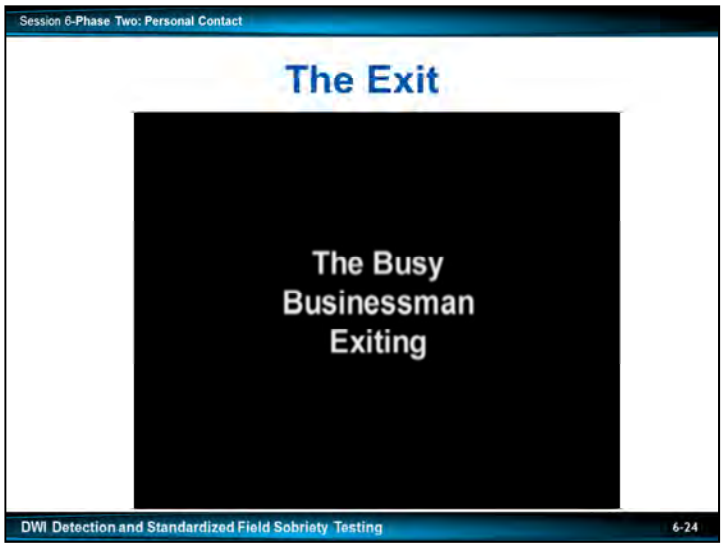
E. <u>Recognition and Description of Clues Associated With the Exit Sequence</u>

Your decision to instruct the driver to step from the vehicle usually is made after you have developed a suspicion the driver is impaired. Even if that suspicion may be very strong, the driver is usually not under arrest when you give the instruction.

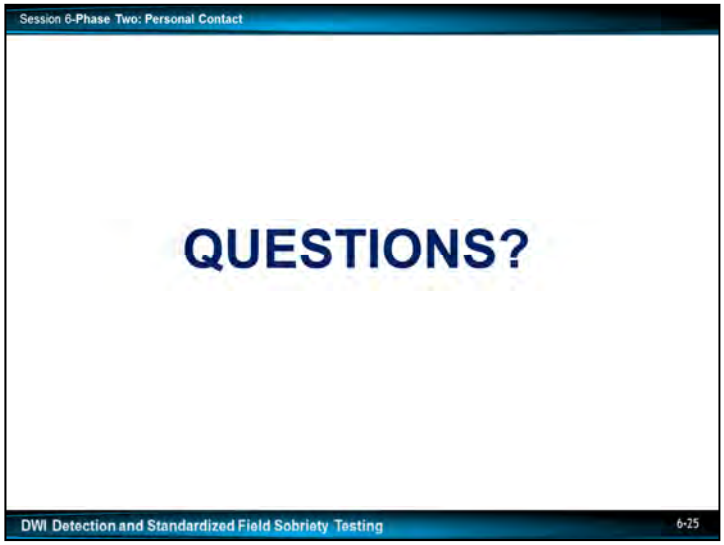
How the driver steps and walks from the vehicle and actions or behavior during the exit sequence may provide important evidence of impairment. Be alert to the driver who:

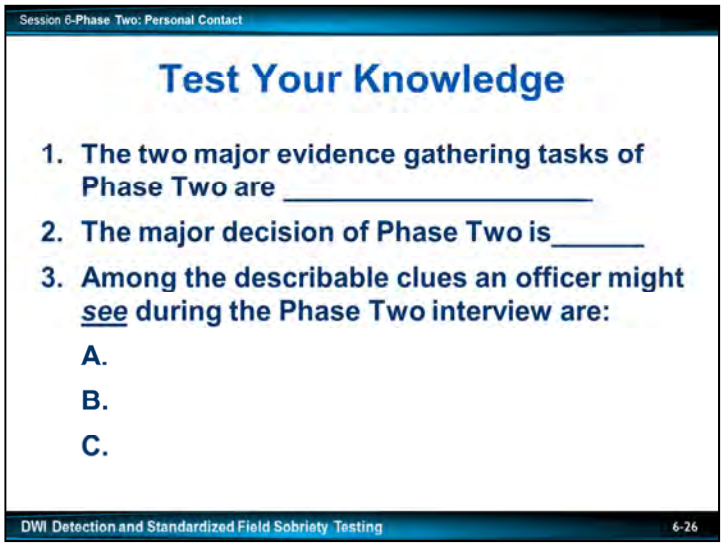
- Shows angry or unusual reactions
- Cannot follow instructions
- Cannot open the door
- Leaves the vehicle in gear
- Climbs out of vehicle
- Leans against vehicle
- Keeps hands on vehicle for balance

Proper face-to-face observation and interview of a driver 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.



Remember, you may instruct a driver to exit the vehicle as a means of ensuring your own safety. Safety considerations take precedence over all other considerations.


Session 6-Phase Two: Personal Contact
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
6-25



Test Your Knowledge

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

_____

2. The major decision of Phase Two is _____

_____

3. Among the describable clues an officer might ***see*** during the Phase Two interview are:

A. _____

B. _____

C. _____

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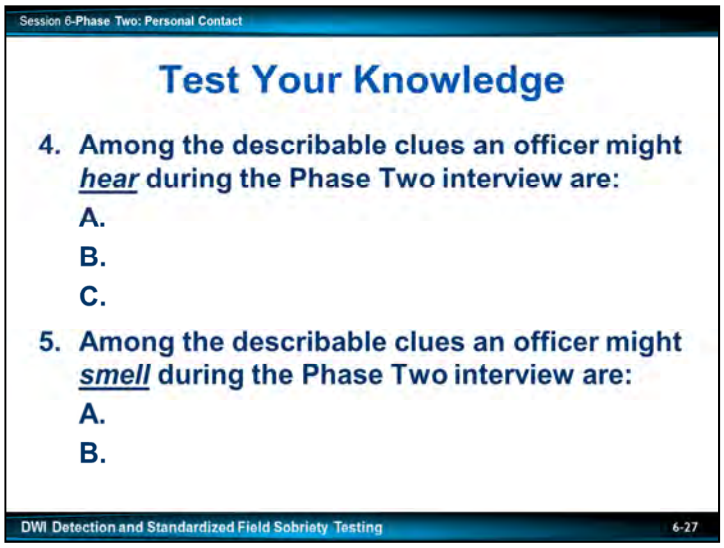

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4. Among the describable clues an officer might hear during the interview are:

   A. _____

   B. _____

   C. _____

_____

_____

5. Among the describable clues an officer might smell during the interview are:

   A. _____

   B. _____

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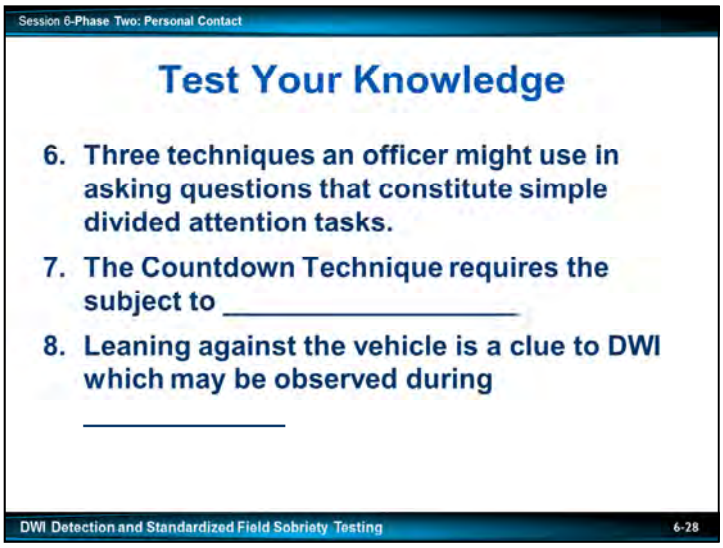

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6. There are three techniques an officer might use in asking questions that constitute simple divided attention tasks. These techniques are:

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7. The Count Down Technique requires the driver to _____

_____

8. Leaning against the vehicle is a clue to DWI which may be observed during _____

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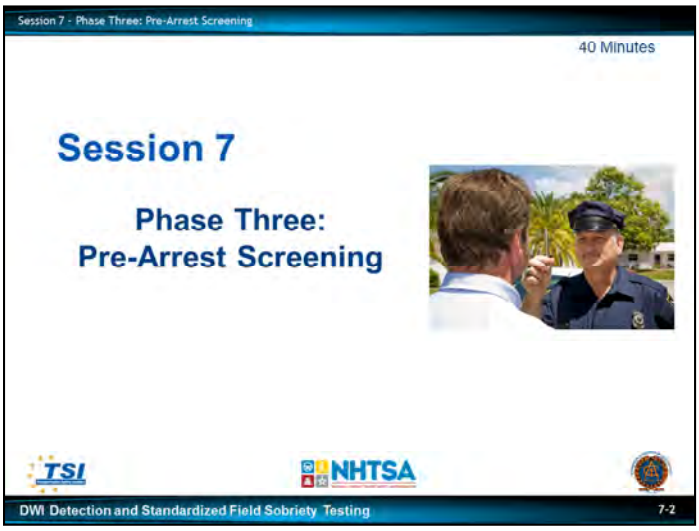
DWI Detection
and
Standardized
Field Sobriety
Testing
Session 7 – Phase Three:
Pre-Arrest Screening
NHTSA
TSI
February 2018


Session 7 - Phase Three: Pre-Arrest Screening
40 Minutes
Session 7
Phase Three:
Pre-Arrest Screening
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
7-2



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

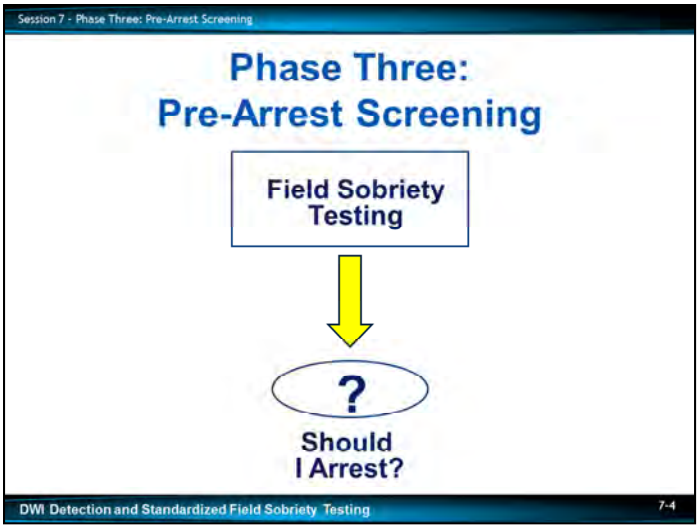
- Describe the role of psychophysical and preliminary breath tests
- Define and describe the concepts of divided attention and nystagmus
- Discuss the advantages and limitations of preliminary breath testing
- Discuss the arrest decision process

CONTENT SEGMENTS

A. Overview: Tasks and Decision
B. Gaze Nystagmus - Definition
C. Horizontal Gaze Nystagmus – Definition, Concepts, Demonstration
D. Vertical Gaze Nystagmus – Definition, Concepts, Demonstration
E. Divided Attention Tests: Concepts, Examples, Demonstration
F. Advantages and Limitations of Preliminary Breath Testing
G. The Arrest Decision

LEARNING ACTIVITIES

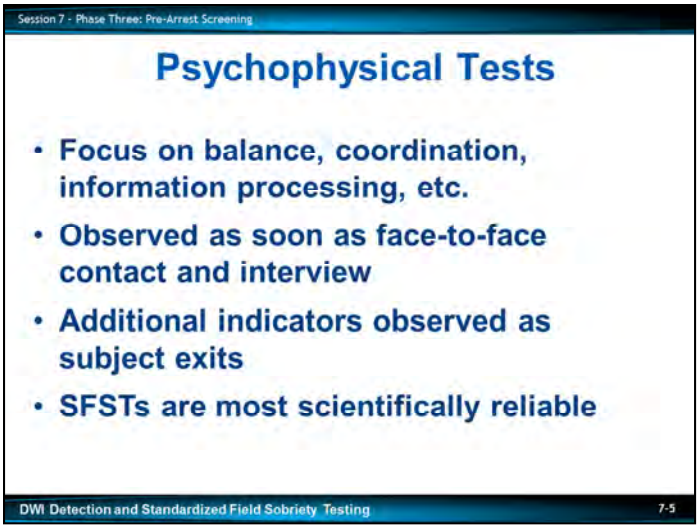
Instructor-Led Presentation
Instructor-Led Demonstrations
Video Presentation



A. <u>Overview: Tasks and Decision</u>

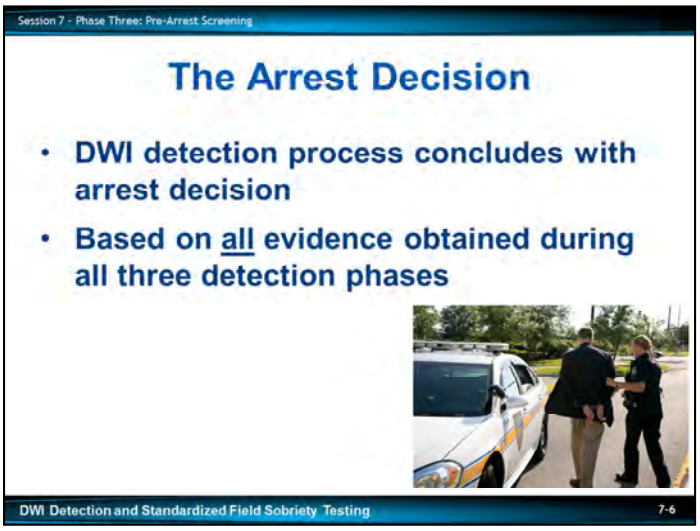
Like Phases One and Two, DWI Detection Phase Three: Pre-arrest Screening has two major evidence gathering tasks and one major decision.

Phase Three: Pre-Arrest Screening
Your first task in Phase Three is to administer three scientifically validated Standardized Field Sobriety Tests (SFSTs). Depending on State laws and/or agency policies, the next task would be to administer (or arrange for) a Preliminary Breath Test (PBT) to confirm the chemical basis of the subject's impairment. Based on these tests and on all other evidence from Phase One and Two, the officer should decide whether there is sufficient probable cause to arrest the subject for DWI. The <u>entire</u> detection process culminates in the arrest/no arrest decision.



Psychophysical tests are methods of assessing a subject's mental and physical impairment. These tests focus on the abilities needed for safe driving: balance, coordination, information processing, and so on.

Indicators of psychophysical impairment may be observed as soon as you come into face-to-face contact with the subject and begin the interview. Additional indicators of impairment can be observed as the subject exits the vehicle to begin the field sobriety tests. The SFSTs are the most scientifically reliable indicators of psychophysical impairment.



The Arrest Decision

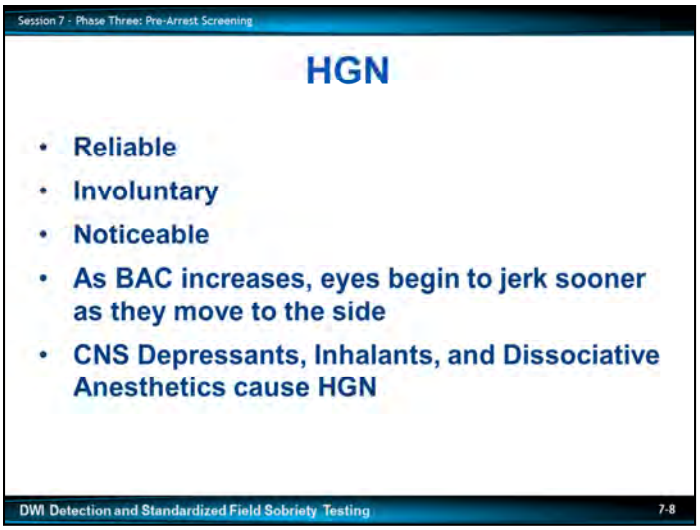
The DWI detection process concludes with the arrest decision. This decision is based on all of the evidence you have obtained during all three detection phases: on observation of the vehicle in motion and during the stopping sequence; on face-to-face observation of the subject and the subject's exit from the vehicle; and, pre-arrest screening.



B. <u>Gaze Nystagmus – Definition</u>

"Nystagmus" means an involuntary jerking of the eyes.

Alcohol and certain other drugs cause Horizontal Gaze Nystagmus (HGN).

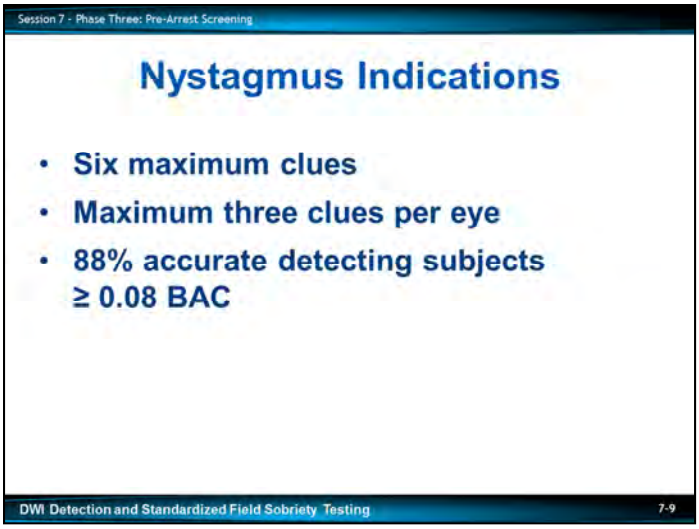


C. <u>Horizontal Gaze Nystagmus – Definition, Concepts, Demonstration</u>

HGN is the most reliable field sobriety test. Especially when used in combination with the divided attention tests, it will help law enforcement officers correctly identify subjects who are impaired. Involuntary jerking of the eyes becomes readily noticeable when a person is impaired by alcohol and certain drug categories. As a person's blood alcohol concentration (BAC) increases, the eyes will begin to jerk sooner as they move to the side.

HGN refers to an involuntary jerking occurring as the eyes gaze toward the side. In addition to being involuntary, the person experiencing the nystagmus is usually unaware the jerking is happening. In administering the HGN test, the officer has the subject follow the motion of a small stimulus with the eyes only. The stimulus may be the tip of a pen or penlight, or an eraser on a pencil, whichever contrasts with the background.

In addition to alcohol, drugs such as Central Nervous System (CNS) Depressants, Inhalants, and Dissociative Anesthetics cause HGN.



- When the HGN test is administered, always begin with subject's left eye
  - Each eye is examined for three specific clues

- As the eye moves from side to side, does it move smoothly or does it jerk noticeably?
  - As people become impaired by alcohol, their eyes exhibit a Lack of Smooth Pursuit as they move from side to side

- When the eye moves as far to the side as possible and is kept at that position for four seconds, does it jerk distinctly?
  - Distinct and Sustained Nystagmus at Maximum Deviation is another clue of impairment

- As the eye moves toward the side, does it start to jerk prior to a 45 degree angle?
  - Onset of Nystagmus Prior to 45 Degrees is another clue of impairment

- As a person's BAC increases, it is more likely these clues will appear

- The maximum total number of clues is six
  - The maximum number of clues that may appear in one eye is three

Based upon research using SFST-experienced personnel, HGN is 88% accurate at detecting subjects at or above 0.08 BAC.

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Session 7 - Phase Three: Pre-Arrest Screening
HGN Video
Truth
is in
The
EYES
DWI Detection and Standardized Field Sobriety Testing
7-10



To test for HGN, the subject is instructed to stand with feet together, hands at sides, hold the head still, and follow the motion of a stimulus with the eyes only.

The object may be the tip of a pen or penlight or the eraser on a pencil, which contrasts with the background.

Each eye is checked, beginning with the subject's left. A subject's height might restrict ability to clearly see nystagmus. Subject may be placed in sitting position to accommodate a better view.

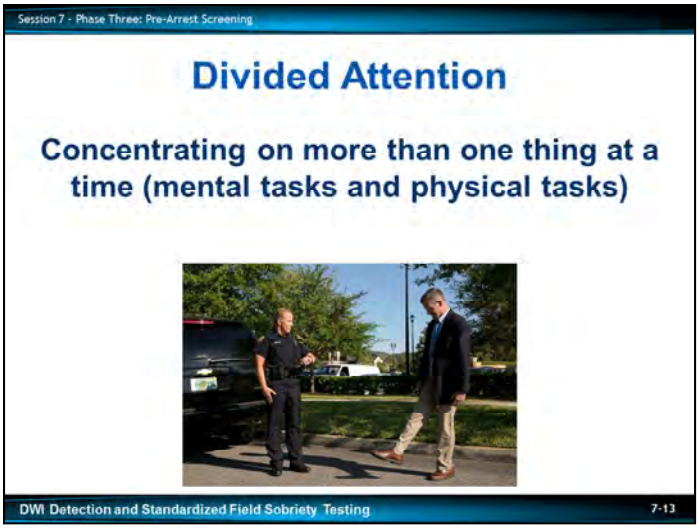
Two or more "passes" are made before each eye to look for each of the clues of nystagmus.



D. <u>Vertical Gaze Nystagmus – Definition, Concepts, Demonstration</u>

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

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



E. <u>Divided Attention Tests: Concepts, Examples, Demonstration</u>

Many of the most reliable and useful psychophysical tests employ the concept of divided attention: they require the subject to concentrate on more than one thing at a time (mental tasks and physical tasks). Driving is a complex divided attention task. In order to operate a vehicle safely, subjects must simultaneously control steering, acceleration and braking, react appropriately to a constantly changing environment, and perform many other tasks.

Alcohol and many other drugs reduce a person's ability to divide attention. Impaired subjects often ignore the less critical tasks of driving in order to focus their impaired attention on the more critical tasks. For example, a subject may ignore a traffic signal and focus instead on speed control. Even when impaired, many people can handle a single, focused attention task fairly well. For example, a subject may be able to keep the vehicle well within the proper traffic lane as long as the road remains fairly straight. However, most people, when impaired, cannot satisfactorily divide their attention to handle multiple tasks at the same time.

The concept of divided attention has been applied to psychophysical testing. Field sobriety tests that simulate the divided attention characteristics of driving have been developed and are being used by law enforcement agencies nationwide. The best of these tests exercise the same mental and physical capabilities a person needs to drive safely. A good, structured field sobriety test is simple and divides the subject's attention. Examples of divided attention tests include Walk and Turn (WAT) and One Leg Stand (OLS).

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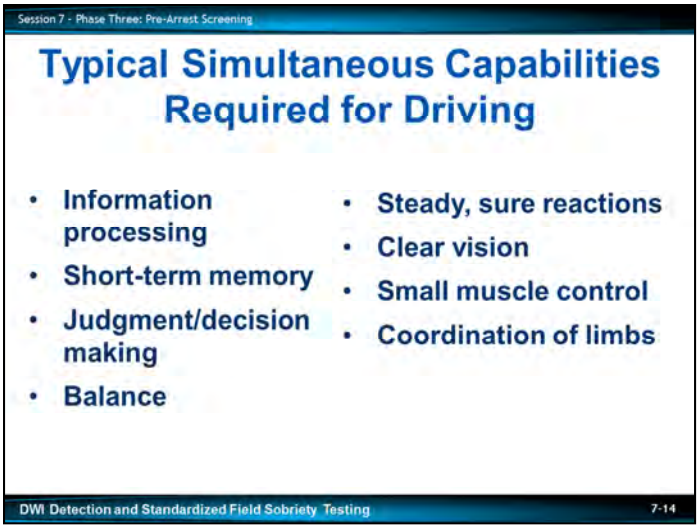


Typical simultaneous capabilities required for driving:

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

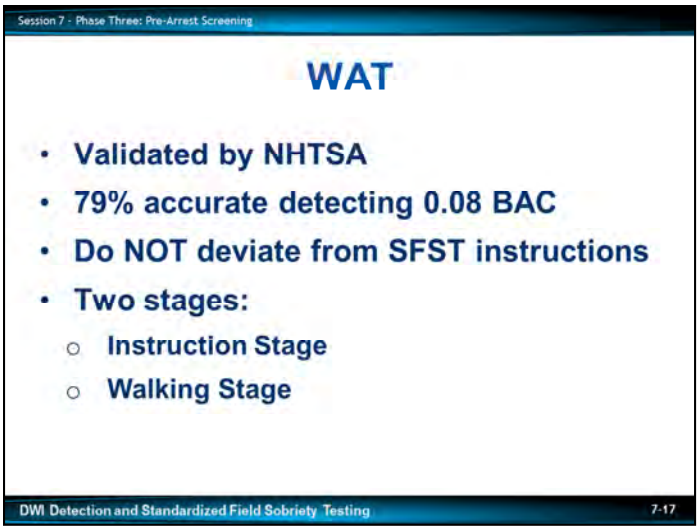
Any test that requires a person to demonstrate two or more of these capabilities simultaneously is potentially a good psychophysical test.



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



Two divided attention field sobriety tests that have proven accurate and effective in DWI detection are the WAT and the OLS.



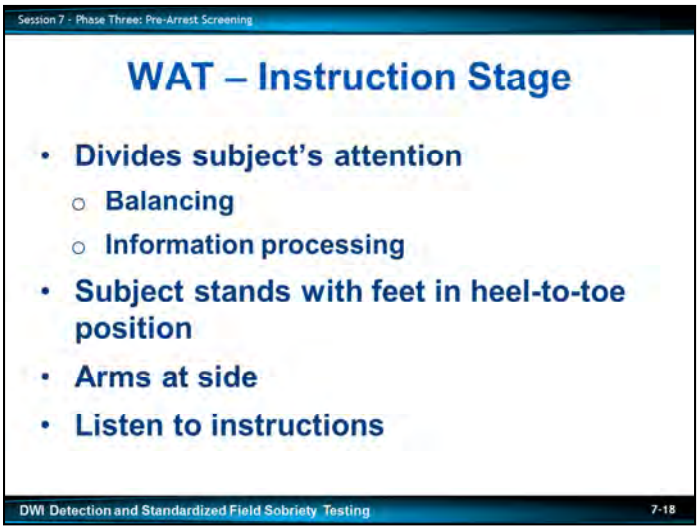
Walk and Turn

WAT is a test that has been validated through extensive research sponsored by the National Highway Traffic Safety Administration (NHTSA).

Based upon research using SFST-experienced personnel, WAT is 79% accurate at detecting subjects at or above 0.08 BAC.

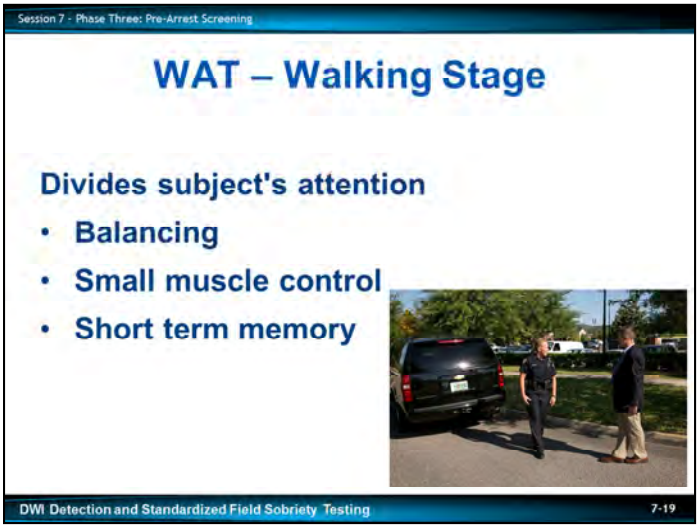
WAT is a divided attention test consisting of two stages:

- Instruction stage
- Walking stage

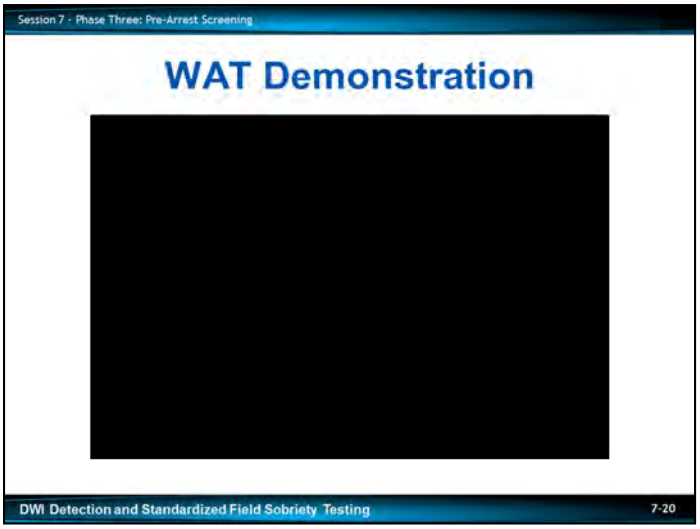


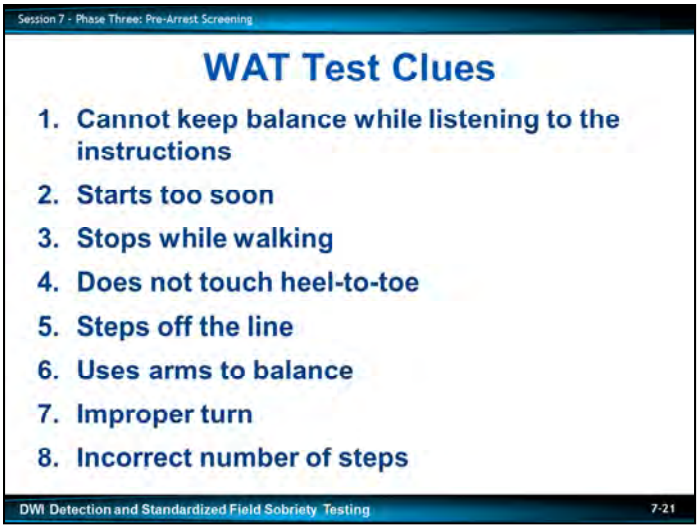
The Instruction Stage divides the subject's attention between a balancing task (standing while maintaining the heel-to-toe position) and an information processing task (listening to and remembering instructions).

In the Instruction Stage, the subject must stand with their feet in a heel-to-toe position, keep their arms at their sides, and listen to the instructions.



In the Walking Stage, the subject takes nine heel-to-toe steps, turns in a prescribed manner, takes nine heel-to-toe steps back, counts the steps out loud, and watches their feet. During the turn, the subject keeps their front foot on the line, turns in a prescribed manner, and uses the other foot to take several small steps to complete the turn. The Walking Stage divides the subject's attention among a balancing task (walking heel-to-toe and turning), a small muscle control task (counting out loud), and a short term memory task (recalling the number of steps and the turning instructions). The walking stage divides the subject's attention between a task of listening, comprehending, and carrying out the instruction.

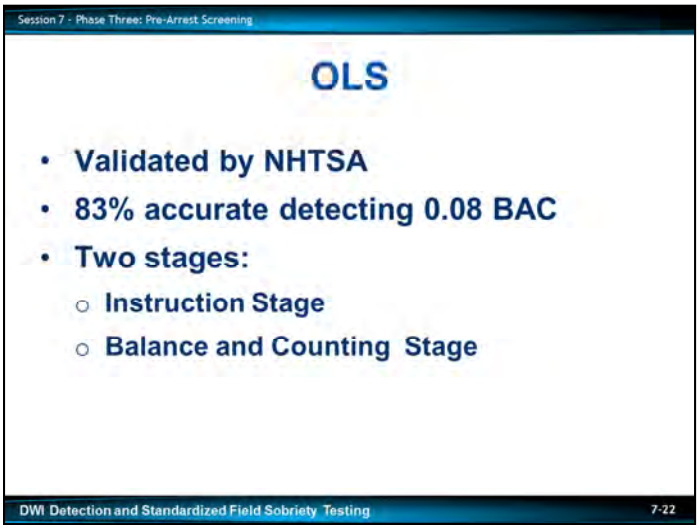

Session 7 - Phase Three: Pre-Arrest Screening
WAT Demonstration
DWI Detection and Standardized Field Sobriety Testing
7-20



The WAT test is administered and interpreted in a standardized manner, i.e., the same way every time. Officers administering the WAT test observe the subject's performance for eight 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

Inability to complete the WAT test may occur when the subject is in danger of falling or otherwise cannot complete the test.



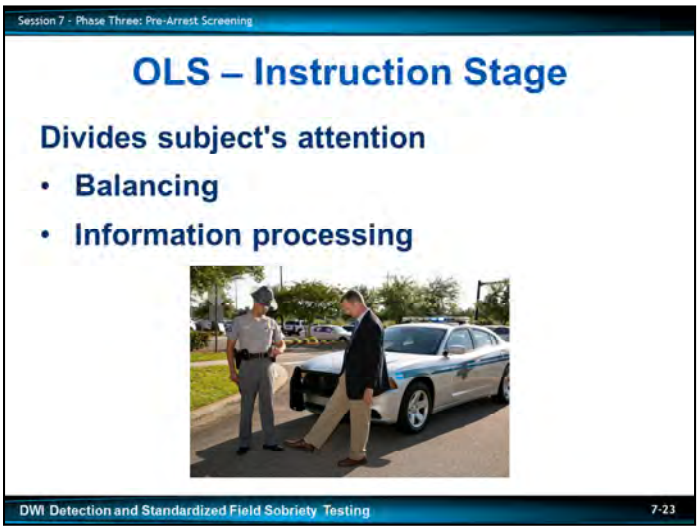
One Leg Stand

The OLS has also been validated through NHTSA-sponsored research.

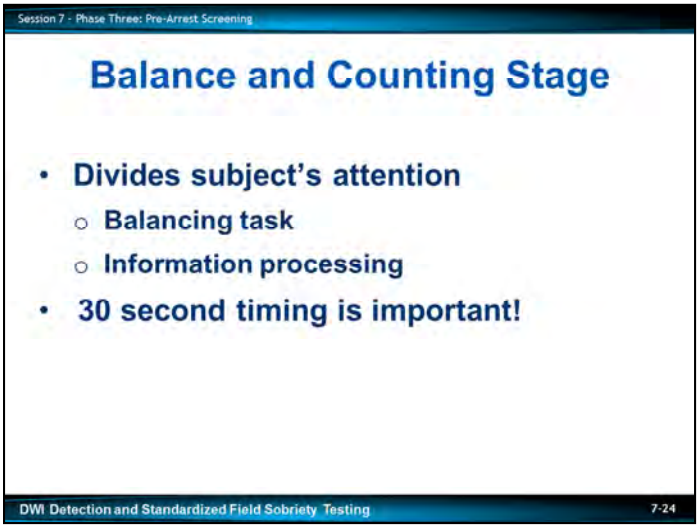
Based upon research using SFST-experienced personnel, OLS is 83% accurate at detecting subjects at or above 0.08 BAC.

It is a divided attention test consisting of two stages:

- Instruction stage
- Balance and counting stage

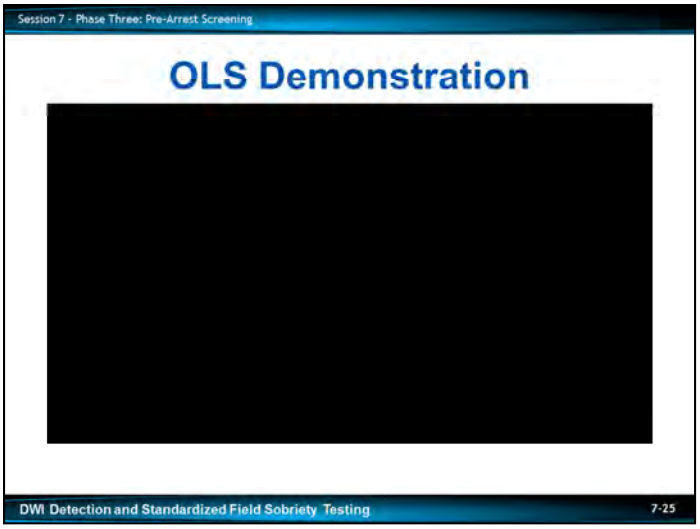


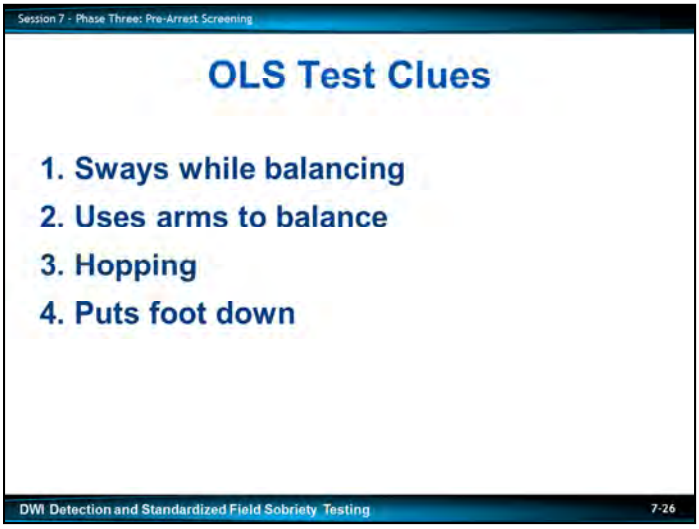
In the Instruction Stage, the subject must stand with their feet together, keep their arms at their sides, and listen to instructions.



In the Balance and Counting Stage, the subject must raise one foot, either foot, with the raised foot approximately six inches off the ground, with both legs straight and the raised foot parallel to the ground. Have the subject, while looking at the elevated foot, count out loud in the following manner: "one thousand one", "one thousand two", "one thousand three" until told to stop. This divides the subject's attention between balancing (standing on one foot) and information processing (counting out loud).

The timing for a thirty-second period by the officer is an important part of the OLS test. The original research conducted by SCRI in 1977 showed many impaired subjects are able to stand on one leg for up to 25 seconds, but few can do so for 30 seconds.

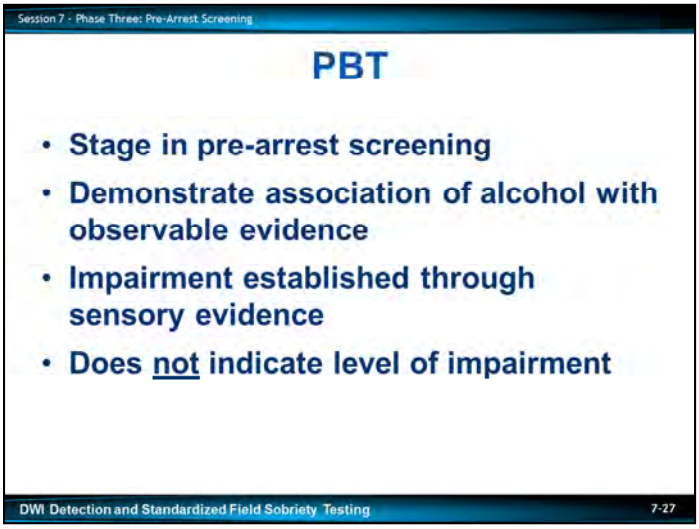

Session 7 - Phase Three: Pre-Arrest Screening
OLS Demonstration
DWI Detection and Standardized Field Sobriety Testing
7-25



OLS is also administered and interpreted in a standardized manner. Officers carefully observe the subject's performance and look for four specific clues:

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

Inability to complete the OLS test occurs when the subject is in danger of falling or otherwise cannot complete the test.

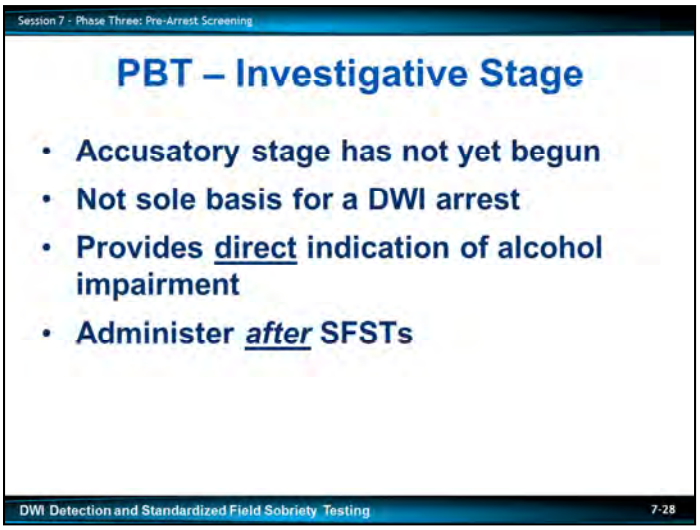


F. Advantages and Limitations of Preliminary Breath Testing

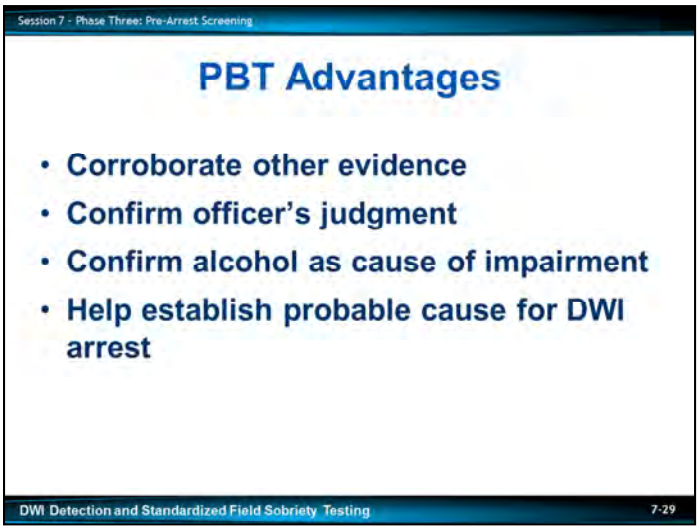
Preliminary breath testing (PBT), like psychophysical testing, is a stage in the pre-arrest screening of a DWI subject. Usually the subject is not yet under arrest when requested to submit to the PBT.

The basic purpose of PBT is to demonstrate the association of alcohol with the observable evidence of the subject's impairment. The subject's impairment is established through sensory evidence: what the officer sees, hears, and smells.

The PBT provides the evidence that alcohol is the chemical basis of impairment by yielding an on-the-spot indication of the subject's BAC. The PBT provides direct indication of the BAC level. **It does not indicate the level of the subject's impairment.** Impairment varies widely among individuals with the same BAC level.



The DWI 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 subject should be arrested for DWI. Whenever possible, it should not be the sole basis for a DWI arrest. The PBT result is an important factor because it provides direct indication of alcohol impairment. All other evidence, from initial observation of the vehicle in operation through psychophysical testing, indicates alcohol impairment.



PBT Advantages

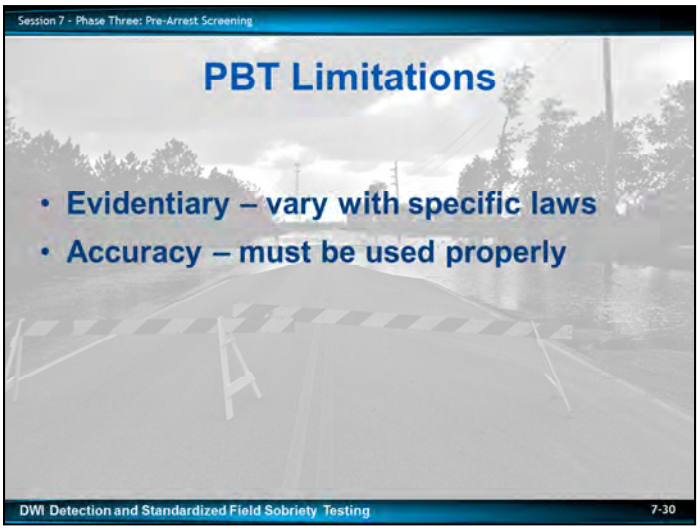
A PBT offers several important advantages for DWI detection. It may:

- Corroborate other evidence by demonstrating the suspicion of alcohol impairment is consistent with the officer's observations of the subject's mental and physical impairment

- Confirm the officer's own judgment and help gain confidence in evaluating alcohol impairment accurately based on observations and psychophysical tests
  - Many officers experienced in DWI enforcement find 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 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 the subject has ingested a drug other than alcohol or suffers from a medical problem

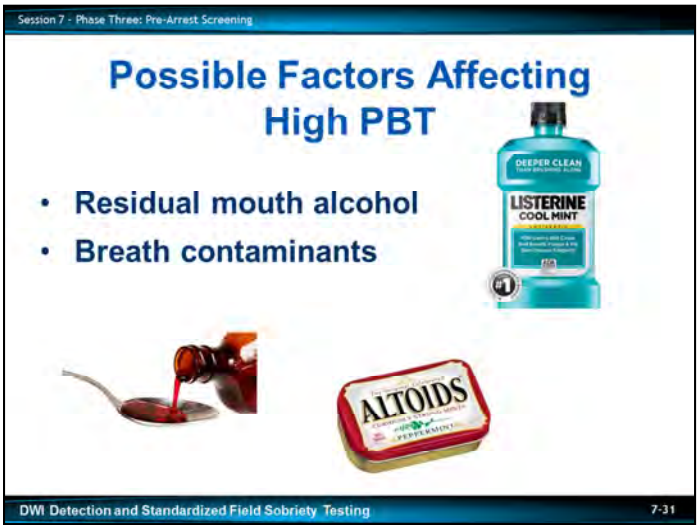
- Help to establish probable cause for a DWI arrest
  - The role of the PBT in establishing probable cause may be affected by the evidentiary value of PBT results in your State
  - Consult your specific PBT law, your supervisor, or the local prosecutor for clarification, if necessary



PBT Limitations

PBT may have both evidentiary limitations 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 or value they are given. Consult your State PBT law, your supervisor, or your local prosecutor, as necessary, for clarification.

Although all PBT instruments currently used by law enforcement are reasonably accurate, they are subject to the possibility of some error, especially if they are not used properly. There are factors that can affect the accuracy of PBT devices. Some of these factors tend to produce "high" test results; others tend to produce "low" results.



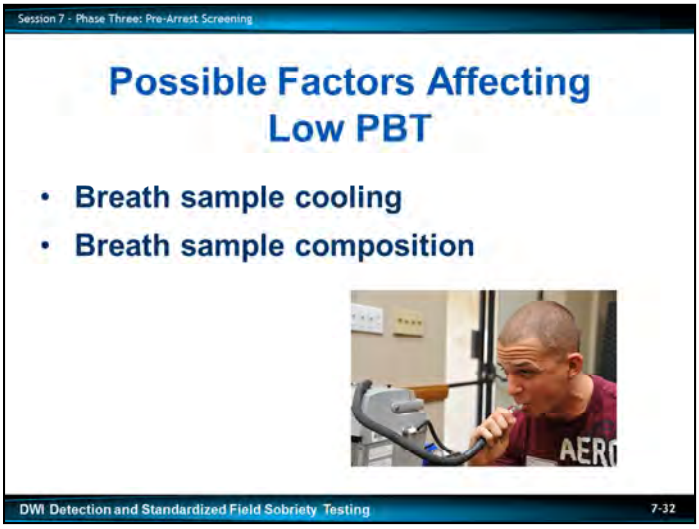
There are two common factors that tend to produce high results on a PBT.

Residual Mouth Alcohol – After a person takes a drink, some of the alcohol will remain in the mouth. 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 be eliminated from the mouth.

The only sure way to eliminate this factor is to make sure the subject does not consume any alcohol for at least 15 to 20 minutes before conducting a breath test. Remember, too, most mouthwashes, breath sprays, cough syrups, etc., contain alcohol and may produce residual mouth alcohol. Therefore, do not permit the subject to put anything in their mouth for at least 15 to 20 minutes prior to testing.

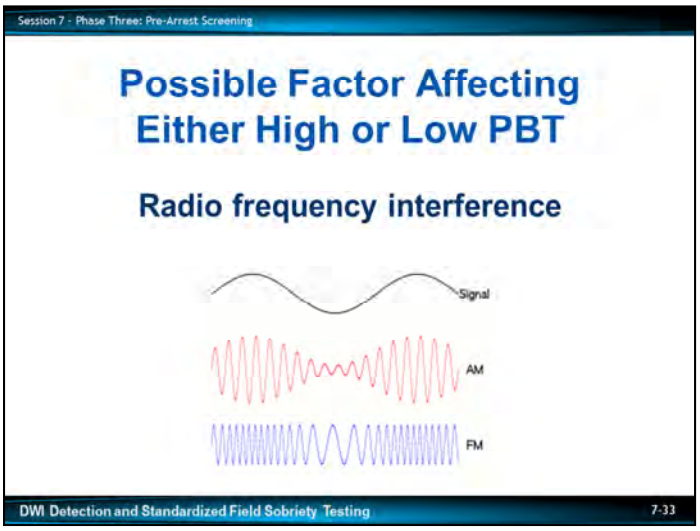
Breath Contaminants – Some types of PBTs might react to certain substances other than alcohol. For example, substances such as ether, chloroform, acetone, acetaldehyde, and cigarette smoke may produce a positive reaction on certain devices. If so, the test would be contaminated and its result would be higher than the true BAC. Normal characteristics of breath samples, such as halitosis (bad breath), food odors, etc., do not affect accuracy.



There are two common factors that tend to produce low PBT results.

Breath Sample Cooling – 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.

Breath Sample Composition – 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.



Radio frequency interference (RFI) can produce either high or low test results, or can prevent a breath test device from producing any result. Care should be exercised when utilizing a PBT around radio equipment.



G. <u>The Arrest Decision</u>

Your arrest/no arrest decision is the culmination of the DWI detection process. That decision is based on <u>all</u> of the evidence that has come to light since your attention was first drawn to the vehicle or individual.

PHASE ONE:
- Initial observation of vehicle in motion
- Observation of the stop

PHASE TWO:
- Face-to-face observation and interview
- Observation of the exit

PHASE THREE:
- SFSTs
- PBTs

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

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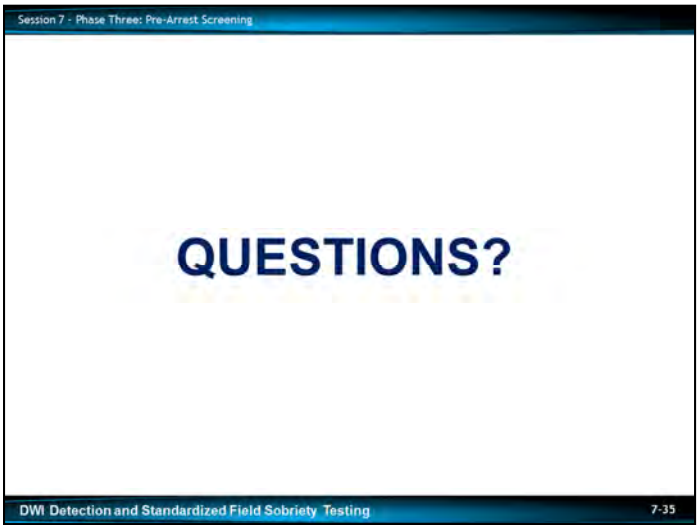
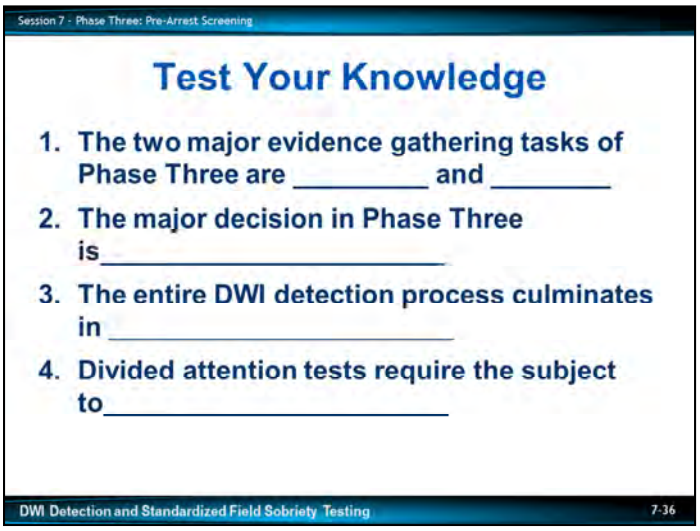

Session 7 - Phase Three: Pre-Arrest Screening
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
7-35



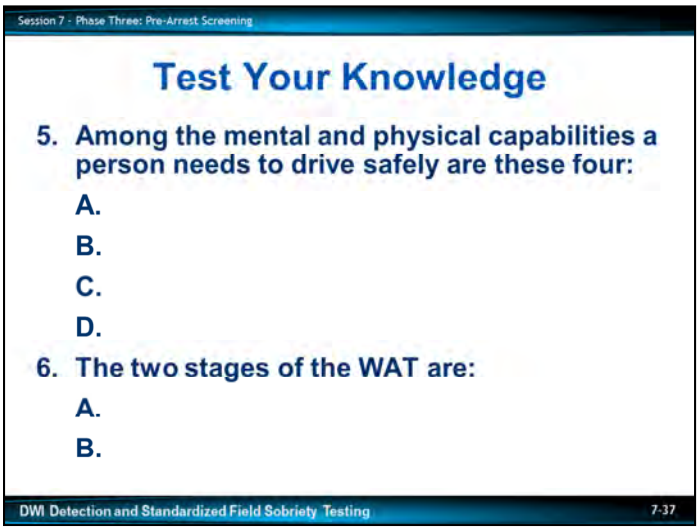
Test Your Knowledge

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

2. The major decision in Phase Three is _____

3. The entire DWI detection process culminates in _____

4. Divided attention tests require the subject to _____



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

A. _____

B. _____

C. _____

D. _____

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_____

6. The two stages of the WAT are:

A. _____

B. _____

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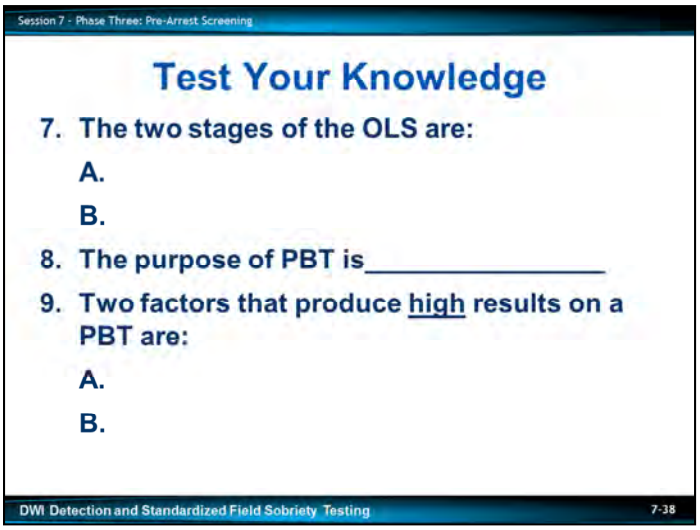

7. The two stages of the OLS are:
   A. _____
   B. _____

8. The purpose of PBT is _____

_____

_____

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

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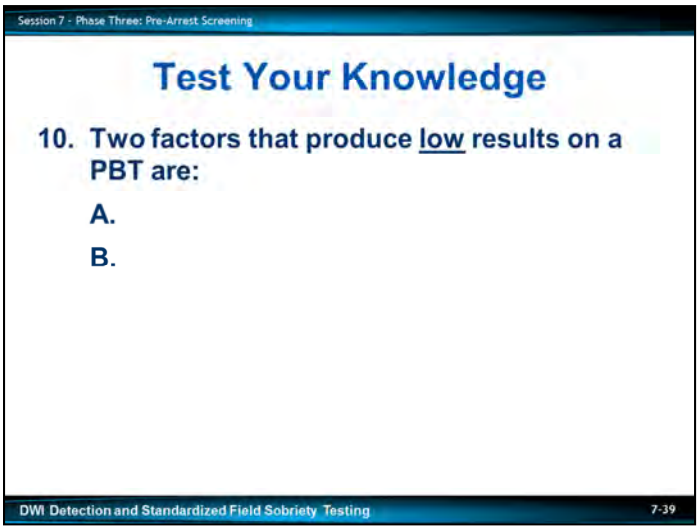

10. Two factors that produce low results on a PBT are:

A. _____

B. _____

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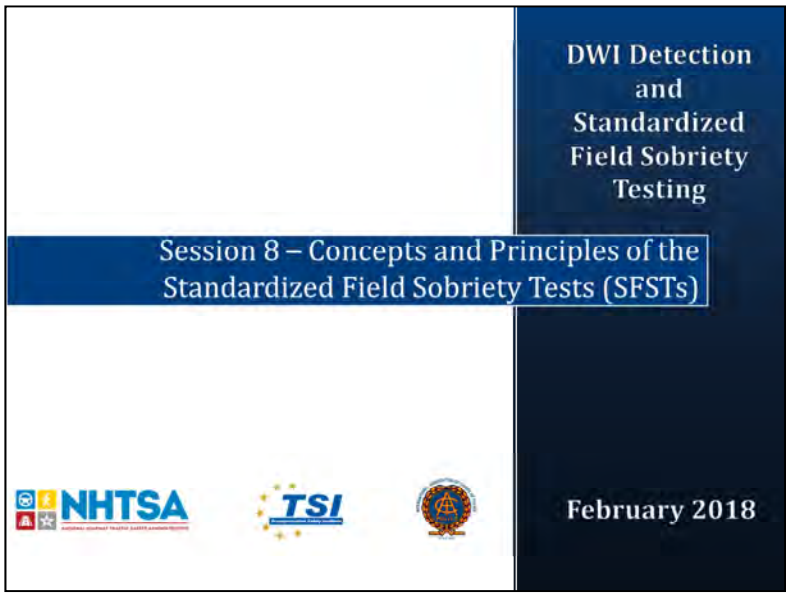
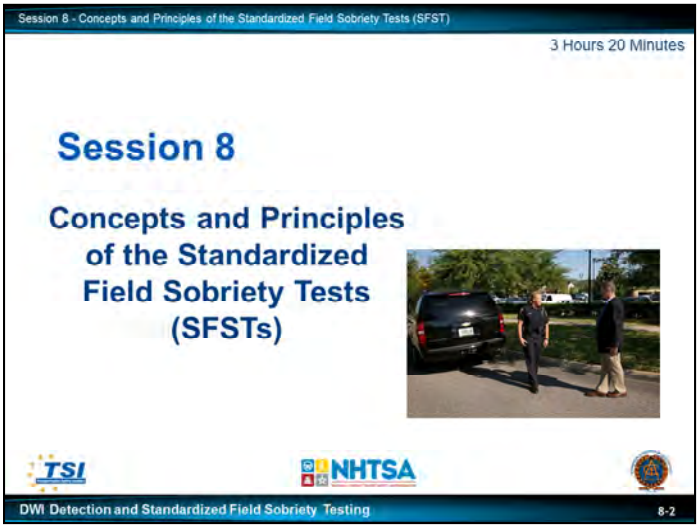
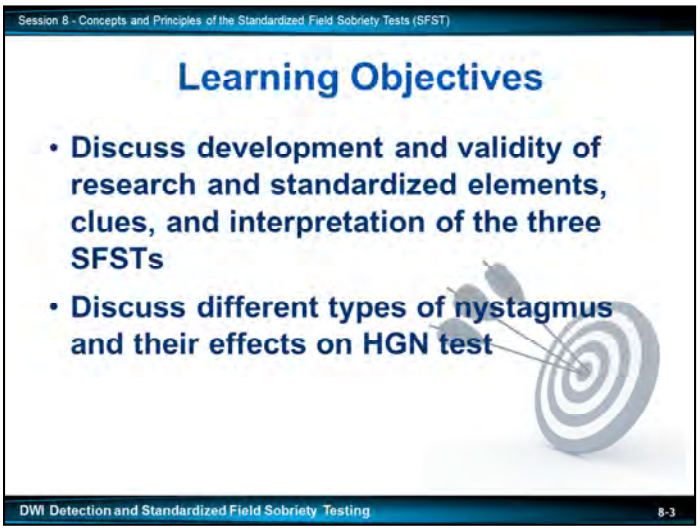
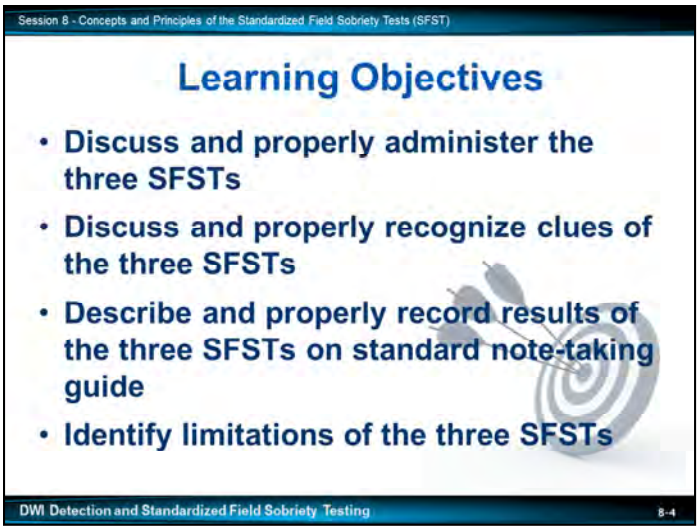

DWI Detection
and
Standardized
Field Sobriety
Testing
Session 8 – Concepts and Principles of the
Standardized Field Sobriety Tests (SFSTs)
NHTSA
TSI
February 2018


Session 8 - Concepts and Principles of the Standardized Field Sobriety Tests (SFST)
3 Hours 20 Minutes
Session 8
Concepts and Principles of the Standardized Field Sobriety Tests (SFSTs)
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
8-2



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

- Discuss the development and validity of the research and the standardized elements, clues, and interpretation of the three Standardized Field Sobriety Tests (SFSTs)
- Discuss the different types of nystagmus and their effects on the Horizontal Gaze Nystagmus (HGN) test



- Discuss and properly administer the three SFSTs
- Discuss and properly recognize the clues of the three SFSTs
- Describe in a clear and convincing manner and properly record the results of the SFSTs on a standard note-taking guide
- Identify the limitations of the three SFSTs

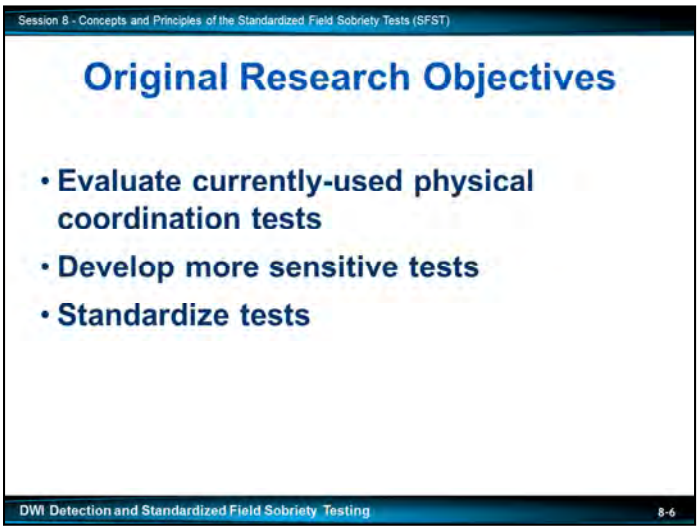
CONTENT SEGMENTS
A. Overview: Development and Validation
B. SFST Field Validation Studies
C. Horizontal Gaze Nystagmus
D. Vertical Gaze Nystagmus
E. Walk and Turn
F. One Leg Stand
G. Taking Field Notes on the Standardized Field Sobriety Tests

LEARNING ACTIVITIES
Instructor-Led Demonstration
Participant Practice Session
Demonstration



A. <u>Overview: Development and Validation</u>

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



The original research objectives were to:

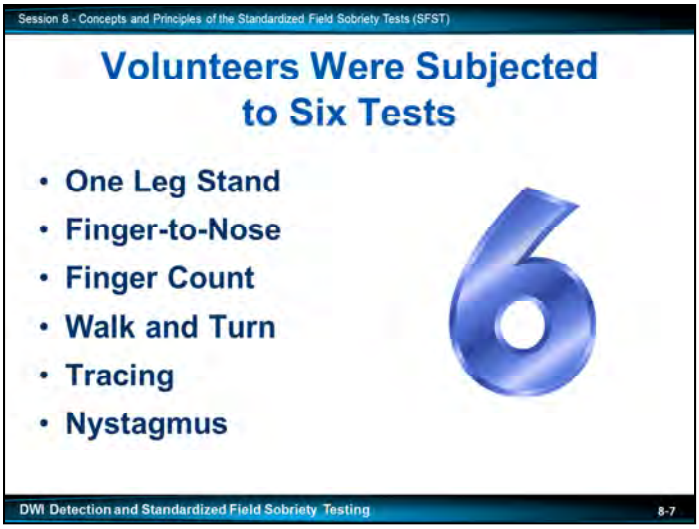
- Evaluate currently-used physical coordination tests to determine their relationship to intoxication and driving impairment

- Develop more sensitive tests that would provide more reliable evidence of impairment

- Standardize the tests and observations

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 accurate. SCRI published the following three reports:

- California: 1977 (Lab)
- California: 1981 (Lab and Field)
- Maryland, District of Columbia, Virginia, North Carolina: 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.

1. One Leg Stand (OLS)
2. Finger-to-Nose (FTN)
3. Finger Count
4. Walk and Turn (WAT)
5. Tracing (a paper and pencil exercise)
6. Nystagmus (called alcohol gaze nystagmus in final report)

Laboratory research indicated three of these tests, when administered in a standardized manner, were highly accurate and reliable tests for distinguishing blood alcohol concentrations (BACs) at or above 0.10; HGN, WAT, and OLS.

The research showed these three tests were the most accurate and the remaining tests were merely reassessing the same skills.

While many field sobriety tests are valid tests, the SFSTs have been validated through numerous research studies.

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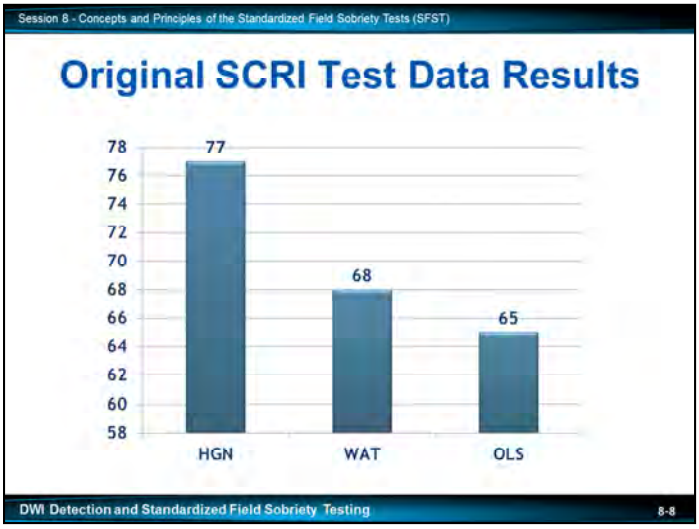
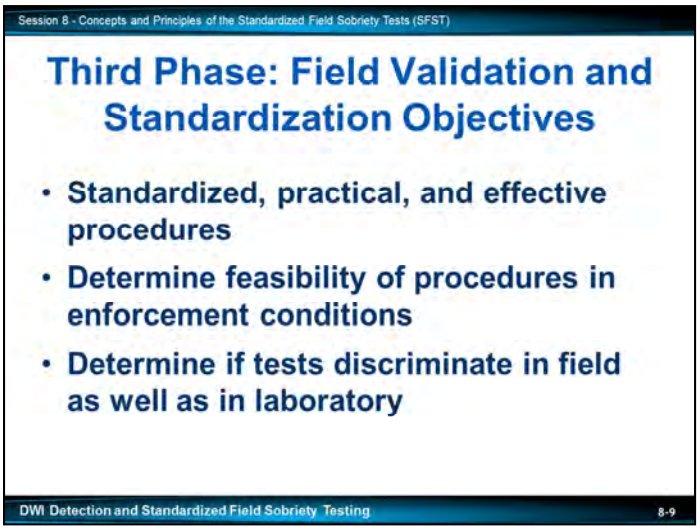


NHTSA analyzed the original SCRI research laboratory test data and found:

- HGN, by itself, was 77% accurate
- WAT, by itself, was 68% accurate
- OLS, by itself, was 65% accurate



B. <u>SFST Field Validation Studies</u>

The final phase of this study was conducted as a field validation.

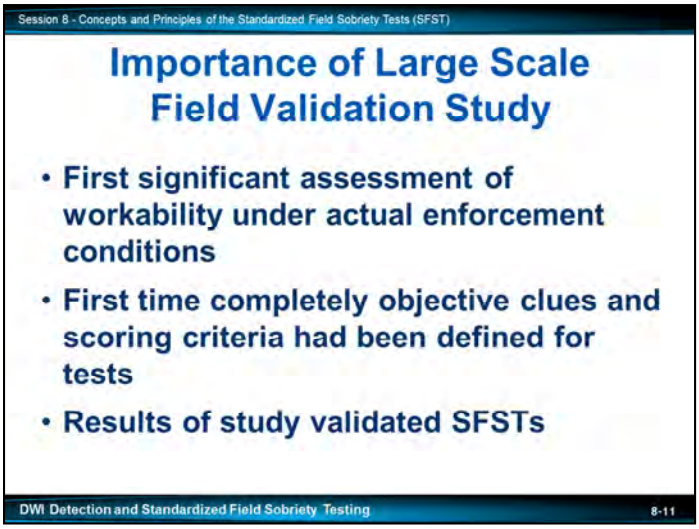
- Standardized, practical, and effective procedures were developed
- Determine the feasibility of the procedures for these tests in actual enforcement conditions
- The tests were determined to discriminate in the field as well as in the laboratory



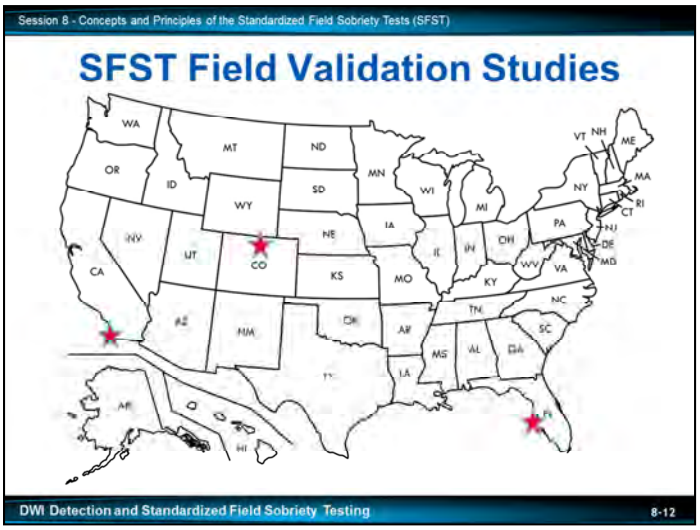
The three standardized tests were found to be highly reliable in identifying subjects whose BACs were at or above 0.10. The results of the study unmistakably validated the SFSTs.

The "Standardized" elements included:

- Standardized Administrative Procedures
- Standardized Clues
- Standardized Criteria



The large scale field validation study was the first significant assessment of the workability of the standardized tests under actual enforcement conditions. It was also the first time completely objective clues and scoring criteria had been defined for these tests. The results of this study validated the SFSTs.



Three SFST validation studies were undertaken between 1995 and 1998:

- Colorado - 1995
- Florida - 1997
- San Diego - 1998

In order to understand the results of the research studies discussed in this course, it is important to define what is meant by a correct arrest decision. A correct arrest decision is made when an officer, after completing the third phase of the detection process, decides to arrest a subject and that subject tested above the illegal per se limit for BAC or the officer decides to release a subject who is below the illegal per se limit for BAC.



For purposes of this study, a correct decision was when the person was above the per se limit and was arrested, or the person was below the per se limit and was released.

The remaining subjects, incorrect arrest decisions, fall into two other categories. Members of the first group were not arrested but tested above the per se limit for BAC. The Colorado Study noted a number (approximately 33%) of these individuals were considered alcohol tolerant and performed well on the SFSTs even though their BACs were above the per se limit. Although these release decisions were recorded as errors based on the procedures outlined in the study, this non-arrest decision ultimately benefited the driver.

For purposes of this study, the subjects who were arrested, but their BAC was below the per se limit, were also considered incorrect arrests. Many States stipulate in their statute a driver is considered DWI if they are either above the per se limit for BAC or have lost the normal use of their mental or physical faculties. Even though these arrests are legally justifiable according to an individual State's statute, these decisions are recorded as errors in the research based on the procedures outlined in the study.

Each of these studies have shown the SFSTs are scientifically validated and are a reliable method for distinguishing between impaired and unimpaired drivers.
It is important for the officer who is trained in SFST to prepare themselves to understand and explain these statistics in layman terms in order to effectively articulate them to a jury in a courtroom. Remember, if you do not know the answer to a defense question you can say, "I DON'T KNOW."

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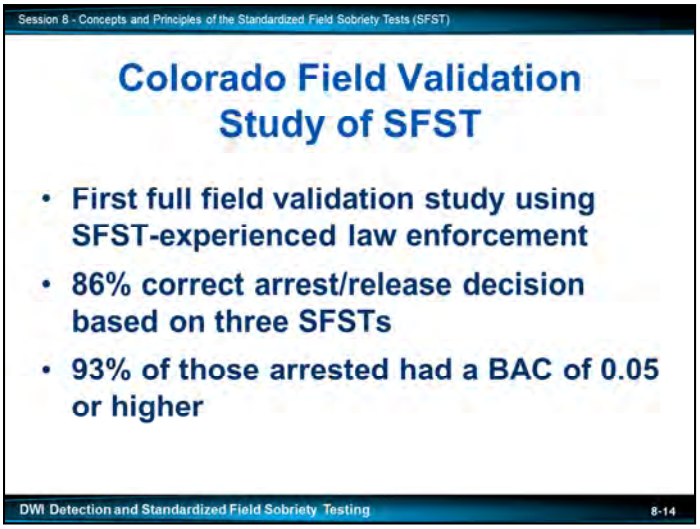
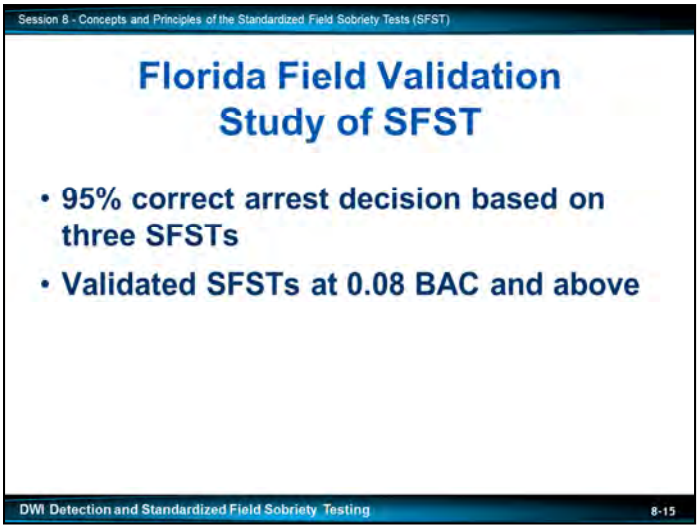


"A Colorado Validation Study of Standardized Field Sobriety Test Battery"

- The Colorado SFST validation study was the first full field study that utilized law enforcement personnel experienced in the use of SFSTs

- The initial 1977 study utilized only a few experienced officers in DWI enforcement in both a laboratory setting and field setting
  - These officers received approximately four hours of training in field sobriety testing prior to the laboratory study

- In the Colorado study, correct arrest/release decisions at a 0.05 BAC were 86% accurate based on the three SFSTs (HGN, WAT, OLS) and 93% of arrested drivers had a BAC of 0.05 or higher
  - These results, by officers who were trained in the SFST curriculum, were substantially higher than the initial 1977 study results

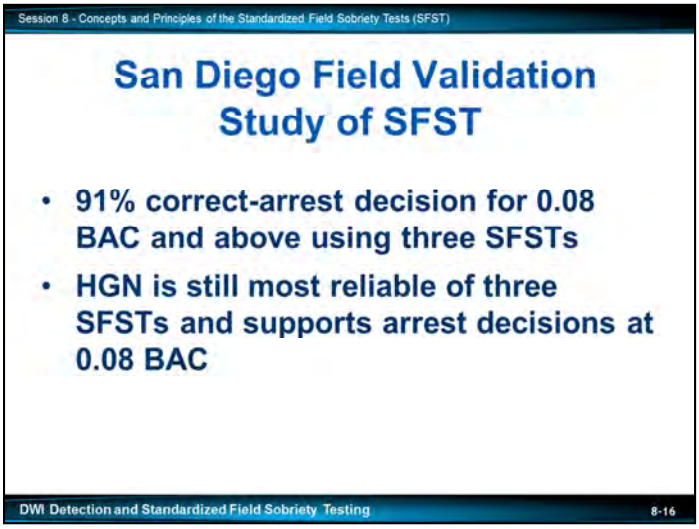


"Florida Validation Study of the Standardized Field Sobriety Test Battery"

- The Florida SFST field validation study was undertaken in order to answer the question of whether SFSTs are valid and reliable indices of the presence of alcohol when used under present-day traffic and law enforcement conditions

- Correct decisions to arrest were made 95% of the time based on the three SFSTs (HGN, WAT, OLS)

This was the second SFST field validation study undertaken. This study was the first study conducted at the lower BAC limit of 0.08.



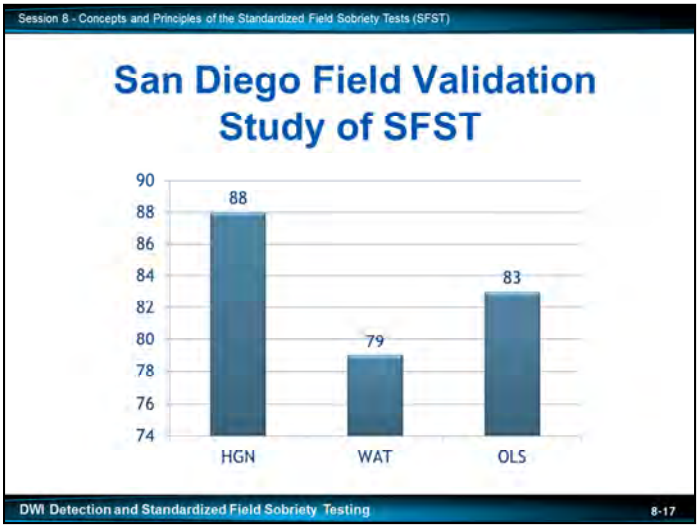
"Validation of the Standardized Field Sobriety Test Battery at BACs Below 0.10 %"

- The San Diego SFST validation field study was undertaken because of the nationwide trend towards lowering the BAC limits to 0.08
  - The question to be answered was "Do SFSTs discriminate at BACs below 0.10%?"

- The study examined the validity of SFSTs for both .08% and .04%

- Correct arrest decisions were made 91% of the time based on the three SFSTs (HGN, WAT, OLS) at the 0.08 level and above

This is the most current research used to describe the accuracy of the SFSTs.



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

The results of this study provide clear evidence of the validity of the three-tests to support arrest decisions at above or below 0.08. It strongly suggests the SFSTs also identify BACs at 0.04 and above.

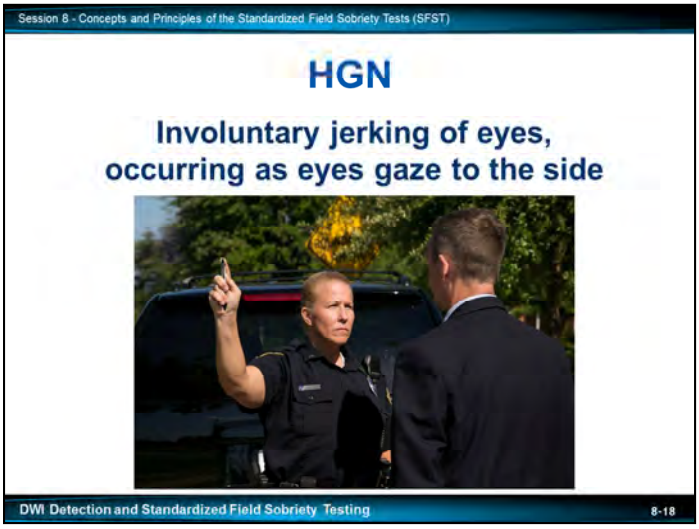
Results: Three SFST 1990's Field Studies

Study..... % Correct
Colorado ..... 86% Arrest/Release Decisions
Florida ..... 95% Arrest Decisions
San Diego ..... 91% Arrest Decisions

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 SFST elements is changed, the validity may be compromised.

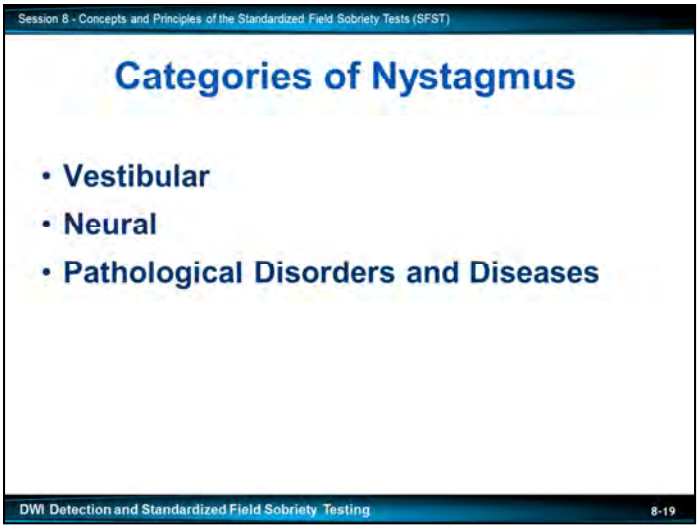


C. <u>Horizontal Gaze Nystagmus</u>

<u>Definition Review</u>: Involuntary jerking of the eyes, occurring as the eyes gaze to the side.
In addition to being involuntary:

- Person is usually unaware it is happening
- Person is powerless to stop it or control it

<u>Key Summary Point</u>: Alcohol and certain other drugs cause HGN.



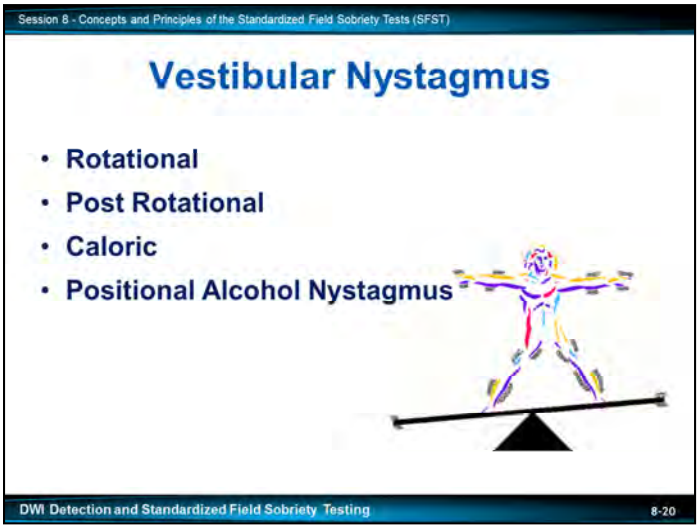
Categories of Nystagmus

HGN is not the only kind of nystagmus. There are other circumstances under which the eyes will jerk involuntarily.

It is important to know some of the other common types of nystagmus and to be aware of their potential impact on field sobriety tests.

Nystagmus of several different origins may be seen. The three general categories of nystagmus are:

- Vestibular
- Neural
- Pathological Disorders and Diseases



Vestibular Nystagmus is caused by movement or action to the vestibular system.

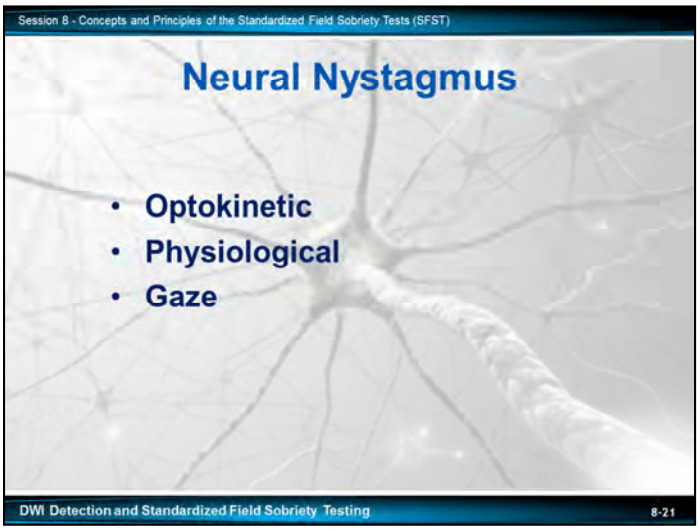
Types of Vestibular Nystagmus:

- 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 period of time and the eyes continue to jerk.

Neither Rotational nor Post Rotational Nystagmus will interfere with the HGN test because of the conditions under which they occur.

- Caloric Nystagmus occurs when fluid motion in the canals of the vestibular system is stimulated by temperature as by 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. This causes the vestibular system to respond to gravity in certain head positions, resulting in nystagmus.

In the original HGN study, research was not conducted for performing HGN on people lying down. Current research demonstrates HGN can be performed on someone in this position.



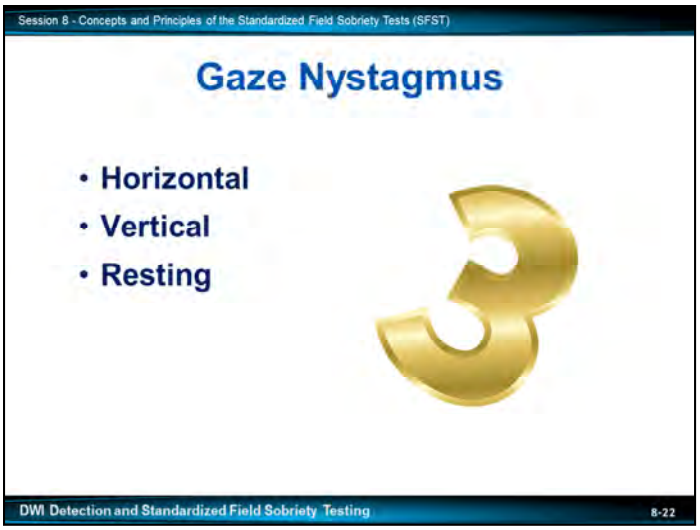
Nystagmus can also result directly from neural activity:

- 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 strobe lights, rotating lights, or rapidly moving traffic in close proximity. The HGN test will not be influenced by Optokinetic Nystagmus when administered properly. During the HGN test, the suspect is required to fixate the eyes on a penlight, pencil, or similar object that moves in accordance with the HGN testing procedures, thus Optokinetic Nystagmus will not occur. The movement of the stimulus and the fixation on the stimulus by the subject precludes this form of nystagmus from being observed by the officer.

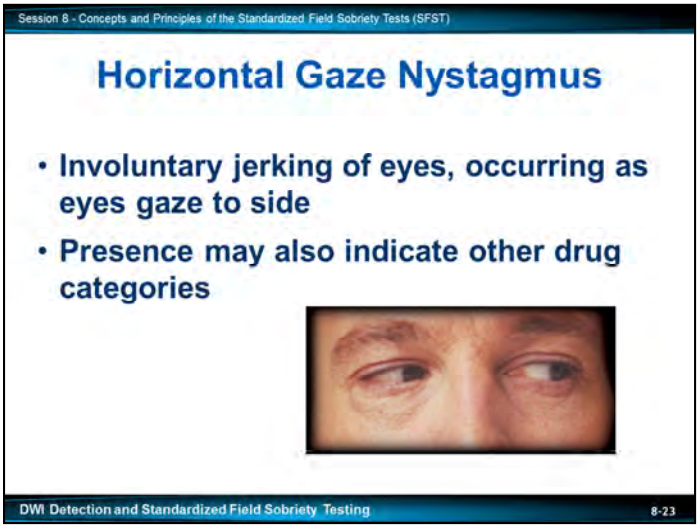
- Physiological Nystagmus is a natural nystagmus that keeps the sensory cells of the eye from tiring. It is the most common type of nystagmus. It happens to all of us, all the time. This type of nystagmus produces extremely minor tremors or jerks of the eyes. These tremors are usually too small to be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

- Gaze Nystagmus is a form of nystagmus that occurs when the eyes attempt to maintain visual fixation on a stimulus.



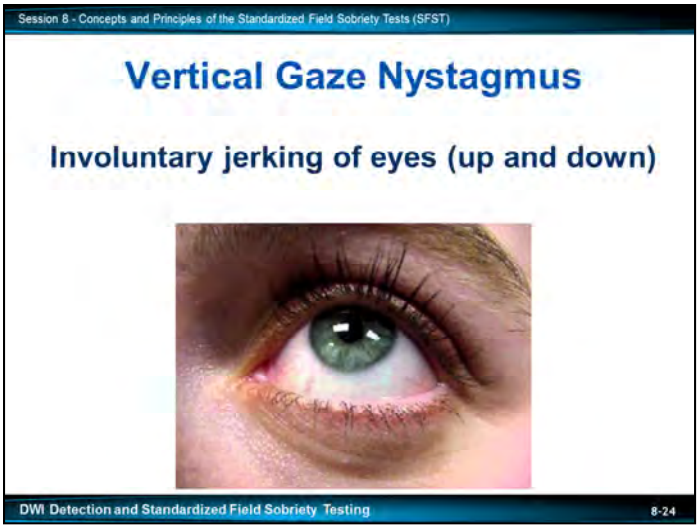
For our purposes, Gaze Nystagmus is separated into three types:

- Horizontal
- Vertical
- Resting



Horizontal Gaze Nystagmus is an involuntary jerking of the eyes, occurring as the eyes gaze to the side. It is the observation of the eyes for Horizontal Gaze Nystagmus that provides the first and most accurate test in the SFSTs. Although this type of nystagmus is indicative of alcohol impairment, its presence may also indicate use of certain other drugs.

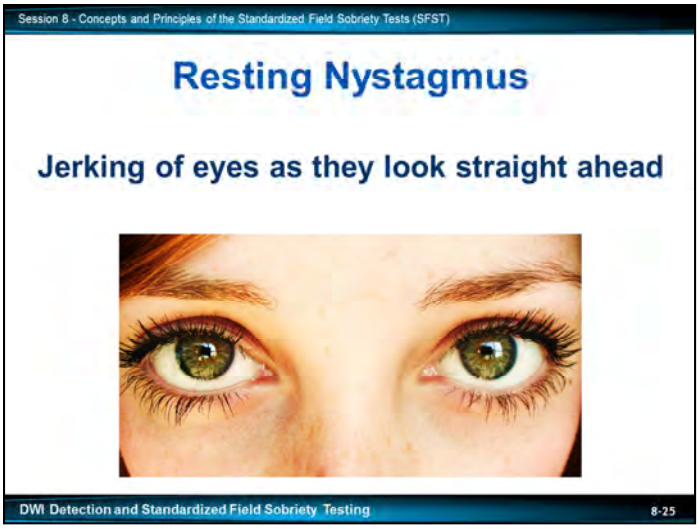
Examples of other drug categories are: CNS Depressants, Inhalants, and Dissociative Anesthetics such as PCP and its analogs.



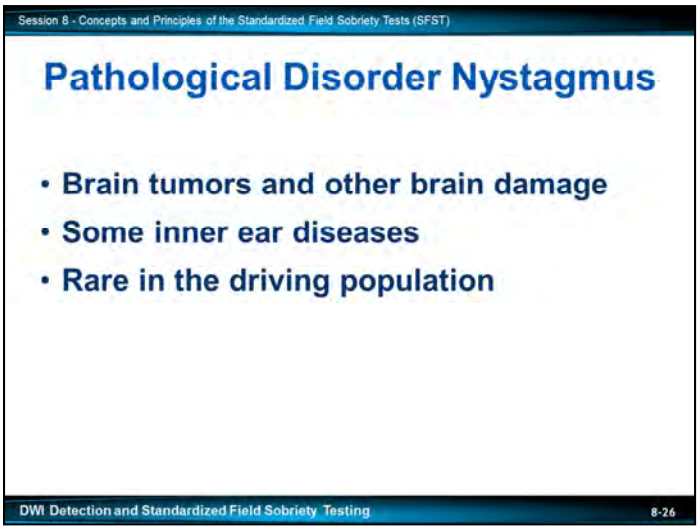
Vertical Gaze Nystagmus is an involuntary jerking of the eyes (up and down) which occurs when the eyes gaze upward at maximum elevation. The presence of this type of nystagmus is associated with high doses of alcohol for that individual. It may also be present with certain other drugs. The drugs that cause VGN are the same ones that cause HGN.

There is no known drug that will cause VGN without causing at least four clues of HGN. If VGN is present and HGN is not, it could be a medical condition.

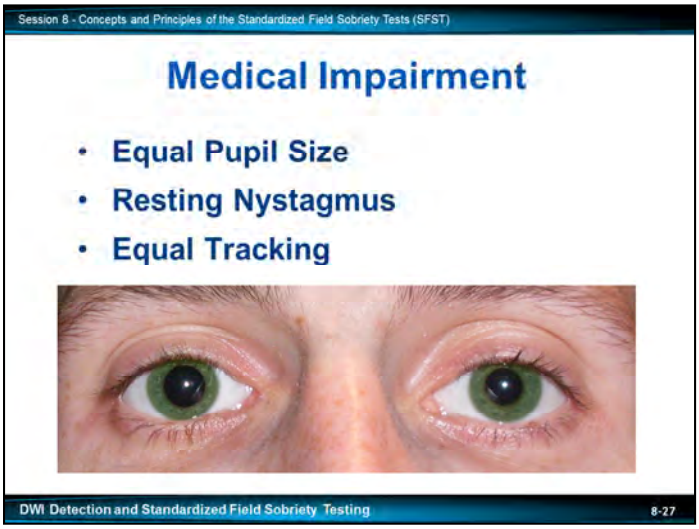
For VGN to be recorded, it must be distinct and sustained for a minimum of four seconds at maximum elevation.



Resting Nystagmus is referred to as a jerking of the eyes as they look straight ahead. Its presence usually indicates a medical condition or high doses of a Dissociative Anesthetic drug such as PCP. If detected, take precautions. (OFFICER SAFETY.)



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 you conduct to assess possible medical impairment include:

- Equal Pupil Size
- Resting Nystagmus
- Equal Tracking

Pupil size will be affected by some medical conditions or injuries. If the two pupils are distinctly different in size, it is possible the subject:

- Has a prosthetic eye
- Is suffering from a head injury
- Has a neurological disorder

Resting Nystagmus is referred to as jerking as the eyes look straight ahead. This condition is not frequently seen. Its presence usually indicates a pathology or high doses of a drug such as a Dissociative Anesthetic like PCP.

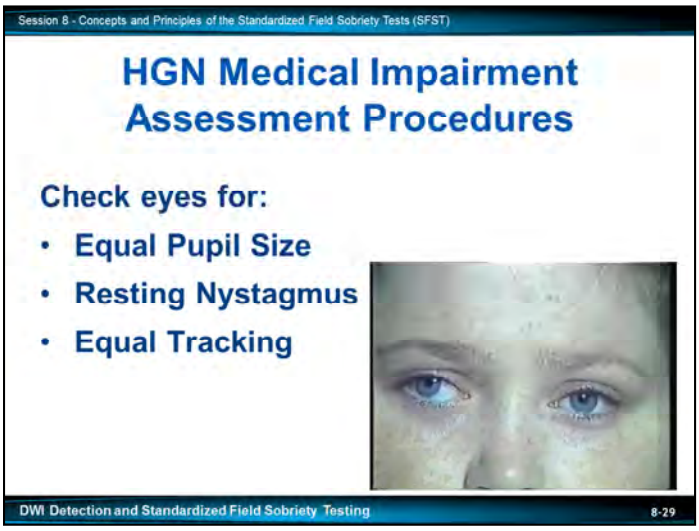
Resting Nystagmus may also be a medical problem. Tracking ability will be affected by certain medical conditions or injuries involving the brain.

This observation is a medical assessment. If the two eyes do not track together, the possibility of a serious medical condition or injury is present.



By passing a stimulus across both eyes, you can check to see if both eyes are tracking equally. If they don't (i.e., if one eye tracks the stimulus, but the other fails to move or lags behind the stimulus) there is the possibility of a neurological disorder.

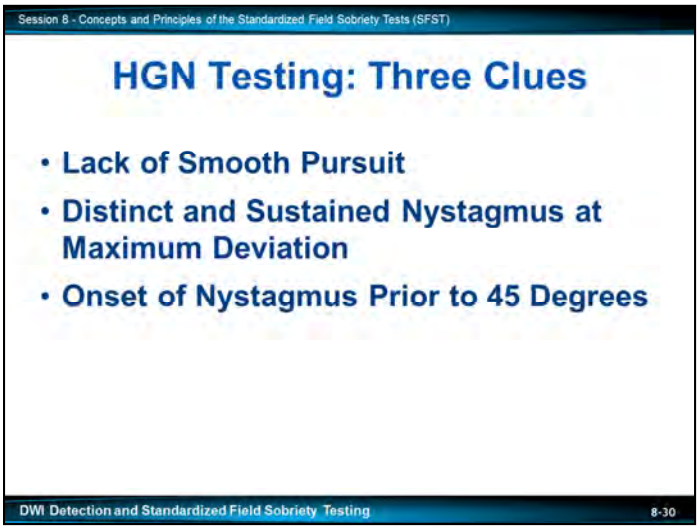
If a person has sight in both eyes, but the eyes fail to track together, there is a possibility the person is suffering from an injury or illness affecting the brain.



Procedures to Assess Possible Medical Impairment

Prior to administration of HGN, the eyes are checked for Equal Pupil Size, Resting Nystagmus, and Equal Tracking (can 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. If the eyes track together, continue with the test and document the results.

Officers are reminded to ask questions about the subject's eye and general health conditions prior to administering the HGN test. If a subject responds or volunteers information that he or she is blind in one eye or has an artificial eye, and the subject has equal tracking, the officer should make note of the abnormality and proceed with the HGN test. If there are any abnormal findings on the pre-test checks, the officer may choose not to continue with the testing. If HGN testing is continued, officers are reminded this does not follow the standardized protocol and should acknowledge such in any report. If HGN testing is conducted on a person with a blind eye, typical inconsistent findings could be related to the blind eye not being able to see or track the stimulus, or when the normal eye can no longer see the stimulus, e.g., when checking Distinct and Sustained Nystagmus at Maximum Deviation on the blind eye side.



Procedures of Horizontal Gaze Nystagmus Testing: The Three Clues
The test you will use at roadside is HGN – an involuntary jerking of the eyes occurring as the eyes gaze to the side. When a person is impaired by alcohol or certain drugs, some jerking will be seen if the eyes are moved far enough to the side.

- Lack of Smooth Pursuit (Clue Number One) – The eyes can be observed to jerk or "bounce" as they follow a smoothly moving stimulus, such as a pencil or penlight
  - The eyes of an impaired person will not follow smoothly, i.e., windshield wipers moving across a dry windshield

- Distinct and Sustained Nystagmus At Maximum Deviation (Clue Number Two) – Distinct and sustained nystagmus is evident when the eye is held at maximum deviation for a minimum of four seconds and continues to jerk toward the side

- Onset of Nystagmus Prior To 45 Degrees (Clue Number Three) – The point at which the eye is first seen jerking. If the jerking begins prior to 45 degrees it is evident the person has a BAC above 0.08, as shown by recent research.

The higher the degree of impairment, the sooner the nystagmus will be observable.

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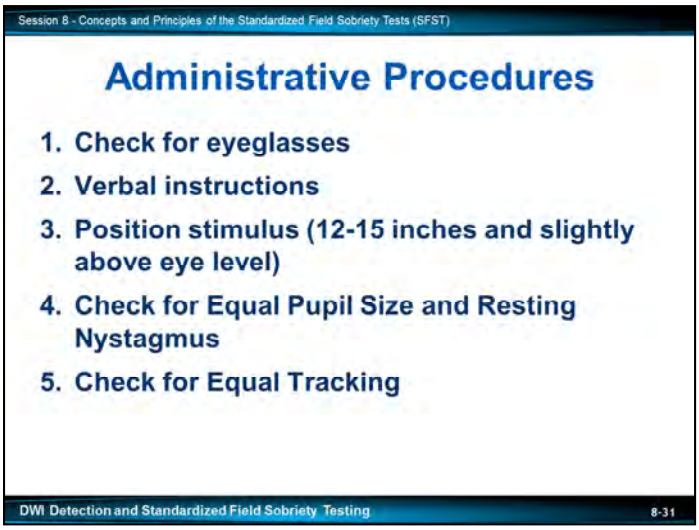
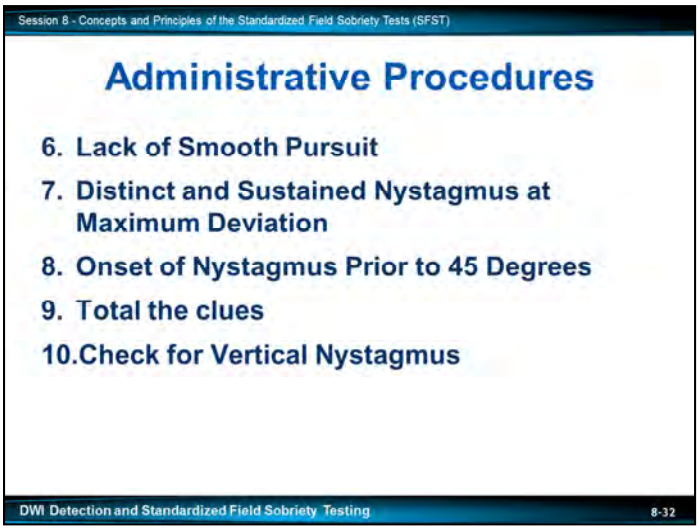


HGN and VGN can be observed directly and does not require special equipment. You will need a contrasting stimulus for the subject to follow with their eyes. This can be a penlight or pen. The stimulus used should be held slightly above eye level so the eyes are wide open when they look directly at it.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

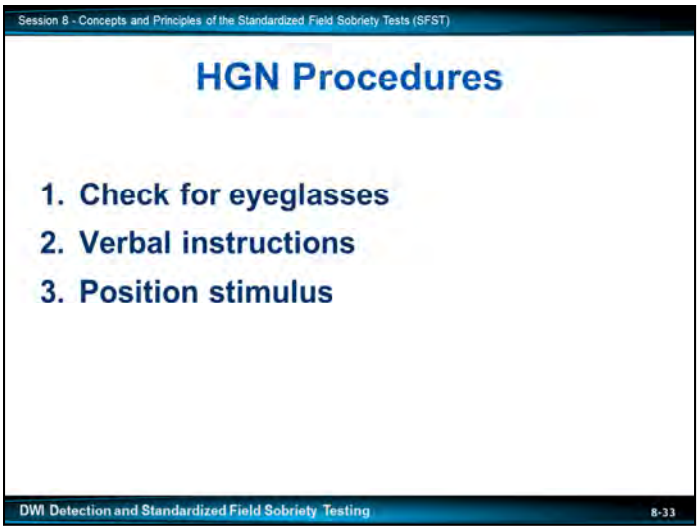
OFFICER SAFETY IS THE NUMBER ONE PRIORITY ON ANY TRAFFIC STOP.

Administrative Procedures

1. Check for eyeglasses
2. Verbal instructions
3. Position stimulus (12-15 inches and slightly above eye level)
4. Check for Equal Pupil Size and Resting Nystagmus
5. Check for Equal Tracking



6. Lack of Smooth Pursuit
7. Distinct and Sustained Nystagmus at Maximum Deviation
8. Onset of Nystagmus Prior to 45 Degrees
9. Total the clues
10. Check for Vertical Nystagmus



Administrative Procedures for HGN
It is important to administer the HGN test systematically using the following steps to ensure nothing is overlooked.

There are 10 steps in the systematic administration of the HGN test.

Step 1: Check for Eyeglasses (Note if subject wears contacts especially colored contacts because some colored contacts may affect the ability to compare pupil size)
Begin by instructing the subject to remove eyeglasses, if worn.
It does not matter whether the subject can see the stimulus with perfect clarity. The subject just needs to see it and be able to follow it.

Step 2: Verbal Instructions
Give the subject the appropriate verbal instructions:
- Put feet together, hands at the side
- Keep head still
- Look at the stimulus
- Follow movement of the stimulus with the eyes only
- Keep looking at the stimulus until told the test is over

Sep 3: Position the Stimulus
Position the stimulus approximately 12 - 15 inches (30 - 38 cm) in front of subject's nose and slightly above eye level to commence the test.
Resting Nystagmus may be observed at this time. Officers should note whether the subject displays Resting Nystagmus.

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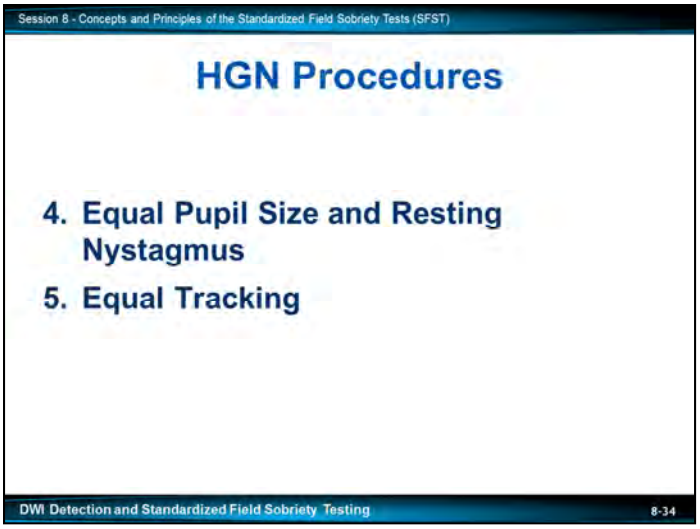
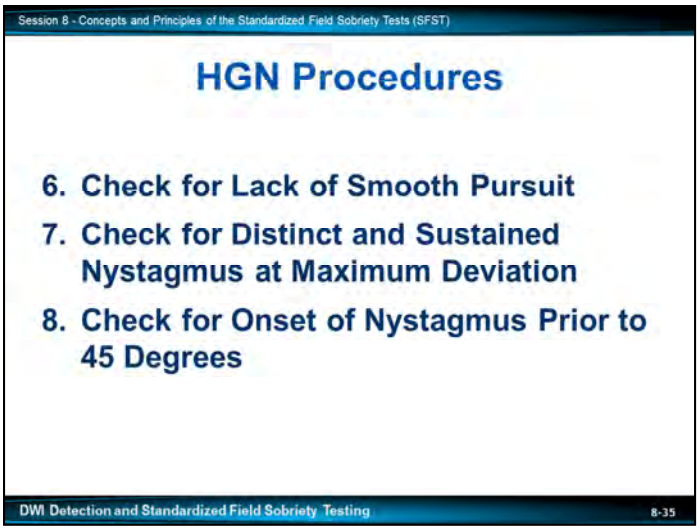


Step 4: Equal Pupil Size and Resting Nystagmus
Check for Equal Pupil Size and Resting Nystagmus.

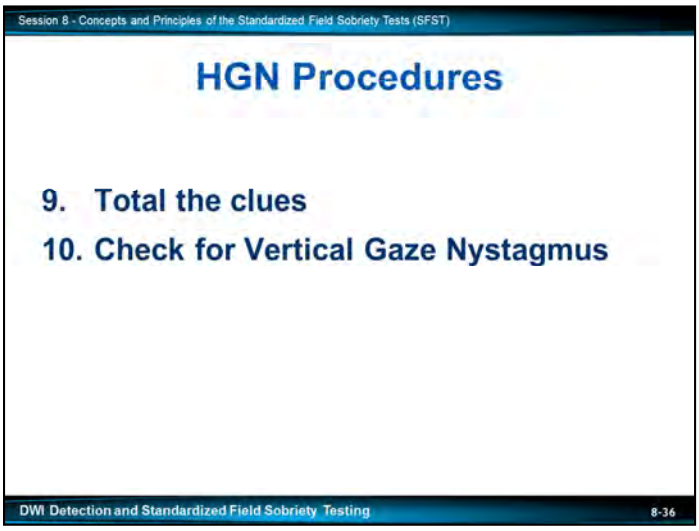
Step 5: Equal Tracking
Check for Equal Tracking. Move the stimulus from center to far right, to far left, and back to center. The speed of the stimulus should be approximately the same speed used as checking for the Lack of Smooth Pursuit. This check may be done more than once.



Step 6: Lack of Smooth Pursuit
Check the left eye for lack of the "Smooth Pursuit" clue. If the eye is observed to jerk while moving, that is one clue.
Check the right eye for lack of the "Smooth Pursuit" clue and compare.

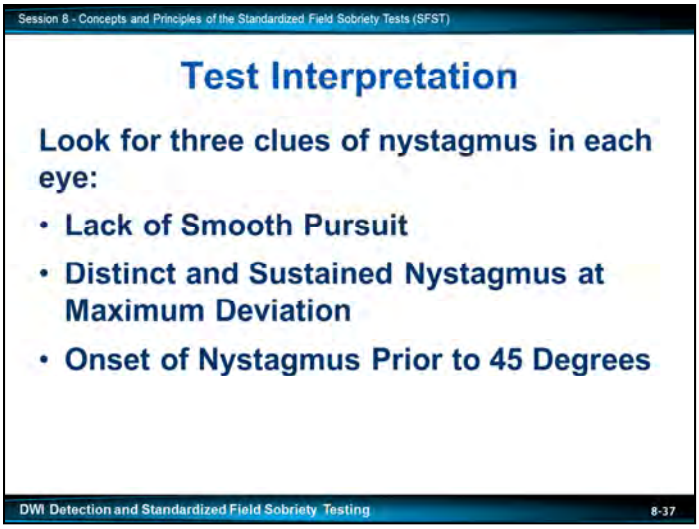
Step 7: Check the right and left eye for the “Distinct and Sustained Nystagmus at Maximum Deviation" clue. If the jerkiness is distinct and sustained, that is one clue.

Step 8: Onset of Nystagmus Prior to 45 Degrees
Check the left eye for the "Onset of Nystagmus Prior to 45 Degrees" clue. If the jerking begins prior to 45 degrees, that is one clue.
Check the right eye for "Onset of Nystagmus Prior to 45 Degrees" clue and compare.



Step 9: Total the clues
Maximum number of clues possible for each eye: 3
Total maximum number of clues possible for both eyes: 6

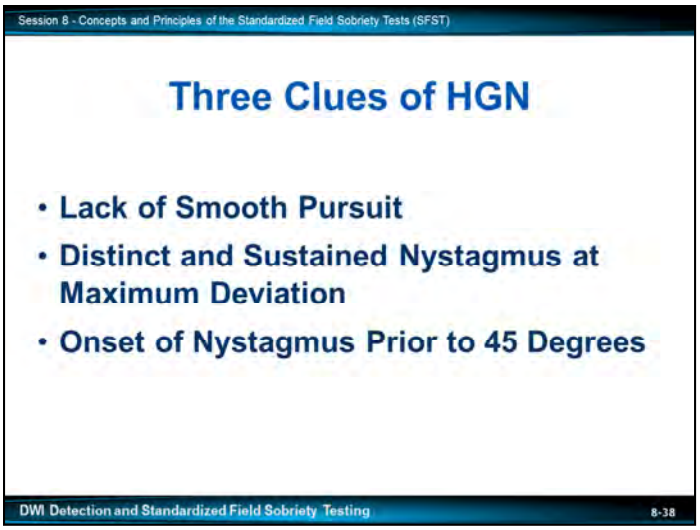
Step 10: Check for Vertical Nystagmus
It is possible all three clues definitely will be found in one eye, while only two (or sometimes only one) will show up in the other eye. It is always necessary to check both eyes and to check them independently. Notwithstanding, it is unlikely the eyes of someone under the influence of alcohol will behave totally different. Thus, if one eye shows all three clues distinctly while the other eye gives no evidence of nystagmus, the person may be suffering from one of the pathological disorders covered previously.



Test Interpretation
You should look for three clues of nystagmus in each eye.

- Lack of Smooth Pursuit (The eye cannot follow a moving object smoothly)
- Distinct and Sustained Nystagmus at Maximum Deviation (nystagmus is distinct and sustained when the eye is held at maximum deviation for a minimum of four seconds)
- Onset of Nystagmus Prior to 45 Degrees

Based on recent research, if you observe four or more clues it is likely the subject's BAC is at or above 0.08. Using this criterion, you will be able to classify about 88% of your subjects accurately. This was determined during laboratory and field testing and helps you weigh the various SFSTs as you make your arrest decision.

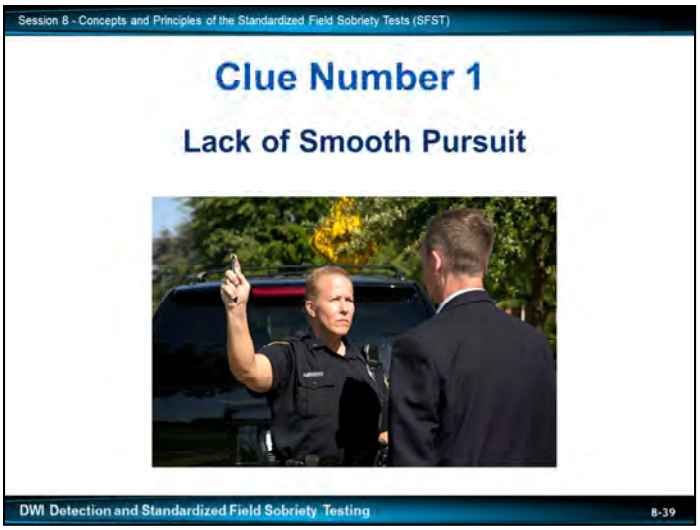


Three Clues of Horizontal Gaze Nystagmus

When we administer the HGN test, we look for three specific clues as evidence of alcohol influence. We check each eye independently for each clue.

For standardization, begin with the subject's left eye. Check for the first clue. Next, check right eye for same clue. Repeat this procedure for each clue starting with left eye, then right eye. Compare and document the results.

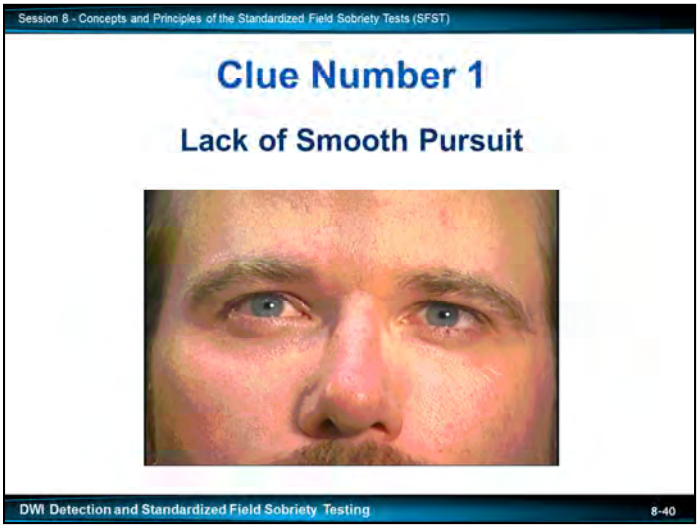
When we are checking an eye, it is good practice to administer the test by the numbers each time, to make sure no step is overlooked.



Clue No. 1: Lack of Smooth Pursuit
The first clue requires the subject move the eye to follow the motion of a smoothly moving stimulus.

The stimulus may be the eraser on a pencil, the tip of a penlight, the tip of your finger, or any similar small object.

Begin by holding the stimulus vertically approximately 12 - 15 inches (30 - 38 cm) in front of the subject's nose and slightly above eye level.

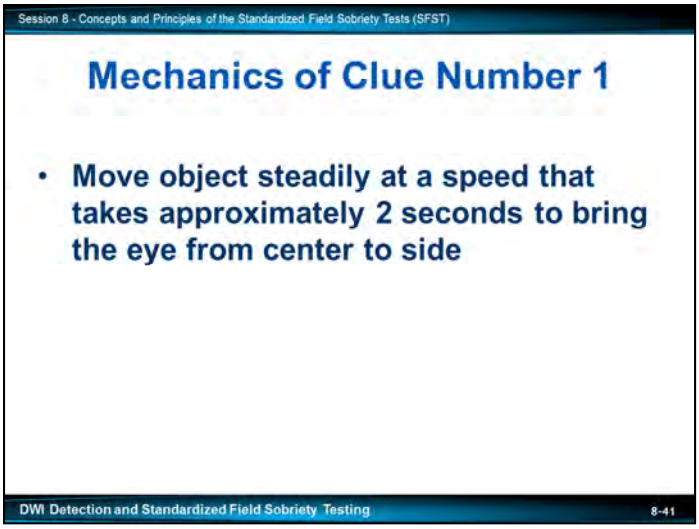


Move the stimulus smoothly all the way out to the right (checking subject's left eye first) then move the stimulus smoothly all the way across the subject's face to the left (checking the subject's right eye), then back to center. Carefully watch the subject's left eye then right eye and determine if they are able to pursue smoothly.

Make at least two complete passes with the stimulus.

If a person is not impaired by alcohol (or drugs that cause HGN), the eyes should move smoothly as the object is moved back and forth.

Analogy: movement of the eyes of a person not impaired by alcohol (or drugs that cause HGN) will be similar to the movement of windshield wipers across a wet windshield versus an impaired person and windshield wipers moving across a dry windshield.

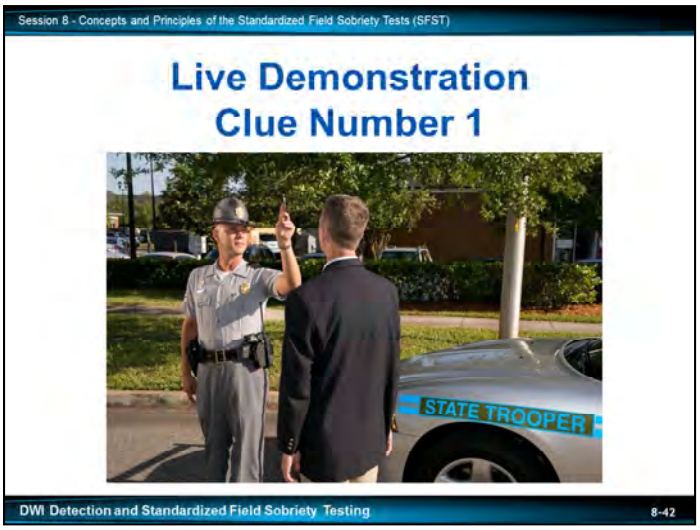


The Mechanics of Clue Number 1
It is necessary to move the object smoothly in order to check the eye's ability to pursue smoothly. The stimulus should be moved from center position, all the way out to the right (checking subject's left eye) where the eye can go no further, and then all the way back across subject's face all the way out to the left where the eye can go no further (checking subject's right eye) and then back to the center.

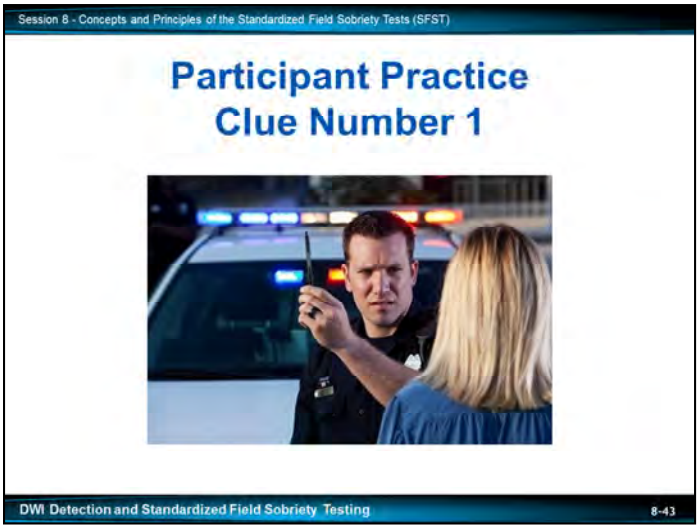
The object must be moved steadily, at a speed that takes approximately 2 seconds to bring the eye from center to side.

In checking for this clue, make at least two complete passes in front of the eyes.

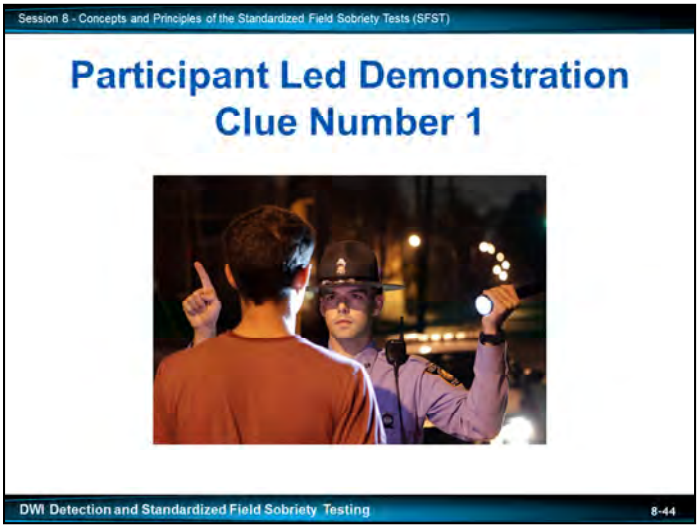
If you are still not able to determine whether or not the eye is jerking as it moves, additional passes may be made in front of the eyes.



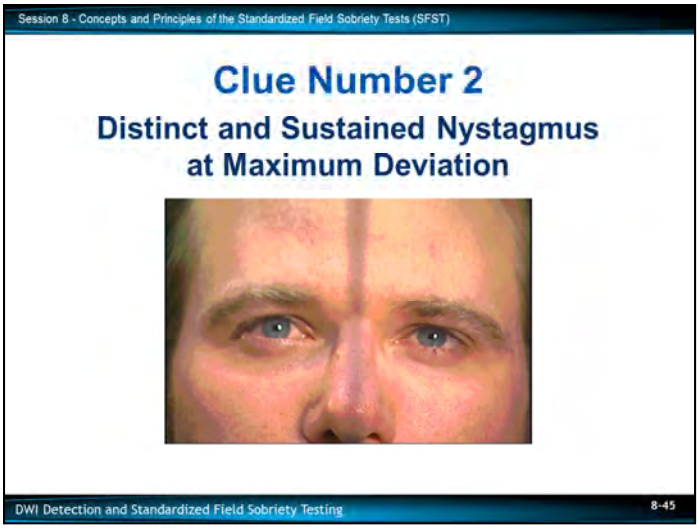
Live Demonstration of the Mechanics of Clue No. 1



Participant Practice of the Mechanics of Clue No. 1



Participant Led Demonstration



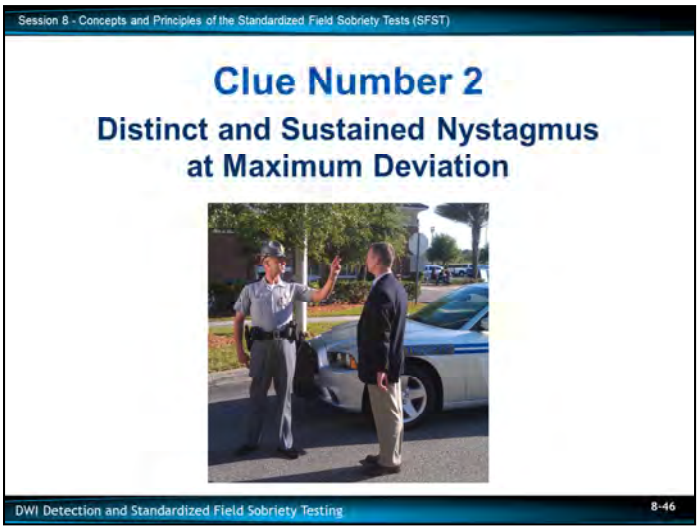
Clue No. 2: Distinct and Sustained Nystagmus at Maximum Deviation
Once you have completed the check for Lack of Smooth Pursuit, you will check the eyes for distinct and sustained nystagmus when the eye is held at maximum deviation, beginning with the subject's left eye.

The Mechanics of Clue Number 2
Once again, position the stimulus approximately 12 - 15 inches (30 - 38 cm) in front of subject's nose and slightly above eye level.

Move the stimulus off to the right (checking subject's left eye) until the eye has gone as far as possible.

Hold the stimulus steady at that position for a minimum of four (4) seconds and carefully watch the eye.

Then, move the stimulus back across the subject's face all the way out to the left (subject's right eye).



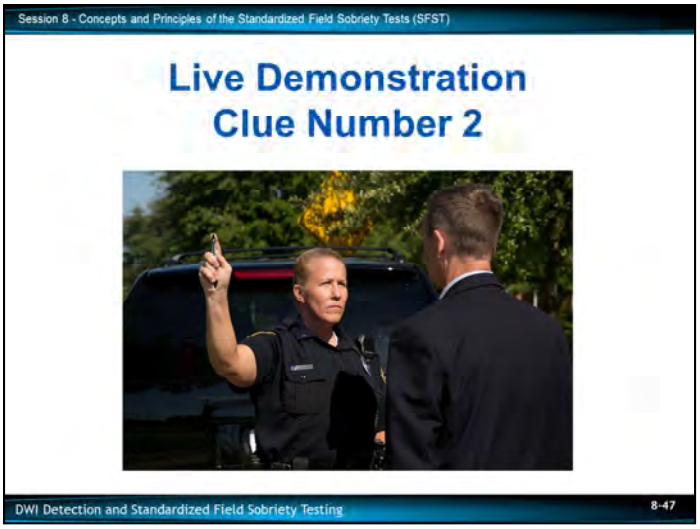
Four seconds will not cause fatigue nystagmus. This type of nystagmus may begin if a subject's eye is held at maximum deviation for more than 30 seconds.

Hold the stimulus steady and carefully watch the eye.

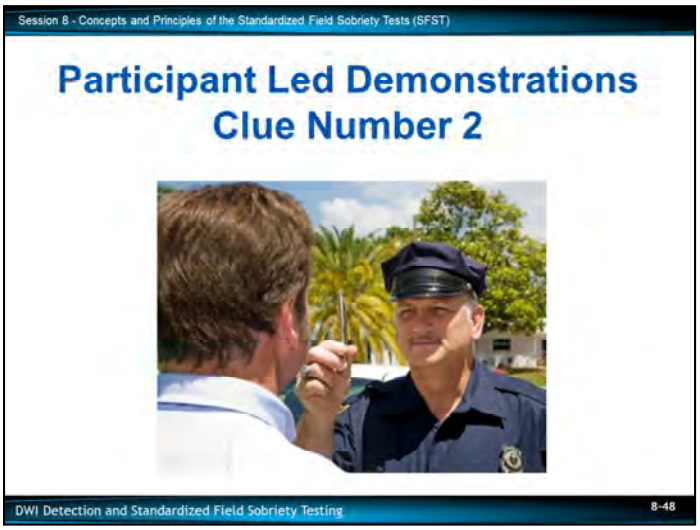
If the person is impaired, the eye is likely to exhibit definite, distinct and sustained jerking when held at maximum deviation for a minimum of 4 seconds.

In order to "count" this clue as evidence of impairment, the nystagmus must be distinct and sustained for a minimum of 4 seconds.

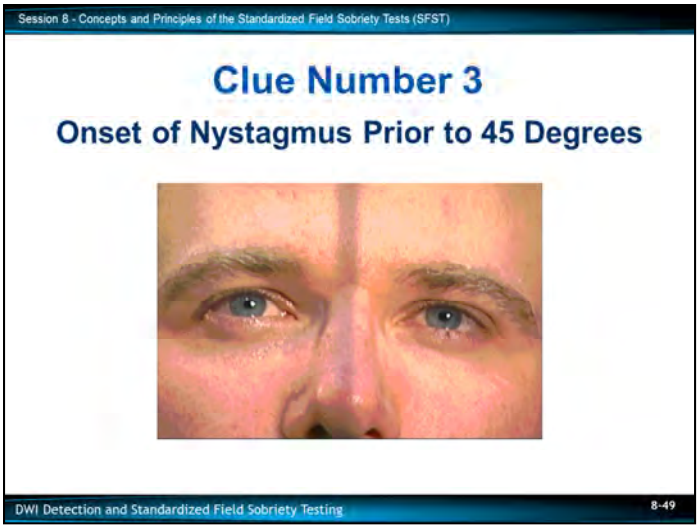
If you think you see only slight nystagmus at this stage of the test or if you have to convince yourself nystagmus is present, then it isn't really there.



Live Demonstration of the Mechanics of Clue No. 2



Participant practice of the mechanics of Clue No. 2
Participant Led Demonstrations



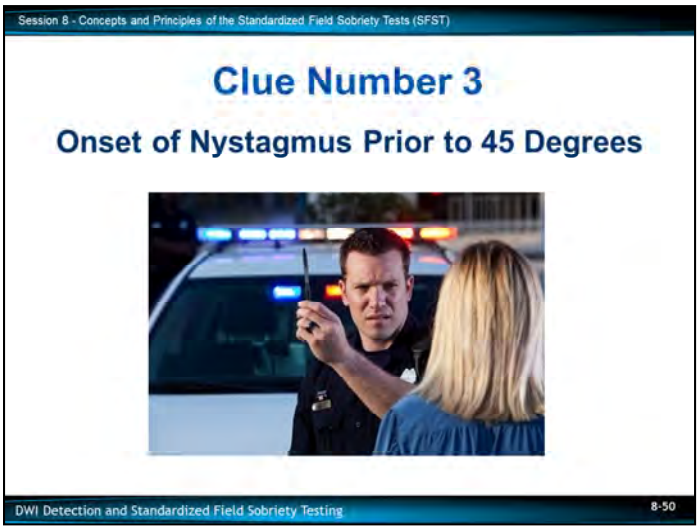
Clue No. 3: Onset of Nystagmus Prior to 45 Degrees
Once again, position the stimulus approximately 12 - 15 inches (30 - 38 cm) in front of subject's nose and slightly above eye level.

The angle of onset of nystagmus is simply the point at which the eye is first seen jerking.

Examples: With someone at a very high BAC (0.20+), the jerking might begin almost immediately after the eye starts to move toward the side. For someone at 0.08 BAC, the jerking might not start until the eye has moved nearly to the 45 degree angle.

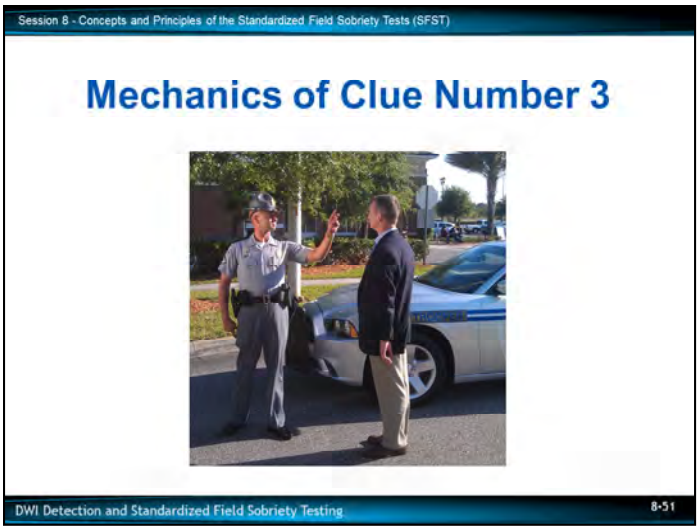
Generally speaking, the higher the BAC, the sooner the jerking will start as the eye moves toward the side.

If the jerking begins prior to 45 degrees, that person's BAC could be 0.08 or above.



It is not difficult to determine when the eye has reached the 45 degree point, but it does require some practice.

If you start with the stimulus approximately 12 - 15 inches (30 - 38 cm) directly in front of the nose, you will reach 45 degrees when you have moved the stimulus an equal distance to the side. Another important indicator that can be used to determine if the eye is within 45 degrees is at 45 degrees, some white usually will still be visible in the corner of the eye (for most people). (Although rare, there may be times when a person's eye may be at a 45 degree angle and no white in the corner of the eye is visible.)



The Mechanics of Clue No. 3
The stimulus is positioned approximately 12 - 15 inches from (30 - 38 cm) subject's nose and slightly above eye level. It is necessary to move the stimulus slowly to identify the point at which the eye begins to jerk.

Start moving the stimulus towards the right (left eye) at the speed that would take approximately 4 seconds for the stimulus to reach a 45 degree angle.

As you are slowly moving the stimulus, watch the eye carefully for any sign of jerking.

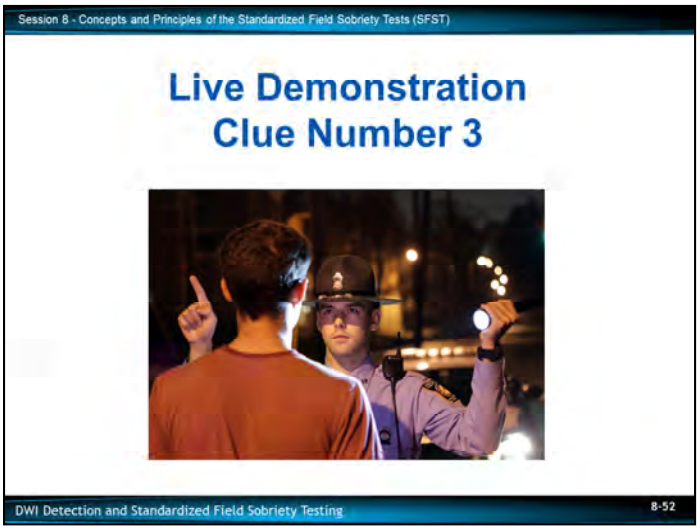
When you see the jerking begin, immediately stop moving the stimulus and hold it steady at that position.

With the stimulus held steady, look at the eye and verify the jerking is continuing.

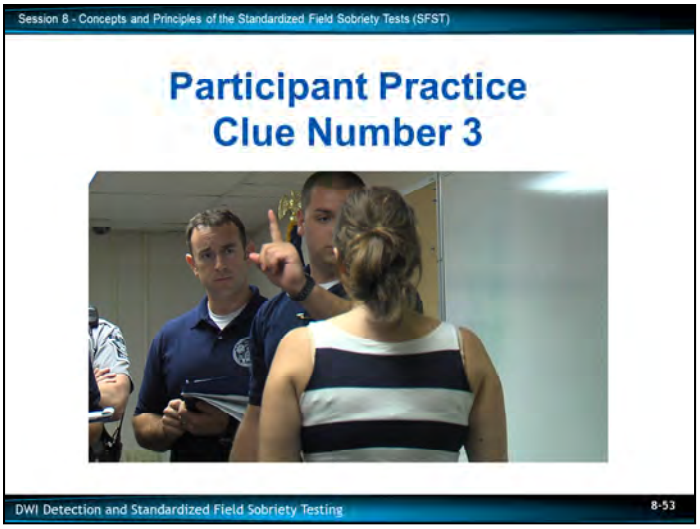
If the jerking is not evident with the stimulus held steady, you have not located the point of onset. Therefore, resume moving the stimulus slowly toward the side until you notice the jerking again.

When you locate the point of onset of nystagmus, you must determine whether it is prior to 45 degrees.

Verify some white is still showing in the corner of the eye.



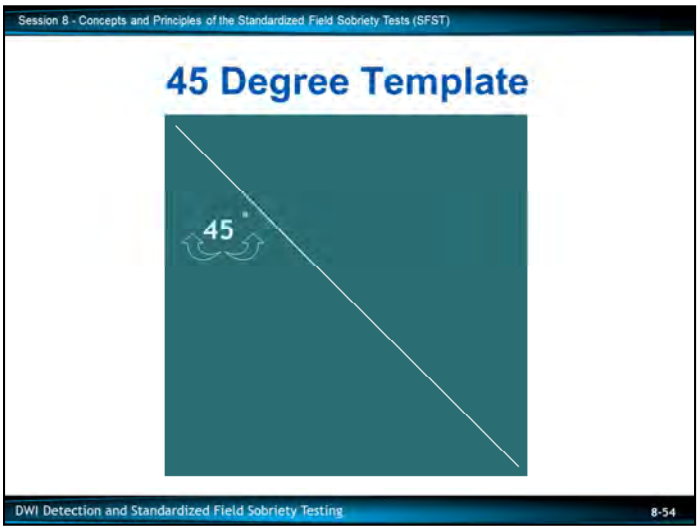
Live Demonstration of the Mechanics of Clue No. 3



Participant practice of the mechanics of Clue No. 3

Coaching and critiquing participants practice.

Participant led demonstration.



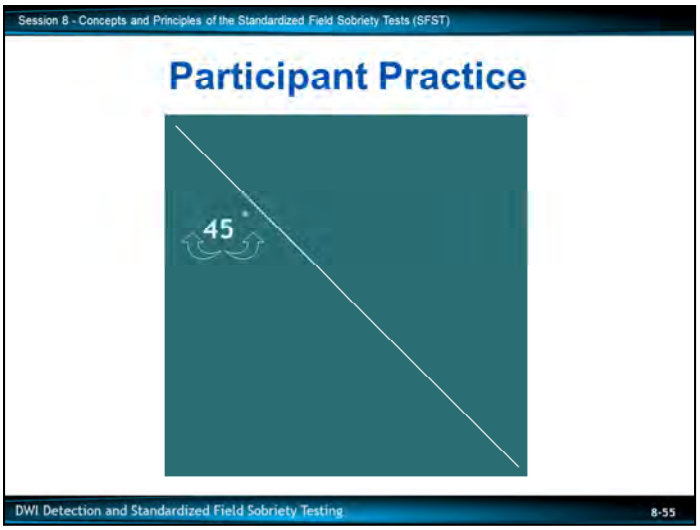
Training Aid: The 45 Degree Template

A training aid has been provided to help you practice estimating a 45 degree angle.

- The outline of a square, with its diagonal line, gives us a 45 degree angle
- This outline, or template, is provided for practice only
- It is not to be used with actual DWI subjects

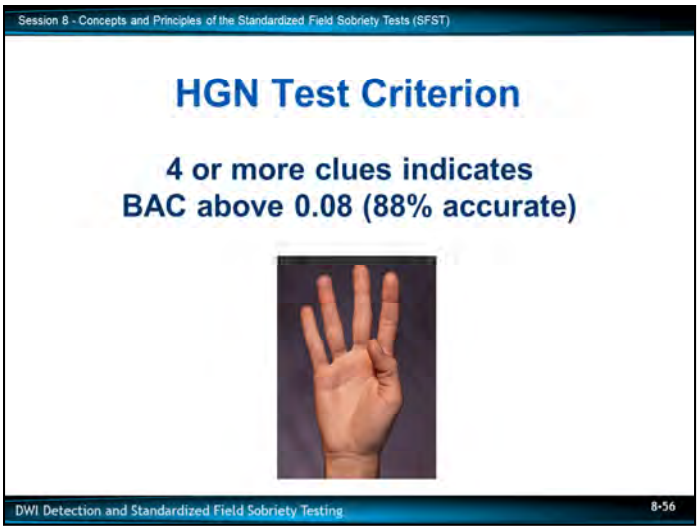
To use the template, have your training partner hold the corner of the square under the nose.

When you line up your stimulus with the diagonal line, your partner will be looking along a 45 degree angle.



Coaching and Critiquing Participants' Practice

Participant led Demonstration

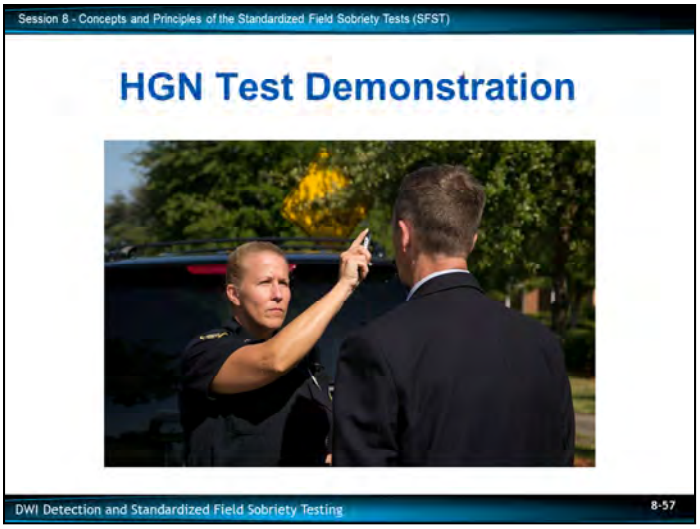


Test Interpretation

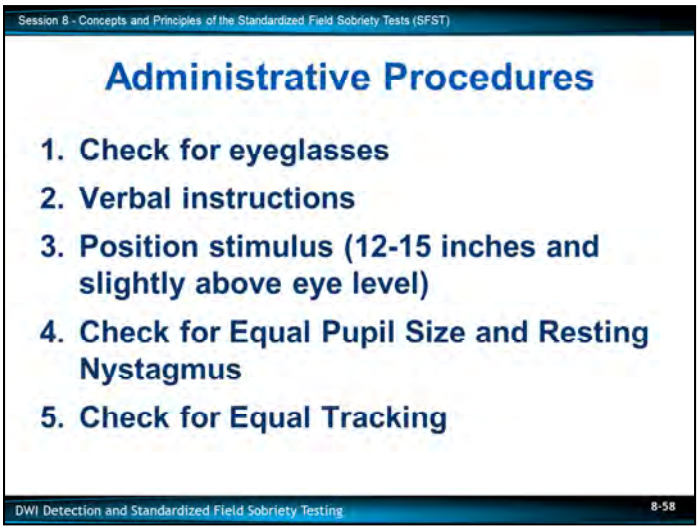
Based upon the original developmental research into HGN, the criterion for this test is 4.

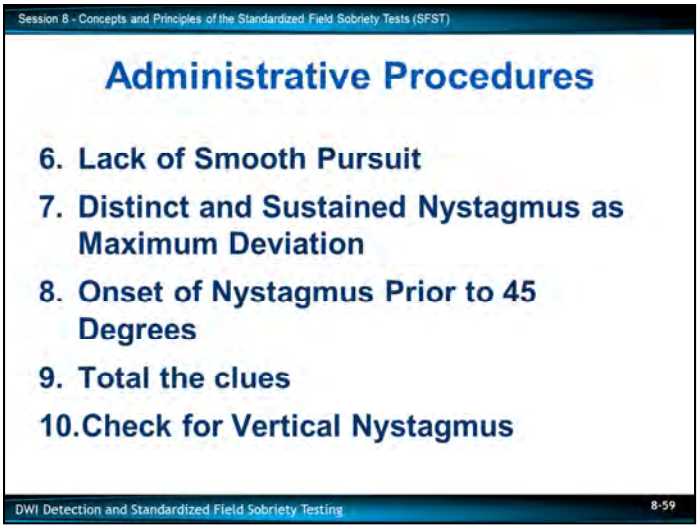
If a person exhibits at least 4 out of the possible 6 clues, the implication is a BAC above 0.08.

Using this criterion, the test is 88% accurate.



Test Demonstration


Session 8 - Concepts and Principles of the Standardized Field Sobriety Tests (SFST)
Administrative Procedures
1. Check for eyeglasses
2. Verbal instructions
3. Position stimulus (12-15 inches and slightly above eye level)
4. Check for Equal Pupil Size and Resting Nystagmus
5. Check for Equal Tracking
DWI Detection and Standardized Field Sobriety Testing
8-58


Session 8 - Concepts and Principles of the Standardized Field Sobriety Tests (SFST)
Administrative Procedures
6. Lack of Smooth Pursuit
7. Distinct and Sustained Nystagmus as Maximum Deviation
8. Onset of Nystagmus Prior to 45 Degrees
9. Total the clues
10. Check for Vertical Nystagmus
DWI Detection and Standardized Field Sobriety Testing
8-59



D. <u>Vertical Gaze Nystagmus (VGN)</u>

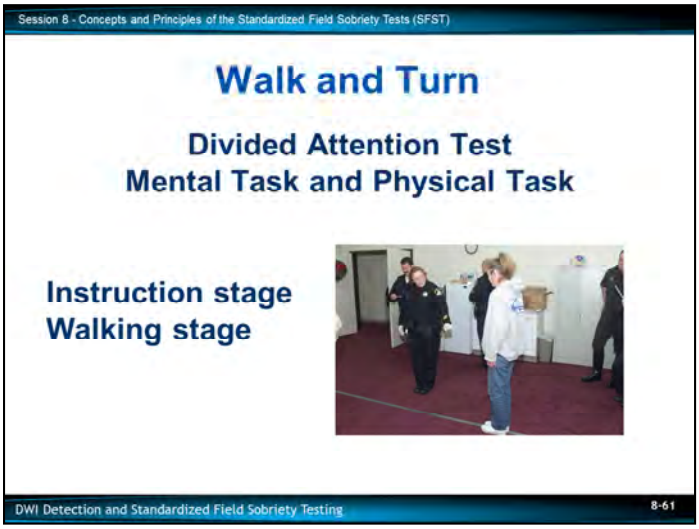
The <u>VGN</u> test is simple to administer. During the <u>VGN</u> test, look for jerking as the eyes move up and are held for a minimum of four seconds at maximum elevation.

- Position the stimulus <u>horizontally</u>, about 12 - 15 inches in front of the subject's nose
- Instruct the subject to hold the head still and follow the object with the eyes only
- Raise the object until the subject's eyes are elevated as far as possible
- Hold for a minimum of four seconds
- Watch closely for evidence of the eyes jerking upward

Participant led demonstration.

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

VGN may be present in subjects under the influence of high doses of alcohol for that individual, and some other drugs.

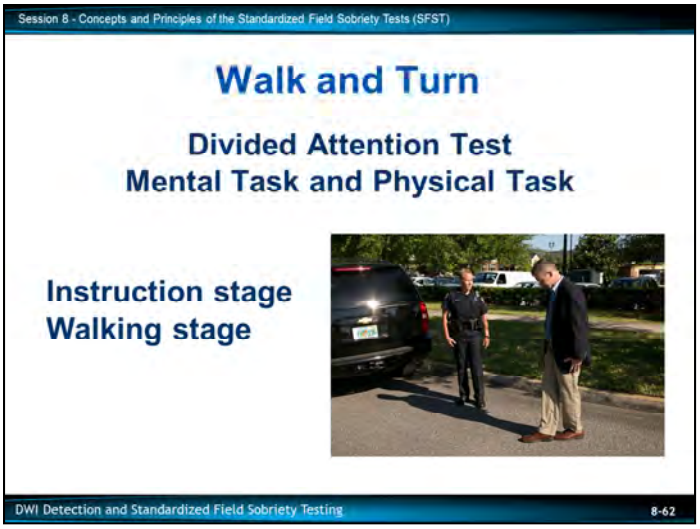


E. <u>Walk and Turn</u>

Test Stages
Like all divided attention tests, WAT has two stages. They are:

- Instruction stage
- Walking stage

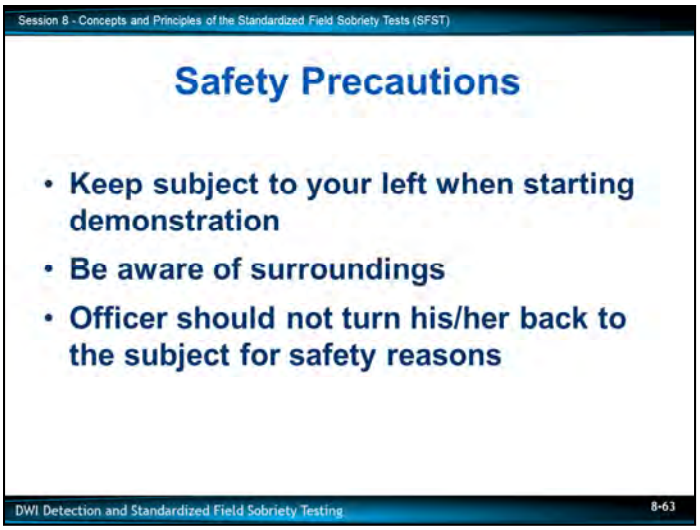
Both stages are important because they can affect the subject's overall performance on the test.



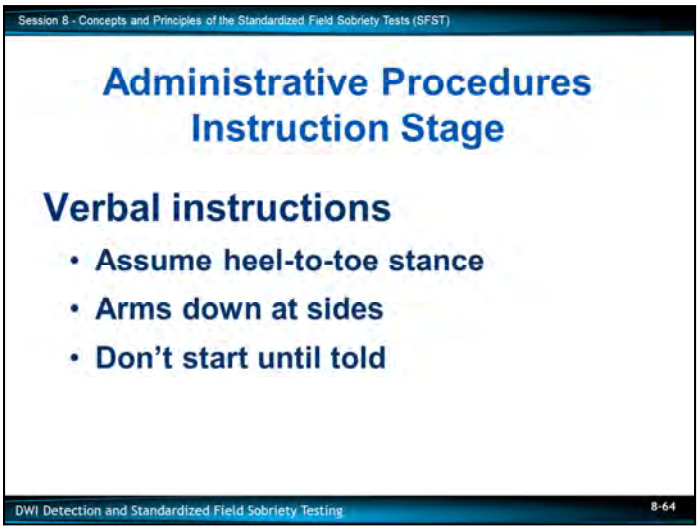
Test Conditions
Whenever possible, the WAT test should be conducted on a reasonably dry, hard, level, non-slippery surface. There should be sufficient room for subjects to complete nine heel-to-toe steps. Recent field validation studies have indicated varying environmental conditions have not affected a subject's ability to perform this test.

Standardizing this test for every type of road condition is unrealistic. The original research study recommended this test be performed on a dry, hard, level, non slippery surface and relatively safe conditions. If not, the research recommends:
1) subject be asked to perform the test elsewhere, or
2) only HGN be administered

The original SCRI studies suggested individuals over 65 years of age or people with back, leg, or inner ear problems had difficulty performing this test. Less than 1.5% of the test subjects in the original studies were over 65 years of age. Also, the SCRI studies suggest individuals wearing heels more than 2 inches high should be given the opportunity to remove their shoes. Officers should consider all factors when conducting SFSTs.



Procedures for Walk and Turn Testing



Instruction Stage: Initial Positioning and Verbal Instructions
For standardization in the performance of this test, have the subject 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).

Place your right foot on the line ahead of the left foot, with the heel of your right foot against the toe of the left foot.

Place your arms down at your sides.

Maintain this position until I have completed the instructions. Do not start to walk until told to do so. Do you understand the instructions so far? (Make sure subject indicates understanding.)

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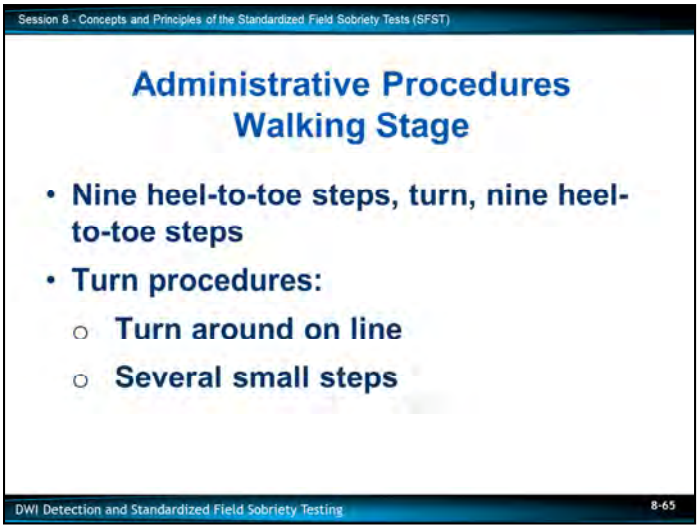

Demonstrations and Instructions for the Walking Stage
Explain the test requirements by giving instructions, accompanied by demonstrations:
When I tell you to start, take nine heel-to-toe steps on the line, turn, and take nine heel-to-toe steps down the line.

When you turn, keep the front (lead) foot on the line, and turn by taking a series of small steps with the other foot, like this.

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, don't stop until you have completed the test.

Do you understand the instructions? (Make sure subject understands.)

Instruct the person to begin the test.

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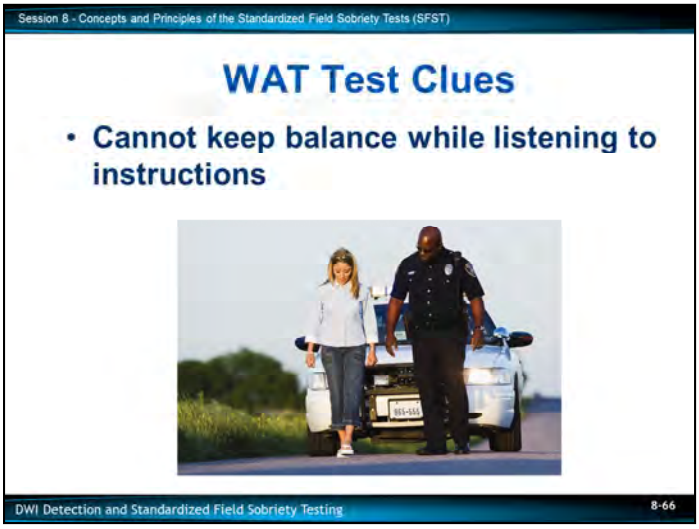
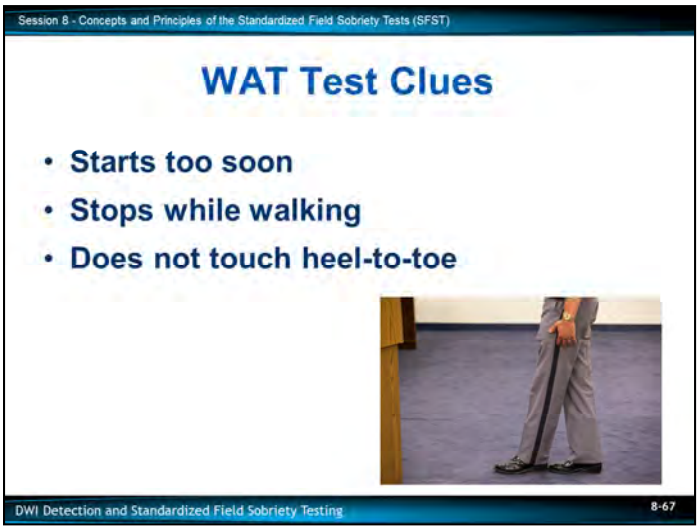


Test Interpretation

You may observe a number of different behaviors when a subject performs this test. Original research demonstrated the behaviors listed below are 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:

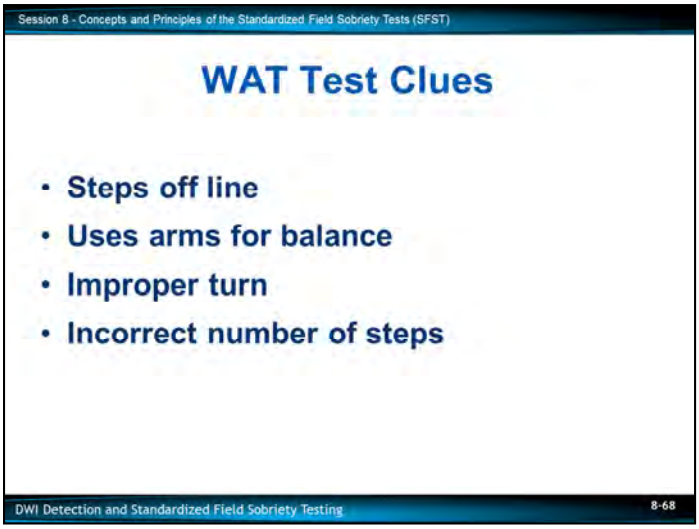
- Cannot keep balance while listening to the instructions. Two tasks are required at the beginning of this test. The subject must balance heel-to-toe on the line, and at the same time, listen carefully to the instructions. Typically, the person who is impaired can do only one of these things. The subject may listen to the instructions, but not keep balance. Record this clue if the subject does not maintain the heel-to-toe position throughout the instructions. (Feet must actually break apart or step off the line.) Do not record this clue if the subject 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 subject not to start walking "until I tell you to begin," record this clue if the subject does not wait.

- Stops while walking. The subject stops while walking. Do not record this clue if the subject is merely walking slowly.

- Does not touch heel-to-toe. The subject leaves a space of one half inch or more between the heel and toe on any step.

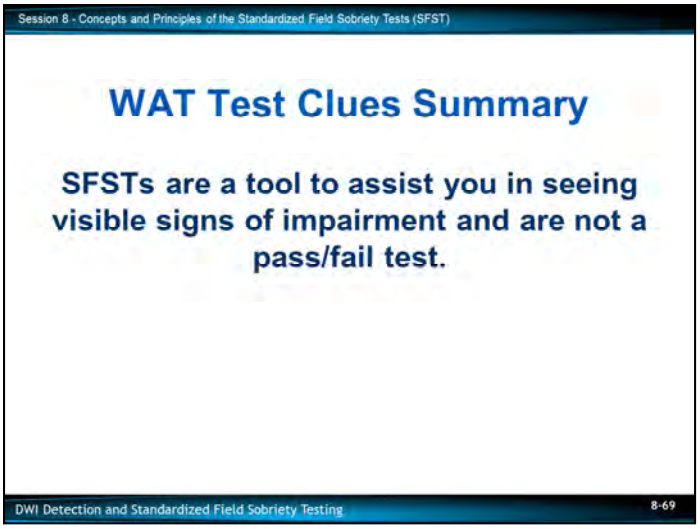


- Steps off the line. The subject steps so that one foot is entirely off the line.

- Uses arms for balance. The subject raises one or both arms six or more inches from the sides in order to maintain balance.

- Improper turn. The subject removes the front foot from the line while turning. Also record this clue if the subject has not followed directions as instructed, i.e., spins or pivots around or loses balance while turning.

- Incorrect number of steps. Record this clue if the subject takes more or fewer than nine steps in either direction.



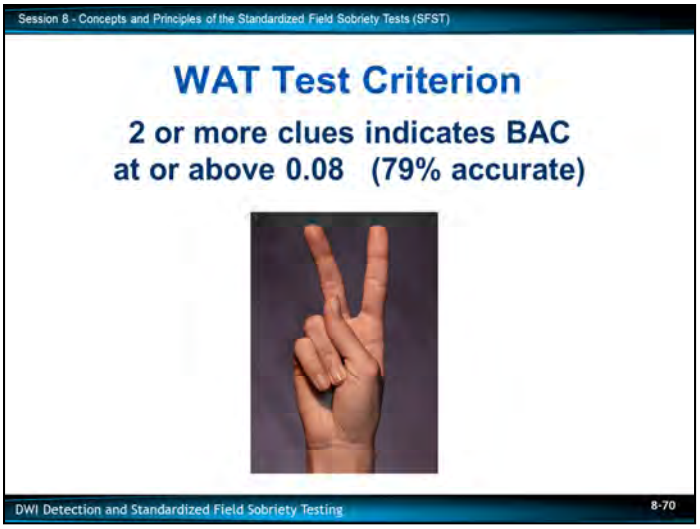
If subject can't do the test, record observed clues and document the reason for not completing the test, e.g., subject's safety.

Remember the SFSTs are a tool to assist you in seeing visible signs of impairment and are not a pass/fail test.

Subject gets into a "leg lock" position (legs crossed, unable to move.)

If the subject has difficulty with the test (for example, steps off the line), continue from that point, not from the beginning. This test may lose its sensitivity if it is repeated several times.

Observe the subject from a safe distance and limit your movement which may distract the subject during the test. **Always consider officer safety.**



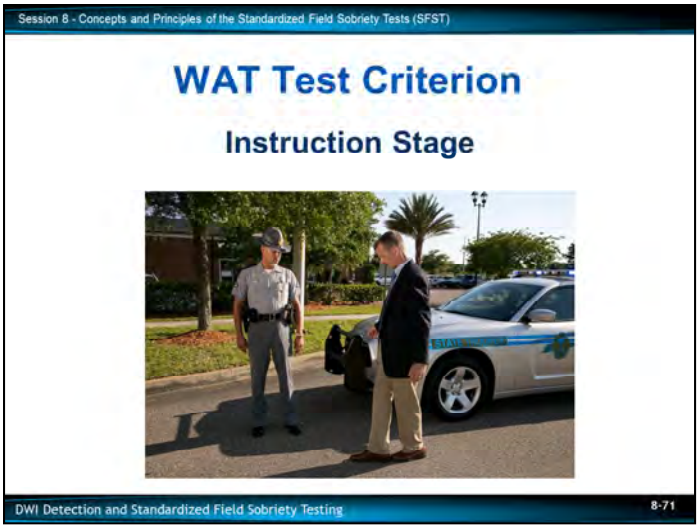
Based on recent research, if the subject exhibits two or more clues on this test or fails to complete it, classify the subject's BAC as at or above 0.08. Using this criterion, you will be able to accurately classify 79% of your subjects.

Review of Divided Attention Definition
WAT is a field sobriety test based on the important concept of divided attention.

The test requires the subject to divide attention among mental tasks and physical tasks.

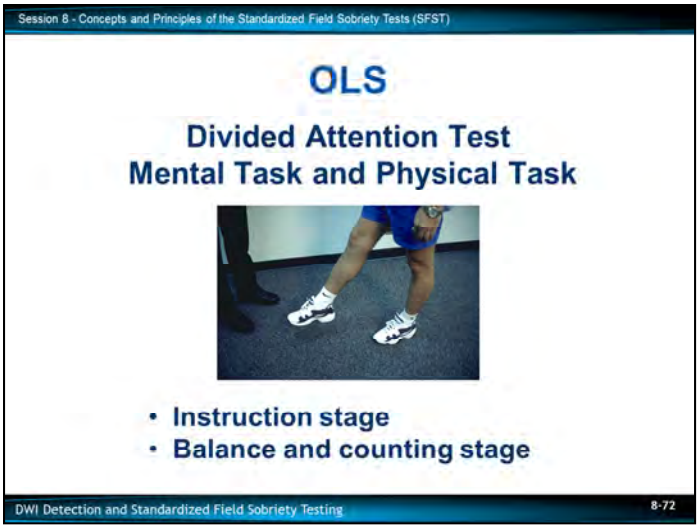
The mental tasks include comprehension of verbal instructions, processing of information, and recall of memory.

The physical tasks include balance and coordination. The subject is required to maintain balance and coordination while standing still, walking, and turning.



Instruction Stage

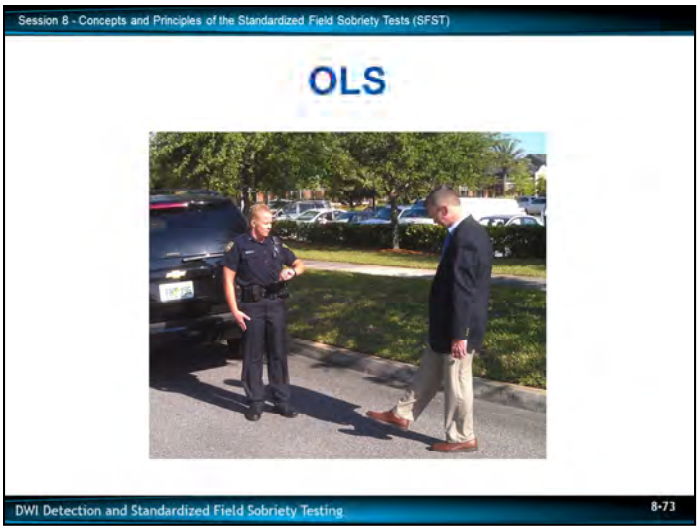
Test Demonstrations



F. <u>One Leg Stand</u>

Test Stages
Like all divided attention tests, OLS has two stages. They are:
- Instruction stage
- Balance and counting stage

Both stages are important because they can affect the subject's overall performance on the test.

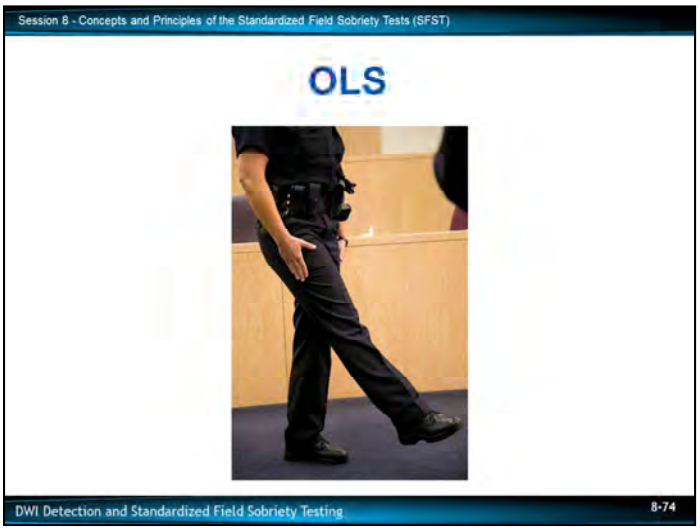


Test Conditions
OLS requires a reasonably dry, hard, level, and non slippery surface. Subject's safety should be considered at all times.

Standardizing this test for every type of road condition is unrealistic. The original research study recommended this test be performed on a dry, hard, level, non slippery surface and relatively safe conditions. If not, the research recommends:
1) subject be asked to perform the test elsewhere, or
2) only HGN be administered

However, recent field validation studies have indicated that varying environmental conditions have not affected a subject's ability to perform this test.

The original SCRI studies suggested individuals over 65 years of age, people with back, leg or inner ear problems, or people who are overweight by 50 or more pounds may have difficulty performing this test. Less than 1.5% of the test subjects in the original studies were over 65 years of age. There was no data containing the weight of the test subjects included in the final report. Also, the SCRI studies suggest individuals wearing heels more than 2 inches high should be given the opportunity to remove their shoes.


Session 8 - Concepts and Principles of the Standardized Field Sobriety Tests (SFST)
OLS
DWI Detection and Standardized Field Sobriety Testing
8-74

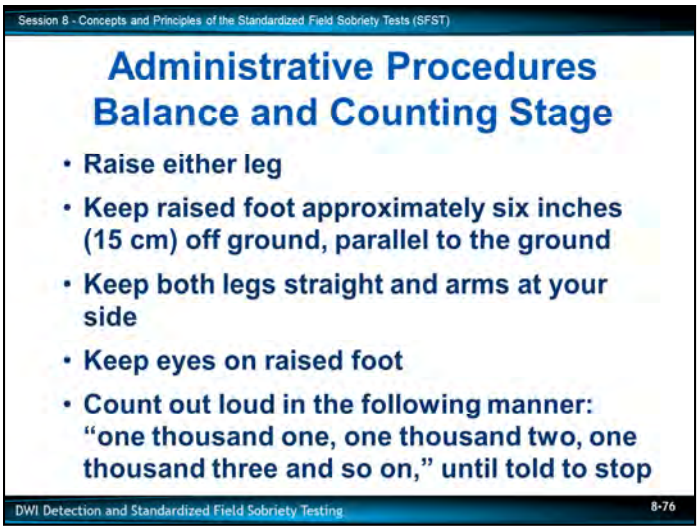


Instruction Stage: Initial Positioning and Verbal Instructions
Initiate the test by giving the following instructions, accompanied by demonstrations.

Please stand with your feet together and your arms down at the sides, like this.

Do not start to perform the test until I tell you to do so.

Do you understand the instructions so far?



Demonstrations 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, keeping your foot parallel to the ground.

Keep both legs straight and your arms at your side.

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?

Go ahead and perform the test. (Officer should always time the 30 seconds. Test should be discontinued after 30 seconds.)

Observe the subject from a safe distance.

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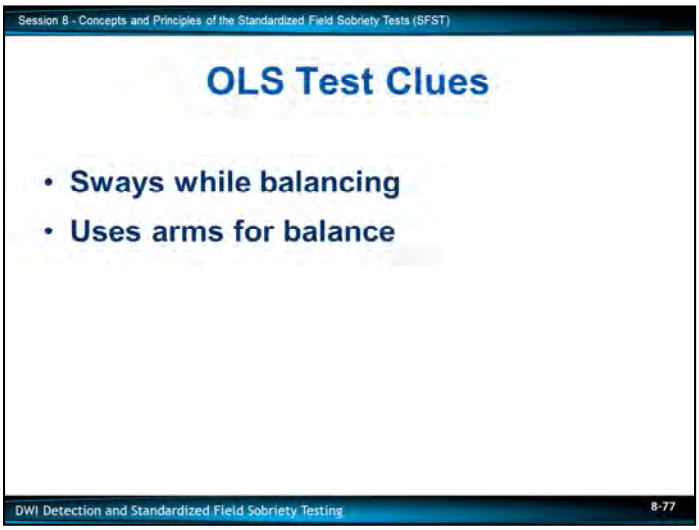


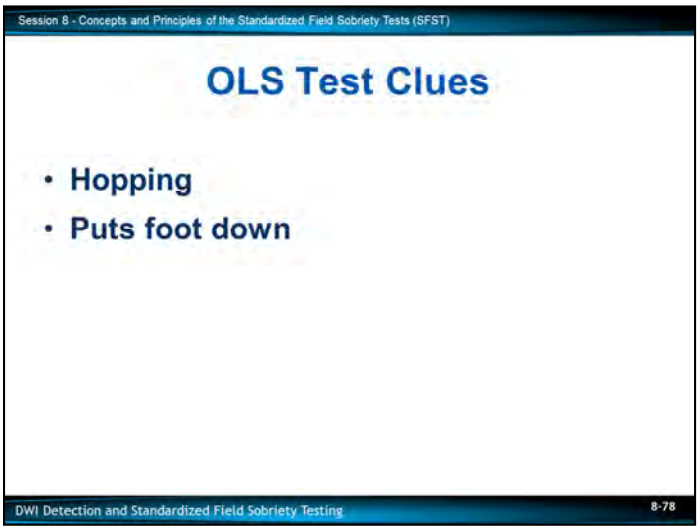
Test Interpretation

You may observe a number of different behaviors when a subject performs this test. The original research found the behaviors listed below are the most likely to be observed in someone with a BAC at or above 0.08. When administering the OLS test, we look for certain specific behaviors. Each behavior or action is considered one clue. There is a maximum number of 4 clues on this test. Look for the following clues each time the OLS test is administered.

The subject sways while balancing – This refers to side to side or back and forth motion of the body, or a swaying motion of the foot, while the subject maintains the OLS position.

Slight tremors of the foot or body should not be interpreted as swaying.

Uses arms for balance – Subject moves arms 6 or more inches from the side of the body in order to keep balance.



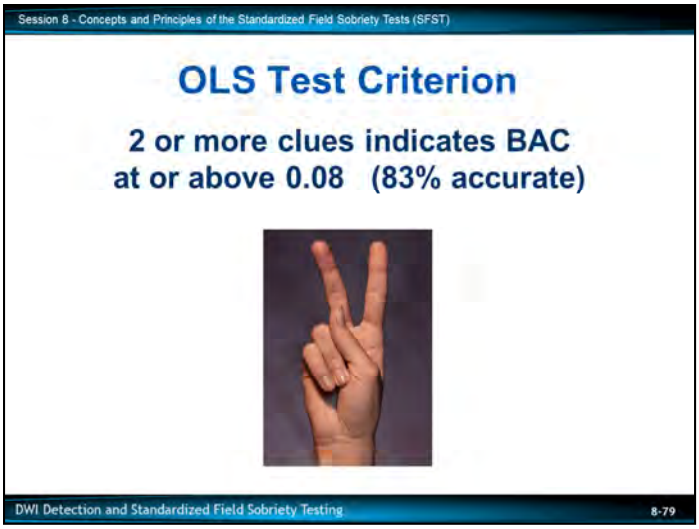
Hopping – Subject is able to keep one foot off the ground, but resorts to hopping in order to maintain balance.

Puts foot down – The subject is not able to maintain the OLS position, putting the foot down one or more times during the 30 second count.

If the subject puts the foot down, give instructions to pick the foot up again and continue counting from the point at which the foot touched.

If subject can't do the test, record observed clues and document the reason for not completing the test, e.g. subject's safety.

Remember time is critical in this test. The original SCRI research has shown a person with a BAC above 0.10 can maintain balance for up to 25 seconds, but seldom as long as 30.



Based on recent research, if an individual shows two or more clues or fails to complete the OLS, there is a good chance the BAC is at or above 0.08. Using that criterion, you will accurately classify 83% of the people you test as to whether their BAC's are at or above 0.08.

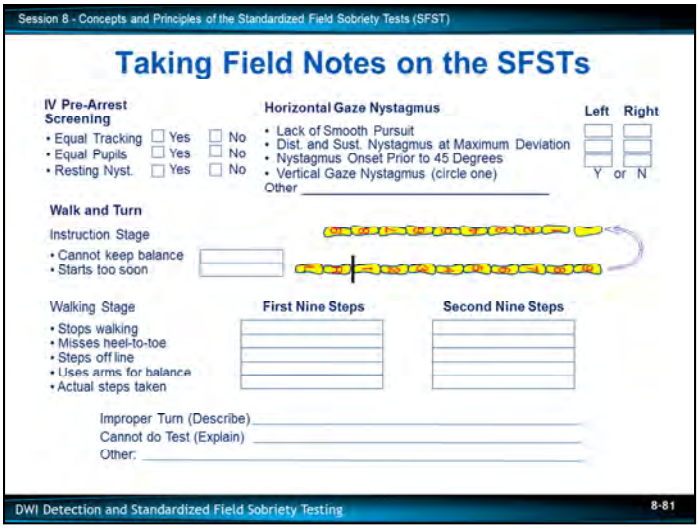
Observe the subject from a safe distance and minimize movement during the test so as not to interfere. If the subject puts the foot down, give instructions to pick the foot up again and continue counting from the point at which the foot touched the ground. If the subject counts very slowly, terminate the test after 30 seconds.

Review of Divided Attention Definition
OLS is another field sobriety test that employs divided attention.
The subject's attention is divided among such simple tasks as balancing, listening, and counting out loud.

Although none of these is particularly difficult in itself, the combination can be very difficult for someone who is impaired.



Test Demonstrations



G. <u>Taking Field Notes on the Standardized Field Sobriety Tests</u>

For purposes of the arrest report and courtroom testimony, it is not enough to report the number of clues on the three tests.

The numbers are important to the police officer in the field because they help determine whether there is probable cause to arrest.

But to secure a conviction, more descriptive evidence is needed.

The officer must be able to describe how the subject performed on the tests and what the subject did.

The standard note taking guide is designed to help develop a clear description of the subject's performance on the tests.

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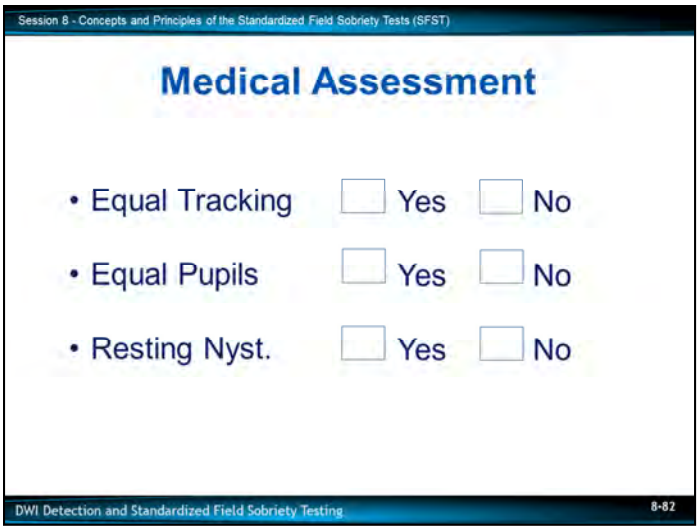
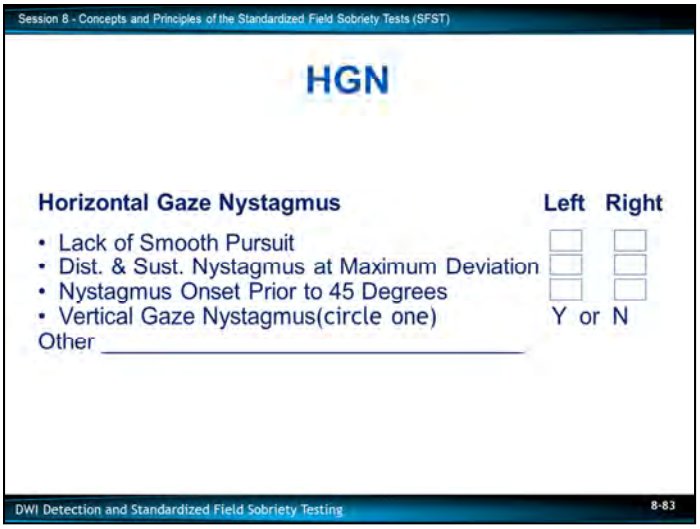


Equal Pupils □ Yes □ No
Equal Tracking □ Yes □ No
Resting Nystagmus □ Yes □ No
Other _____



Complete the entire procedure for both eyes, checking "yes" or "no" for each clue.
Check box (✓) if the clue is present.
For standardization, test the subject's left eye first.
Then, check for the same clue in the right eye.
If clue is not present, leave box blank.
After both eyes have been completely checked, total the number of HGN clues observed.

Complete the check for VGN.
If present, circle Y. If not present, circle N.
In the section labeled "other", record any facts, circumstances, conditions or observations that may be relevant to this procedure.

Examples of additional evidence of impairment emerging while checking for nystagmus:
- Subject unable to keep head still
- Subject swaying noticeably
- Subject utters incriminating statements

Examples of conditions that may interfere with subject's performance while checking for nystagmus:
Wind, dust, etc. (irritating subject's eyes).

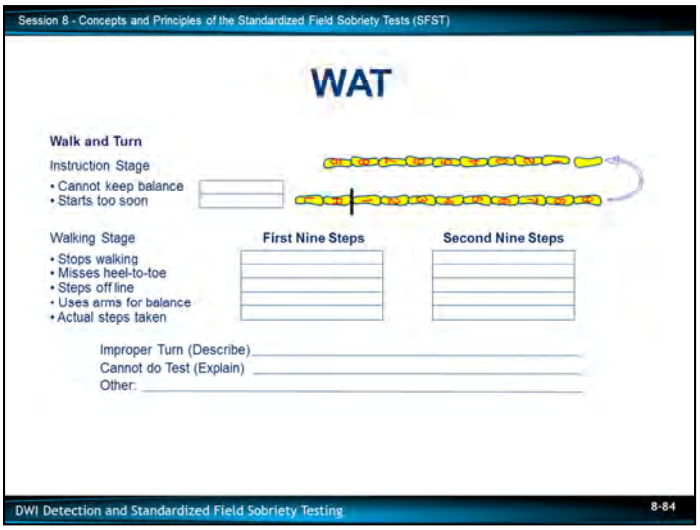
NOTE: Try to face subject away from flashing or strobe lights that could cause visual or other distractions that could impede the test.

Visual or other distractions impeding the test.

_____

_____

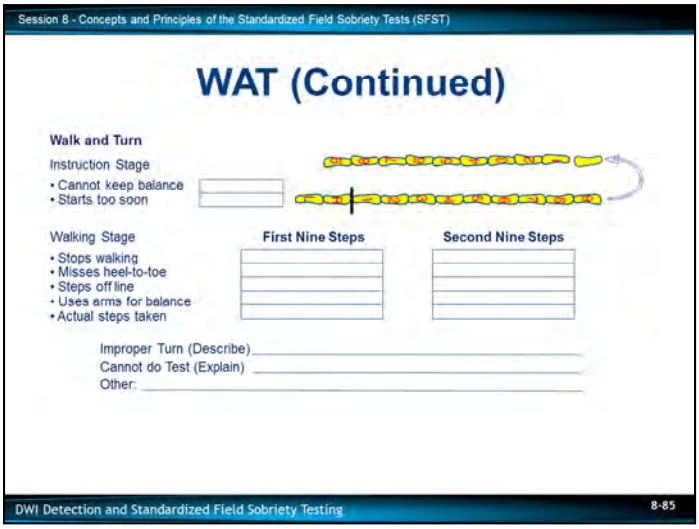
_____



The section on the WAT test appears at the top of the guide's back side. First two clues are checked only during the instruction stage. In the boxes provided, either record the number or enter a check (✓) or a number to indicate the number of times the clue appears during the instruction stage. Example: if subject loses balance twice during the instruction stage, place two check marks (✓) or a "2" in the box.

Example: If the subject does not start too soon, write "N/A" in that box.

Record the next four clues separately for each nine steps. If subject stops walking, record it by drawing a vertical line from the toe at the step at which the stop occurred and place a letter "S" at bottom of vertical line to indicate "stops walking". Do this for each of the nine steps. How many times during first nine steps? How many times during second nine steps?



If subject fails to touch heel-to-toe, record how many times this happens and place a letter “M” at bottom of vertical line to indicate missed heel-to-toe.

If subject steps off the line while walking, record it by drawing a line from the appropriate footprint at the angle in the direction in which the foot stepped. Do this for each nine steps.

If subject uses arms for balance, give some indication of how often or how long this happens.
Example: subject raised arms from sides three times. Place three check marks (✓) or a “3” in the box.
Record the actual number of steps taken by subject, in each direction.

For the next clue, “Improper Turn," record a description of the turn.
- Example: turned incorrectly
- Example: stumbled, to left
- Example: wrong direction
- Example: no small steps
- If the turn is correct, note: N/A

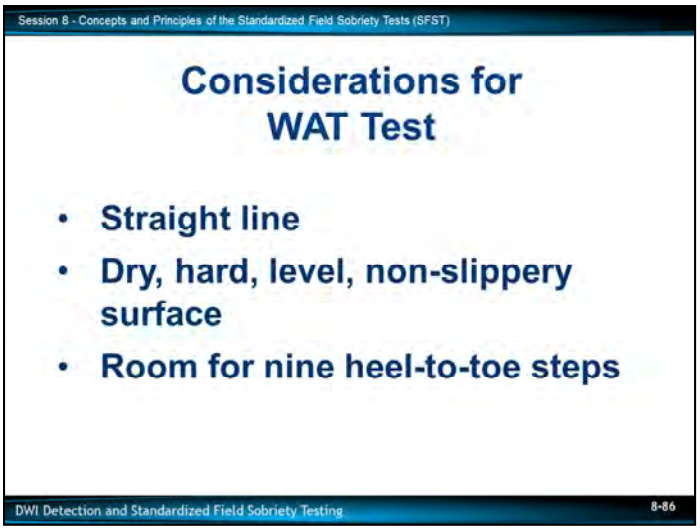
If the subject is unable to safely complete the test, you may stop the test early. Document the reasons the test was stopped.
At end of the test, examine each factor and determine the total number of clues recorded.

In the section labeled "other", record any facts, circumstances, conditions, or observations that may be relevant to this test.

Examples of additional evidence of impairment emerging during WAT test.

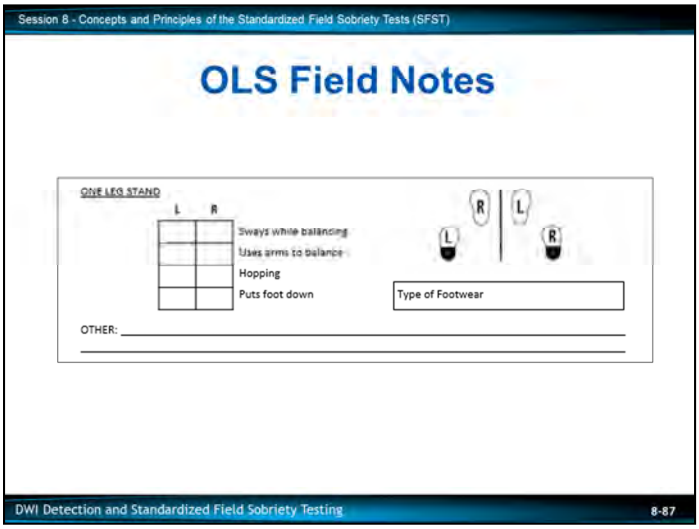
_____

_____



Examples of conditions that may interfere with subject's performance of the WAT test:

- Wind/Weather conditions
- Subject's age
- Subject's footwear



Record the subject's performance separately.
For each clue, record how often it appears with a check mark (✓).

If subject sways, indicate how often with a (✓) check mark.

Indicate above the feet the number they were counting when they put their foot down.

Check marks (✓) or a number should be made to indicate the number of times the subject swayed, used arms, hopped or put foot down.

Place check marks (✓) in or near the small boxes to indicate how many times you observed each of the clues. In addition, if the subject puts the foot down during the test, record when it happened. To do this, write the count number at which the foot came down.

For example, suppose, when standing on the left leg, the subject lowered the right foot at a count of "one thousand thirteen," and again at "one thousand twenty."

If subject uses arms for balance, indicate how often arms were raised.

If subject is hopping, indicate how many hops were taken.

If subject puts foot down, indicate how many times the foot came down.

If the subject is unable to safely complete the test, you may stop the test early. Document the reason(s) the test was stopped.

_____

_____

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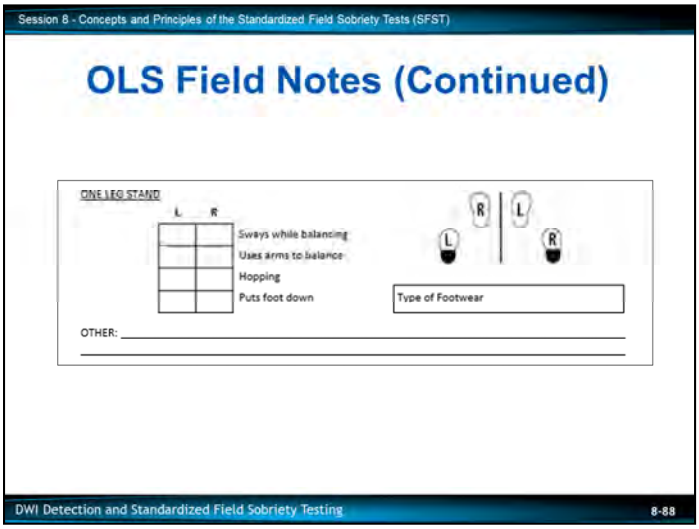


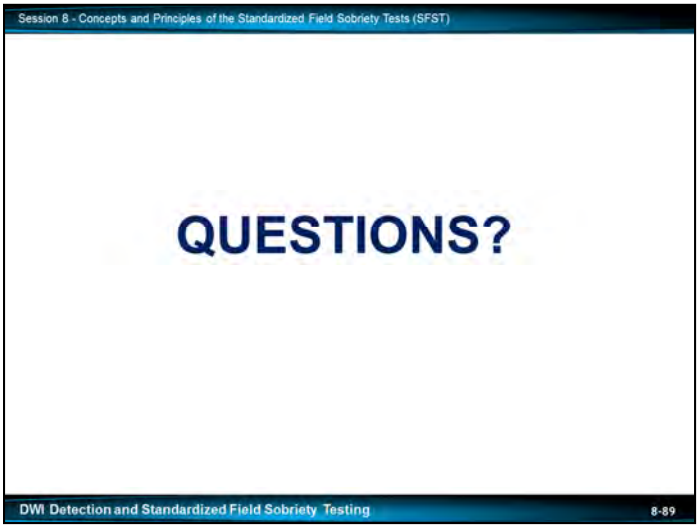
In the section labeled “Type of Footwear”, record the type of footwear worn.
In the section labeled "other", record any facts, circumstances, conditions, or observations that may be relevant to this test.

Examples of additional evidence of impairment emerging during OLS test:

- Subject verbally miscounts 30 seconds
- Subject utters incriminating statements

At end of the test, examine each factor and determine how many clues have been recorded.
Remember, each clue may appear several times, but still only constitutes one clue.

Officers who are video recording the SFSTs may choose to document any observed clues by voicing them into the recording as the clues are observed.


Session 8 - Concepts and Principles of the Standardized Field Sobriety Tests (SFST)
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
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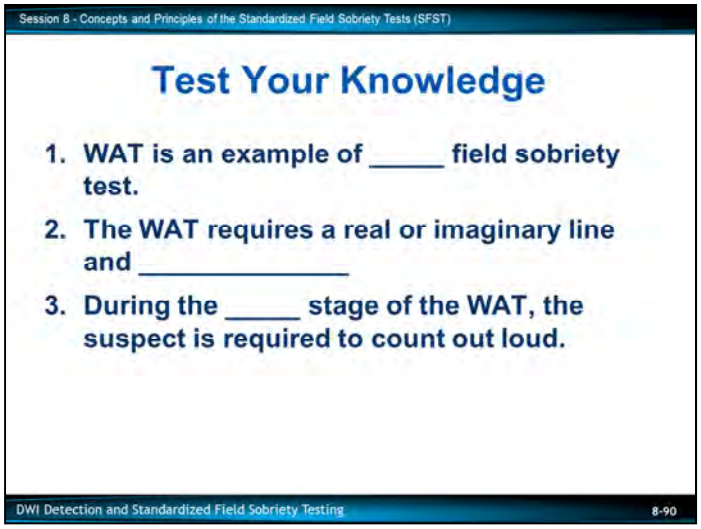

Test Your Knowledge

1. WAT is an example of _____ field sobriety test.

2. The WAT requires a real or imaginary line and _____

_____

3. During the _____ stage of the WAT, the subject is required to count out loud.

_____

_____

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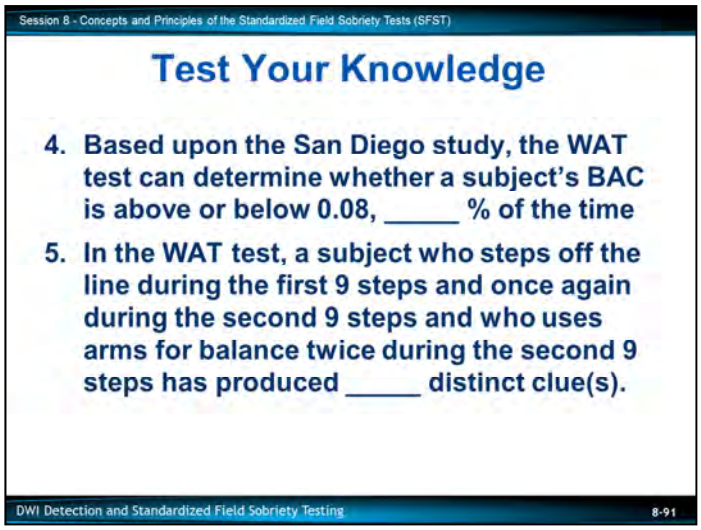

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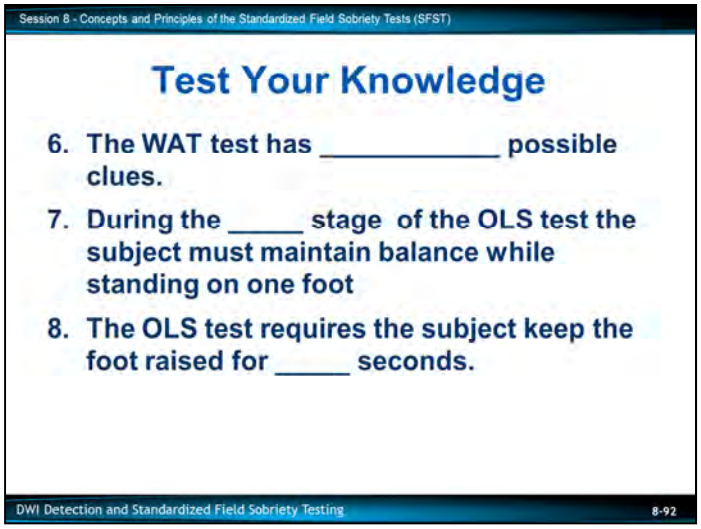
4. Based upon the San Diego study, the WAT test can determine whether a subject's BAC is above or below 0.08, _____ % of the time.

5. In the WAT test, a subject who steps off the line during the first 9 steps and once again during the second 9 steps and who uses arms for balance twice during the second nine steps has produced _____ distinct clue(s).



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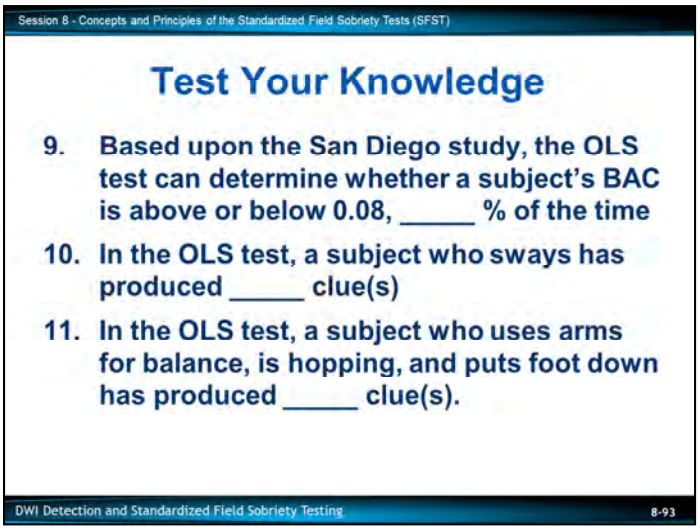
6. The WAT test has _____ possible clues.

7. During the _____stage of the OLS test the subject must maintain balance for 30 seconds.

8. The OLS requires the subject keep the foot elevated for _____seconds.



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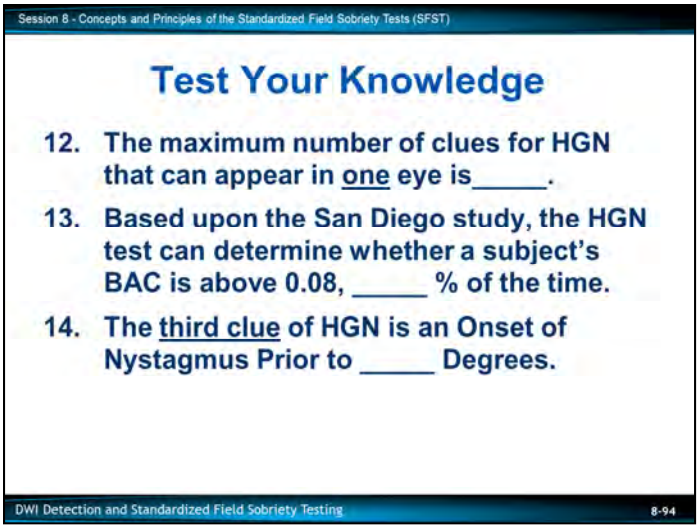
9. Based upon the San Diego study, the OLS test can determine whether a subject's BAC is above or below 0.08, _____% of the time.

10. In the OLS test, a subject who sways has produced _____ clue(s).

11. In the OLS test, a subject who uses arms for balance, is hopping, and puts foot down has produced _____ clue(s).



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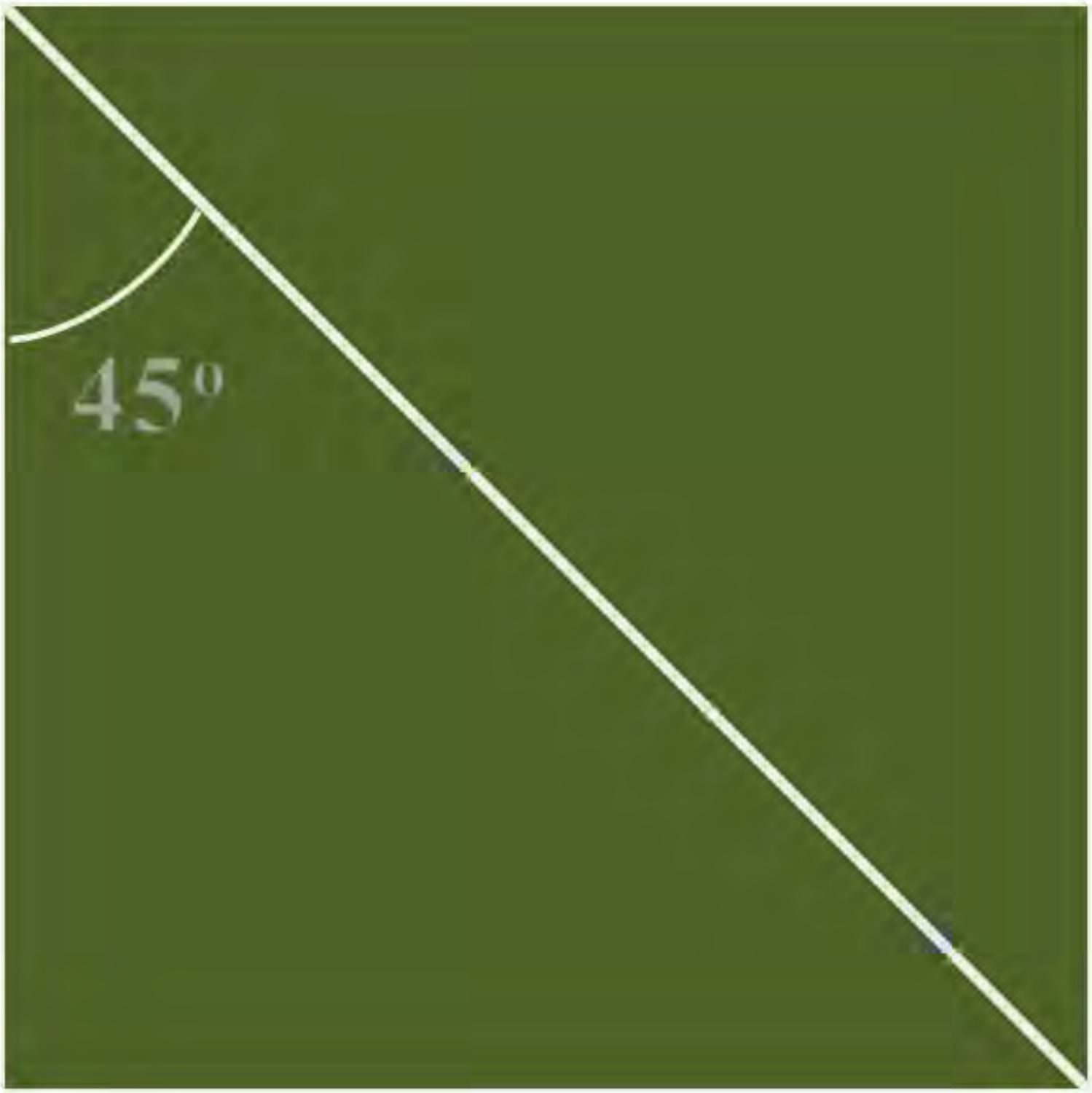
12. The maximum number of clues for HGN that can appear in one eye is _____.

13. Based upon the San Diego study, the HGN test can determine whether a subject's BAC is above 0.08, _____% of the time.

14. The third clue of HGN is an Onset of Nystagmus Prior to _____Degrees.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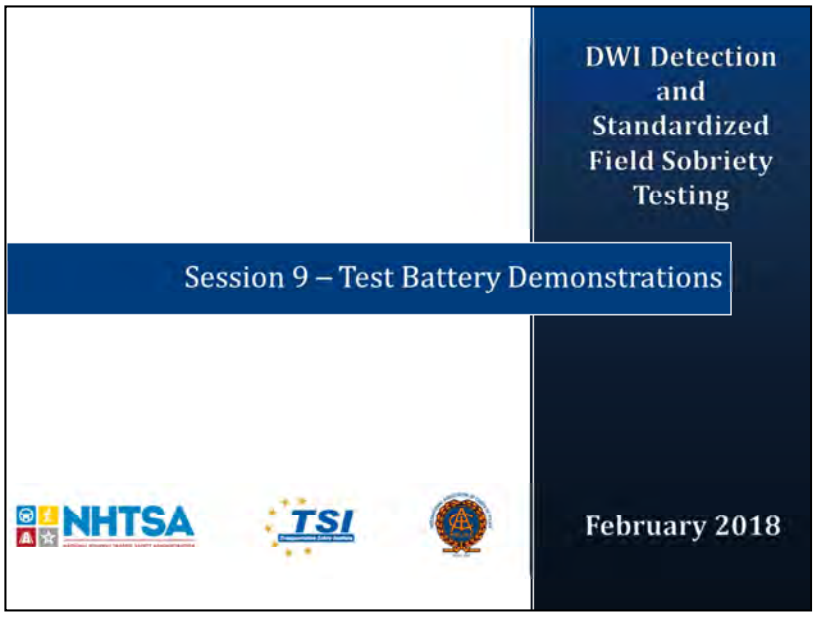
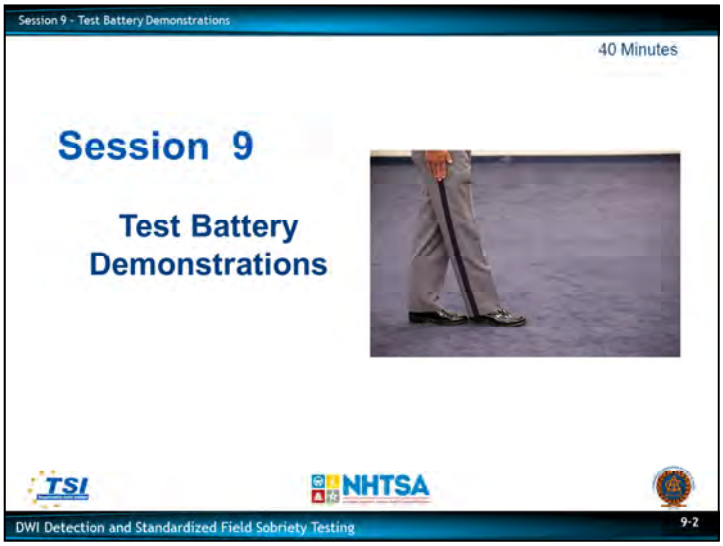

DWI Detection and Standardized Field Sobriety Testing
Session 9 – Test Battery Demonstrations
NHTSA
TSI
February 2018


Session 9 - Test Battery Demonstrations
40 Minutes
Session 9
Test Battery Demonstrations
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
9-2



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

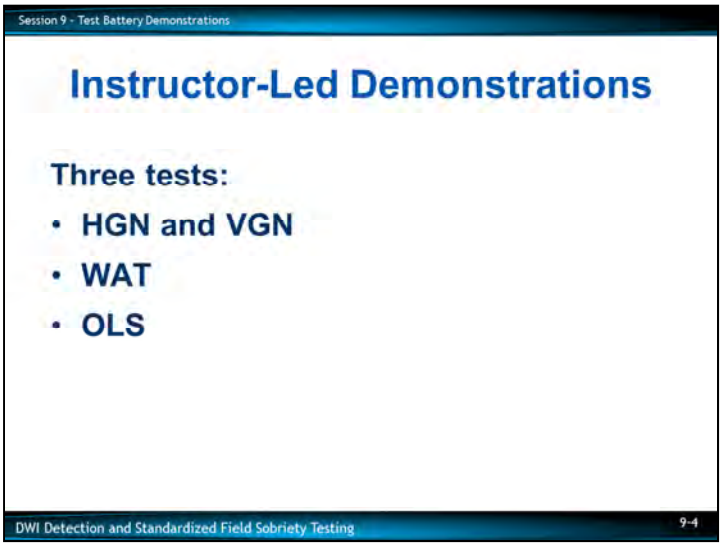
- Demonstrate the appropriate administrative procedures for the Standardized Field Sobriety Tests (SFSTs)

CONTENT SEGMENTS

A. Live Classroom Demonstrations

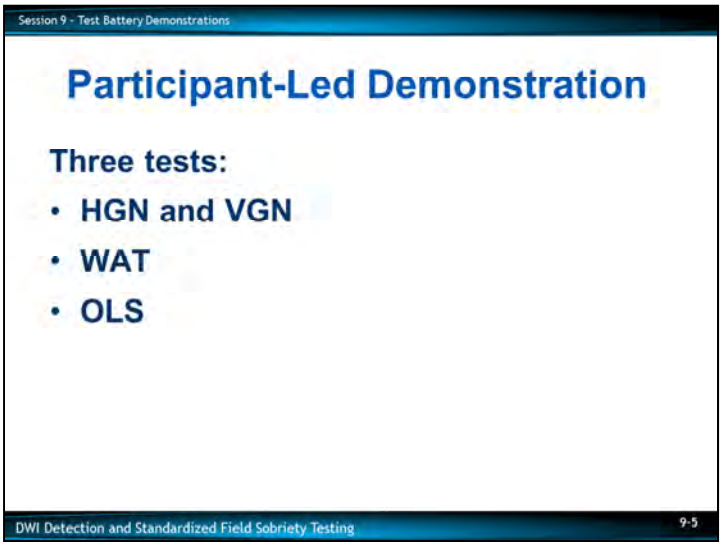
LEARNING ACTIVITIES

Instructor-Led Presentation

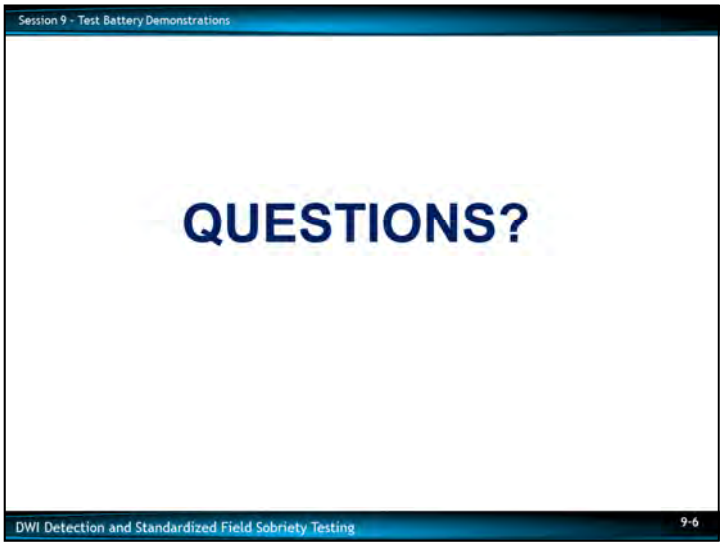


A. <u>Live Classroom Demonstrations</u>

Instructor-Led Demonstrations

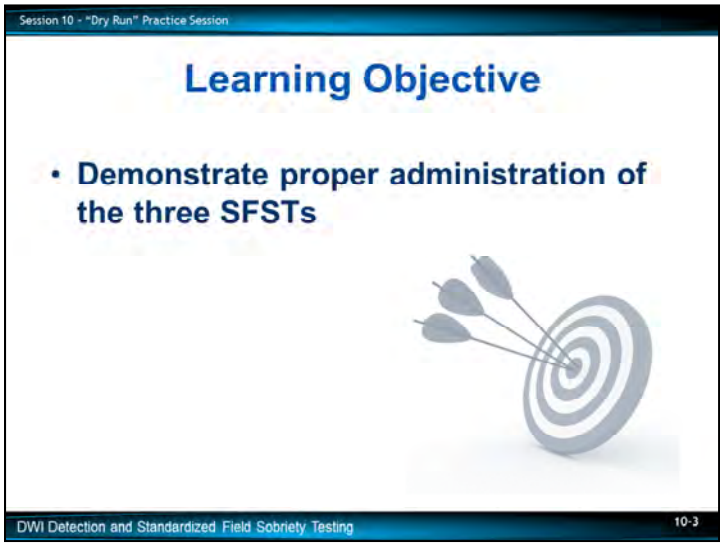


Participant-Led Demonstration


Session 9 - Test Battery Demonstrations
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
9-6


DWI Detection and Standardized Field Sobriety Testing
Session 10 – "Dry Run" Practice Session
NHTSA
TSI
February 2018


Session 10 - "Dry Run" Practice Session
50 Minutes
Session 10
"Dry Run"
Practice Session
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
10-2



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

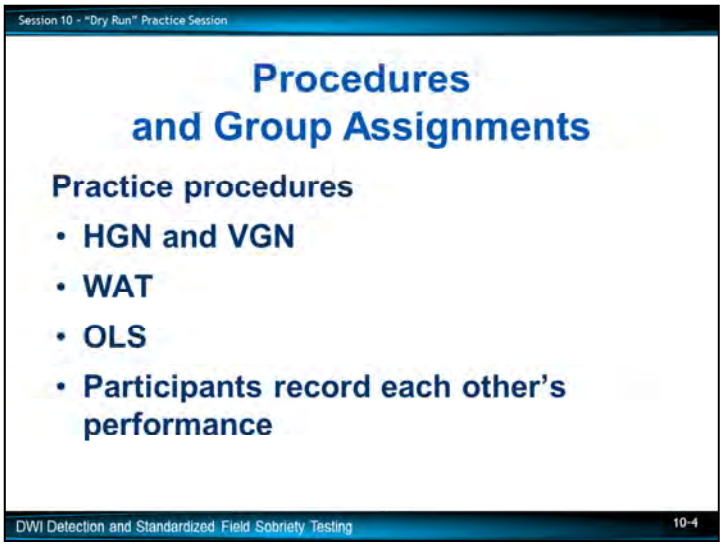
- Demonstrate the proper administration of the three Standardized Field Sobriety Tests (SFSTs)

CONTENT SEGMENTS

A. Procedures and Group Assignments
B. Live Administration of SFSTs
C. Hands on Practice

LEARNING ACTIVITIES

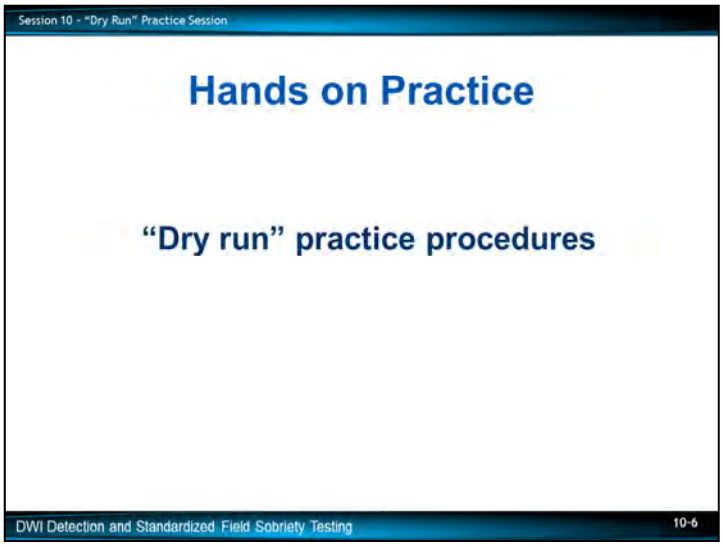
Instructor-Led Presentation
Participant Practice Session
Instructor-Led Presentation



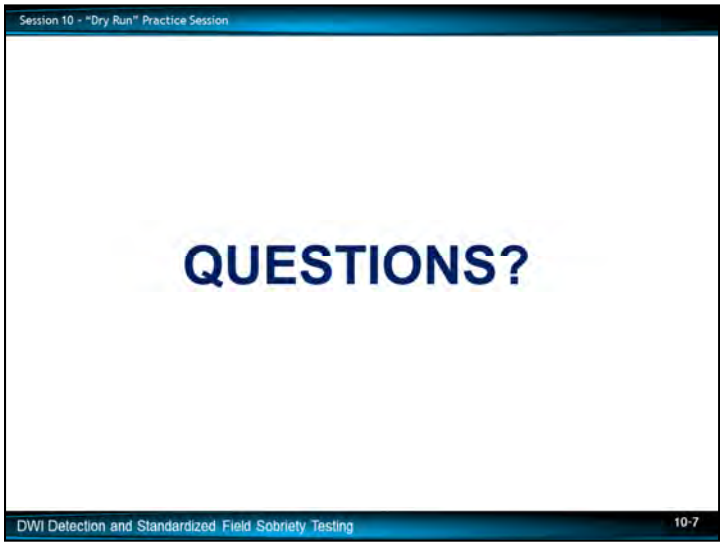
A. <u>Procedures and Group Assignments</u>



B. <u>Live Administration of SFSTs</u>



C. <u>Hands on Practice</u>


Session 10 - "Dry Run" Practice Session
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
10-7

PARTICIPANT PROFICIENCY EXAMINATION

STANDARDIZED FIELD SOBRIETY TESTs

Name_____ Date_____/_____/_____

Agency_____

I. HORIZONTAL GAZE NYSTAGMUS

1. ___Have subject remove glasses if worn.
2. ___Stimulus held in proper position (approximately 12”-15” from nose, just slightly above eye level).
3. ___Check for equal pupil size and resting nystagmus.
4. ___Check for equal tracking.
5. ___Smooth movement from center of nose to maximum deviation in approximately 2 seconds and then back across subject’s face to maximum deviation in right eye, then back to center. Check left eye, then right eye. (Repeat)
6. ___Eye held at maximum deviation for a minimum of 4 seconds (no white showing). Check left eye, then right eye. (Repeat)
7. ___Eye moved slowly (approximately 4 seconds) from center to 45 angle. Check left eye, then right eye. (Repeat)
8. ___Check for Vertical Gaze Nystagmus. (Repeat)

II. WALK AND TURN

1. ___Instructions given from a safe position.
2. ___Tells subject to place feet on a line in heel-to-toe manner (left foot behind right foot) with arms at sides and gives demonstration.
3. ___Tells subject not to begin test until instructed to do so and asks if subject understands.
4. ___Tells subject to take nine heel-to-toe steps on the line and demonstrates.
5. ___Explains and demonstrates turning procedure.
6. ___Tells subject to return on the line taking nine heel-to-toe steps.
7. ___Tells subject to count steps out loud.
8. ___Tells subject to look at feet while walking.
9. ___Tells subject not to raise arms from sides.
10. ___Tells subject not to stop once they begin.
11. ___Asks subject if all instructions are understood.

III. ONE LEG STAND

1. ___Instructions given from a safe position.
2. ___Tells subject to stand straight, place feet together, and hold arms at sides.
3. ___Tells subject not to begin test until instructed to do so and asked if subject understands.
4. ___Tells subject to raise one leg, either leg, approximately 6" from the ground, keeping raised foot parallel to the ground, and gives demonstration.
5. ___Tells subject to keep both legs straight and to look at elevated foot.
6. ___Tells subject to count out loud in the following manner: one thousand one, one thousand two, one thousand three, and so on until told to stop, and gives demonstration.
7. ___Checks actual time subject holds leg up. (Time for 30 seconds.)

Instructor: _____

Note: In order to pass the proficiency examination, the student must explain and proficiently complete each of the steps listed.

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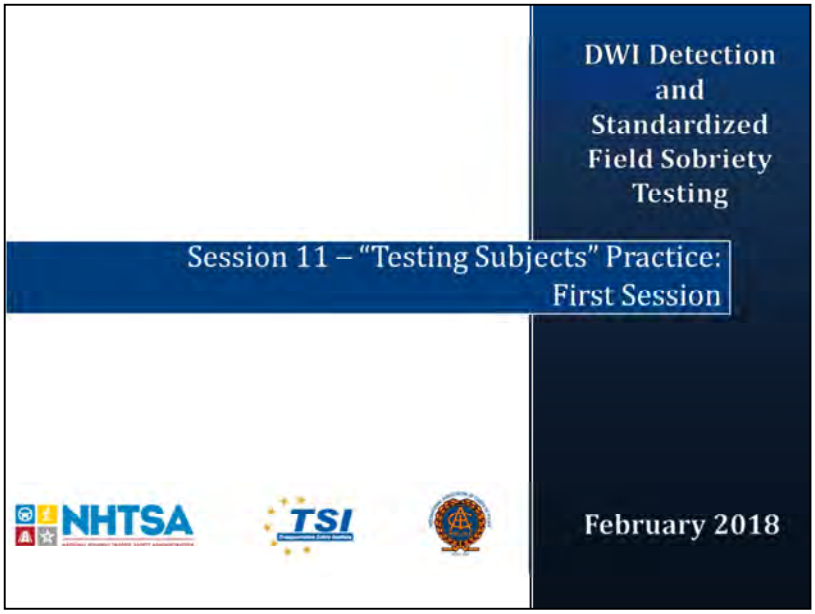
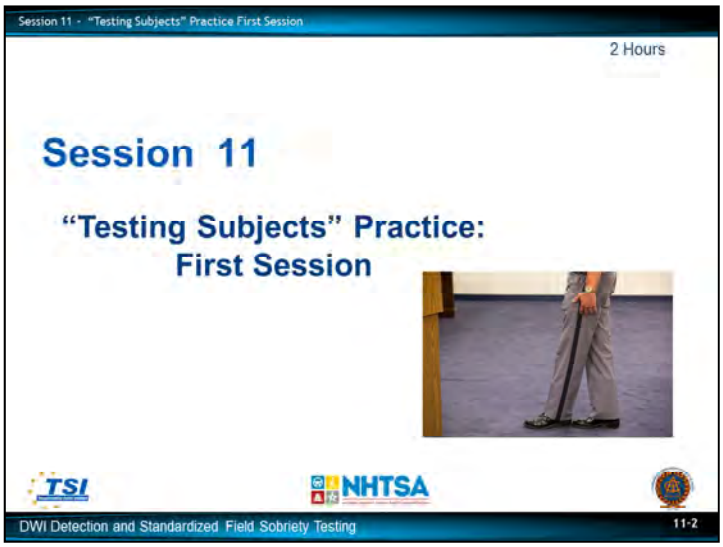
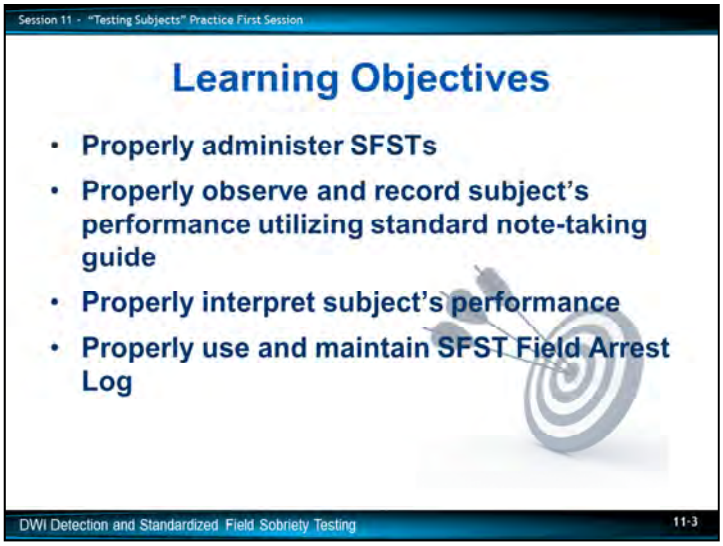

DWI Detection and Standardized Field Sobriety Testing
Session 11 – "Testing Subjects" Practice: First Session
NHTSA
TSI
February 2018


Session 11 - "Testing Subjects" Practice First Session
2 Hours
Session 11
"Testing Subjects" Practice:
First Session
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
11-2



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

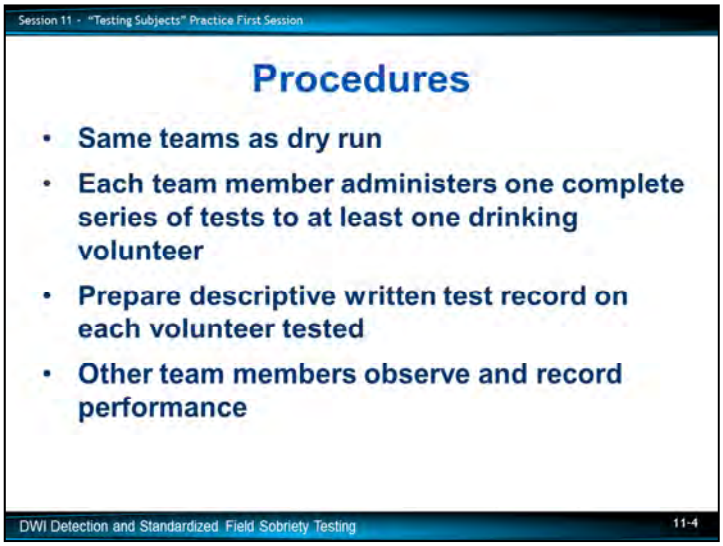
- Properly administer the Standardized Field Sobriety Tests (SFSTs)
- Properly observe and record subject's performance utilizing the standard note-taking guide
- Properly interpret the subject's performance
- Properly use and maintain the SFST Field Arrest Log

CONTENT SEGMENTS

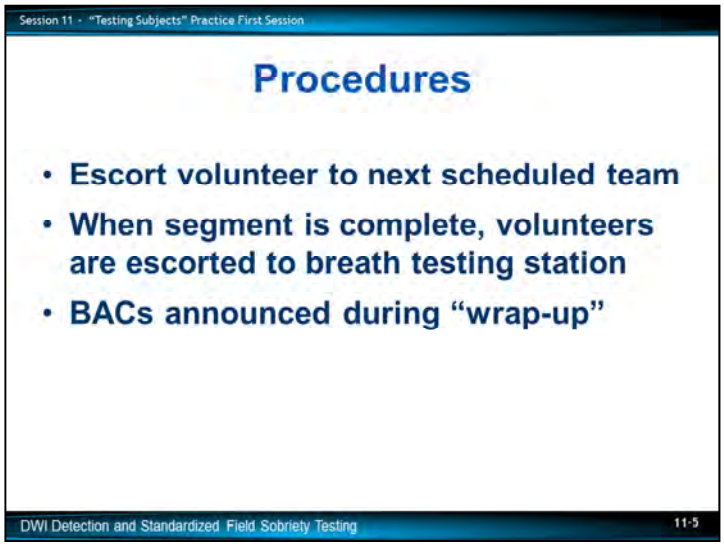
A. Procedures
B. Hands on Practice
C. Use and Maintenance of SFST Field Arrest Log
D. Session Wrap Up

LEARNING ACTIVITIES

Instructor-Led Presentations
Participant Practice Session
Instructor-Led Presentation
Instructor-Led Discussion



A. <u>Procedures</u>



B. <u>Hands on Practice</u>



C. <u>Use and Maintenance of SFST Field Arrest Log (The International Association of Chiefs of Police (IACP) strongly recommends the use of this log)</u>

The SFST Field Arrest Log is used to record the results of the SFSTs performed on suspected impaired subjects.

This log is important in documenting an officer's experience and proficiency in performing and interpreting SFSTs.

It is highly recommended by the IACP and the National Highway Traffic Safety Administration (NHTSA), that officers utilize an SFST log for the following reasons:

- Records training proficiency
- Records field proficiency
- Documents the officer's experience

All of these combined helps to establish the officer's credibility in administering the SFSTs and may be used as evidence in court.

_____

_____

_____

_____

_____

_____

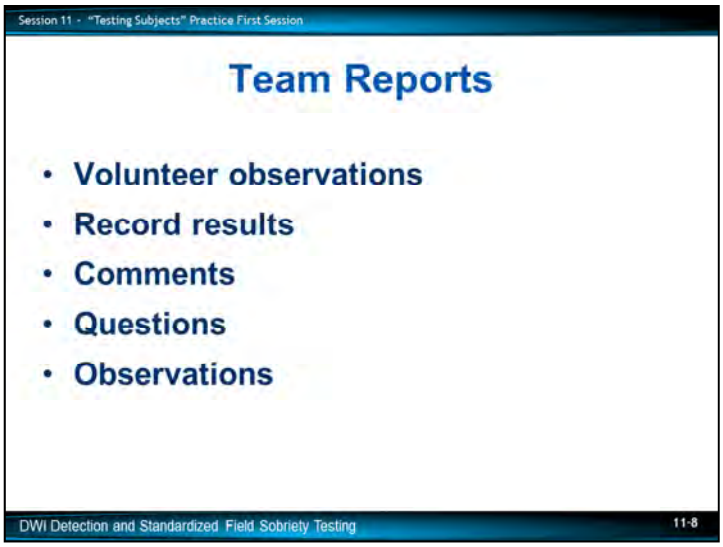
_____



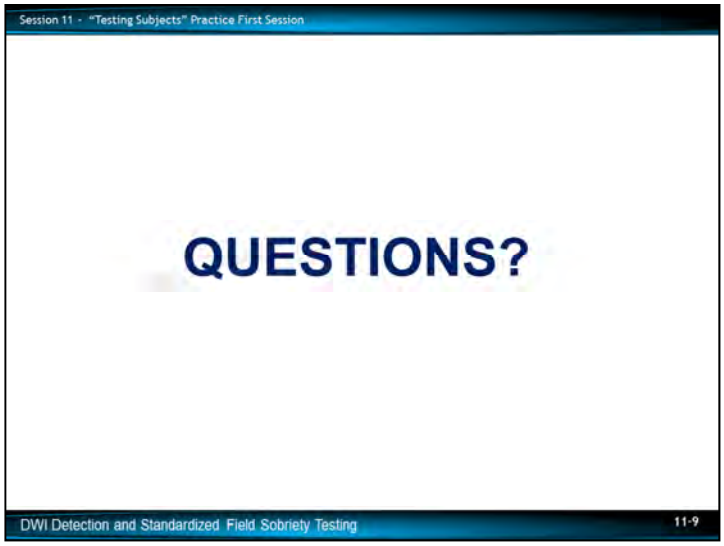
This log has the following components:

- The actual date the SFSTs were administered
- Subject's full name
- Results of each SFST test
- Classification of BAC as above or below 0.08 BAC
- Arrest/Not Arrest
- Subject's measured BAC (if available)
- Remarks

Utilization of Log



D. <u>Session Wrap Up</u>


Session 11 - "Testing Subjects" Practice First Session
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
11-9

Sample Dry Erase Board Array for Tabulating Results

"Designated Subjects"	Horizontal Gaze Nystagmus	Walk and Turn	One Leg Stand	Arrest?
"A"				
"B"				
"C"				
"D"				
"E"				
"F"				
"G"				
"H"				
"I"				
"J"				

SFST Field Arrest Log

Date	Name	HGN	WAT	OLS	BAC +/- .08	Arrest / Not Arrest	Measured BAC	Remarks

ALCOHOL WORKSHOP PARTICIPANT STATEMENT OF INFORMED CONSENT

I, _____, hereby agree to participate in the alcohol
(Print Name)

workshop conducted on _____/_____/_____ by _____.
(Agency/Department)

I understand that I will consume alcohol, and may become impaired or intoxicated. I specifically agree that my participation as a volunteer drinker in this program makes it imperative that I refrain from driving for at least twelve hours following completion of the program.

I understand that, while participating in the program, I will be required to submit to breath tests to determine my blood alcohol concentration. I also understand that I will be required to submit to psychophysical examinations and other non-intrusive clinical tests to assess the extent of my impairment.

I represent that I am in good physical health, and that I am not an alcoholic. I attest that I am not now under the influence of alcohol or any other drug. I attest that I have not consumed any drug, medication, or other substance that would make my consumption of alcohol at this time inadvisable. I affirm that there exists no condition that should preclude my participation in this alcohol workshop as a volunteer drinker.

I have been informed of the purpose of this workshop, namely, to assist in training police officers to recognize and investigate persons impaired by alcohol and other drugs. I acknowledge that I may refuse to consume any or all of the alcohol offered to me during this workshop.
I also consent to being photographed or video recorded, by instructors, for training purposes only.

_____
Signature

Date _____/_____/_____ _____
Witness

VOLUNTEER DRINKER QUESTIONNAIRE

VOLUNTEER: _____

DATE: _____

LOCATION: _____

Wearing Glasses? Yes ☐ No ☐

Wearing Contacts? Yes ☐ No ☐

Eye Problems? _____

Sick or Injured? _____

Diabetic? _____

Epileptic? _____ Other: _____

Physical Defects? _____

Under Doctor's Care? _____

Taking Any Medications or Drugs? Yes No What: _____

Been Drinking? Yes ☐ No ☐ What: _____ When: _____

Last Sleep? _____

Number of Hours? _____

Last Ate – Time: _____ What: _____

Age _____ Eye Color _____

Height _____ Sex M ☐ F ☐

Weight _____ Build _____

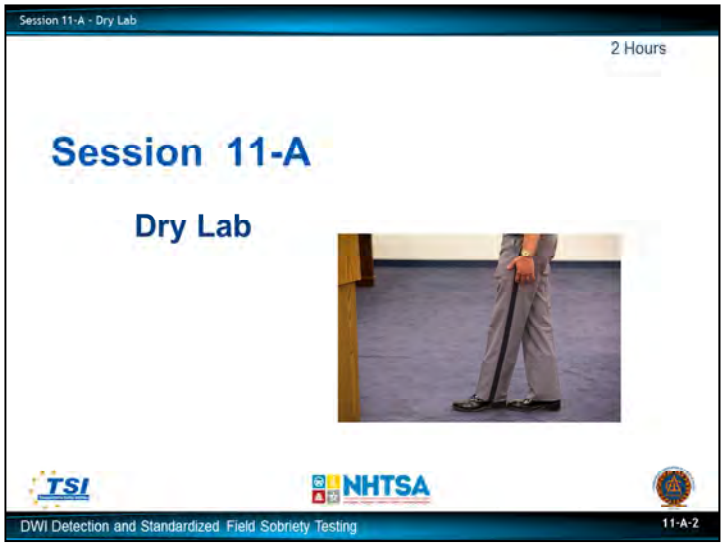
DOSING CHART

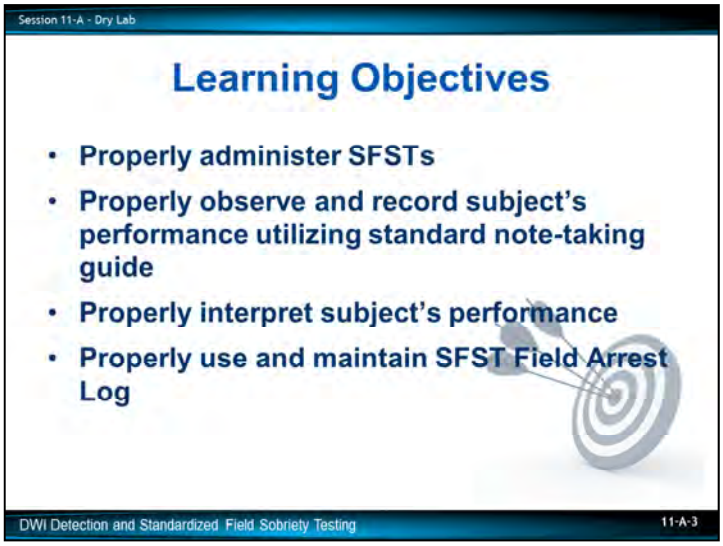
MIX: _____

TOTAL NUMBER OZ ETOH _____ TYPE _____ PROOF _____

	BEFORE DRINKING	**PRE-TESTNG**	**POST TESTING**
Lack of Smooth Pursuit	YES ☐ NO ☐	YES ☐ NO ☐	YES ☐ NO ☐
Maximum Deviation	YES ☐ NO ☐	YES ☐ NO ☐	YES ☐ NO ☐
Angle of Onset			
Pupil Size	MM	MM	MM
Pulse	BPM	BPM	BPM
Blood Pressure	/	/	/
BAC/Time	/	/	/


DWI Detection and Standardized Field Sobriety Testing
Session 11-A – Dry Lab
NHTSA
TSI
February 2018


Session 11-A - Dry Lab
2 Hours
Session 11-A
Dry Lab
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
11-A-2



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

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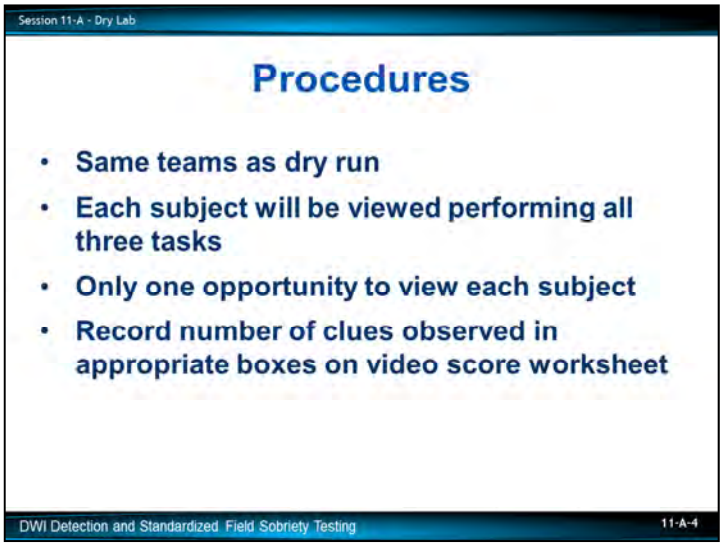
- Properly observe and record subject's performance utilizing the standard note-taking guide
- Properly interpret the subject's performance
- Properly use and maintain the SFST Field Arrest Log

CONTENT SEGMENTS

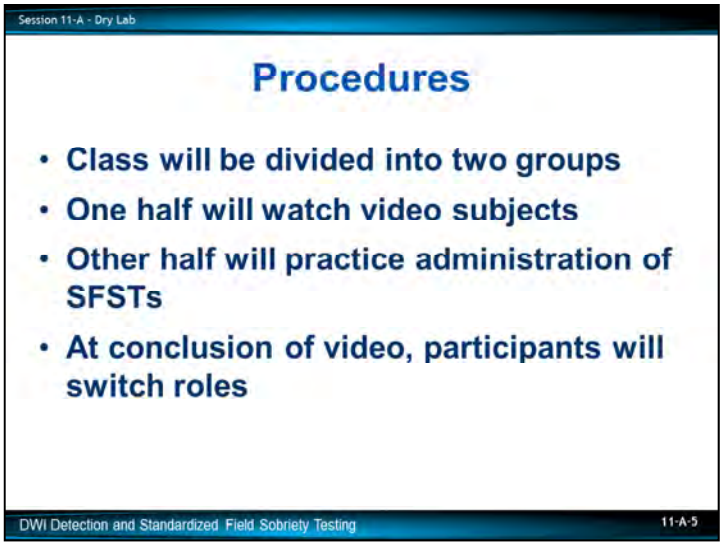
A. Procedures
B. Hands on Practice
C. Use and Maintenance of SFST Field Arrest Log
D. Session Wrap Up

LEARNING ACTIVITIES

Instructor-Led Presentations
Participant Practice Session
Instructor-Led Presentation
Instructor-Led Discussion



A. Procedures



B. <u>Hands on Practice</u>



C. <u>Use and Maintenance of SFST Field Arrest Log (the International Association of Chiefs of Police (IACP) strongly recommends the use of this log)</u>

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All of these combined helps to establish the officer’s credibility in administering the SFSTs and may be used as evidence in court.



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- The actual date the SFSTs were administered
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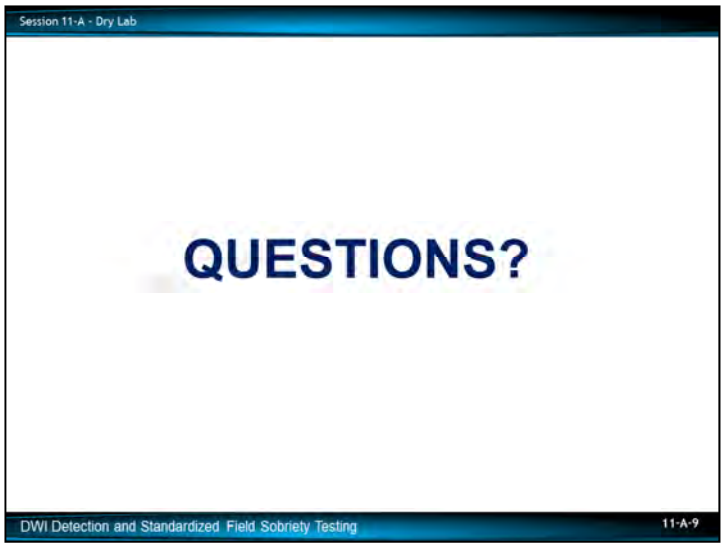
- Results of each SFST test
- Classification of BAC as above or below 0.08 BAC
- Arrest/Not Arrest
- Subject's measured BAC (if available)
- Remarks

Utilization of Log



D. Session Wrap Up


Session 11-A - Dry Lab
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
11-A-9

The Use of Video in Training for

Standardized Field Sobriety Tests (SFST)

A. James McKnight and Elizabeth A. Langston

National Public Services Research Institute
8201 Corporate Drive, Suite 220
Landover, MD 20785

September 1993

TECHNICAL REPORT

NHTSA Contract No. DTNH22-92-C-05109

Prepared for
U.S. Department of Transportation
National Highway Traffic Safety Administration
400 7th Street, S.W.
Washington, D.C. 20590

Technical Report Documentation Page

1. Report No.	2. Government Accession No.	3. Recipient's Catalog No.
4. Title and Subtitle The Use of Video in Training for SFSTs		5. Report Date September 1993
		6. Performing Organization Code
7. Author(s) A.J. McKnight and E.A. Langston		8. Performing Organization Report No.
9. Performing Organization Name and Address National Public Services Research Institute, 8201 Corporate Drive, Suite 220, Landover, MD 20745		10. Work Unit No. (TRAIS)
		11. Contract or Grant No. DTNH22-91-R-05109
12. Sponsoring Agency Name and address National Highway Traffic Safety Administration, 400 Seventh Street, S.W. Washington, D.C. 20590		13. Type of Report and Period Covered Final Report 6/91-9/93
		14. Sponsoring Agency Code
15. Supplementary Notes Dr. Richard Compton served as Contracting Officer's Technical Representative		

16. Abstract
The NHTSA training program to certify law enforcement officers in administration of SFSTs includes two “workshops” in which trainees administer sobriety tests to alcohol-dosed subjects has led to consideration of video as an alternative training method. A preliminary study showed that Certified SFST examiners scoring videotaped performance of alcohol-dosed subjects obtained the same results as examiners scoring the subjects directly. An experiment was therefore undertaken to compare three alternative methods of conducting training during the workshops: live alcohol-dosed subjects (alcohol), video-recorded performances of alcohol-dosed subjects (video), and a combination of the video and alcohol methods (video/alcohol). A total of 133 SFST trainees were randomly assigned to the three training methods. The results disclosed extremely small and statistically nonsignificant differences among the three workshop methods in the proficiency with which trainees administered and scored the SFST with alcohol-dosed subjects in a final performance test. It was concluded that video provides an acceptable alternative to live dosed subjects in training law enforcement officers to administer SFSTs.

17. Key Words	18. Distribution Statement		
Alcohol, Drinking and Driving, Sobriety Tests	Available to the public through the National Technical Information Service, Springfield, VA 22161		
19. Security Classif. (of this report) Unclassified	20. Security Classif. (of this page) Unclassified	21. No. of Pages	22. Price

The Role of Video Training

The use of videos in Sessions XIA and XIVA is not intended to imply that video can serve as a "substitute" for training with live dosed subjects. However, a combination of practical and moral obstacles to use of alcohol-dosed subjects in training has threatened to prevent the administration of SFST courses in many jurisdictions. Here the choice is not between video and alcohol workshops but between video and no instruction at all. The results of this study clearly resolve that decision.

REMINDER: Only the NHTSA/IACP options videos are approved for this instruction.

The Conclusions of this Study

From the results of this study, the following conclusions may be offered:

1. Video administration of the SFST of alcohol-dosed subjects can be used as an alternative to the use of live alcohol-dosed subjects in either or both of the current training "workshops" without altering the ability of trainees to administer or score the test.

2. Current SFST training leads to significant gains in knowledge of administration procedures and scoring criteria. However, gains in scoring the Walk and Turn and One Leg Stand are minimal owing to the objectivity of the scoring criteria.

3. The only significant differences among approaches to teaching the workshop involve the direction of trainee scoring errors on the Walk and Turn and One Leg Stand, where trainees from the video workshop tend to report slightly fewer impairment clues than certified examiners, while those participating in either or both alcohol workshops tend to report more clues.

REFERENCES

Burns, M.; Moskowitz, H. Final Report on NHTSA Contract No. DOT-HS-8-01999: Methods for Estimating Expected Blood Alcohol Concentration. Washington, DC: NHTSA; 1980.

Burns, M.; Moskowitz, H. (Southern California Research Institute). Prepared for U.S. Department of Transportation, NHTSA: Psychophysical Tests for DWI Arrest. Springfield, VA: National Technical Information Service; 1977 June; DOT HS 802 424. 126.

McKnight, A. J.; Marques, P. R. Estimating alcohol impairment from behavioral clues. Journal of Alcohol Studies. 1991; 52(5): pp 389-397

Russ, N. W.; Geller, E. S. Evaluation of a server intervention program for preventing drunk driving. Final Report No. DD-3 ed.; Blacksburg, VA: Virginia Polytechnic Institute and State University, Department of Psychology; 1986. 56 pages.

Tharp, V.; Burns, M.; Moskowitz, H. Development and field test of psychophysical tests for DWI arrest; 1981; NHTSA Report # DOT-HS-805-864. Available from NTIS, Springfield, VA 22151.

Sample Dry Erase Board Array for Tabulating Results

"Designated Subjects"	Horizontal Gaze Nystagmus	Walk and Turn	One Leg Stand	Arrest?
"A"				
"B"				
"C"				
"D"				
"E"				
"F"				
"G"				
"H"				
"I"				
"J"				

SFST Field Arrest Log

Date	Name	HGN	WAT	OLS	BAC +/- .08	Arrest / Not Arrest	Measured BAC	Remarks

Video Score Sheet

SUSPECT'S NAME:_____OFFICER'S NAME:_____

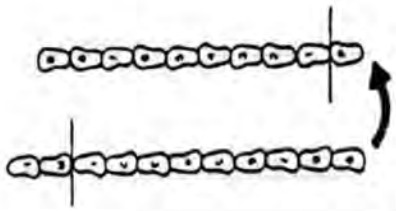
Pupil Size: □ Equal □ Unequal	Tracking: □ Equal □ Unequal		Unequal Pupil Size: Explain:
Resting Nystagmus □ Yes □ No	Eyelids: □ Normal □ Droopy		
Lack of Smooth Pursuit	Left Eye	Right Eye	Vertical Nystagmus □ Yes □ No
Distinct Nystagmus At Maximum Deviation			Eyes: □ Normal □ Bloodshot □ Watery
Onset of Nystagmus Prior To 45 Degrees			

HGN CLUES

Observed	Actual

WALK AND TURN TEST

Cannot keep balance_ Starts too soon_____



	1st Nine	2nd Nine
Stops Walking		
Misses Heel-to-Toe		
Steps Off Line		
Uses Arms		
Actual Steps Taken		

Improper Turn (Describe)	Cannot Do Test (explain)

WALK AND TURN

Observed	Actual

Team Information

Team No:_____

Arrest Decision:
Yes:_____
No:_____

BAC:
Above 0.10:_____
Below 0.10:_____
Above 0.08:_____
Below 0.08:_____

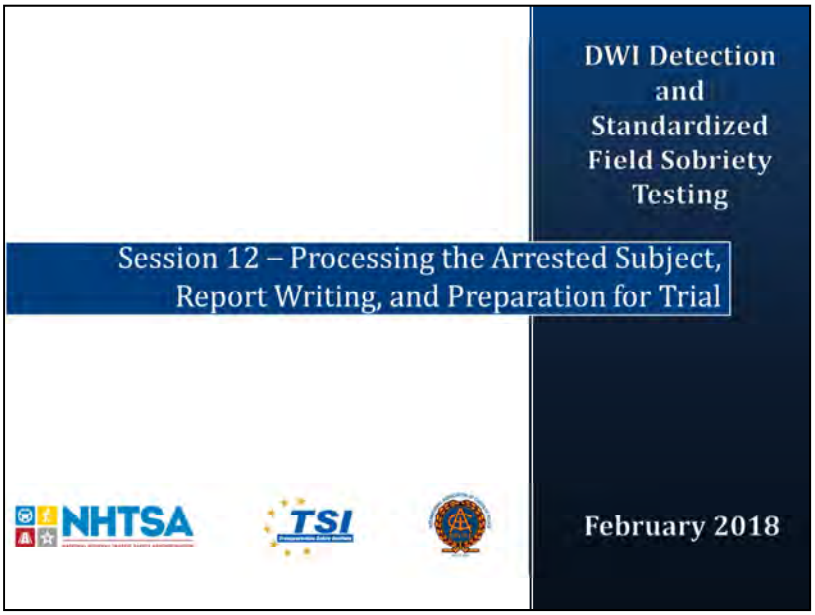
ONE LEG STAND

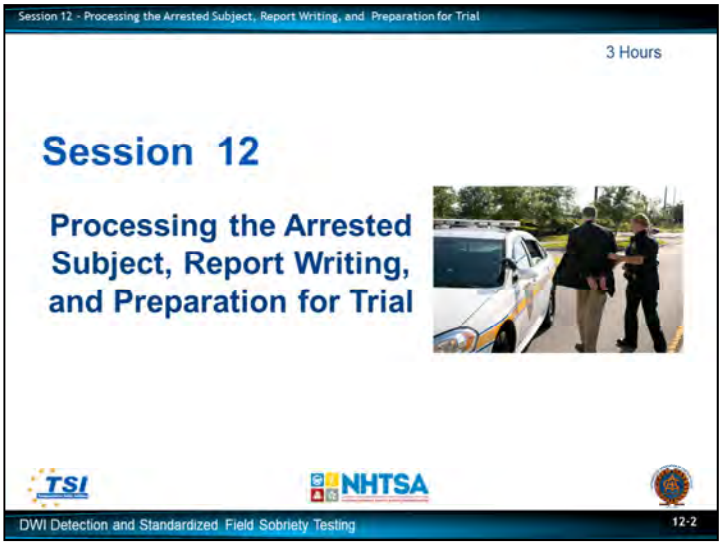


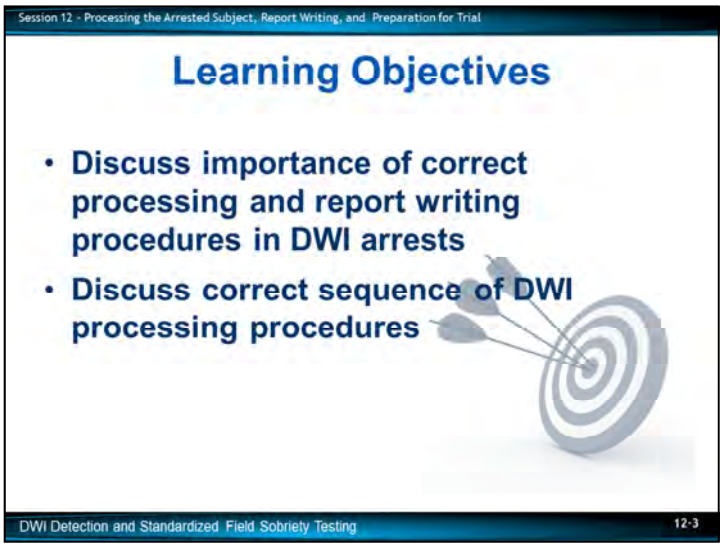
L	R	
□	□	Sways while balancing
□	□	Uses arms to balance
□	□	Hopping
□	□	Puts foot down

ONE LEG STAND

Observed	Actual

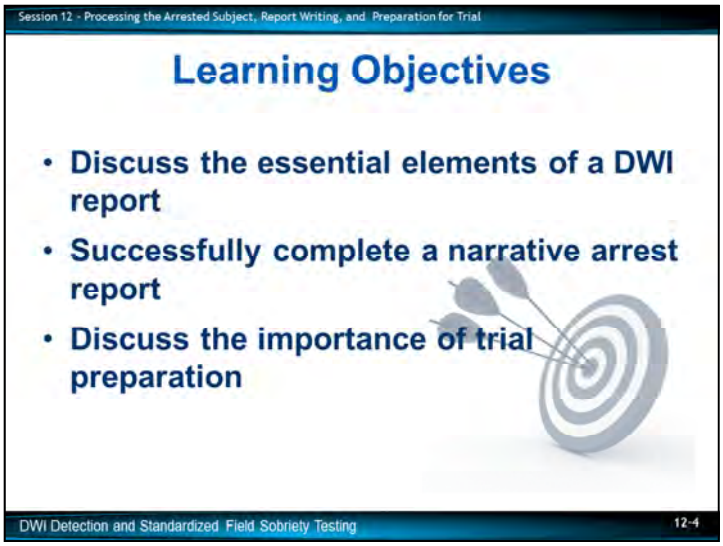

DWI Detection and Standardized Field Sobriety Testing
Session 12 – Processing the Arrested Subject, Report Writing, and Preparation for Trial
NHTSA
TSI
February 2018


Session 12 - Processing the Arrested Subject, Report Writing, and Preparation for Trial
3 Hours
Session 12
Processing the Arrested Subject, Report Writing, and Preparation for Trial
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
12-2



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

- Discuss the importance of correct processing and report writing procedures in DWI arrests
- Discuss the correct sequence of DWI processing procedures



- Discuss the essential elements of a DWI report
- Successfully complete a narrative arrest report
- Discuss the importance of trial preparation

CONTENT SEGMENTS

A. The Processing Phase
B. Narrative DWI Arrest Report
C. Case Preparation and Pretrial Conference
D. Guidelines for Direct Testimony

LEARNING ACTIVITIES

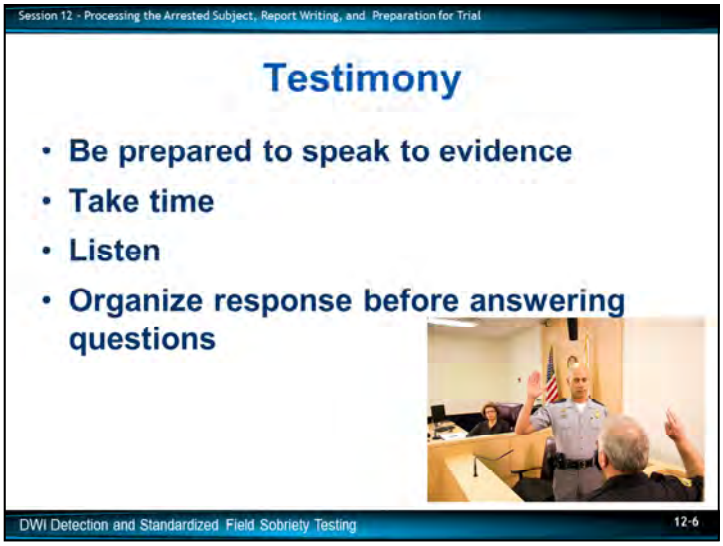
Instructor-Led Presentations
Video Presentation
Instructor-Led Demonstrations
Participant Presentations



A. <u>The Processing Phase</u>

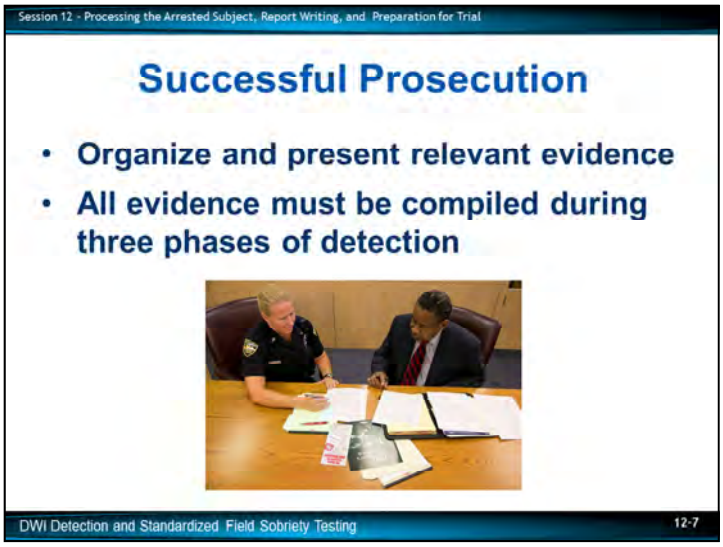
The foundation for preparation and successful testimony is the relationship between the law enforcement officer(s) involved with the arrest and the prosecuting attorney(s) associated with the case. Effective communication and a clear understanding of each group's objectives and expectations is essential for successful prosecution.

You, as the State's primary witness, play an important part in illustrating to the judge/jury the impairment of the defendant. In addition to verbal testimony, visual aids are often helpful in painting the picture of the entire DWI detection process. Visual aids engage the judge/jury and increase the retention of information. In addition, it is important you do not use legal, law enforcement, or medical terms unless absolutely necessary. The use of plain English assists the judge, jury, and others involved in the case to understand the specifics of all the testimony.



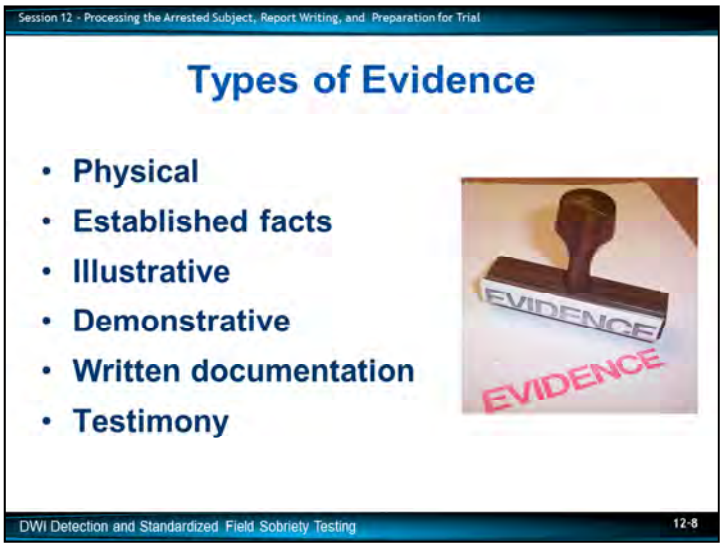
Since testimony constitutes the majority of time spent in trial, it is imperative, in addition to effective communication techniques, the witness be well prepared to speak to the evidence related to the case. Direct examination is your opportunity to tell the story. It should be an exchange between the prosecutor and the law enforcement officer. Take the time to think and make sure you completely understand the question and organize your response before you answer. NEVER answer a question you do not fully understand. Cross examination is NOT the time to showboat. Always listen carefully to the question and again make sure you completely understand the question before you answer. If you do not understand the question, ask for clarification. If you are not able to fully understand the question during direct or cross examination, it is acceptable to say "I do not know," "I cannot answer that question," or "I cannot answer that question without further explanation." Always make sure you listen closely to the question and don't answer a question you don't understand.

Remember: When it comes to successful testimony, there is NO substitution for preparation.



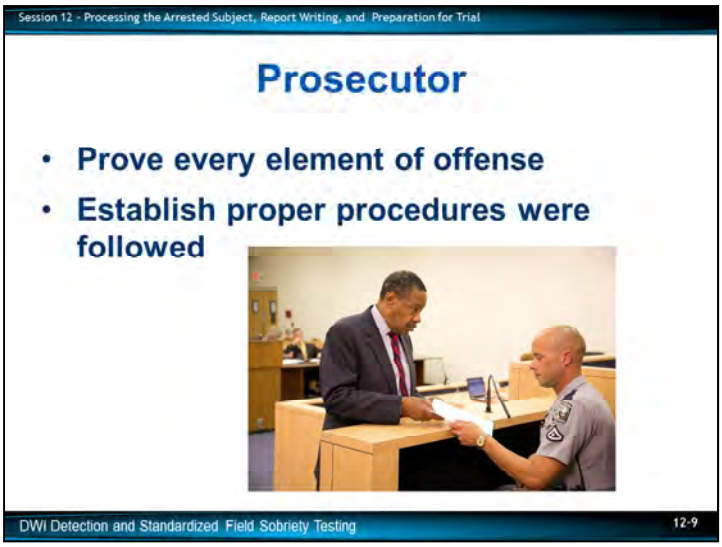
The successful prosecution of a DWI case often depends upon the officer's ability to organize and present all relevant evidence of each element of the DWI violation. Keep in mind virtually all of this evidence must be compiled during the three phases of detection – vehicle in motion, personal contact, and pre-arrest screening. The officer must be able to establish the level of impairment at the time the violation occurred, therefore, observations are critical. Subsequent evidence of impairment, such as 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 DWI offender will be of little value if there is not sufficient evidence to prove every element of the violation.

No matter how much evidence you collect, if it is not presented clearly, completely, and convincingly in court, the case may be lost. Therefore, it is essential officers develop the ability to write a clear, complete, and concise report describing their observations and results. Additionally, the officer must be able to articulate that information to the judge/jury.



Evidence of a DWI violation may be of various types:

- Physical (or real) evidence: something tangible, visible, audible (e.g., a blood sample or a partially empty can of beer)
- Well established facts (e.g., judicial notice of accuracy of the breath test device when proper procedures are followed)
- Illustrative evidence: visual aids (e.g., photo of the crash scene, defendant, or diagram of the roadway)
- Demonstrative evidence: demonstrations performed in courtroom (e.g., Standardized Field Sobriety Tests (SFSTs) or other field sobriety tests)
- Written documentation (e.g., the citation, the alcohol influence report, the drug evaluation report, evidential chemical test results, etc.)
- Testimony (the officer's verbal description of what was seen, heard, smelled, etc.)

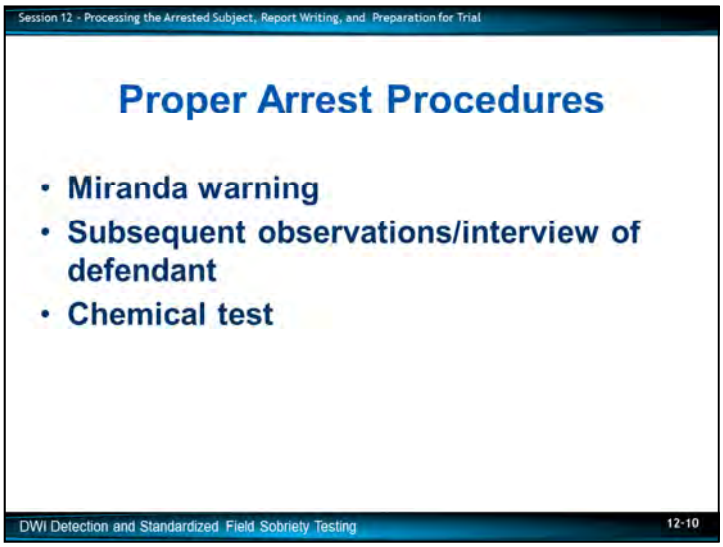


The prosecutor must be able to establish and prove every element of the offense. The prosecutor also must establish the proper procedures were followed, including:

There was a reasonable suspicion or another valid reason for stopping/contacting the driver.

The driver was operating or in actual physical control of the vehicle.

There was probable cause to arrest the driver.

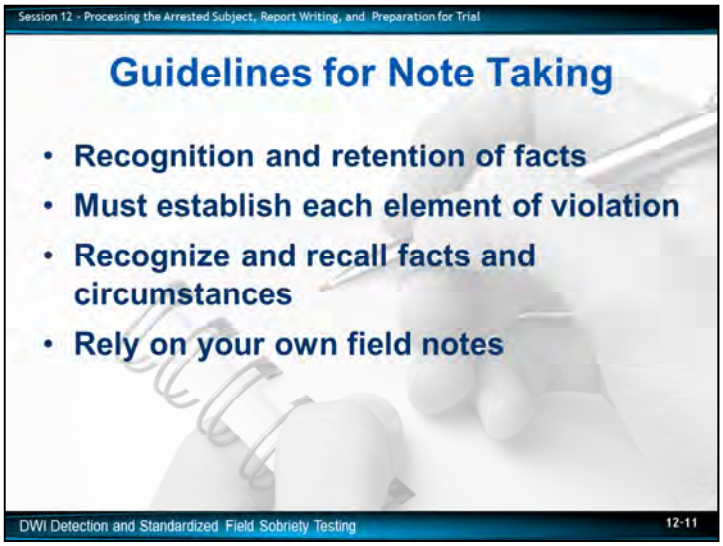


- Proper regard was given to the defendant's Miranda rights
- Subsequent observations/interview of the defendant provided additional evidence relevant to the offense
- There was a proper request for a chemical test

The prosecutor's case will largely be based upon the thoroughness of the officer's investigation and the clarity of his/her testimony.

While it is true many items which are critical to the prosecution are documented on special forms, the officer must keep in mind 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 essential the report clearly, completely, and accurately describe the total sequence of events from the point the driver was first observed, through the arrest, the chemical test, and subsequent release or incarceration.



Guidelines for Note Taking

One of the critical tasks in the DWI enforcement process is the recognition and retention of facts that establish reasonable suspicion to stop the driver, investigate further, and the probable cause to arrest persons for DWI. The evidence gathered during the detection process must establish each element of the violation and must be documented to support successful prosecution of the defendant. This evidence is largely sensory (see, smell, hear) in nature and, therefore, is extremely short lived.

Law enforcement officers must be able to recognize and act on facts and circumstances with which they are confronted. But the officer must also be able to recall those observations – and describe them clearly and convincingly – to secure a conviction. The officer is inundated with evidence of DWI (sights, sounds, smells, etc.), recognizes it, and bases the decision to stop, investigate, and arrest on their observations.

Since evidence of a DWI violation is short lived, police officers need a system and tools for recording field notes at scenes of DWI investigations. Technological advances have made it possible to use audio, video, and digital recorders in the field. They provide an excellent means of documenting this short-lived evidence. However, the vast majority of officers must rely on their own field notes.
One way of improving the effectiveness of field notes is to use a structured note-taking guide. This type of form makes it very easy to record brief notes on each step of the detection process and ensures vital evidence is documented. Field notes provide the information necessary for completion of required DWI report forms and assist the officer in preparing a written narrative of the investigation. Since they can be used to refresh the officer's memory, field notes could be useful if the officer is required to provide oral testimony.

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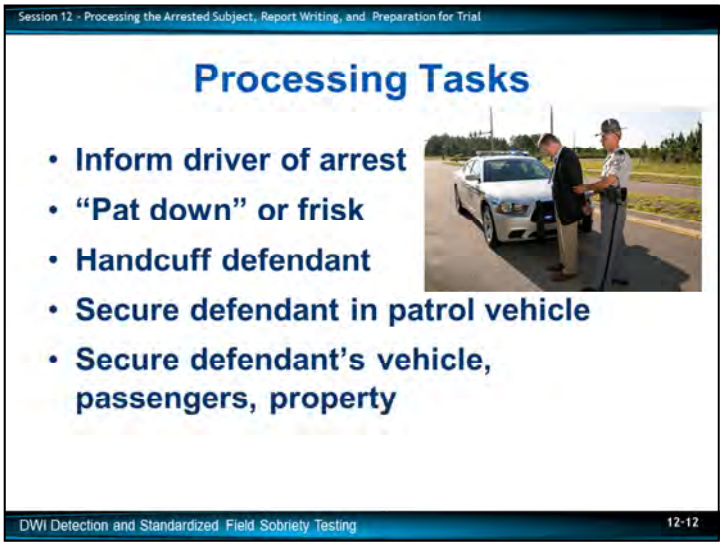
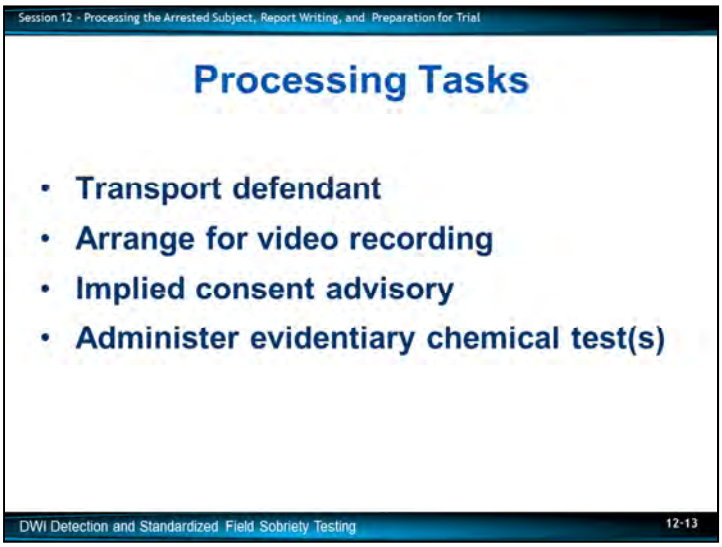


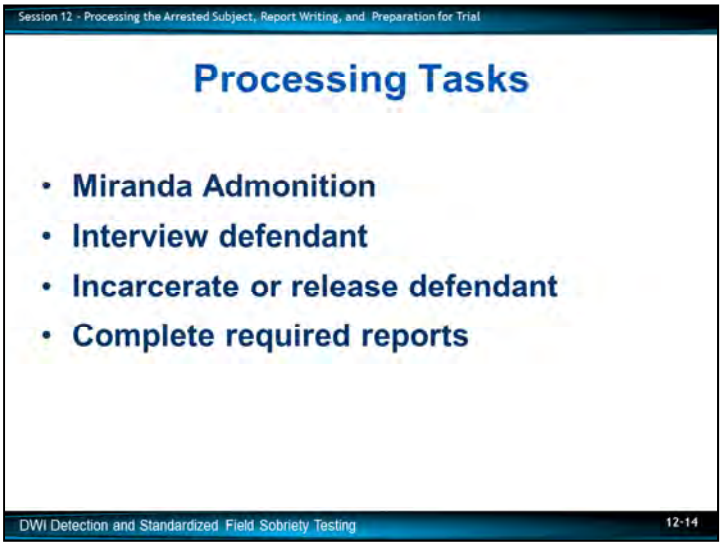
The Processing Phase of a DWI Enforcement incident is the bridge between arrest and conviction of a DWI offender. Processing involves the proper assembly and organization of all of the evidence obtained during the detection phase. This ensures the evidence will be available and admissible in court. Processing also involves obtaining additional evidence, such as a chemical test or tests of the subject's breath, blood, etc.

Typically, the processing phase may involve the following tasks:

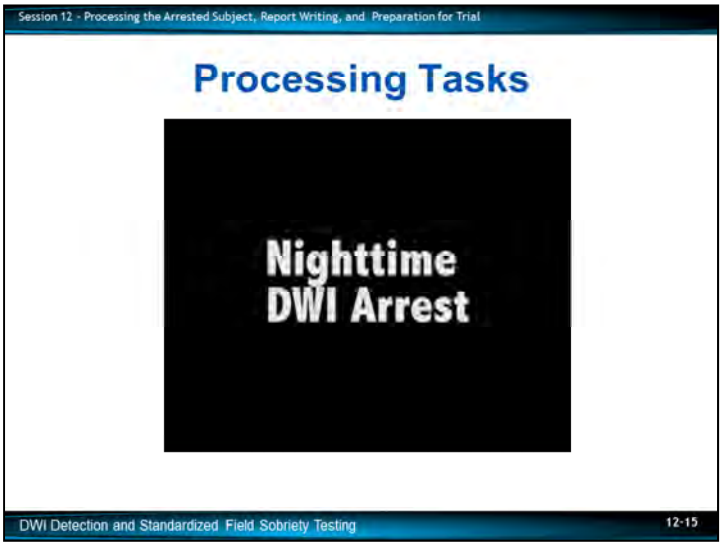
- Inform the driver they are under arrest
- ”Pat down" or frisk the defendant
- Handcuff the defendant
- Secure the defendant in the patrol vehicle
- Secure the defendant’s vehicle, passengers, property

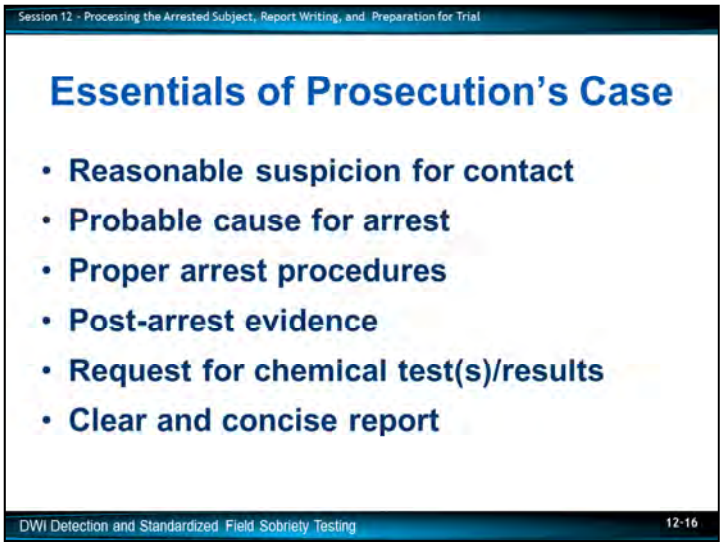


- Transport the defendant to an appropriate facility
- Arrange for video recording of booking process (if applicable)
- Advise the defendant of rights and obligations under the implied consent law
- Administer the evidentiary chemical test(s)



- Advise the defendant of Constitutional Rights (Miranda Admonition)
- Interview the defendant
- Incarcerate or release the defendant
- Complete the required reports

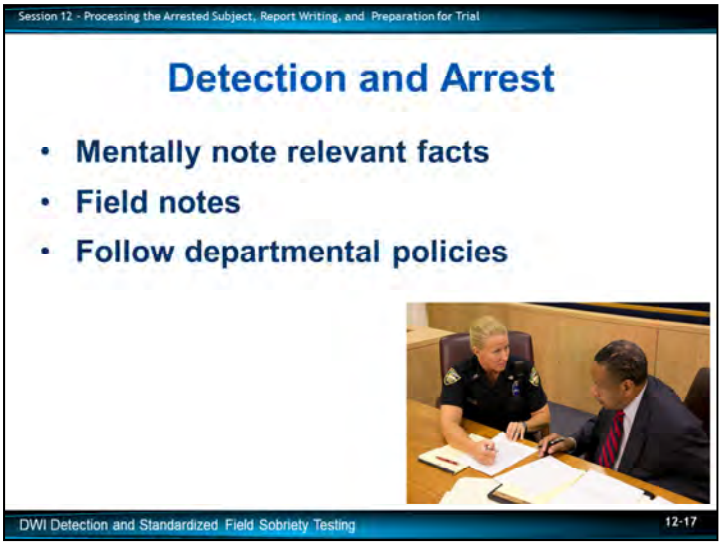

Session 12 - Processing the Arrested Subject, Report Writing, and Preparation for Trial
Processing Tasks
Nighttime
DWI Arrest
DWI Detection and Standardized Field Sobriety Testing
12-15



B. <u>Narrative DWI Arrest Report</u>

Report writing is an essential skill for a police officer. Good report writing becomes second nature with practice. While there is no one best way to write an arrest report, it is critical the report be detailed regarding every phase of the detection and arrest process. It is helpful to follow a simple format. Departmental policies and/or special instructions or requirements of the prosecutor provide some guidance.

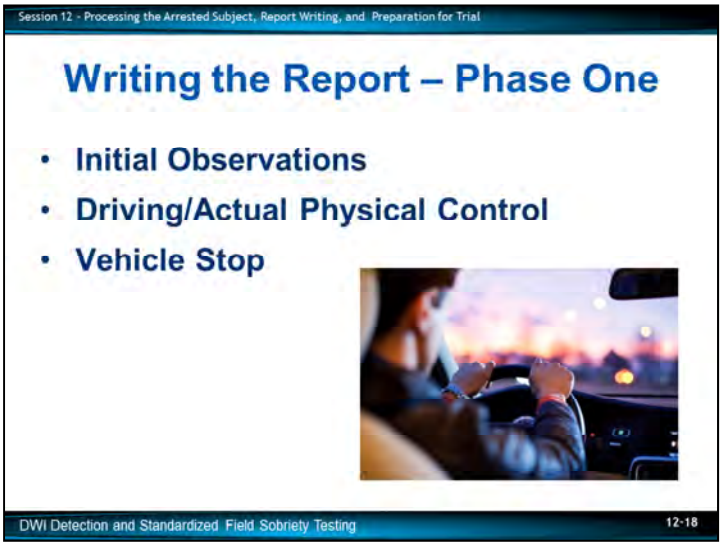
It is important for officers to understand the essential ingredients of the prosecution's case. Clarity and completeness of an officer's observations and relaying this information in a clear and concise report is critical. Additionally, an officer must be able to establish he/she had reasonable grounds for the arrest and followed proper arrest procedures. Proper arrest procedures include advising the defendant of their constitutional rights and gathering additional post-arrest evidence. The admissibility of chemical test evidence requires a proper request in accordance with your State's guidelines.



Detection and Arrest

During the detection phase of the DWI arrest process, the arresting officer must mentally note relevant facts to support the decision to arrest.

These facts are then recorded in the form of field notes and can be used to refresh officer's memory when the formal arrest/narrative report is prepared.



The following block outline format identifies some of the important components in a DWI arrest/narrative report:

Initial Observations – Describe your first observations of the driver's actions. What drew your attention to the vehicle/driver? Your first observations are important because they help establish your reasonable suspicion to stop. This should include details about the driving before you initiated the traffic stop. Be sure to record the time and location of the first event.

Driving or Actual Physical Control – In some cases, you may not use the driving behavior as the basis for the contact. Your first contact could result from a crash investigation or a motorist assistance type of contact. Your observations and documentation must establish the driver was operating or in actual physical control of the vehicle. You can use circumstantial evidence, such as seat belt marks, ownership of the vehicle, location of the keys, admissions, witness statements, etc. to establish this element.

Vehicle Stop – Record any unusual actions taken by the driver. How did the driver react to the emergency light and/or siren? How far did the driver travel after emergency equipment was activated? How did the driver pull over? Was it a normal stop? Be detailed and specific.

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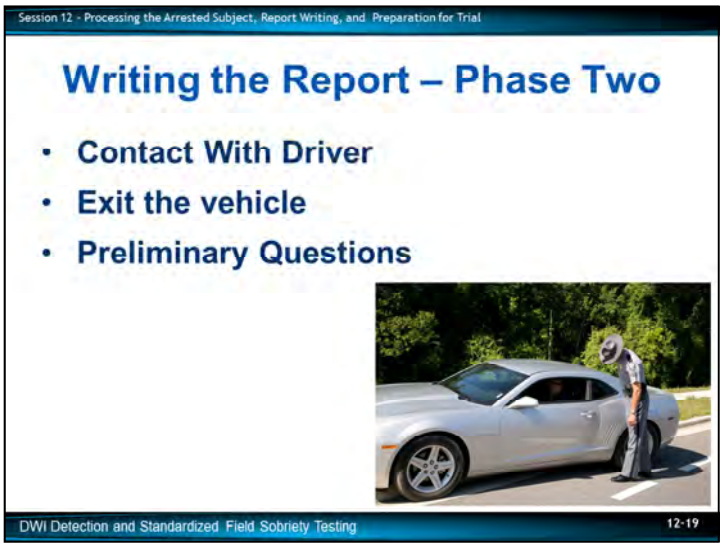

Contact With Driver – Record your observations of the driver's personal appearance, condition of the eyes, speech, odors, inappropriate or inconsistent responses to questions, etc. Record the name and condition of passengers in the vehicle and where they were located. Describe any unusual actions taken by the driver or passengers.

Exit From Vehicle – Record your observations of the driver's exit from the vehicle and include any unusual actions taken by the driver. Be specific about how the driver exits the vehicle. For example: climbs out of the vehicle, uses the vehicle for support, leans on the vehicle, walks slowly and/or deliberately, stumbles, etc.

Preliminary Questions – Record the preliminary questions you ask of the driver as well as their responses. Pay close attention to any inconsistent responses and any other physical signs of impairment. For example: driver responds “I’m just trying to get home” when asked “are you diabetic or epileptic?”

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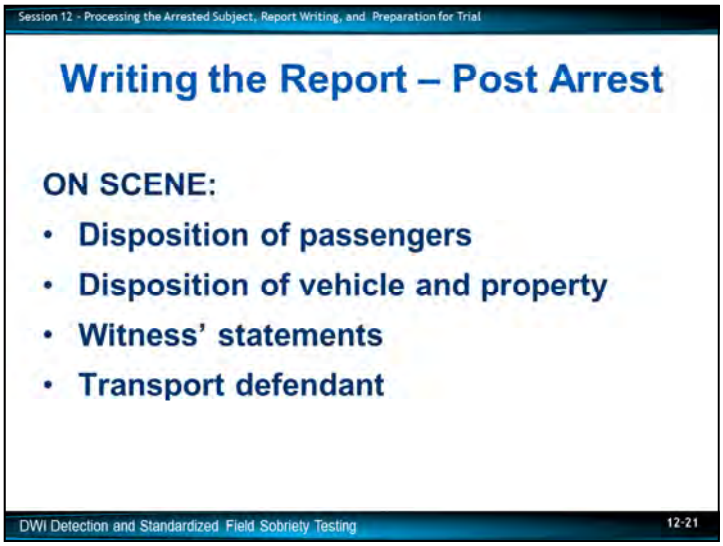
SFSTs – This should include specific details about the validated clues noted during the test. It should also include all other observations made during the SFSTs such as: did not follow directions, how quickly or slowly the driver performed the test, etc.

Include specific details about the clues observed. For example, missed heel-to-toe on steps 3, 4, and 5 by at least three inches each step, etc.

Field Sobriety Tests – Describe the driver's actions when you administered other field sobriety tests. Be specific.

Arrest – Document the arrest decision and ensure all elements of the crime have been accurately described.



ON SCENE:
Disposition of Passengers – Make sure passengers are identified, interviewed, and safely released.

Disposition/Location of Vehicle and Keys – Indicate where the vehicle was secured or towed and the location of the keys. If the vehicle was released to another party or was driven by a backup officer, record that fact. Document disposition of any property seized.

Witness' Statements – List all witnesses (including other officers), contact information, and attach copies of their statements (if any). Additionally, make notes of any verbal statements made by witnesses.

Transport of Defendant – Describe where the defendant was transported for evidential testing. Document time of departure and arrival. (This information can be obtained from the radio log). Note any spontaneous or voluntary comments made by the defendant.

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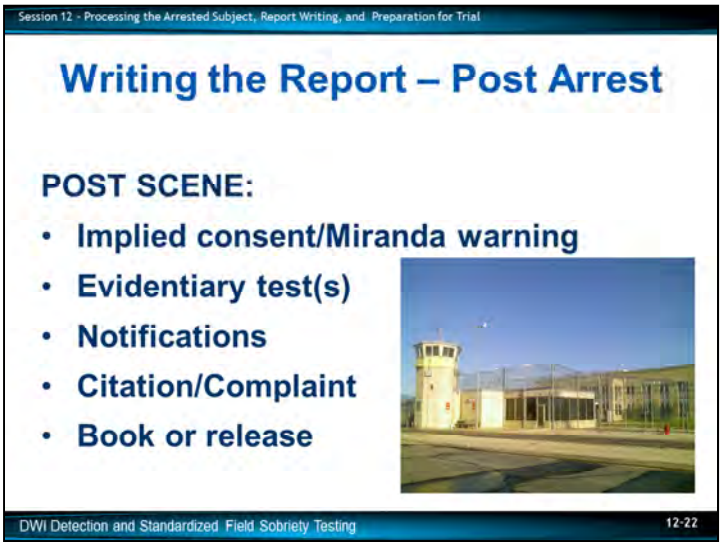


POST SCENE:
Implied Consent/Miranda Warning – Document the admonishments given at the appropriate point in the investigation.

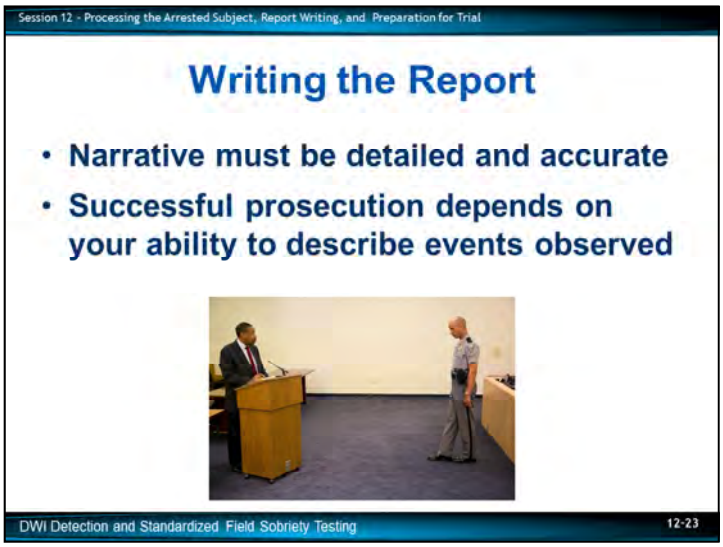
Evidentiary Test(s) – Document which test(s) were administered and by whom. Be sure to include the evidential test(s). If the defendant is authorized to request additional chemical tests and does so, record the type of test, time administered, location, and party administering the test.

The foregoing list is not intended to be all inclusive. In many cases, several points may not be applicable and additional information not listed may apply.

Notification of Defendant's Attorney or Other Party – Document the time and result of defendant's telephone call to an attorney or other party.

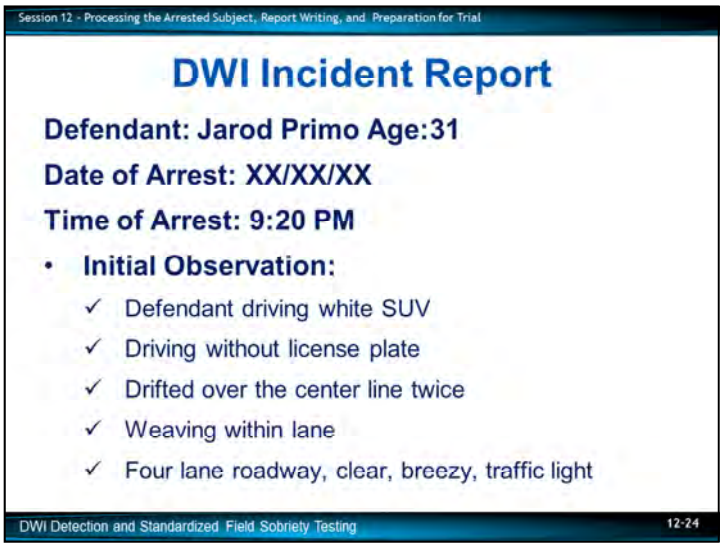
Citation/Complaint – Document the traffic citation/complaint was issued at the appropriate time, if applicable.

Book or Release – Document the time and place of incarceration or the name and address of the responsible party to whom the defendant was released. Be sure to record the time.



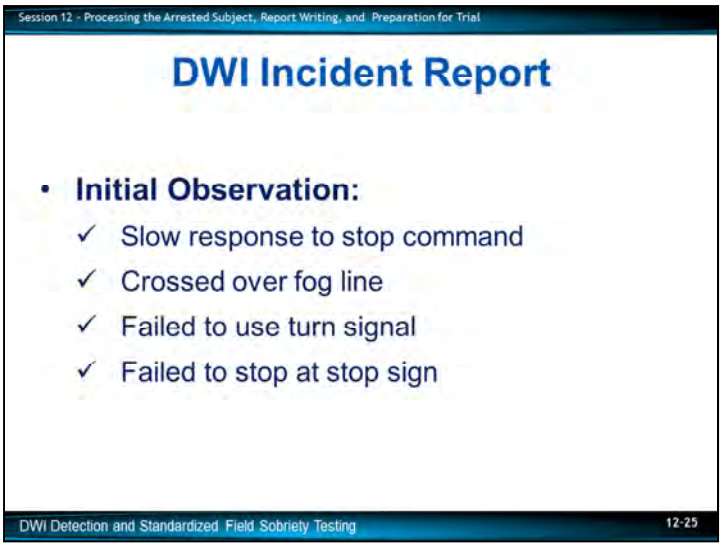
The narrative does not necessarily have to be lengthy, but it must be detailed and accurate. Remember, successful prosecution depends on your ability to describe the events you observed. Often a trial can be avoided (i.e., a defendant may plead guilty) when you do a thorough job in preparing your arrest report.

A sample report providing an example of the block outline format is at the end of this session.



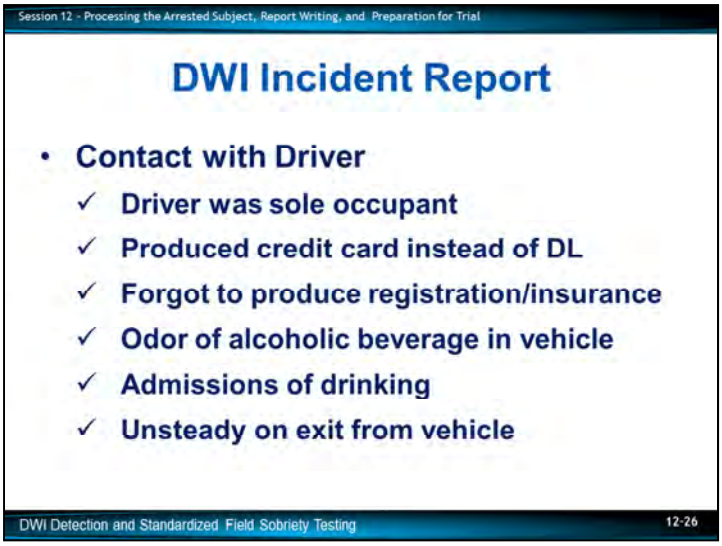
DWI Incident Report
Defendant: Jarod Primo, Age:31
Date of Arrest: 4-14-XX
Time of Arrest: 9:20 PM
Initial Observation:

- Defendant driving white SUV
- Driving without license plate
- Drifted over the center line twice
- Weaving within lane
- Slow response to stop command
- Failed to stop at stop sign
- Four lane roadway, clear, breezy, traffic light



Initial Observation:

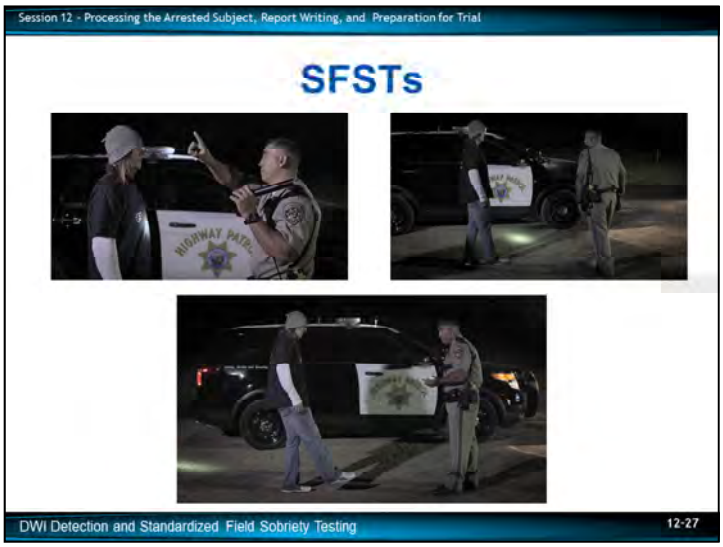
- Slow response to stop command
- Crossed over fog line
- Failed to use turn signal
- Failed to stop at stop sign



Contact with Driver

- Driver was sole occupant
- Produced credit card instead of DL
- Forgot to produce registration/insurance
- Odor of alcoholic beverage in vehicle
- Admissions of drinking (2 drinks)
- Unsteady on exit from vehicle

Any other observations during contact with driver



SFSTs

- Horizontal Gaze Nystagmus (HGN) – Lack of Smooth Pursuit, Distinct and Sustained Nystagmus at Maximum Deviation, and Onset of Nystagmus Prior to 45 Degrees in both eyes

- Walk and Turn (WAT) – Could not maintain balance during instructions, improper turn, used arms for balance (2x), steps off line, and stops while walking

- One Leg Stand (OLS) – Raised right foot, put foot down on 1010 and 1014, raised left arm for balance, hopped, and reached the count of 1014 in 30 seconds

Any other observations?

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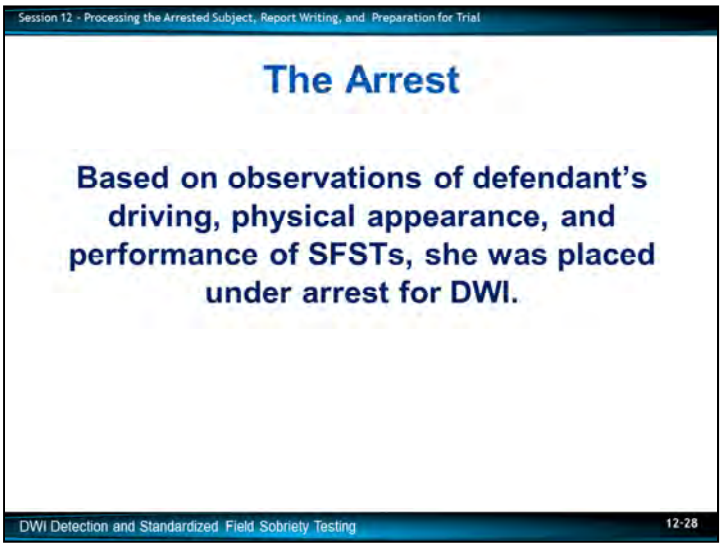
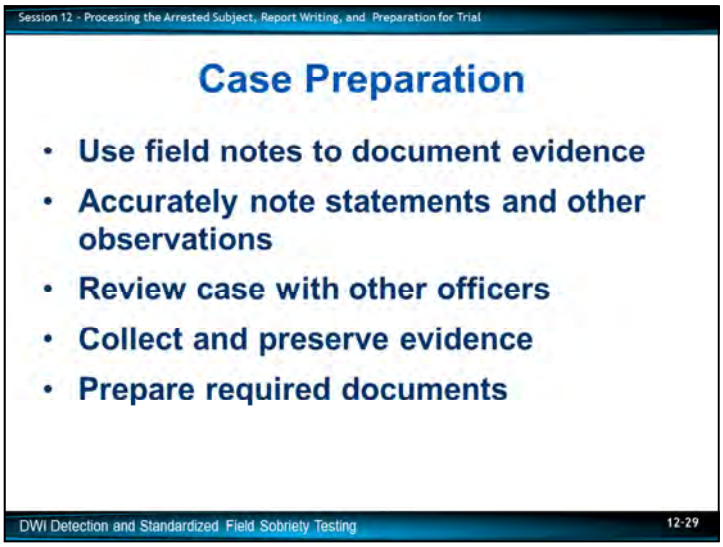

Session 12 - Processing the Arrested Subject, Report Writing, and Preparation for Trial
The Arrest
Based on observations of defendant's driving, physical appearance, and performance of SFSTs, she was placed under arrest for DWI.
DWI Detection and Standardized Field Sobriety Testing
12-28

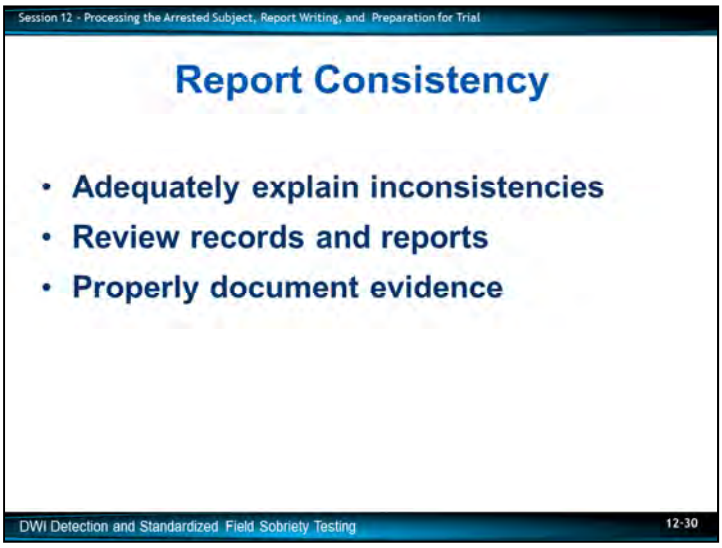


C. <u>Case Preparation and Pretrial Conference</u>

As was discussed in Session 4, case preparation begins with your first observation and contact with the driver. It is essential all relevant facts and evidence are mentally noted and later documented in field notes, narrative report, or other official forms.

Guidelines for Case Preparation

- Use field notes to document evidence
- Accurately note statements and other observations
- Review 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

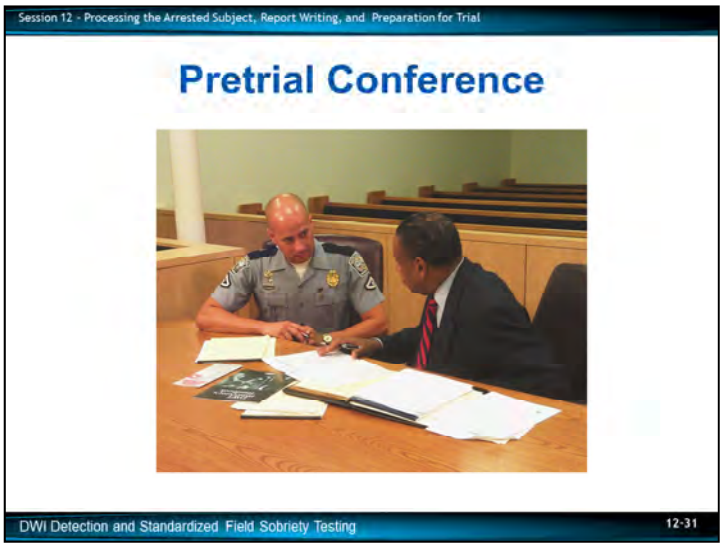


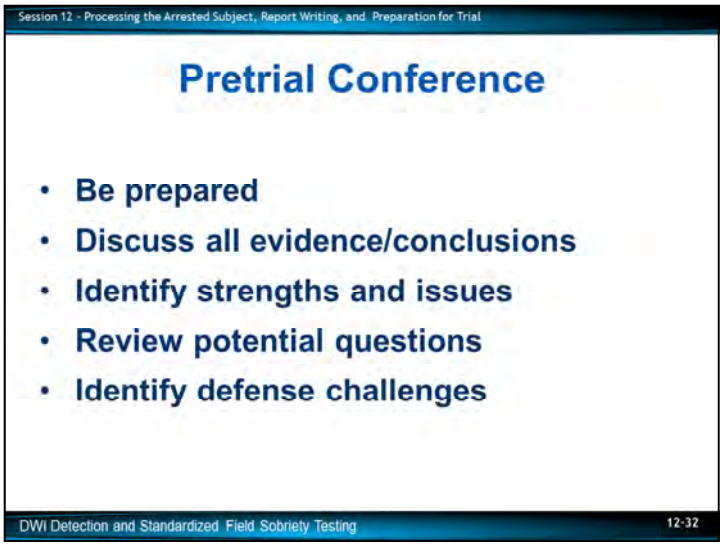
Remember, it is essential all reports be consistent. If differences occur, be sure to adequately explain them. The defense will try to impeach your testimony by pointing out seemingly minor inconsistencies.

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 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.


Session 12 - Processing the Arrested Subject, Report Writing, and Preparation for Trial
Pretrial Conference
DWI Detection and Standardized Field Sobriety Testing
12-31



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/or experts.

If at all possible, arrange a pretrial conference with the prosecutor. In preparation for the pretrial conference, you should review the entire case file. During the conference, discuss with the prosecutor all evidence and all bases for your conclusions. If there are strengths or issues in your case, bring them to the prosecutor's attention. Ask the prosecutor to review the questions that will be asked on the witness stand. Identify questions of which you do not have the answer to the prosecutor. Ask the prosecutor to review questions and challenges the defense attorney may use. Review your credentials and qualifications with the prosecutor.

If you cannot have a pretrial conference, try to identify the main points and weaknesses about the case and be sure to discuss these with the prosecutor during the few minutes you will have just before the trial.



D. <u>Guidelines for Direct Testimony</u>

Your basic task is to establish the facts of the case:

- The subject was driving or in actual physical control of a vehicle on a highway or other specified location within the court's jurisdiction and was impaired by alcohol and/or other drugs.

In other words, to present evidence to establish reasonable suspicion for the stop, probable cause for the arrest, and conclusive evidence regarding every element of the offense.

Describe in a clear, detailed, and convincing manner all relevant observations during the three detection phases and those subsequent to the arrest. Describe clearly how the defendant performed (e.g., stepped off the line twice on steps 2 and 4, raised the arms on steps 5 and 7 going out and step 3 coming back, etc.). By presenting your observations clearly and convincingly, you will allow evidence of the defendant's impairment to speak for itself. Direct testimony should include all relevant information about this incident.

Always keep in mind juries typically focus on an 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 layman's language, don't use jargon, abbreviations, acronyms, etc. Make eye contact with the judge/jury; they are the people you are trying to convince. Repeat important points and continued observations about the defendant.

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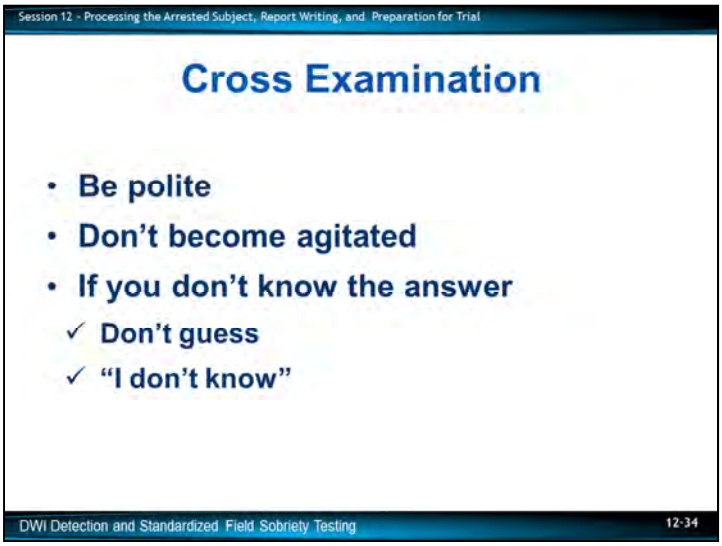
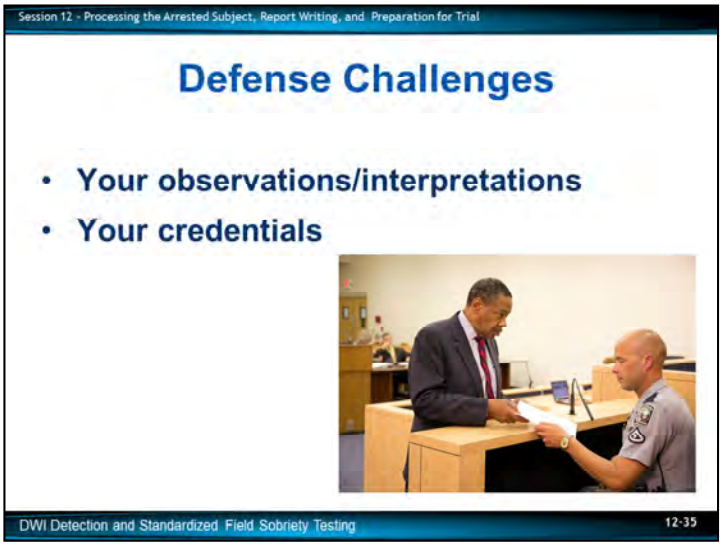


Cross Examination/Defense Challenges
In many cases, you will be the key witness for the prosecution. Therefore, the defense will try very hard to cast doubt on your testimony.

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.



The defense will ask questions to challenge your observations and interpretations. For example, you may be asked whether the signs, symptoms, and behaviors you observed of the defendant could have been caused by an injury or illness or by something other than the alcohol/drugs. You will be asked questions to create doubt about your observations. Answer these questions honestly, but carefully. If your observations are not consistent with an illness or injury, explain why not. Clearly testify your opinion is based on everything observed during the DWI investigation.

The defense will attempt to challenge your credentials by asking questions to cast doubt on your formal training. They will ask questions to "trip you up" on technical or scientific issues. Answer all questions about your training and experience completely and accurately, but don't embellish. Answer scientific or technical questions only if you have been trained in that area.



The defense will ask questions to challenge your credibility. You may be asked several very similar questions in the hope your answers will be inconsistent. You may be asked questions designed to imply you had already formed your opinion before the defendant completed the SFSTs. Listen to the questions carefully and emphasize your arrest decision was made at the completion of your DWI investigation and based on ALL available evidence.

You may be asked questions that suggest you deviated from your training. These questions may suggest you eliminated portions of the tests or gave incomplete or confusing instructions. One way you can refute these defense challenges is by administering the SFSTs as you were trained. If deviations to the protocol occur, it is important to explain why. Standardization ensures both consistency and credibility.

You may be asked questions that suggest the SFSTs are not relevant. These questions will suggest SFSTs have no relationship to driving. For example, a defense attorney may suggest standing on one leg does not correlate with the ability to drive safely. The divided attention tests assess the same mental and physical capabilities a person needs to drive safely. These include:

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


Session 12 - Processing the Arrested Subject, Report Writing, and Preparation for Trial
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
12-37

Trial Tips and Techniques
Courtroom Decorum

1. TELL THE TRUTH. Honesty is the best policy. Telling the truth requires a witness testify accurately as to what he knows. If you tell the truth and are accurate, you have nothing to fear on cross examination.

2. Provide your professional Curriculum Vitae to the prosecutor and, if requested, bring it to court with you.

3. READ YOUR INCIDENT REPORT prior to arrival at court. Go over the details and refresh your memory of the events of the arrest. If you cannot locate a copy of your report, ask the prosecutor prior to the court date.

4. Dress neatly and professionally; leave sunglasses, gloves, flashlight and other cumbersome equipment in your car before coming into the courtroom, unless needed for a demonstration.

5. Do not guess the answer to any question asked. It is OKAY to say “I don’t know” or “I can’t remember” in response to questions. Do not give the impression that you are guessing the answer by prefacing your response with “I think” or “I believe.” If you do not know the answer, it is okay to look at your report and refresh your memory. Always give definitive, positive, sure answers.

6. Listen carefully to the question asked. Do not begin your answer until the attorney has finished asking the question. Be sure you understand the question before you attempt to give an answer. It is appropriate if you don’t understand the question to say “I don’t understand your question.” If necessary, ask that the question be repeated or rephrased.

7. Take your time. Do not feel pressured to give a quick answer. Take time after the question is asked to think before you answer. After a question is asked, there may be an objection. When you hear the word, “objection,” stop testifying.

8. Answer the question that is asked, then stop. Do not volunteer information not asked. Explain an answer if you feel your answer appears ambiguous or incomplete. You are always permitted to explain your answer. Tell the prosecutor prior to your testimony if there is anything you feel they do not know about the case.

9. Always be professional in the courthouse. Jurors could be anywhere at any time.

10. Speak loud and clear so that you can be easily heard.

11. Look at the judge/jury when testifying. Always make eye contact with who you are trying to convince. During a bench trial, look at the judge. During a jury trial, look at the jury. This applies even when the attorney asking the question is not standing near the judge or jury box. Always talk to the judge or jury and maintain eye contact with them, even if it feels unnatural.

12. Always be courteous, even when the defense attorney is not. Control your emotions, and never allow yourself to be drawn into an argument. Remember, the best way to make a good impression with the judge/jury is to be courteous and professional. You were just doing your job during the arrest, and presenting the facts in court as they occurred.

13. Testify in plain language. Do not say, "The perpetrator exited the vehicle" when in reality "the defendant got out of his car." The person on trial is never a "lady" or "gentlemen," but is always "the defendant." Do not use military times without clarifying the time in laymen's terms. Do not use call signals. It makes more sense to the jury when you speak the same language they do.

14. It is the best practice to discuss the case with the prosecutor before trial. A defense attorney may ask if you've had a pretrial conference with the prosecutor. Tell the truth. Preparation for court is acceptable. Be straight forward in answering all questions.

15. Always tell the truth. No case is worth sacrificing your credibility.

Specific DWI Trial Recommendations

1. Never give the numerical PBT reading of the defendant when asked by the prosecutor. However, if the defense attorney asks you for the NUMERICAL reading, give it to him/her. The prohibition of PBT results of a defendant do not apply to witnesses, such as passengers in the car.

2. Discuss with the prosecutor, pre-trial, whether or not to demonstrate how you conducted field sobriety tests. Be certain that you can do in court all the tests you asked the defendant to perform at the time of the arrest. If you cannot do them, the jury will not expect that the defendant could have done them properly.

3. Know the reasons for giving field sobriety tests:
   - They are **divided attention tests**, designed to detect when a person is impaired by alcohol and/or drugs
   - They provide evidence of impairment in cases where the defendant refuses to take a chemical test under implied consent
   - They prevent an arbitrary decision to arrest, and allow an officer to articulate the reasons for concluding that a driver was DWI

4. If you testify to the accuracy of the field sobriety tests, make sure you know the studies, percentages, and their significance. Considered independently, the nystagmus test was 88% accurate, the Walk and Turn, 79% accurate, and the One Leg Stand, 83% accurate in identifying subjects whose BAC were .08 or more.

5. Remember, you should not testify that the defendant passed or failed the SFSTs. The tests are not scored "pass" or "fail." You should testify if the defendant completed the tests as instructed. These tests simply identify impairment.

Sample DWI Incident Report

Defendant:	Jarod Primo
Age:	31
Date of Birth:	10/03/XX
Date of Arrest:	XX-XX-XX
Time of Arrest:	9:20 pm
CA - D.L. #:	CA 1234567

First Observations:

On XX-XX-XX at approximately 9:00 p.m., I was patrolling northbound on State Road 113, a four-lane divided highway, traveling toward Woodland, California in Yolo County. I observed a white sport utility vehicle traveling ahead of me northbound in the right lane of SR 113. I noticed the S/V drift outside of its travel lane to the left, crossing the line divider the entire width of its left side tires. The vehicle corrected its path, returned to the right lane, and then drifted to the left again. The left side tires again crossed completely over the center line before the vehicle corrected and returned to the right lane. As I moved closer to the vehicle, I noticed there was no license plate displayed on the rear of the S/V. I signaled for the vehicle to stop by activating my emergency lights. The driver did not respond for approximately 700-800 feet, so I activated an audible siren to alert the driver. After a few more seconds, the driver reacted to my signal and exited the freeway at exit 34, County Road 25A and crossed over the fog line. At the foot of the ramp the S/V did not stop at the stop sign or signal his turn, but rolled through it during a right turn onto CR 25A. The S/V made another right turn and came to a stop on County Road 100 approximately 300 feet south of CR 25A.

Observations After the Stop:

I approached the S/V on the passenger side and made contact with the driver who was the sole occupant. I immediately noticed the driver had red, bloodshot, watery eyes. I advised him of the reasons for the stop and asked if his vehicle had any mechanical problems. He stated, “no.” I requested his driver’s license, registration, and insurance. The driver handed me a visa credit card, which was removed from his wallet located in a storage pocket in the center of his vehicle dashboard. He did not attempt to produce his registration or insurance card. I asked him where he was coming from. He replied “Downtown,” and that he had been “with some friends.” I noticed his speech was slurred when he was speaking to me and I detected the odor of an alcoholic beverage that was greater when he spoke. I asked him where he was headed and he replied, “just going home.” I informed him he had produced a credit card and asked again for him to produce his driver license. When he provided his driver license, I identified the driver by the photo on his California driver license (#CA1234567) as Jared Primo. I asked him how much alcohol he had consumed tonight and he replied “Just a couple of drinks.” I asked him again for his registration and proof of insurance and he reached into his glove box and retrieved his vehicle registration.

I noticed his movements were uncoordinated as he leaned over and retrieved this document. I asked him to exit the vehicle and step to the front of his vehicle car. He asked "Why? What's going on?" I informed him I detected the odor of an alcoholic beverage coming from within the vehicle and I wanted to ensure he was safe to drive. He rolled his eyes and muttered "Whatever," but complied with my request. When he stepped from the vehicle he was unsteady on his feet and staggered slightly as he walked towards the front of the vehicle. I asked him several pre-field sobriety test questions. As I communicated with him, I continued to smell an odor of alcoholic beverage emitting from his breath. The defendant stated he had no mechanical problems with his vehicle, he was not sick or injured, and he had no physical problems. He stated he ate some pizza "a few hours ago," he was not aware of the location where we were stopped, and that he had consumed two beers between 2-3 hours ago when he was downtown. While questioning the defendant, he occasionally swayed forward and backward.

Field Sobriety Tests:

This evaluation was performed on the west shoulder of CR 100 Drive, just south of CR 25A. The evaluation surface was level packed dirt. Lighting conditions consisted of patrol vehicle headlights, spotlights, overhead lights, and my flashlight. The weather was clear with a slight breeze and Primo was wearing athletic shoes.

Horizontal Gaze Nystagmus (explained):

In checking Primo's eyes, I observed equal tracking in both eyes, equal pupil size in both eyes, and no resting nystagmus in either eye. I observed lack of smooth pursuit, distinct and sustained nystagmus at maximum deviation, and an onset of nystagmus prior to 45 degrees in both of Primo's eyes. Vertical Gaze Nystagmus was not observed.

Walk and Turn (explained and demonstrated):

Instruction Stage: Lost balance (feet broke apart) and swayed noticeably from side to side.

Walking Stage:
Raised left arm over 6 inches away from body to assist with balance at steps 3 and 5 during the first set of nine steps, and raised his right arm during the second set of steps from 3-8.

Missed heel to toe once (#6 during first set of nine steps).

Turn: Primo only took one step during the turn instead of several small steps as instructed.

One Leg Stand (explained and demonstrated):

Primo raised his right foot and began counting. He put his foot down on counts 1010 and 1014. He used his arms for balance (6+ inches from body) and was swaying while balancing on many occasions. He hopped on 1013. He counted to 1014 during the thirty seconds of the test.

Arrest:

Based on the following information, I formed the opinion that Primo was driving under the influence:

- Driving at night with no license plate
- Weaving out of his lane into another lane
- Driving to the right of the solid white fog line freeway
- Failing to stop for stop sign when exiting SR 113 at CR 25A
- I observed divided attention problems while retrieving his license/registration and insurance
- His red, bloodshot, watery eyes and slurred speech
- His admissions to consuming alcoholic beverages
- Staggering after exiting vehicle
- Odor of alcoholic beverage emitting from his breath
- I observed signs of impairment as he performed the standardized field sobriety tests

I arrested Primo for driving under the influence of an alcoholic beverage at 9:20 p.m. Primo was given the proper chemical testing advisement. He chose a breath test and was transported to the breath testing facility. He provided two breath samples of 0.095 and 0.092 at 9:50 p.m. and 9:52 p.m. He was then booked along with his property.

Recommendations:

I recommend a copy of this report be forwarded to the district attorney's office for review and prosecution of Primo for driving under the influence and driving with a blood alcohol concentration at or above the legal state limit.

Vehicle Disposition:

Primo's vehicle was stored by Reliable Towing.


DWI Detection and Standardized Field Sobriety Testing
Session 13 – Moot Court
NHTSA
TSI
February 2018


Session 13 -Moot Court
2 Hours
Session 13
Moot Court
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DWI Detection and Standardized Field Sobriety Testing
13-2



At the conclusion of this session, participants will be able to:

- Discuss the need for competent courtroom testimony
- Demonstrate the proper techniques of courtroom testimony

CONTENT SEGMENTS

A. Procedures

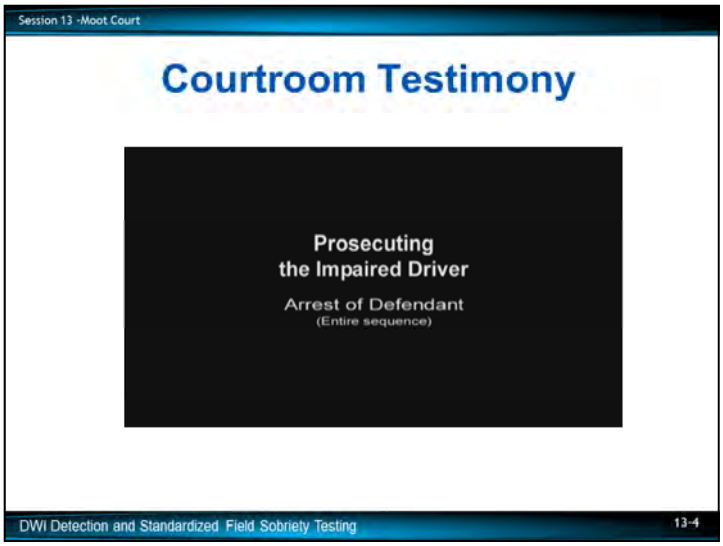
B. Moot Court Exercise

LEARNING ACTIVITIES

Instructor-Led Presentations

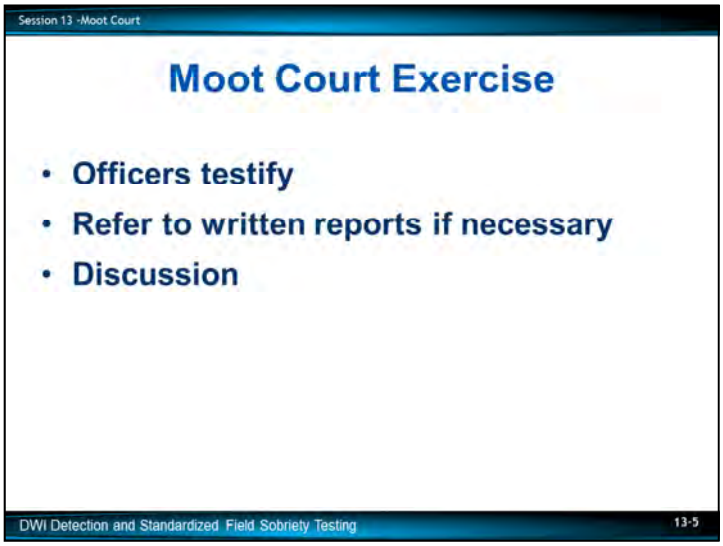
Participant's Courtroom Testimony Exercise

Instructor-Led Discussion



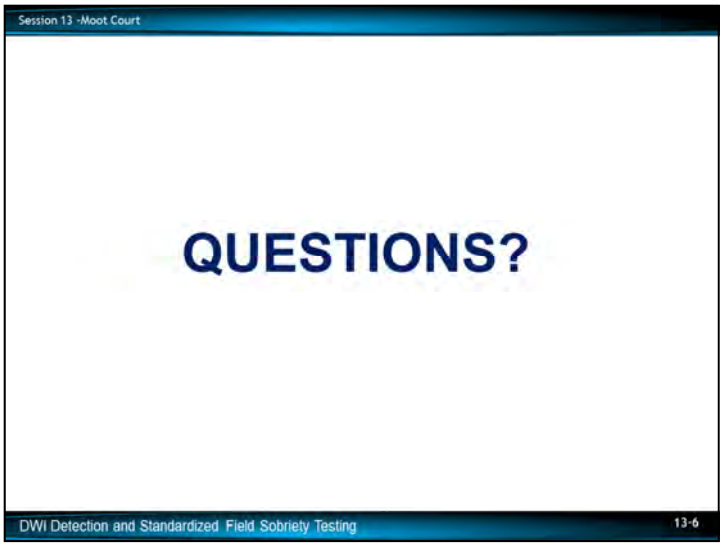
A. <u>Procedures</u>

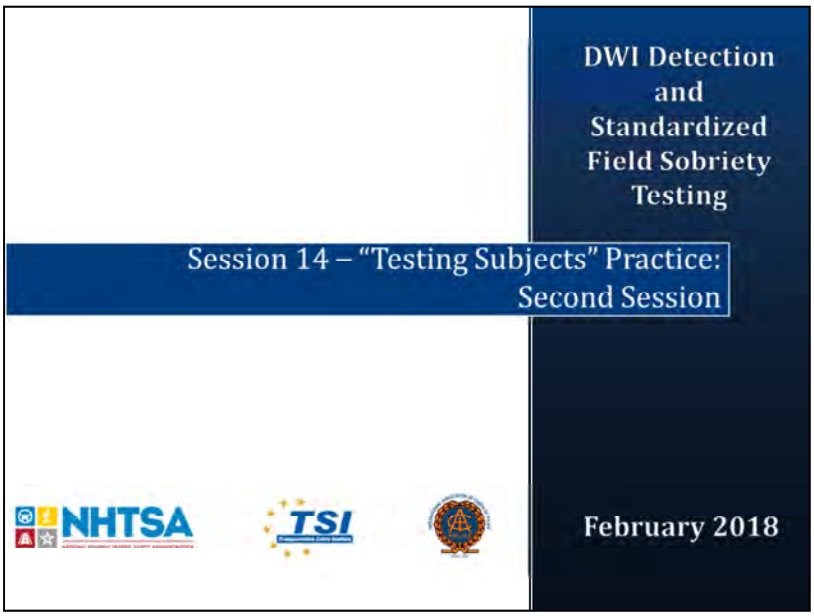
The purpose of this exercise is to have you demonstrate your ability to testify in a logical sequence to the evidence you collected during the three phases of DWI Detection with Report Writing video.

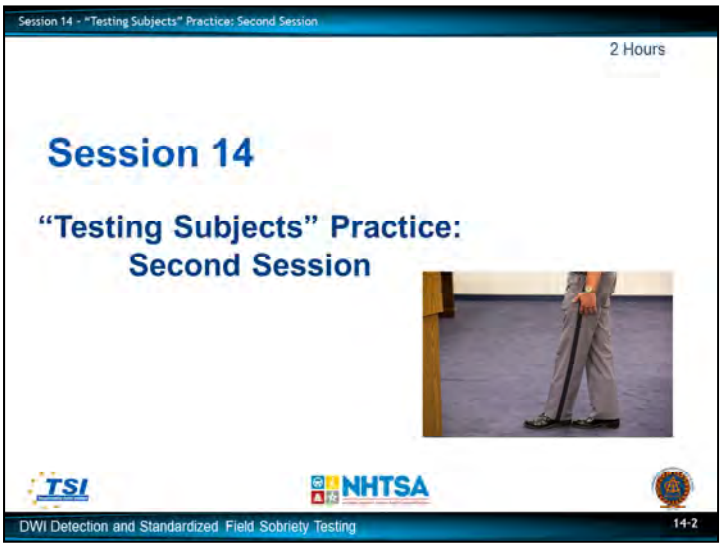


B. <u>Moot Court Exercise</u>

A representative from each group will be called to testify.
You should only testify to what you actually observed. You may refer to your written reports if necessary.


Session 13 -Moot Court
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
13-6


DWI Detection and Standardized Field Sobriety Testing
Session 14 – "Testing Subjects" Practice: Second Session
NHTSA
TSI
February 2018


Session 14 - "Testing Subjects" Practice: Second Session
2 Hours
Session 14
"Testing Subjects" Practice:
Second Session
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
14-2



At the conclusion of this session, participants will be able to:

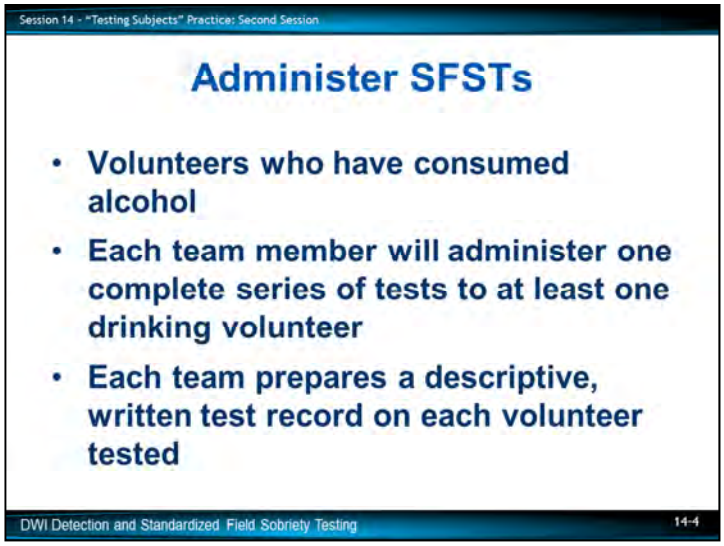
- Properly administer the Standardized Field Sobriety Tests (SFSTs)
- Properly observe and record subject's performance utilizing the field note-taking guide
- Properly interpret the subject's performance

CONTENT SEGMENTS

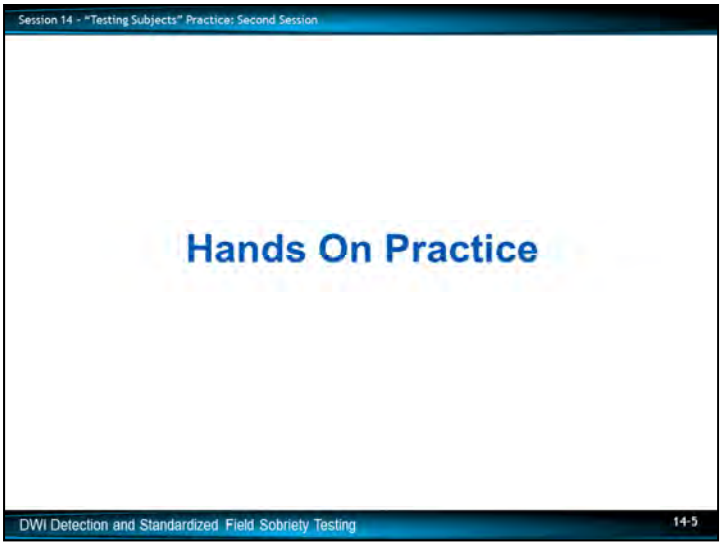
A. Procedures
B. Hands on Practice
C. Session Wrap Up

LEARNING ACTIVITIES

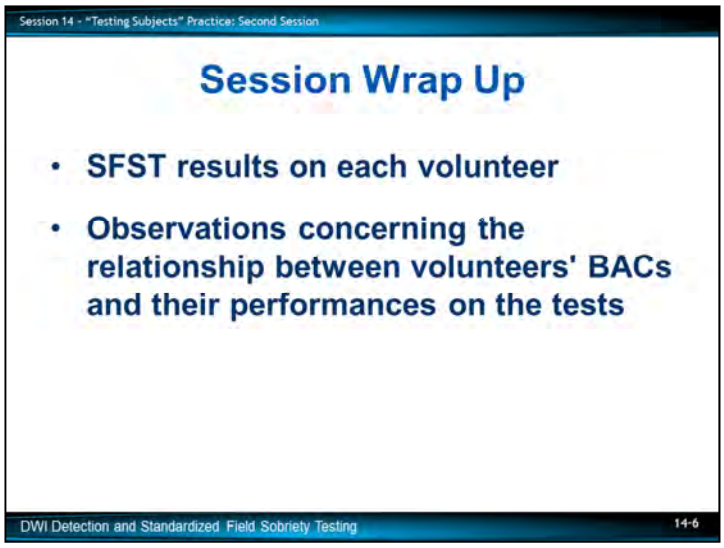
Instructor-Led Presentations
Participant Practice Session
Instructor-Led Discussion



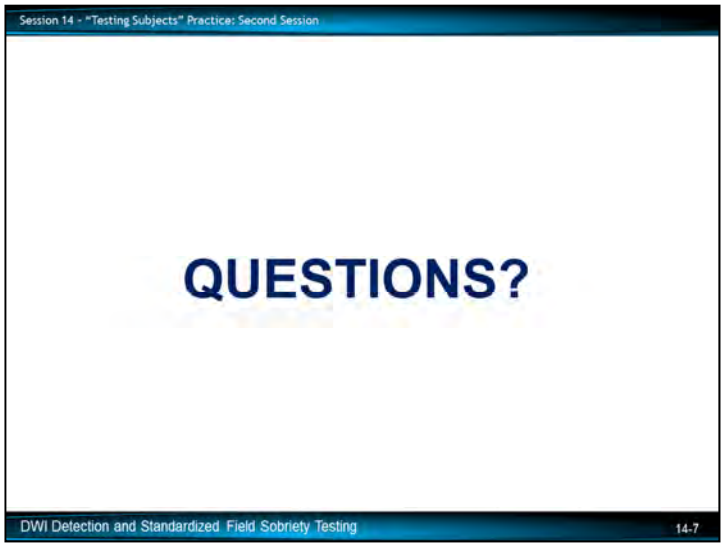
A. <u>Procedures</u>



B. Hands on Practice



C. <u>Session Wrap Up</u>


Session 14 - "Testing Subjects" Practice: Second Session
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
14-7

Sample Dry Erase Board Array for Tabulating Results

"Designated Subjects"	Horizontal Gaze Nystagmus	Walk and Turn	One Leg Stand	Arrest?
"A"				
"B"				
"C"				
"D"				
"E"				
"F"				
"G"				
"H"				
"I"				
"J"				

SFST Field Arrest Log

Date	Name	HGN	WAT	OLS	BAC +/- .08	Arrest / Not Arrest	Measured BAC	Remarks

ALCOHOL WORKSHOP PARTICIPANT STATEMENT OF INFORMED CONSENT

I, _____, hereby agree to participate in the alcohol
(Print Name)

workshop conducted on _____/_____/_____ by _____.
(Agency/Department)

I understand that I will consume alcohol, and may become impaired or intoxicated. I specifically agree that my participation as a volunteer drinker in this program makes it imperative that I refrain from driving for at least twelve hours following completion of the program.

I understand that, while participating in the program, I will be required to submit to breath tests to determine my blood alcohol concentration. I also understand that I will be required to submit to psychophysical examinations and other non-intrusive clinical tests to assess the extent of my impairment.

I represent that I am in good physical health, and that I am not an alcoholic. I attest that I am not now under the influence of alcohol or any other drug. I attest that I have not consumed any drug, medication, or other substance that would make my consumption of alcohol at this time inadvisable. I affirm that there exists no condition that should preclude my participation in this alcohol workshop as a volunteer drinker.

I have been informed of the purpose of this workshop, namely, to assist in training police officers to recognize and investigate persons impaired by alcohol and other drugs. I acknowledge that I may refuse to consume any or all of the alcohol offered to me during this workshop.
I also consent to being photographed or video recorded, by instructors, for training purposes only.

_____
Signature

Date _____/_____/_____ _____
Witness

VOLUNTEER DRINKER QUESTIONNAIRE

VOLUNTEER: _____

DATE: _____

LOCATION: _____

Wearing Glasses? Yes ☐ No ☐

Wearing Contacts? Yes ☐ No ☐

Eye Problems? _____

Sick or Injured? _____

Diabetic? _____

Epileptic? _____ Other: _____

Physical Defects? _____

Under Doctor's Care? _____

Taking Any Medications or Drugs? Yes No What: _____

Been Drinking? Yes ☐ No ☐ What: _____ When: _____

Last Sleep? _____

Number of Hours? _____

Last Ate – Time: _____ What: _____

Age _____ Eye Color _____

Height _____ Sex M ☐ F ☐

Weight _____ Build _____

DOSING CHART

MIX: _____

TOTAL NUMBER OZ ETOH _____ TYPE _____ PROOF _____

	BEFORE DRINKING	**PRE-TESTNG**	**POST TESTING**
Lack of Smooth Pursuit	YES ☐ NO ☐	YES ☐ NO ☐	YES ☐ NO ☐
Maximum Deviation	YES ☐ NO ☐	YES ☐ NO ☐	YES ☐ NO ☐
Angle of Onset			
Pupil Size	MM	MM	MM
Pulse	BPM	BPM	BPM
Blood Pressure	/	/	/
BAC/Time	/	/	/


DWI Detection and Standardized Field Sobriety Testing
Session 14-A – Dry Lab
NHTSA
TSI
February 2018


Session 14-A - Dry Lab
2 Hours
Session 14-A
Dry Lab
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
14-A-2



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

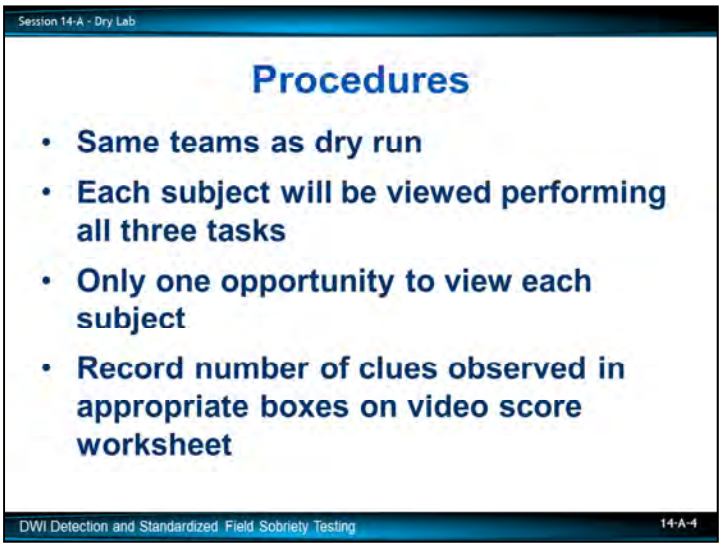
- Properly administer the Standardized Field Sobriety Tests (SFSTs)
- Properly observe and record subject's performance utilizing the field note-taking guide
- Properly interpret the subject's performance
- Properly use and maintain the SFST Field Arrest Log

CONTENT SEGMENTS

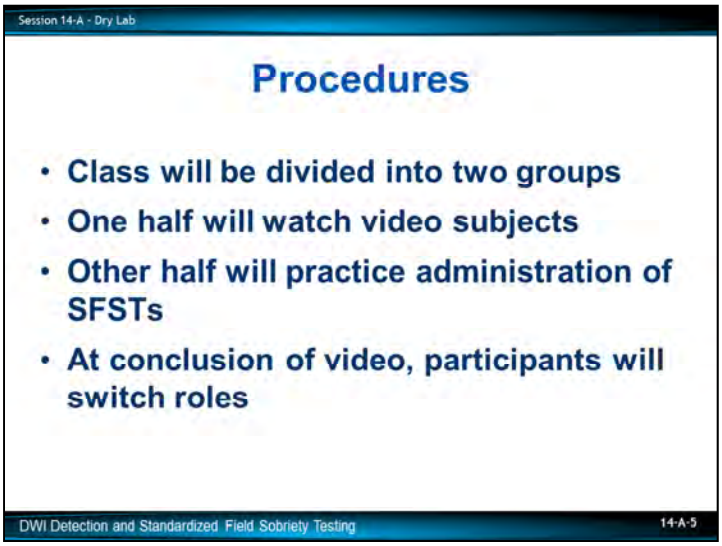
A. Procedures
B. Hands on Practice
C. Use and Maintenance of SFST Field Arrest Log
D. Session Wrap Up

LEARNING ACTIVITIES

Instructor-Led Presentations
Participant Practice Session
Instructor-Led Presentation
Instructor-Led Discussion



A. <u>Procedures</u>



B. <u>Hands on Practice</u>



C. <u>Use and Maintenance of SFST Field Arrest Log (the International Association of Chiefs of Police (IACP) strongly recommends the use of this log)</u>

The SFST Field Arrest Log is used to record the results of the SFSTs performed on suspected impaired subjects.

This log is important in documenting an officer's experience and proficiency in performing and interpreting SFSTs.

It is highly recommended by the IACP and the National Highway Traffic Safety Administration (NHTSA), that officers utilize an SFST log for the following reasons

- Records training proficiency
- Records field proficiency
- Documents the officer's experience

All of these combined helps to establish the officer's credibility in administering the SFSTs and may be used as evidence in court.



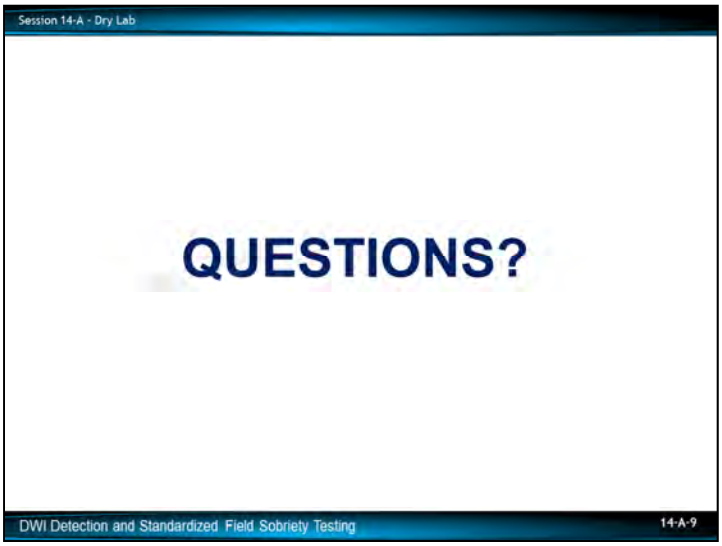
This log has the following components:
- The actual date the SFSTs were administered
- Subject's full name
- Results of each SFST test

Classification of BAC as above or below 0.08 BAC
- Arrest/Not Arrest
- Subject's measured BAC (if available)
- Remarks

Utilization of Log



D. <u>Session Wrap Up</u>


Session 14-A - Dry Lab
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
14-A-9

The Use of Video in Training for

Standardized Field Sobriety Tests (SFST)

A. James McKnight and Elizabeth A. Langston

National Public Services Research Institute
8201 Corporate Drive, Suite 220
Landover, MD 20785

September 1993

TECHNICAL REPORT

NHTSA Contract No. DTNH22-92-C-05109

Prepared for
U.S. Department of Transportation
National Highway Traffic Safety Administration
400 7th Street, S.W.
Washington, D.C. 20590

Technical Report Documentation Page

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		6. Performing Organization Code
7. Author(s) A.J. McKnight and E.A. Langston		8. Performing Organization Report No.
9. Performing Organization Name and Address National Public Services Research Institute, 8201 Corporate Drive, Suite 220, Landover, MD 20745		10. Work Unit No. (TRAIS)
		11. Contract or Grant No. DTNH22-91-R-05109
12. Sponsoring Agency Name and address National Highway Traffic Safety Administration, 400 Seventh Street, S.W. Washington, D.C. 20590		13. Type of Report and Period Covered Final Report 6/91-9/93
		14. Sponsoring Agency Code
15. Supplementary Notes Dr. Richard Compton served as Contracting Officer's Technical Representative		

<table>
<tr><td colspan="4">16. Abstract
The NHTSA training program to certify law enforcement officers in administration of SFSTs includes two “workshops” in which trainees administer sobriety tests to alcohol-dosed subjects has led to consideration of video as an alternative training method. A preliminary study showed that Certified SFST examiners scoring videotaped performance of alcohol-dosed subjects obtained the same results as examiners scoring the subjects directly. An experiment was therefore undertaken to compare three alternative methods of conducting training during the workshops: live alcohol-dosed subjects (alcohol), video-recorded performances of alcohol-dosed subjects (video), and a combination of the video and alcohol methods (video/alcohol). A total of 133 SFST trainees were randomly assigned to the three training methods. The results disclosed extremely small and statistically nonsignificant differences among the three workshop methods in the proficiency with which trainees administered and scored the SFST with alcohol-dosed subjects in a final performance test. It was concluded that video provides an acceptable alternative to live dosed subjects in training law enforcement officers to administer SFSTs.</td></tr>
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Alcohol, Drinking and Driving,
Sobriety Tests</td><td colspan="3">18. Distribution Statement
Available to the public through the
National Technical Information Service,
Springfield, VA 22161</td></tr>
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Unclassified</td><td>20. Security Classif. (of this page) Unclassified</td><td>21. No. of Pages</td><td>22. Price</td></tr>
</table>

The Role of Video Training

The use of videos in Sessions XIA and XIVA is not intended to imply that video can serve as a "substitute" for training with live dosed subjects. However, a combination of practical and moral obstacles to use of alcohol-dosed subjects in training has threatened to prevent the administration of SFST courses in many jurisdictions. Here the choice is not between video and alcohol workshops but between video and no instruction at all. The results of this study clearly resolve that decision.

REMINDER: Only the NHTSA/IACP options videos are approved for this instruction.

The Conclusions of this Study

From the results of this study, the following conclusions may be offered:

1. Video administration of the SFST of alcohol-dosed subjects can be used as an alternative to the use of live alcohol-dosed subjects in either or both of the current training "workshops" without altering the ability of trainees to administer or score the test.

2. Current SFST training leads to significant gains in knowledge of administration procedures and scoring criteria. However, gains in scoring the Walk and Turn and One Leg Stand are minimal owing to the objectivity of the scoring criteria.

3. The only significant differences among approaches to teaching the workshop involve the direction of trainee scoring errors on the Walk and Turn and One Leg Stand, where trainees from the video workshop tend to report slightly fewer impairment clues than certified examiners, while those participating in either or both alcohol workshops tend to report more clues.

REFERENCES

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Sample Dry Erase Board Array for Tabulating Results

"Designated Subjects"	Horizontal Gaze Nystagmus	Walk and Turn	One Leg Stand	Arrest?
"A"				
"B"				
"C"				
"D"				
"E"				
"F"				
"G"				
"H"				
"I"				
"J"				

SFST Field Arrest Log

Date	Name	HGN	WAT	OLS	BAC +/- .08	Arrest / Not Arrest	Measured BAC	Remarks

Video Score Sheet

SUSPECT'S NAME:_____OFFICER'S NAME:_____

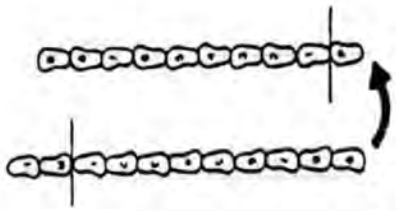
Pupil Size: □ Equal □ Unequal	Tracking: □ Equal □ Unequal		Unequal Pupil Size: Explain:
Resting Nystagmus □ Yes □ No	Eyelids: □ Normal □ Droopy		
Lack of Smooth Pursuit	Left Eye	Right Eye	Vertical Nystagmus □ Yes □ No
Distinct Nystagmus At Maximum Deviation			Eyes: □ Normal □ Bloodshot □ Watery
Onset of Nystagmus Prior To 45 Degrees			

HGN CLUES

Observed	Actual

WALK AND TURN TEST

Cannot keep balance_ Starts too soon_____



	1st Nine	2nd Nine
Stops Walking		
Misses Heel-to-Toe		
Steps Off Line		
Uses Arms		
Actual Steps Taken		

Improper Turn (Describe)	Cannot Do Test (explain)

WALK AND TURN

Observed	Actual

Team Information

Team No:_____

Arrest Decision:
Yes:_____
No:_____

BAC:
Above 0.10:_____
Below 0.10:_____
Above 0.08:_____
Below 0.08:_____

ONE LEG STAND

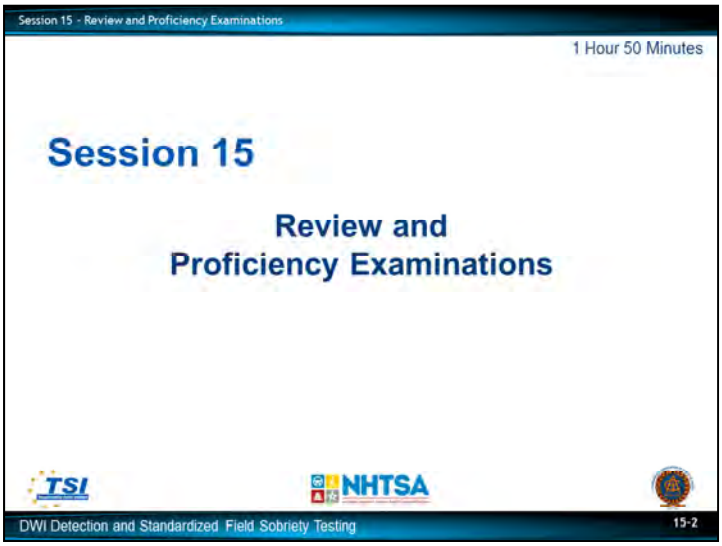


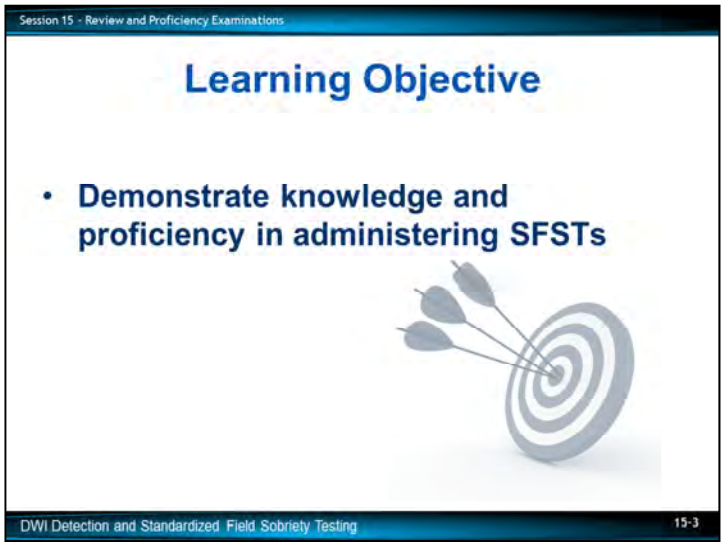
L	R	
□	□	Sways while balancing
□	□	Uses arms to balance
□	□	Hopping
□	□	Puts foot down

ONE LEG STAND

Observed	Actual


DWI Detection and Standardized Field Sobriety Testing
Session 15 – Review and Proficiency Examinations
NHTSA
TSI
February 2018


Session 15 - Review and Proficiency Examinations
1 Hour 50 Minutes
Session 15
Review and
Proficiency Examinations
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
15-2



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

- Demonstrate knowledge and proficiency in administering the Standardized Field Sobriety Tests (SFSTs)

CONTENT SEGMENTS

A. Review of Horizontal Gaze Nystagmus (HGN)
B. Review of Walk and Turn (WAT)
C. Review of One Leg Stand (OLS)
D. Video Demonstrations
E. Proficiency Exam

LEARNING ACTIVITIES

Instructor-Led Presentations
Instructor- and Participant-Led Demonstrations
Video Demonstration (Second Showing (IF TIME PERMITS)
Participant Proficiency Examination

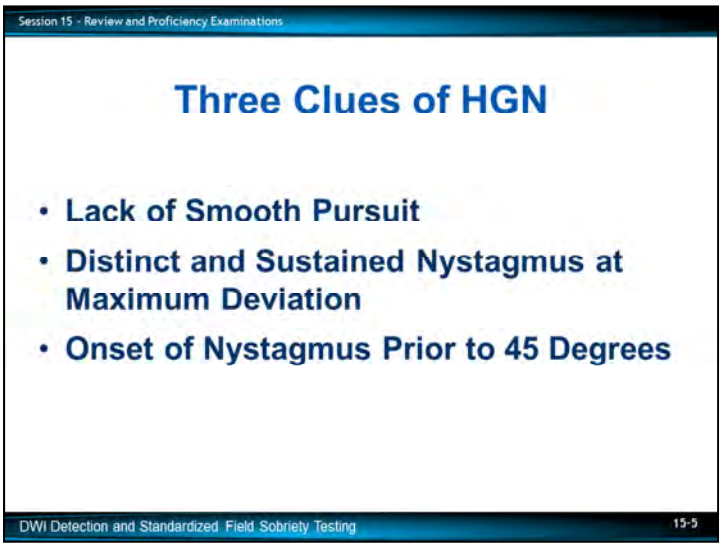


A. <u>Review of Horizontal Gaze Nystagmus</u>

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

The subject is generally unaware of the nystagmus.

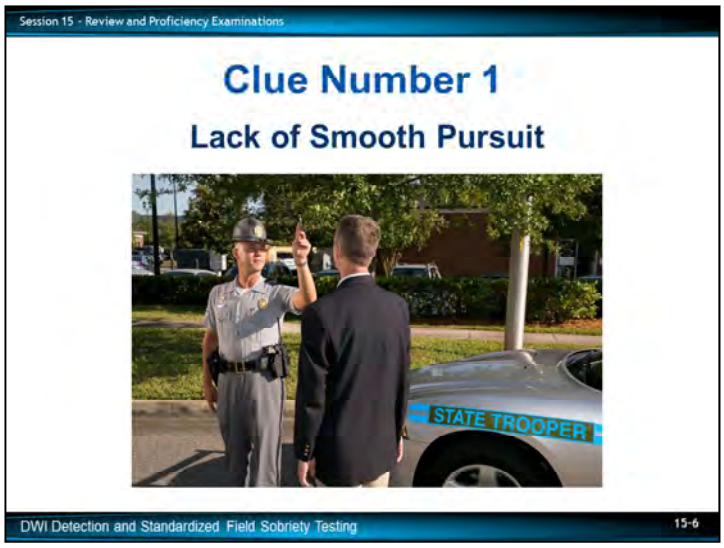
Nystagmus is caused by alcohol and/or other drugs and some medical conditions.



Three specific clues of HGN.

Look for these clues in each eye:

- Lack of Smooth Pursuit
- Distinct and Sustained Nystagmus at Maximum Deviation
- Onset of Nystagmus Prior to 45 Degrees



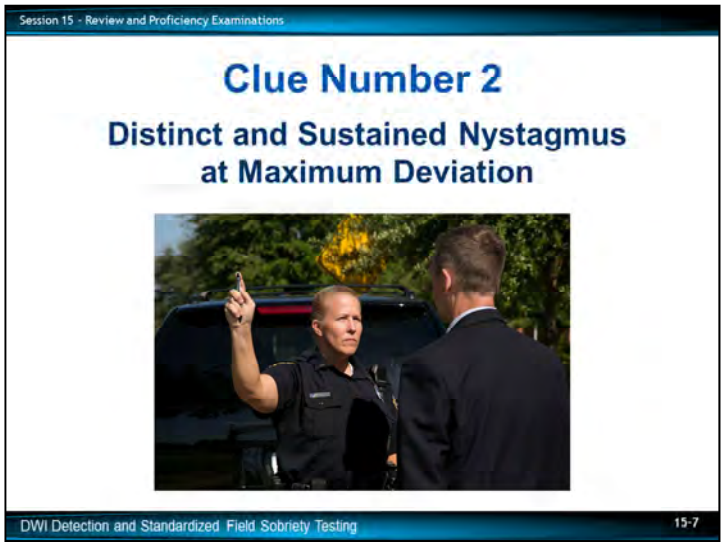
Clue No. 1: Lack of Smooth Pursuit
Position stimulus approximately 12-15 inches (30-38 cm) in front of subject's nose, slightly above eye level.

Start with the left eye.

Move the stimulus smoothly all the way to the right (checking subject's left eye) then all the way to the left (across subject's nose) to the left (checking subject's right eye).

Make at least two complete passes.

Observe eyes for signs of nystagmus as they move side to side.



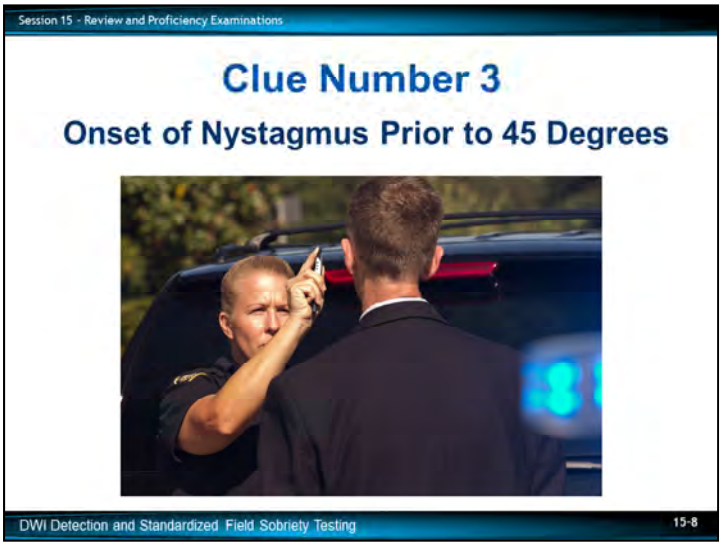
Clue No. 2: Distinct and Sustained Nystagmus at Maximum Deviation
Move the stimulus to the right until the subject's left eye reaches maximum deviation.

Verify no white is showing in the corner of the eye.

Hold the stimulus steady for a minimum of four seconds and watch for distinct and sustained nystagmus.

Repeat for right eye.

Check each eye twice for each clue.



Clue No. 3: Onset of Nystagmus Prior to 45 Degrees
Position stimulus approximately 12-15 inches (30-38 cm) in front of subject's nose, slightly above eye level.

Begin to make a slow pass in front of the left eye.

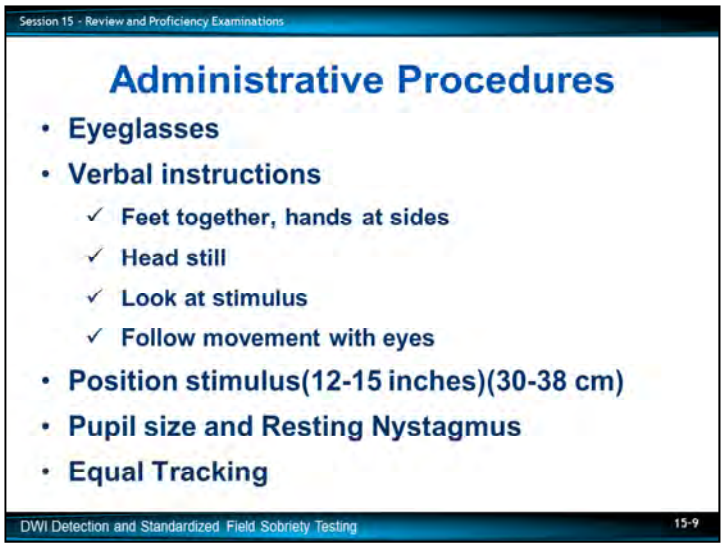
When you see nystagmus, stop the stimulus.

Hold the stimulus steady and verify the nystagmus continues.

Verify there is still some white showing in the corner of the eye.

Repeat for right eye

Check each eye twice for each clue.



Nystagmus Administrative Procedures

Step 1: Check for Eyeglasses

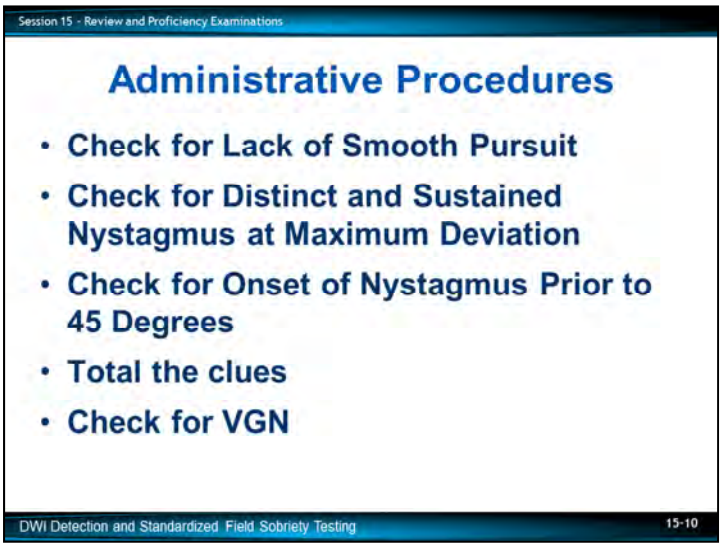
Step 2: Verbal Instructions

- Feet together, hands at sides
- Head still
- Look at stimulus
- Follow movement with eyes

Step 3: Positioning the Stimulus

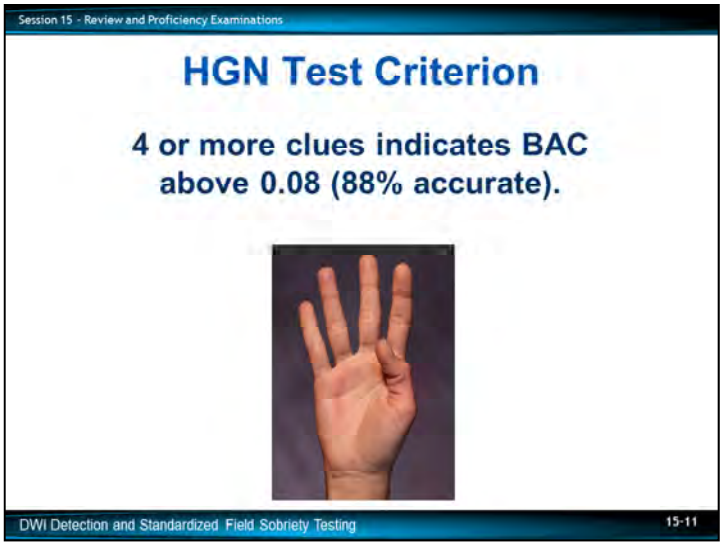
Step 4: Pupil Size and Resting Nystagmus

Step 5: Check for Equal Tracking



Step 6: Check for Lack of Smooth Pursuit
Step 7: Check for Distinct and Sustained Nystagmus at Maximum Deviation
Step 8: Check for Onset of Nystagmus Prior to 45 Degrees
Step 9: Total the clues
Step 10: Check for Vertical Gaze Nystagmus (VGN)

Check each eye independently beginning with the subject's left and compare.



Test Interpretation
Maximum possible number of clues is 6.

Test criterion is 4 or more.

Test is 88% accurate.

Based on the San Diego validation study.

Participant Led Demonstration

Test Administration

Verbal Instructions
Initial positioning of stimulus.

Check for each clue.

Estimate a 45 degree angle.

Critique

_____

_____

_____

_____

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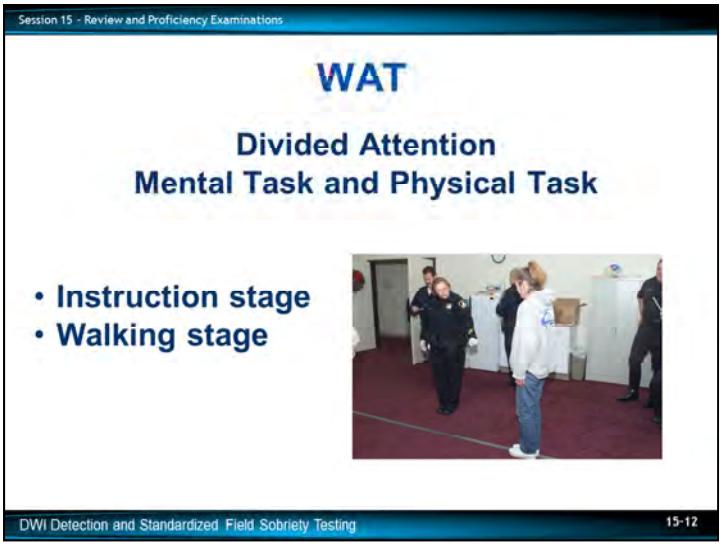


B. <u>Review Walk and Turn</u>

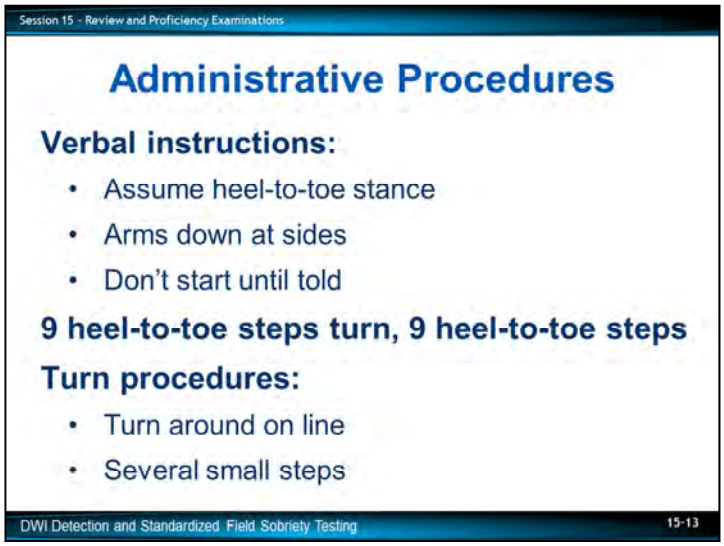
Two Stage Test

1. Instruction stage
2. Walking stage

Instruction Stage Positioning

Place your right foot on the line ahead of the left foot, with the heel of your right foot against the toe of the left foot, keeping the arms at the sides.

Maintain this position until I have completed the instructions. Do not start until told to do so.



Walk and Turn Administrative Procedures

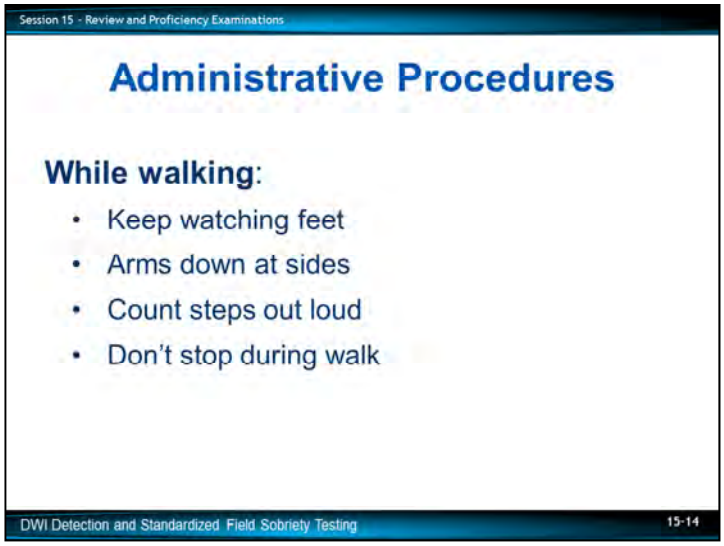
Verbal instructions:

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

9 heel-to-toe steps turn, 9 heel-to-toe steps

Turn procedures:

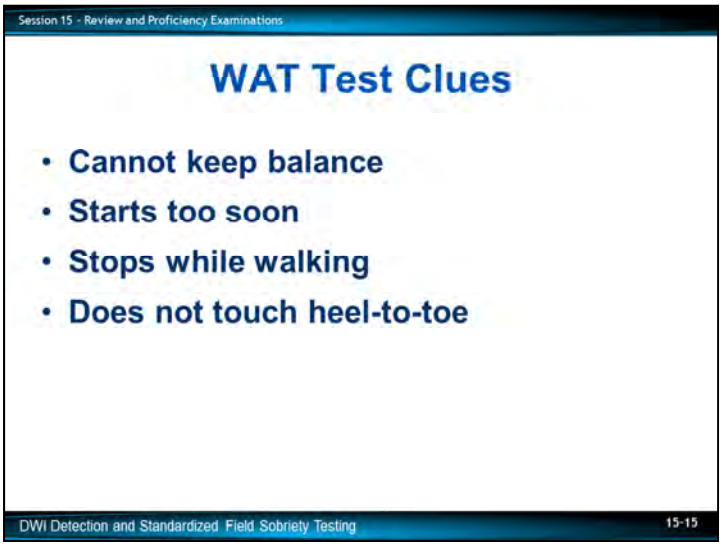
- Turn around on line
- Several small steps



WAT Administrative Procedures

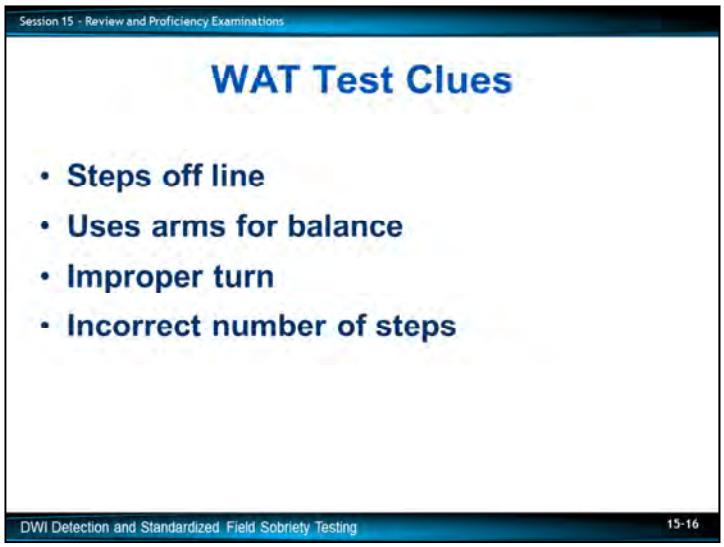
While walking:

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

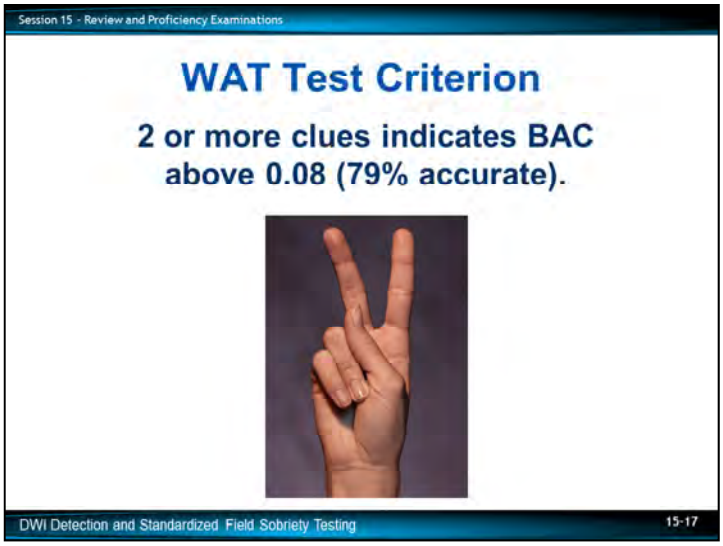


There are eight possible clues for the WAT test:

- Cannot keep balance (feet break away from the heel-to-toe stance)
- Starts too soon (subject starts walking before told to do so)
- Stops while walking
- Does not touch heel-to-toe



- Steps off line
- Uses arms for balance
- Improper turn
- Incorrect number of steps



Test Interpretation
Eight specific clues of impairment.

Test criterion is 2 or more.

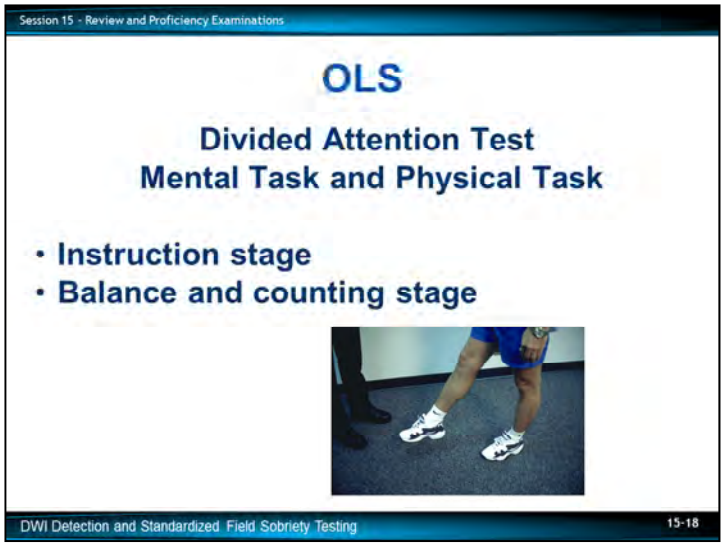
Test is 79% accurate.

Based on the San Diego validation study.

Participant Led Demonstration

Test Administration

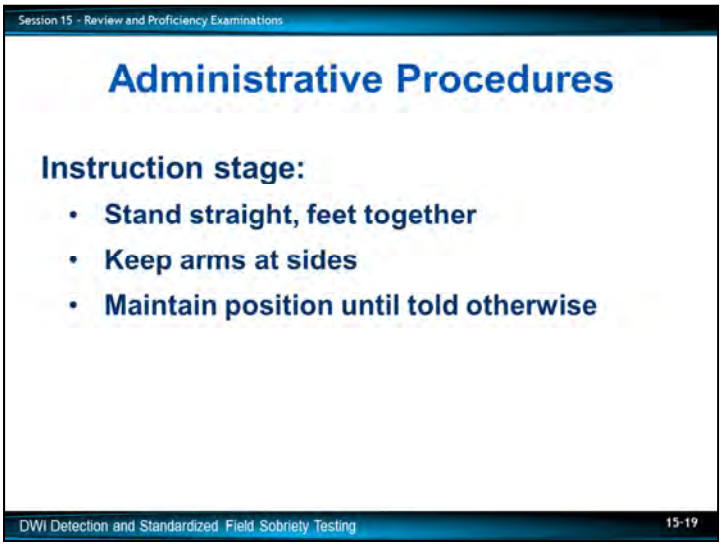
Critique



C. <u>Review of One Leg Stand</u>

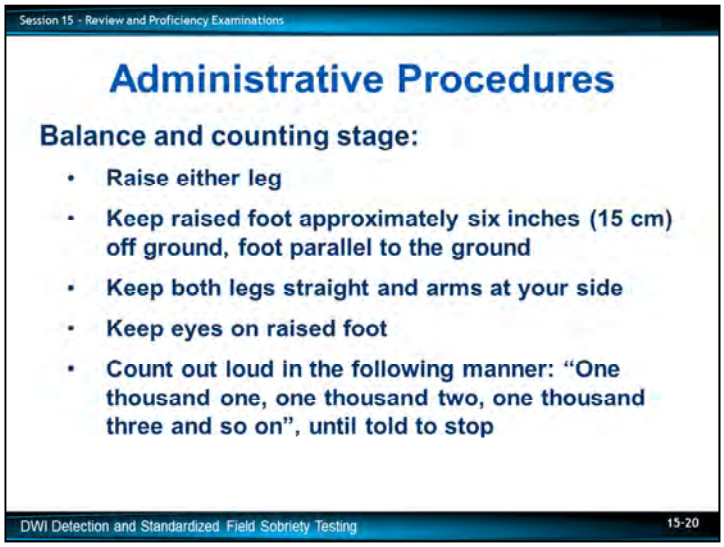
Two Stage Test

1. Instruction stage
2. Balance and Counting stage



Stand with your feet together with your arms down at your sides.

Hold position until told to begin.

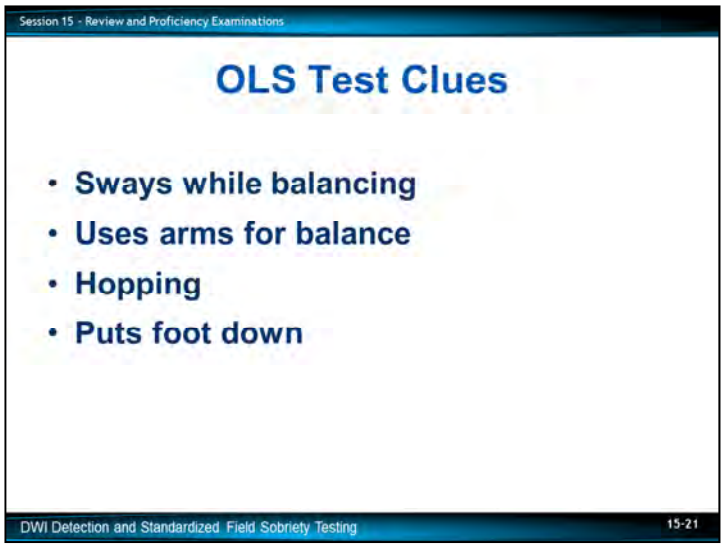


Simple verbal instructions:

- When I tell you to start, raise either leg with the foot approximately six inches off the ground, keeping your raised foot parallel to the ground
- Keep both legs straight and your arms at your side
- Keep both legs straight and to look at elevated foot
- Count out loud in the following manner: "one thousand one, one thousand two, one thousand three," and so on until told to stop

Simple physical demonstrations:

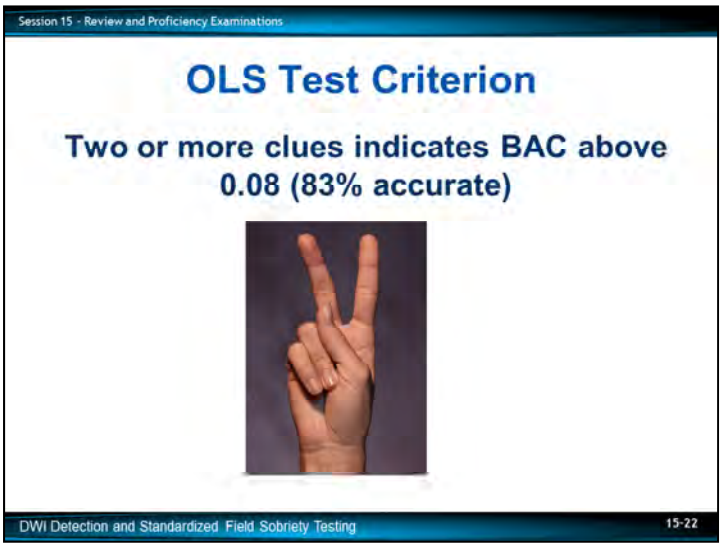
- Demonstrate OLS
- Demonstrate counting



Test Interpretation

There are four specific clues of impairment for the OLS test

- Sways while balancing
- Uses arms for balance
- Hopping
- Puts foot down



Test criterion is 2 or more.

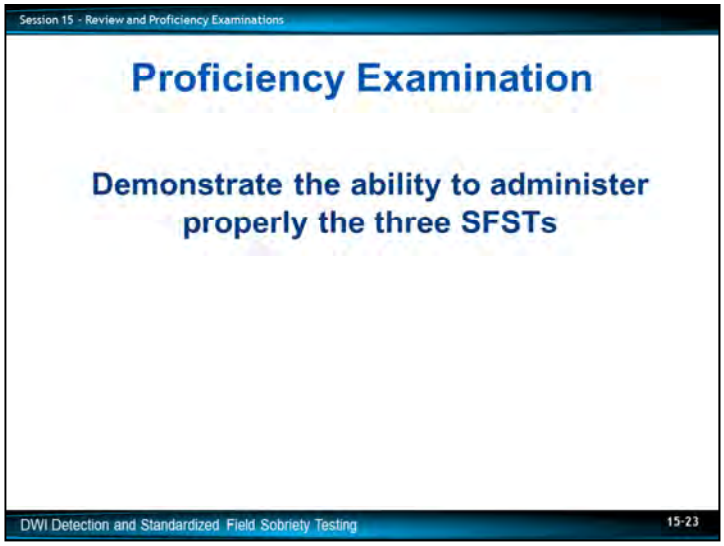
Test is 83% accurate.

Based on the San Diego validation study

Participant Led Demonstration

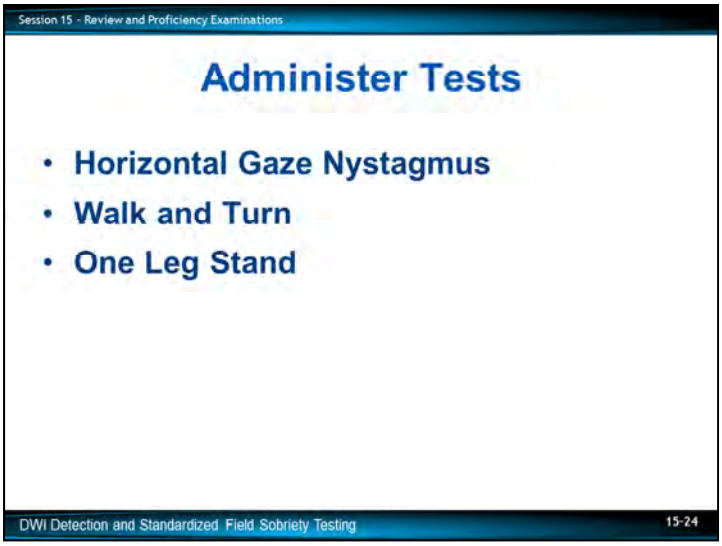
Test Administration

Critique



E. <u>Proficiency Examination</u>

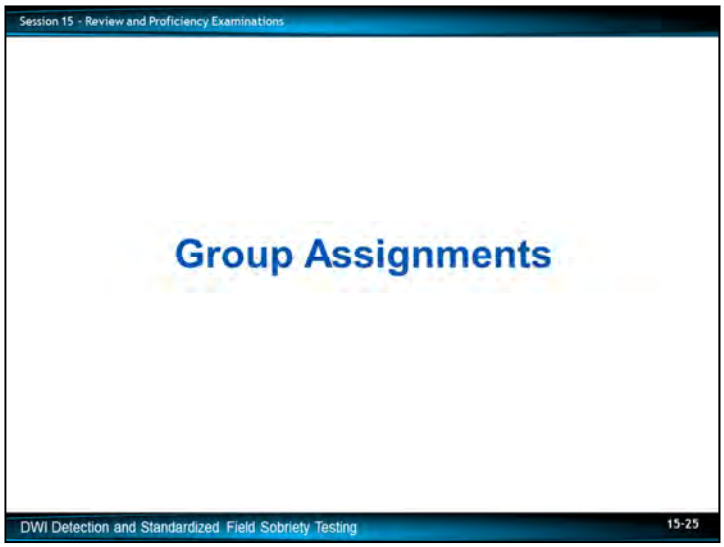
Procedures



HGN
- Demonstrate ability to give proper verbal instructions
- Demonstrate ability to carry out the mechanics of testing for each clue
- Demonstrate ability to estimate a 45 degree angle

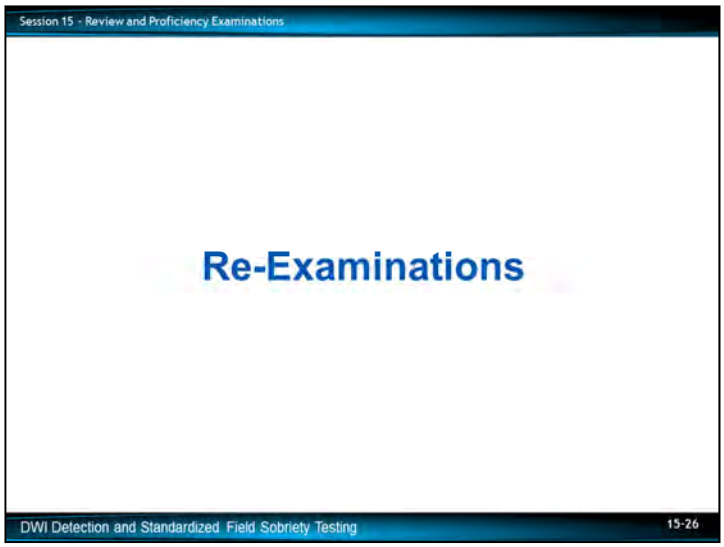
WAT
- Demonstrate ability to give proper verbal instructions
- Demonstrate ability to carry out appropriate physical demonstrations to support the verbal instructions

OLS
- Demonstrate ability to give proper verbal instructions
- Demonstrate ability to carry out appropriate physical demonstrations to support the verbal instructions

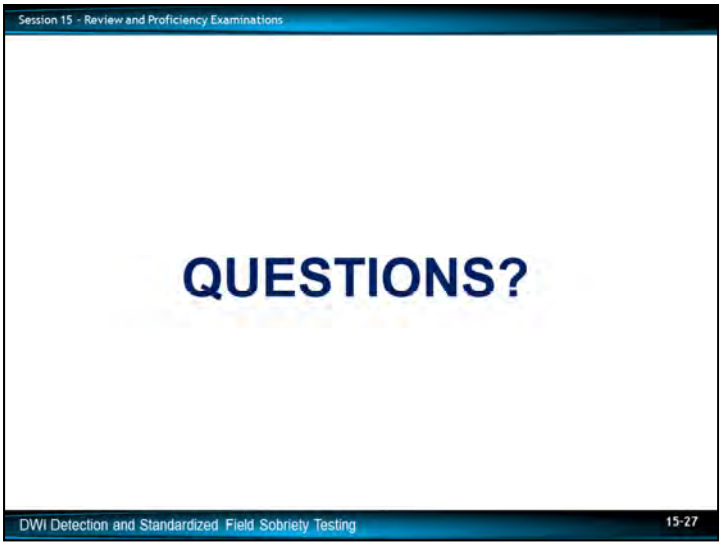


Group Assignments

Conduct Examinations



Re-examinations (as necessary)


Session 15 - Review and Proficiency Examinations
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
15-27

PARTICIPANT PROFICIENCY EXAMINATION

STANDARDIZED FIELD SOBRIETY TESTs

Name_____ Date_____/_____/_____

Agency_____

I. HORIZONTAL GAZE NYSTAGMUS

1. ___Have subject remove glasses if worn.
2. ___Stimulus held in proper position (approximately 12”-15” from nose, just slightly above eye level).
3. ___Check for equal pupil size and resting nystagmus.
4. ___Check for equal tracking.
5. ___Smooth movement from center of nose to maximum deviation in approximately 2 seconds and then back across subject’s face to maximum deviation in right eye, then back to center. Check left eye, then right eye. (Repeat)
6. ___Eye held at maximum deviation for a minimum of 4 seconds (no white showing). Check left eye, then right eye. (Repeat)
7. ___Eye moved slowly (approximately 4 seconds) from center to 45 angle. Check left eye, then right eye. (Repeat)
8. ___Check for Vertical Gaze Nystagmus. (Repeat)

II. WALK AND TURN

1. ___Instructions given from a safe position.
2. ___Tells subject to place feet on a line in heel-to-toe manner (left foot behind right foot) with arms at sides and gives demonstration.
3. ___Tells subject not to begin test until instructed to do so and asks if subject understands.
4. ___Tells subject to take nine heel-to-toe steps on the line and demonstrates.
5. ___Explains and demonstrates turning procedure.
6. ___Tells subject to return on the line taking nine heel-to-toe steps.
7. ___Tells subject to count steps out loud.
8. ___Tells subject to look at feet while walking.
9. ___Tells subject not to raise arms from sides.
10. ___Tells subject not to stop once they begin.
11. ___Asks subject if all instructions are understood.

III. ONE LEG STAND

1. ___Instructions given from a safe position.
2. ___Tells subject to stand straight, place feet together, and hold arms at sides.
3. ___Tells subject not to begin test until instructed to do so and asked if subject understands.
4. ___Tells subject to raise one leg, either leg, approximately 6" from the ground, keeping raised foot parallel to the ground, and gives demonstration.
5. ___Tells subject to keep both legs straight and to look at elevated foot.
6. ___Tells subject to count out loud in the following manner: one thousand one, one thousand two, one thousand three, and so on until told to stop, and gives demonstration.
7. ___Checks actual time subject holds leg up. (Time for 30 seconds.)

Instructor: _____

Note: In order to pass the proficiency examination, the student must explain and proficiently complete each of the steps listed.

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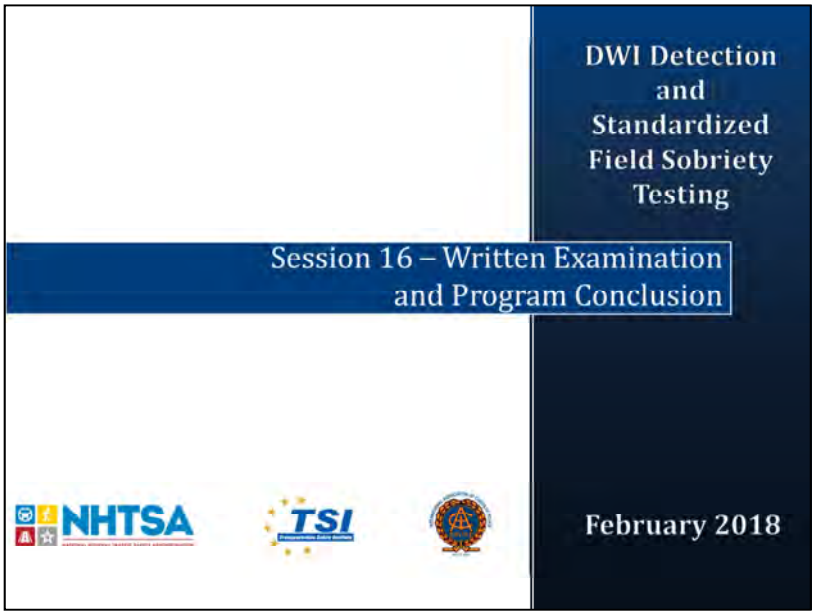
DWI Detection
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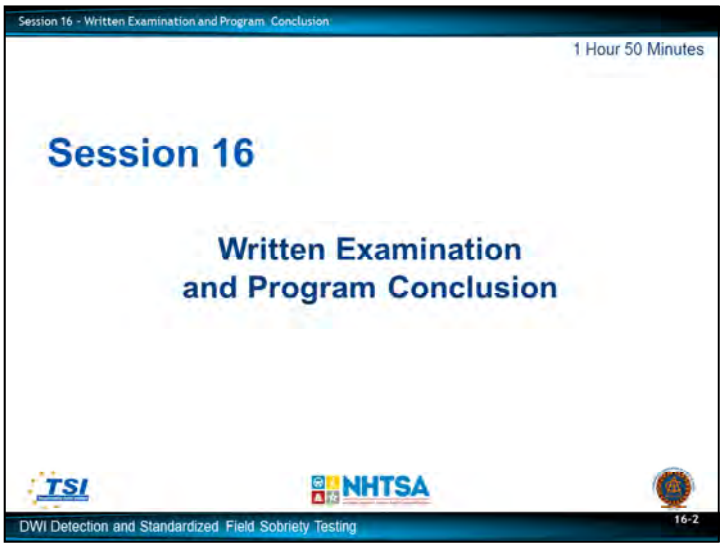
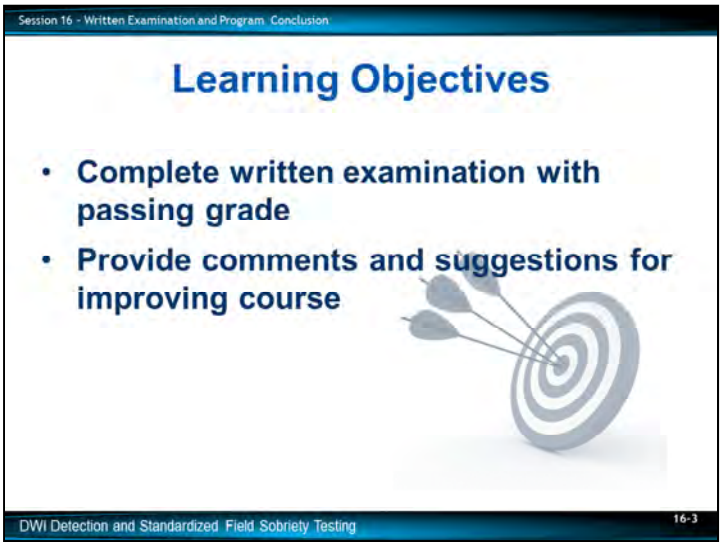
February 2018


Session 16 - Written Examination and Program Conclusion
1 Hour 50 Minutes
Session 16
Written Examination
and Program Conclusion
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
16-2



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

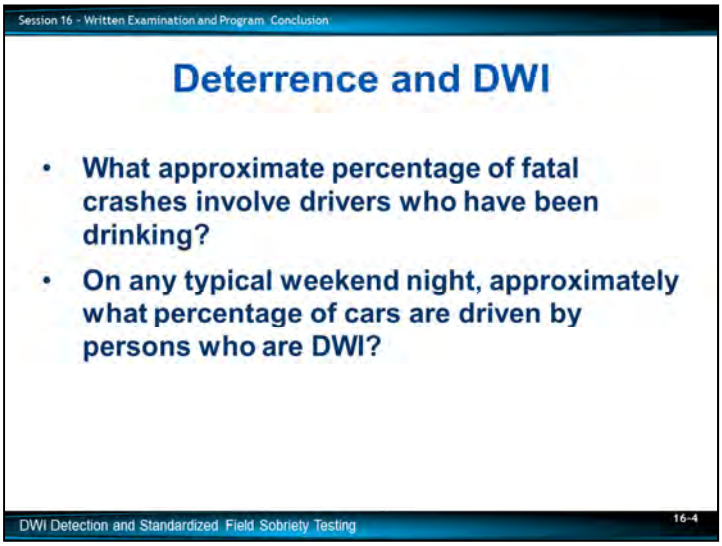
- Complete a written examination with a passing grade
- Provide comments and suggestions for improving the course

CONTENT SEGMENTS

A. Post Test
B. Critique
C. Review of Post Test
D. Concluding Remarks
E. Certificates and Dismissal

LEARNING ACTIVITIES

Written Participant Examination
Written Participant Critique
Instructor-Led Presentation



Suggested topics for review <u>to prepare for the test</u>.

Deterrence and DWI

- Approximately what percentage of fatal crashes involve drivers who have been drinking?

_____

_____

- On any typical weekend night, approximately what percentage of cars are driven by persons who are DWI?

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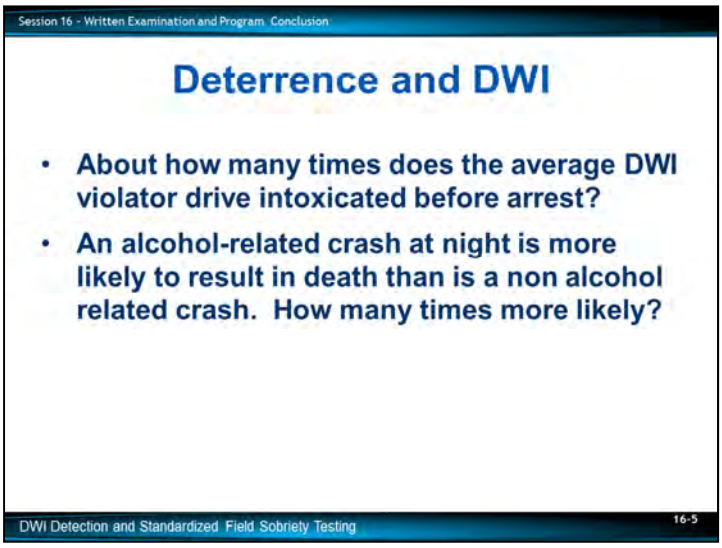
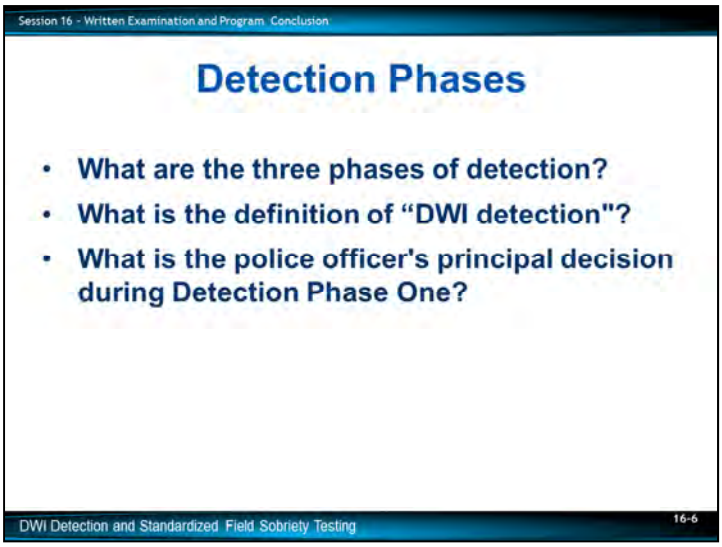


- About how many times does the average DWI violator drive intoxicated before arrest?

- An alcohol-related crash at night is more likely to result in death than is a non-alcohol-related crash. How many times more likely?



Detection Phases

- What are the three phases of detection?

_____

_____

- What is the definition of "DWI detection"?

_____

_____

- What is the police officer's principal decision during Detection Phase One?

_____

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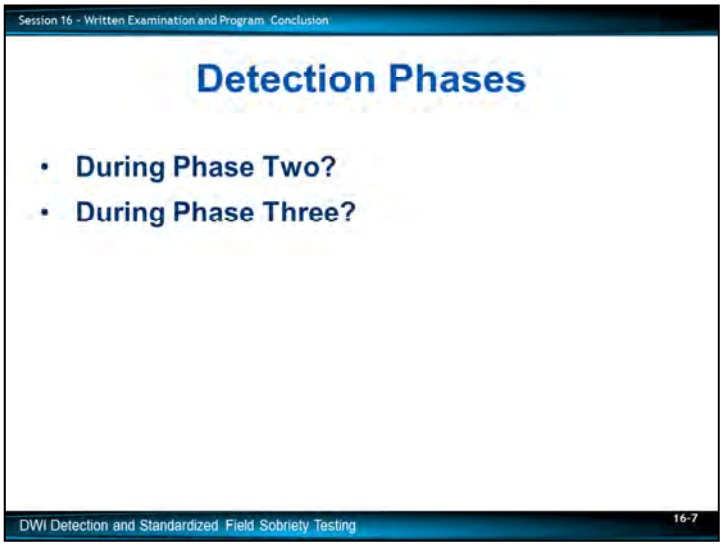
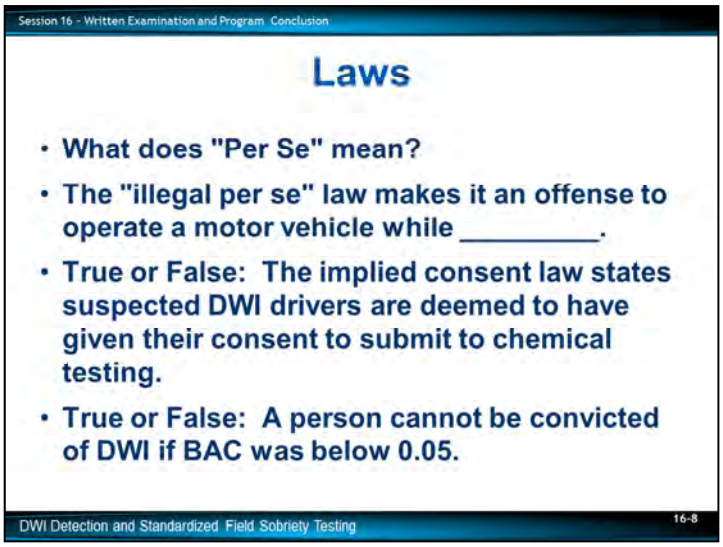


- During Phase Two?

- During Phase Three?



Laws

- What does "Per Se" mean?

_____

_____

- The "illegal per se" law makes it an offense to operate a motor vehicle while

_____

_____

- True or False: The implied consent law states suspected DWI drivers are deemed to have given their consent to submit to chemical testing.

_____

_____

- True or False: A person cannot be convicted of DWI if BAC was below 0.05.

_____

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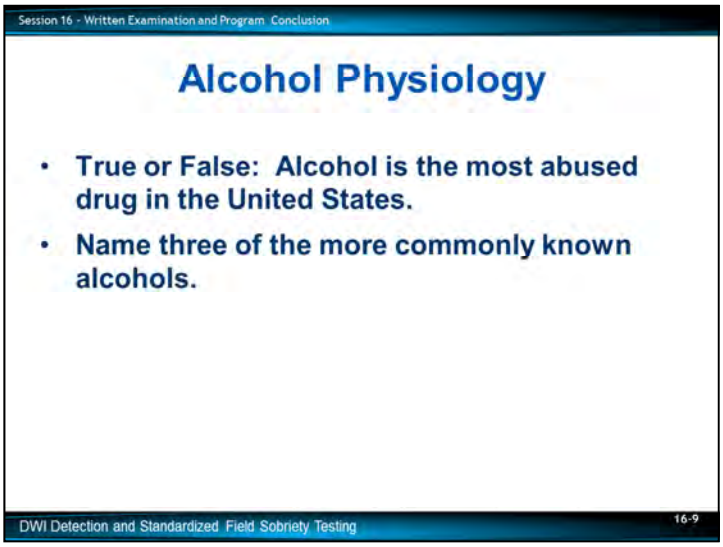
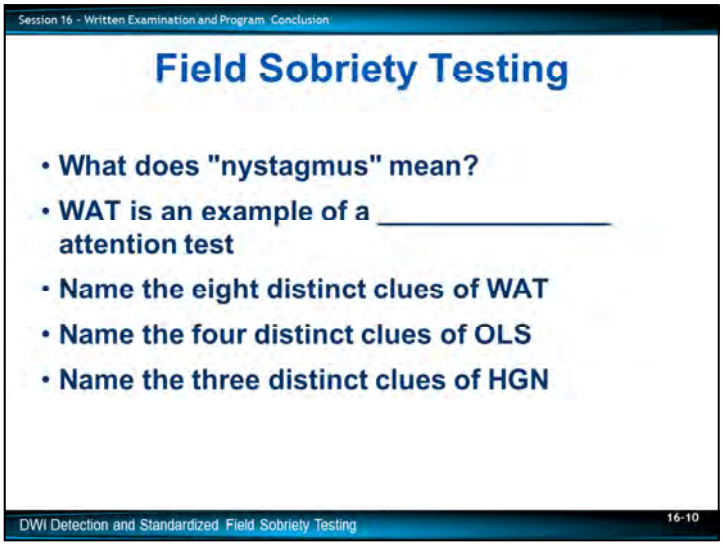


Alcohol Physiology

- True or False: Alcohol is the most abused drug in the United States.

- Name three of the more commonly known alcohols.



Field Sobriety Testing

- What does "nystagmus" mean?

_____

_____

- Walk and Turn (WAT) is an example of a _____ attention test.
- Name the eight distinct clues of WAT.

_____

_____

_____

- Name the four distinct clues of One Leg Stand (OLS).

_____

_____

- Name the three distinct clues of Horizontal Gaze Nystagmus (HGN).

_____

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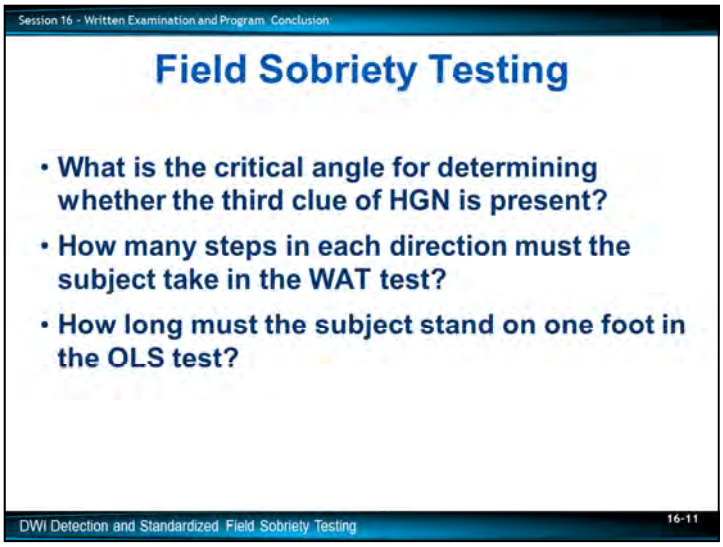

- What is the critical angle for determining whether the third clue of HGN is present?

_____

_____

- How many steps in each direction must the subject take in the WAT test? _____
- How long must the subject stand on one foot in the OLS test?

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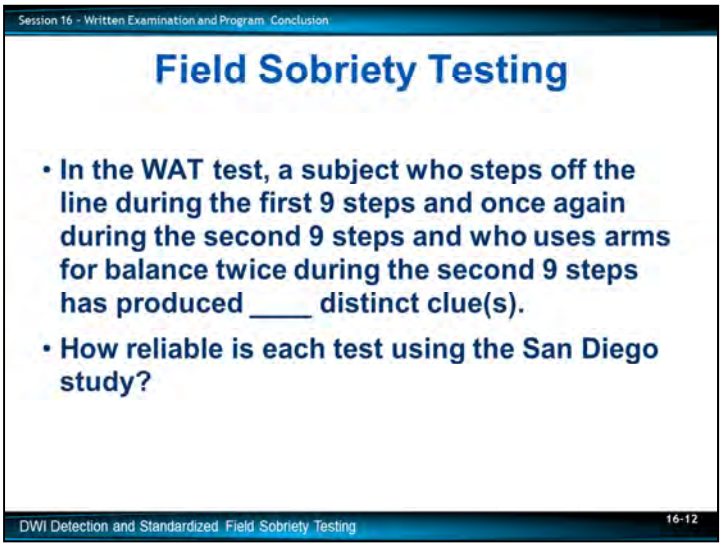
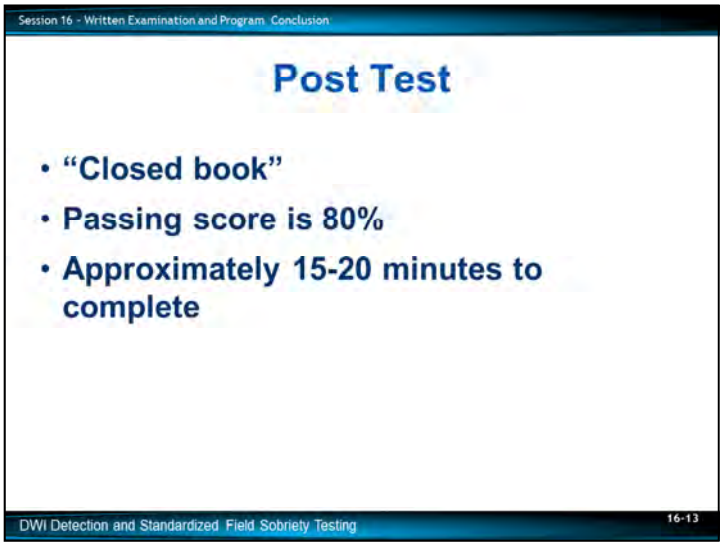


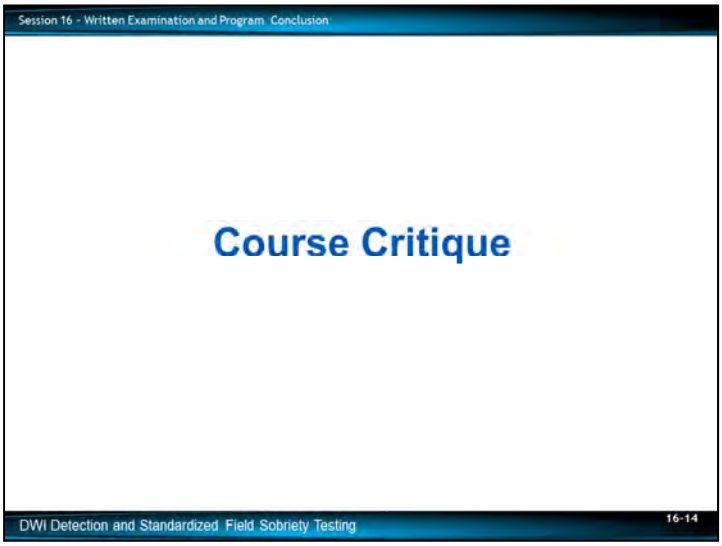
- In the WAT test, a subject who steps off the line during the first 9 steps and once again during the second 9 steps and who uses arms for balance twice during the second 9 steps has produced _____ distinct clue(s).

- How reliable is each test using the San Diego field validation study?



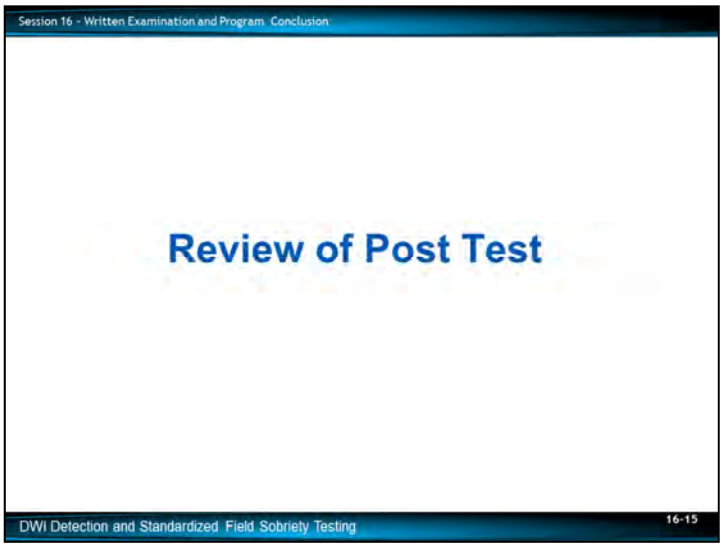
A. <u>Post Test</u>

Purpose of the Post Test: to compare with pretest and determine extent of knowledge gained by participants.



B. <u>Critique</u>

Purpose of the critique form: To identify possible improvements that can and should be made to this program.

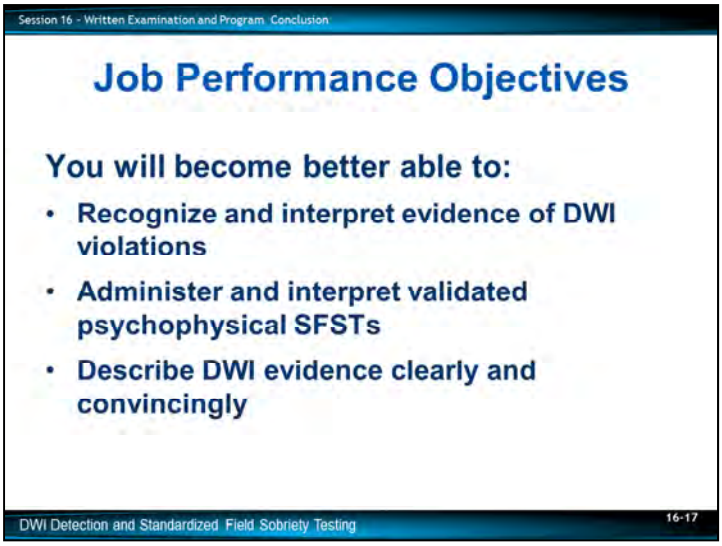


C. <u>Review of Post Test</u>

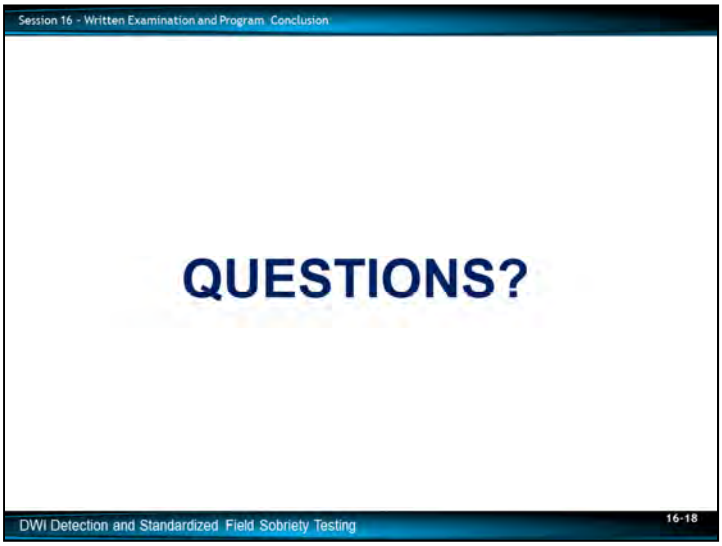
If passing score is not achieved, participant(s) will be allowed to take a "make up" exam at a future date not less than fifteen days nor more than 30 days from the completion of the course.



D. <u>Concluding Remarks</u>



E. <u>Certificates and Dismissal</u>


Session 16 - Written Examination and Program Conclusion
QUESTIONS?
DWI Detection and Standardized Field Sobriety Testing
16-18

DWI Detection and SFST – Course and Instructor Evaluation

For items 1-6, please select your level of agreement with the following statements. Include any additional information in the space provided.

Item	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1. This course enabled me to understand enforcement's role in general DWI deterrence. Comments:_____ _____	O	O	O	O	O
2. This course enabled me to understand the detection phases. Comments:_____ _____	O	O	O	O	O
3. This course enabled me to understand the requirements for organizing and presenting testimonial and documentary evidence in DWI cases. Comments:_____ _____	O	O	O	O	O
4. This course enabled me to improve my ability to recognize and interpret evidence of DWI violations. Comments:_____ _____	O	O	O	O	O
5. This course enabled me to administer and interpret validated psychophysical tests to DWI subjects. Comments:_____ _____	O	O	O	O	O
6. This course enabled me to improve my ability to describe DWI evidence clearly and convincingly in written reports and verbal testimony. Comments:_____ _____	O	O	O	O	O

Please rate how helpful each workshop session was for <u>you personally</u>.

Item	Poor	Fair	Good	Very Good	Excellent
Detection and General Deterrence	O	O	O	O	O
The Legal Environment	O	O	O	O	O
Overview of Detection, Note Taking and Testimony	O	O	O	O	O
Phase One: Vehicle in Motion	O	O	O	O	O
Phase Two: Personal Contact	O	O	O	O	O
Phase Three: Pre-Arrest Screening	O	O	O	O	O
Concepts and Principles of Standardized Field Sobriety Tests	O	O	O	O	O
Test Battery Demonstrations	O	O	O	O	O
"Dry Run" Practice	O	O	O	O	O
"Drinking Subjects" Practice	O	O	O	O	O
Processing the Arrested Subject and Preparation for Trial	O	O	O	O	O
Report Writing Exercise and Moot Court	O	O	O	O	O

Please mark the appropriate word to indicate your agreement or disagreement with each of the following statements.

Item	Agree	Disagree	Not Sure
The program contains some information that is not needed and that should be deleted.	O	O	O
There are some important topics missing from the program that should be added.	O	O	O
The program is too short.	O	O	O
I feel this program has improved my own ability to enforce DWI laws.	O	O	O
The instructors did a good job.	O	O	O
I am very glad I attended the program.	O	O	O
The program is too long.	O	O	O
The instructors should have been better prepared.	O	O	O
I feel fully qualified to use the nystagmus test now.	O	O	O

Item	Agree	Disagree	Not Sure
I feel fully qualified to use the two divided attention tests now.	O	O	O
Too much time was spent practicing with drinking volunteers.	O	O	O
These three new tests definitely will improve our ability to identify impaired drivers.	O	O	O
I wish we had more practice with drinking volunteers.	O	O	O

If you absolutely had to delete one session or topic from this course, what would it be?

_____

_____

If you could add one new topic or session to this course, what would it be?

_____

_____

_____

	Poor	Fair	Good	Very Good	Excellent
Please rate the overall quality of the course.	O	O	O	O	O

Please rate your instructors for this course. Rate the instructor(s) by selecting the appropriate response:

Instructor Name	Poor	Below Average	Average	Above Average	Excellent
Comments: _____ _____	O	O	O	O	O
Comments: _____ _____	O	O	O	O	O
Comments: _____ _____	O	O	O	O	O
Comments: _____ _____	O	O	O	O	O
Comments: _____ _____	O	O	O	O	O

Name (optional): _____

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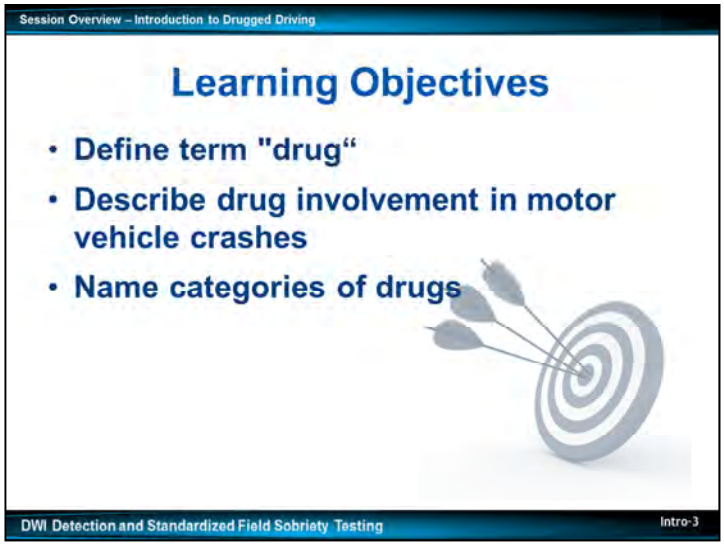
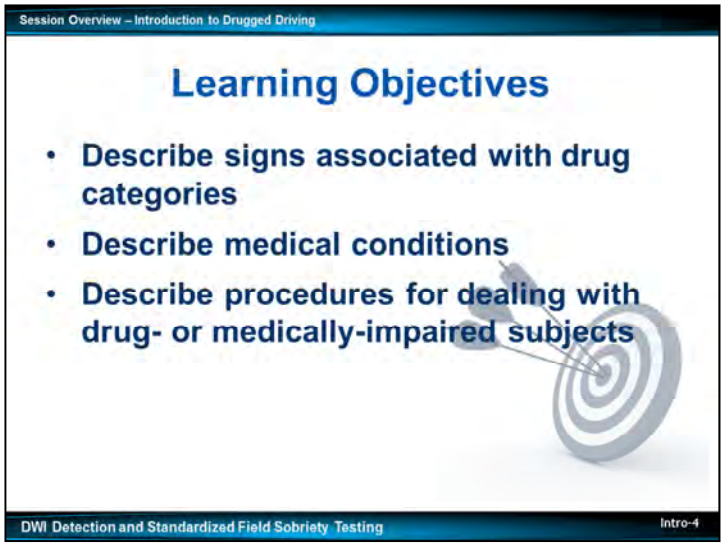
DWI Detection and Standardized Field Sobriety Testing
Introduction to Drugged Driving
NHTSA
TSI
February 2018


Session Overview – Introduction to Drugged Driving
4 Hours
Introduction to Drugged Driving
TSI
NHTSA
DWI Detection and Standardized Field Sobriety Testing
Intro-2



At the conclusion of this session, participants will be able to:

- Define the term "drug"
- Describe in approximate, quantitative terms the incidence of drug involvement in motor vehicle crashes and in DWI enforcement
- Name the categories of drugs



Learning Objectives

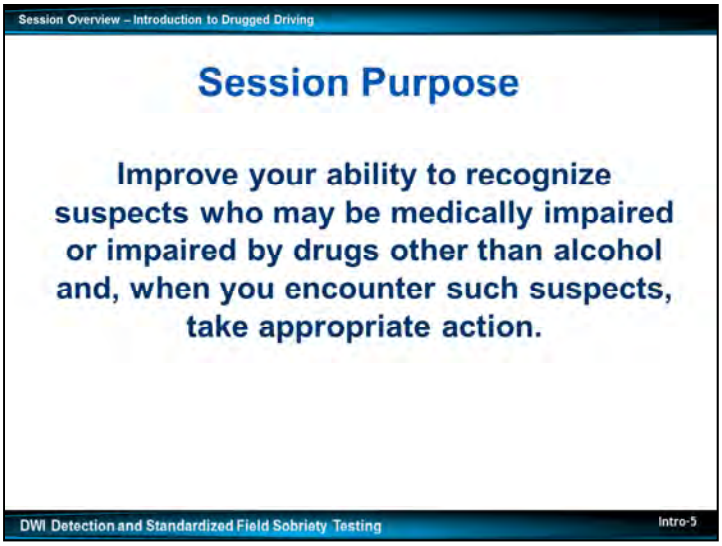
- Describe the observable signs usually associated with the drug categories
- Describe medical conditions and other situations that can produce similar signs
- Describe appropriate procedures for dealing with drug- or medically-impaired subjects

CONTENT SEGMENTS

A. Overview
B. Eye Examinations: Detecting Signs of Drug Influence
C. Medical Conditions That May Mimic Drug Impairment
D. Drug Categories and Their Observable Effects
E. Combination of Drugs
F. Dealing with Suspected Drug Influence or Medical Impairment

LEARNING ACTIVITIES

Instructor-Led Presentations
Participant Practice



A. <u>Overview</u>

The purpose of this session is to improve your ability to recognize suspects who may be medically impaired or impaired by drugs other than alcohol and, when you encounter such suspects, take appropriate action.

Alcohol certainly remains the most frequently abused drug and most impaired drivers are under the influence of alcohol

Many other drugs also are routinely abused by many drivers.

It is highly likely every experienced DWI enforcement officer has encountered at least some drivers who were under the influence of drugs other than alcohol.

Depending upon the specific types of drugs they have taken, some drug-impaired drivers may look and act quite a bit like persons who are under the influence of alcohol, but others will look and act very differently from alcohol-impaired drivers.

It is important you be able to recognize subjects who may be under the influence of other drugs, so you will know when to summon assistance from physicians or other appropriate persons or trained Drug Recognition Experts (DREs).

_____

_____

_____

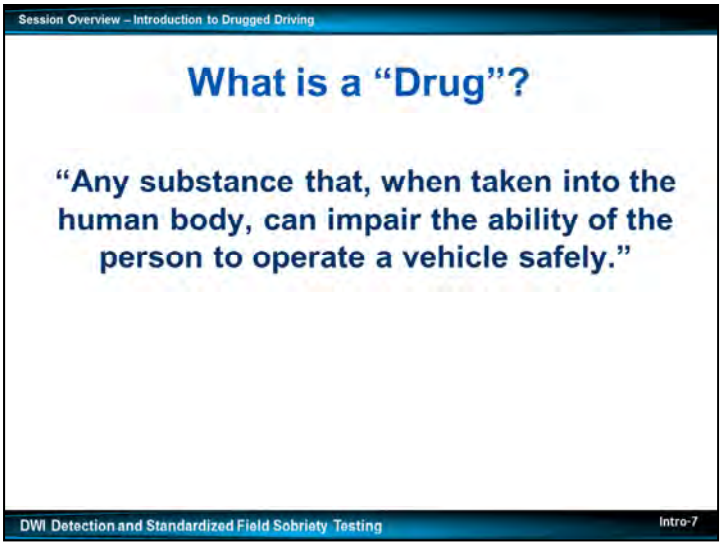
_____

_____



One important thing this session will not accomplish: it will NOT qualify you to perform functions of a DRE.

Officers become DREs only after they have completed a very challenging program that includes nine days of classroom training and closely-supervised on-the-job training. (Two-Day Pre-School followed by 7-Day classroom training.)



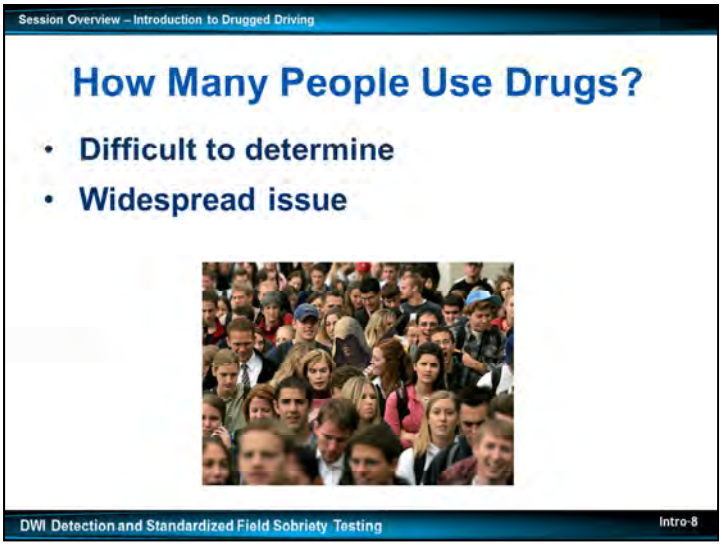
A Simple, Enforcement-Oriented Definition of Drugs
"Any substance that, when taken into the human body, can impair the ability of the person to operate a vehicle safely."
(Working definition derived from the 1985 California Vehicle Code.)

This definition includes some substances physicians don't usually think of as drugs.

Within this simple, enforcement-oriented definition there are seven categories of drugs.

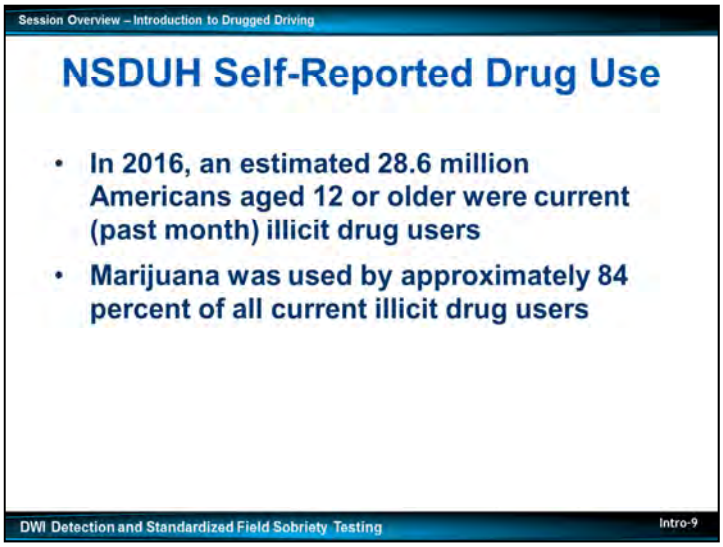
Each category consists of substances that impair a person's ability to drive.

The categories differ from one another in terms of how they impair driving ability and in terms of the kinds of impairment they cause.



How many people use drugs?
Because many drugs are illegally manufactured, sold, and consumed, it is difficult to determine how many people actually use the various drugs.

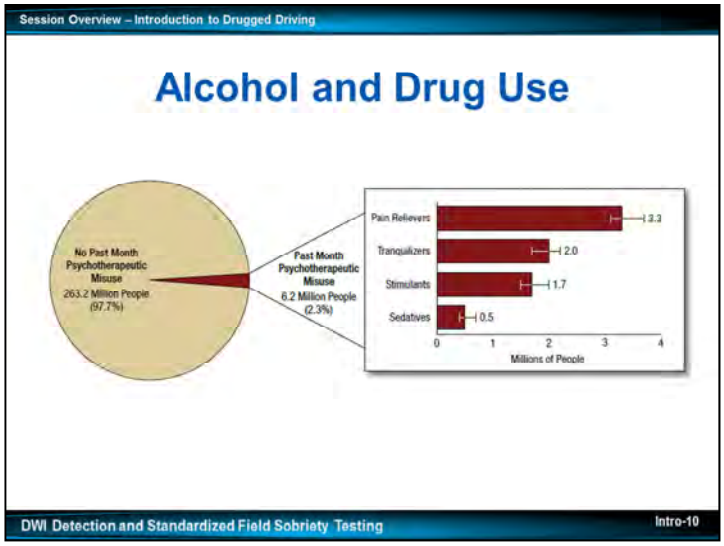
All available information shows drug use and abuse are widespread among large segments of the public.



The following summarizes the self-reported drug usage information as reported by the 2016 National Survey Drug Use and Health (NSDUH):

- In 2016, an estimated 28.6 million Americans aged 12 or older were current (past month) illicit drug users

- Marijuana was used by approximately 84 percent of all current illicit drug users



NSDUH provides additional details on drugs used within the past 30 days in a manner other than prescription:

Type	Number of Users
Cocaine	1.9 Million
Hallucinogens	1.4 Million
Psychotherapeutics	6.2 Million
Pain Relievers	3.3 Million
Tranquilizers	2.0 Million
Stimulants	1.7 Million
Sedatives	0.5 Million



B. <u>Eye Examinations: Detecting Signs of Drug Influence</u>

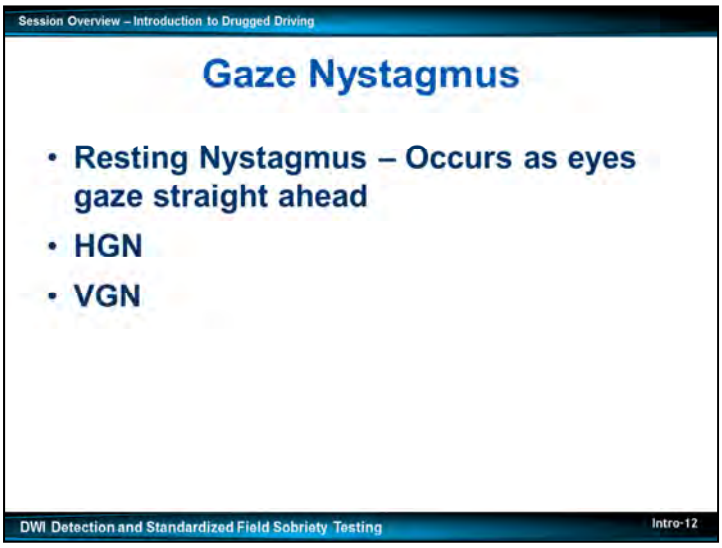
The eyes can disclose indicators of drug impairment or medical conditions.

Horizontal Gaze Nystagmus (HGN) is an excellent indicator of possible alcohol impairment.

There are a number of drugs other than alcohol that can cause HGN.

There are a number of other drugs that will not cause HGN.

There are many other clues the eyes will disclose, all of which will suggest the presence or absence of drugs or medical impairment.



Gaze Nystagmus

Resting Nystagmus is defined as the involuntary jerking of the eyes as they gaze straight ahead. This condition is not frequently observed. Its presence may indicate Dissociative Anesthetic usage, high levels of an impairing substance for that subject or certain medical problem. If detected, take precautions. As always, exercise sound officer safety techniques and consider calling for medical aid.

During this course we will focus on two types of nystagmus:

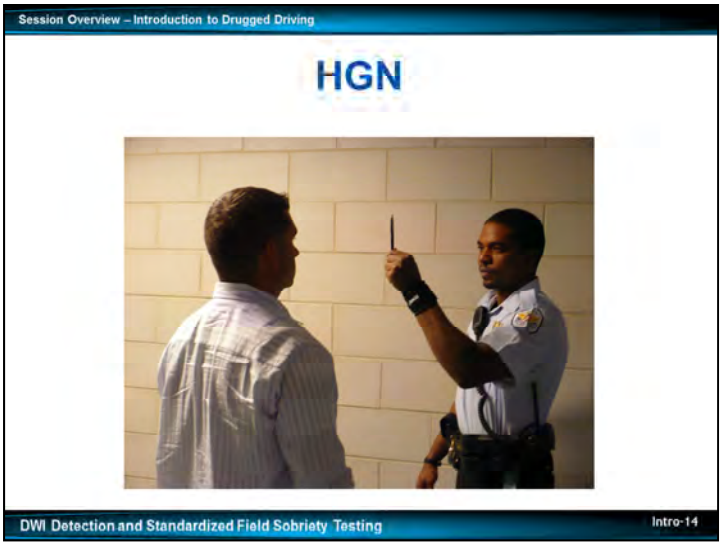
- HGN
  - Occurs as the eyes move to the side
  - Useful in determining alcohol influence as well as some drug categories

- Vertical Gaze Nystagmus (VGN)
  - Occurs as the eyes move upward (vertical plane) to an elevated position as far as they can go
  - Associated with a high doses of alcohol and some drug categories for that individual
  - There is no known drug that will cause VGN without causing at least four clues of HGN



Resting Nystagmus

Sometimes persons impaired by Dissociative Anesthetics will exhibit Resting Nystagmus, i.e., the eyes jerk while they are looking straight ahead.



Horizontal Gaze Nystagmus
HGN is defined as the involuntary jerking of the eyes as they gaze toward the side. (As defined in the current SFST curriculum.)

Although this type of nystagmus is useful in determining alcohol influence, its presence may also indicate use of Central Nervous System (CNS) Depressants, Inhalants, and Dissociative Anesthetics (DID drugs).

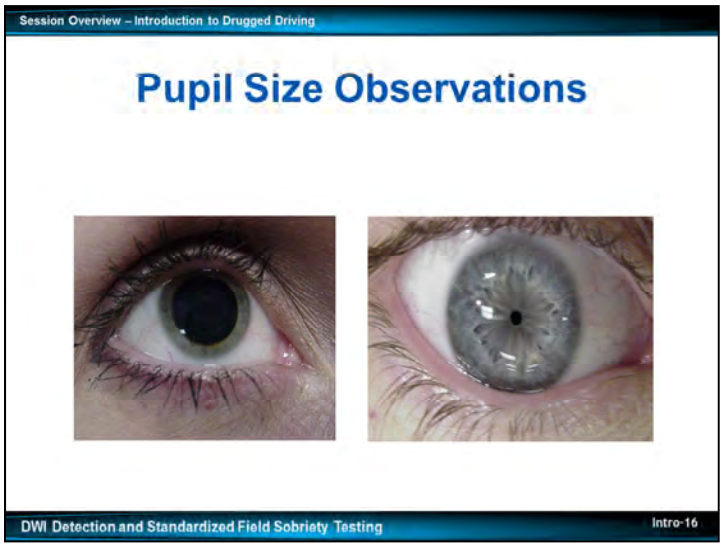
HGN becomes observable:
- When a subject is impaired by alcohol
- As the subject's BAC increases the jerking will appear sooner
- When a subject is impaired by DID drugs



Vertical Gaze Nystagmus
The VGN test is very simple to administer.

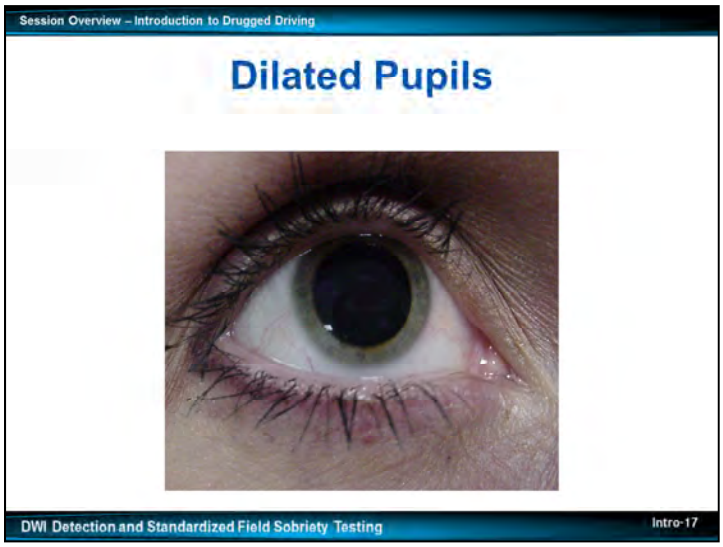
- Position the stimulus horizontally. Approximately 12-15 inches (30-38 cm) in front of the subject's nose
- Instruct the subject to hold their head still and follow the stimulus with the eyes only
- Raise the stimulus until the subject's eyes are elevated as far as possible, hold for a minimum of four seconds
- Watch closely for evidence of jerking (up and down).

VGN may be present in subjects under the influence of CNS Depressants, Dissociative Anesthetics, or Inhalants.



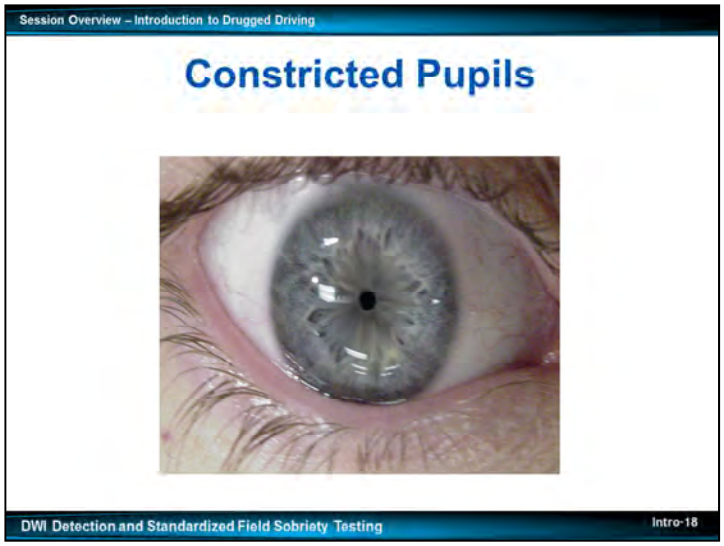
Pupil Size Observations

- The pupil is basically a circular hole in the middle of the iris, which regulates the amount of light that passes through into the retina
- The pupils of the eyes continually adjust in size to accommodate different lighting conditions and refocus according to focal length
- When placed in a darkened environment, the pupils will normally expand in size, or dilate, to allow the eyes to capture as much light as possible
- When the lighting conditions are very bright, the pupils will normally shrink or constrict, to limit the amount of light that passes through and to keep the eyes from being over stimulated



Dilated Pupils

The pupils appear larger than expected for the given lighting condition resulting in a noticeably larger opening (circle) in the center of the eye.



Constricted Pupils
When pupils appear smaller than expected for the given lighting conditions, resulting in a noticeably smaller opening (circle) in the center of the eye.

The effects drugs have on the eyes are involuntary reactions, which mean they cannot be controlled by the subject.



C. <u>Medical Conditions That May Mimic Drug Impairment</u>

There are various medical conditions and injuries that may cause subjects to appear to be impaired by alcohol and/or other drugs.

Some of the more common medical conditions that may mimic drug impairment include:

- Head Trauma
- Stroke
- Diabetes
- Conjunctivitis
- Shock
- Multiple Sclerosis
- Other Conditions



D. <u>Drug Categories and Their Observable Effects</u>

<u>Methods of Ingestion</u>
Oral
Oral ingestion is administered through the mouth.

Injection
- Is a common method of administering drugs, such as heroin (narcotic analgesic)
- Is also used to introduce Stimulants, Hallucinogens, Dissociative Anesthetics, and other Narcotic Analgesics into the body
- CNS Depressants can also be injected but this is not common due to the size of the needle required to deliver the substance

In addition to injecting drugs into the veins in the arms, users will find more creative and less conspicuous areas on the body to administer a substance since needles typically leave marks which can be difficult to conceal.



Insufflation
The act of introducing a substance by inhaling through the nose for the purpose of intranasal absorption through the mucous membrane.

For a substance to be effective when insufflated it must be in a water soluble powder so it can be readily absorbed through the mucous membranes.

This method is commonly referred to as “snorting”.

Inhalation
The act of introducing a substance directly into the respiratory system through the nose and mouth for the purpose of absorbing the substance through the alveoli in the lungs.

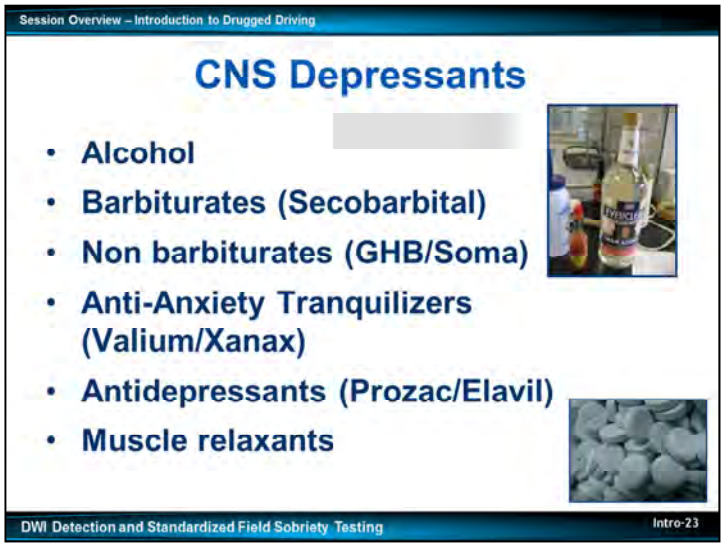
This is a very rapid method of absorption and is often referred to as huffing, sniffing, or smoking.

Transdermal Absorption
A less common method of administering drugs. Transdermal means the chemical or drug is absorbed into a subject’s system through the skin.



Seven Categories of "Drugs"
Definition of "Drug": Any substance that, when taken into the human body, can impair the ability of the person to operate a vehicle safely.

Within this simple, enforcement-oriented definition there are seven categories of drugs:
- CNS Depressants
- CNS Stimulants
- Hallucinogens
- Dissociative Anesthetics
- Narcotic Analgesics
- Inhalants
- Cannabis



CNS Depressants

CNS Depressants slow down the operations of the brain and usually depress the heartbeat, respiration, and many other processes controlled by the brain.

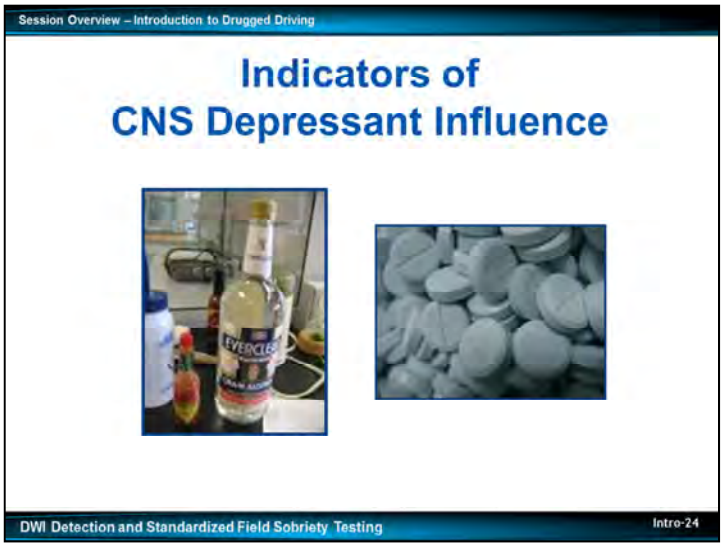
The most familiar CNS Depressant is alcohol.

Other CNS Depressants include:

- Barbiturates (such as Secobarbital (Seconal), and Pentobarbital (Luminal))
- Non-Barbiturates (GHB-gamma-hydroxybutyrate and Soma)
- Anti-Anxiety Tranquilizers (Such as Valium, Librium, Xanax, and Rohpynol)
- Antidepressants (such as Prozac and Elavil)
- Muscle relaxants and many other drugs (Soma)

CNS Depressants usually are taken orally, in the form of pills, capsules, liquids, etc. However, CNS Depressants may be injected or insufflated.

In general, people under the influence of any CNS Depressant look and act like people under the influence of alcohol.



General indicators of CNS Depressant influence are:

- "Drunken" behavior and appearance
- Uncoordinated
- Drowsy
- Sluggish
- Disoriented
- Thick, slurred speech
- Unsteady, staggering (Gait Ataxia)

Eye indicators of CNS Depressant influence are:

- HGN usually will be present
- VGN may be present (with high doses)
- Pupil size usually will not be effected, except Methaqualone, Soma, and certain antidepressants may cause pupil dilation



CNS Stimulants
CNS Stimulants accelerate the heart rate, respiration, and many other processes of the body.

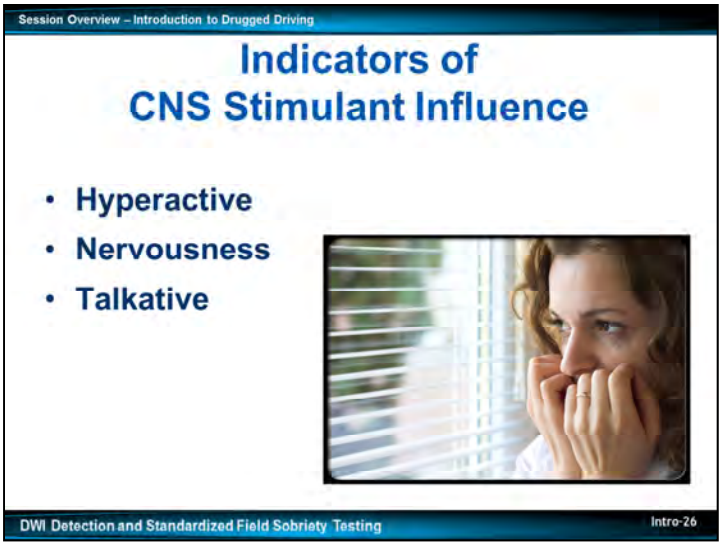
The two most widely abused kinds of CNS Stimulants are Cocaine and methamphetamines.

Cocaine is made from the leaves of the coca plant.

Methamphetamines are chemically produced (manufactured) drugs.

Cocaine abusers may take the drug:
- By insufflation
- By smoking (freebase, or “Crack”)
- By injection
- Orally

Abusers of amphetamines and methamphetamines may take their drugs:
- By injection
- Orally
- By insufflation
- Smoked (methamphetamines only)

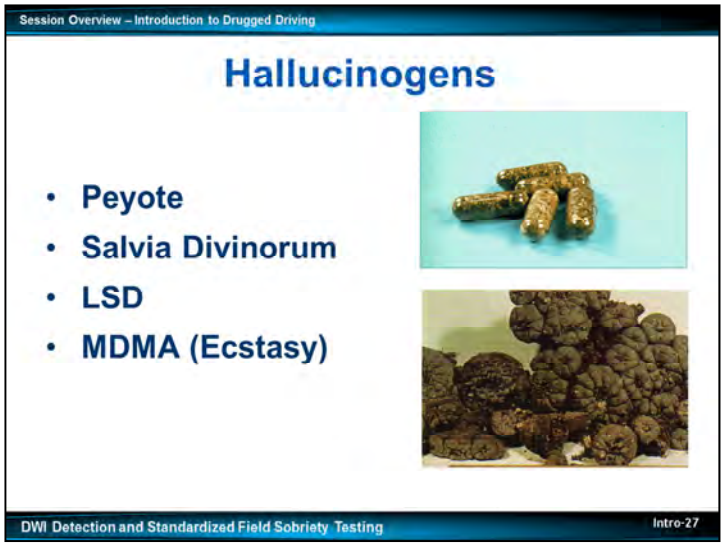


General indicators of CNS Stimulant influence:
People under the influence of CNS Stimulants tend to be hyperactive indicated by nervousness, extreme talkativeness, and an inability to sit still. They also are usually unable to concentrate or to think clearly for any length of time.

- Restlessness
- Talkative
- Excitation
- Euphoria
- Exaggerated reflexes
- Loss of appetite
- Anxiety
- Grinding teeth (bruxism)
- Redness to nasal area (if "snorting")
- Body tremors

Eye indicators of CNS Stimulant influence:

- Neither HGN nor VGN will be observed
- The pupils generally will be dilated



Hallucinogens
Hallucinogens are drugs that affect a person's perceptions, sensations, thinking, self awareness, and emotions.

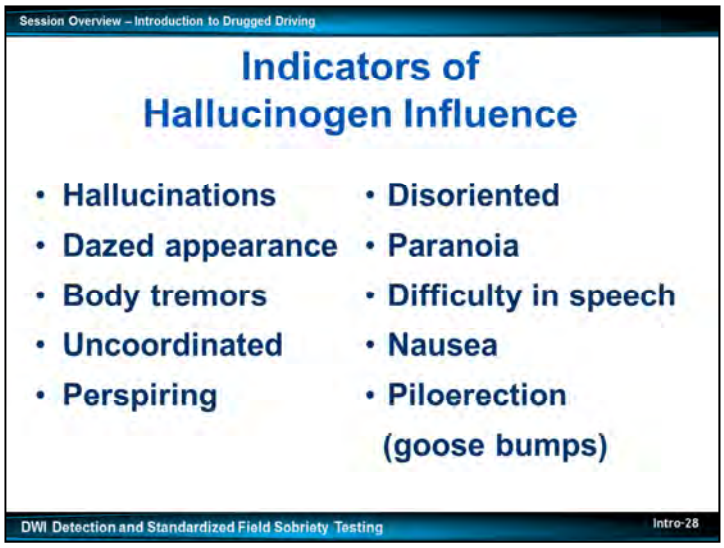
One common type of hallucination caused by these drugs is called synesthesia, which means a transposing of the senses.

Sounds, for example, may be transposed into sights.

Sights, for example, may be transposed into odors or sounds.

Some hallucinogenic drugs come from natural sources:
- Peyote is a Hallucinogen found in a particular species of cactus
- Psilocybin is a Hallucinogen found in a number of species of mushroom

Other Hallucinogens are synthetically manufactured:
- Lysergic Acid Diethylamide (LSD)
- 3,4-Methylenedioxyamphetamine (MDA)
- 3,4-Methylenedioxymethamphetamine or Ecstasy (MDMA)
- Many others



General indicators of Hallucinogen influence:
Hallucinogen abusers usually take their drugs orally; however, some Hallucinogens can be smoked, injected or "snorted".

- Hallucinations
- Dazed appearance
- Body tremors
- Uncoordinated
- Perspiring
- Disoriented
- Paranoia
- Difficulty in speech
- Nausea
- Piloerection (goose bumps)

Eye indicators of Hallucinogen influence:

- Neither HGN nor VGN should be present
- The pupils usually will be noticeably dilated



Dissociative Anesthetics

Dissociative Anesthetics is the category of drugs that includes Phencyclidine (PCP), its various analogs, and Dextromethorphan (DXM).

PCP is a synthetic drug first developed as an intravenous anesthetic.

Because PCP produces very undesirable side effects, it is no longer legally manufactured. However, an analog (chemical cousin) Ketamine is still being legally manufactured and available.

However, it is easy to manufacture:

- The formula for making PCP and PCP analogs have been widely publicized
- The manufacturing process involves readily-available chemicals

Many Dissociative Anesthetic users smoke the drug by using it to adulterate tobacco, marijuana, or various other substances.

Dissociative Anesthetics can also be taken orally, by injection, or inhaled.

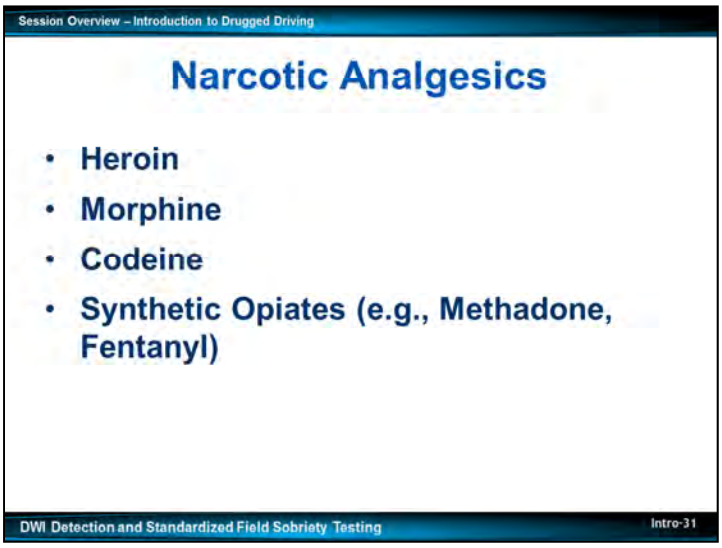


General indicators of Dissociative Anesthetics:
Dissociative Anesthetics cans also be taken orally, by injection, or inhaled.

- Warm to the touch
- Perspiring
- Blank stare
- Repetitive speech
- Incomplete verbal responses
- Confused
- Muscle rigidity
- Possibly violent and combative

Eye Indicators of Dissociative Anesthetic influence:

- HGN generally will be present often with very early onset and very distinct jerking (rarely, Resting Nystagmus may be observed with high doses of dissociative anesthetics)
- VGN generally will be present
- Pupil Size usually will not be effected



Narcotic Analgesics

Narcotic Analgesics include a large number of drugs that share three important characteristics:

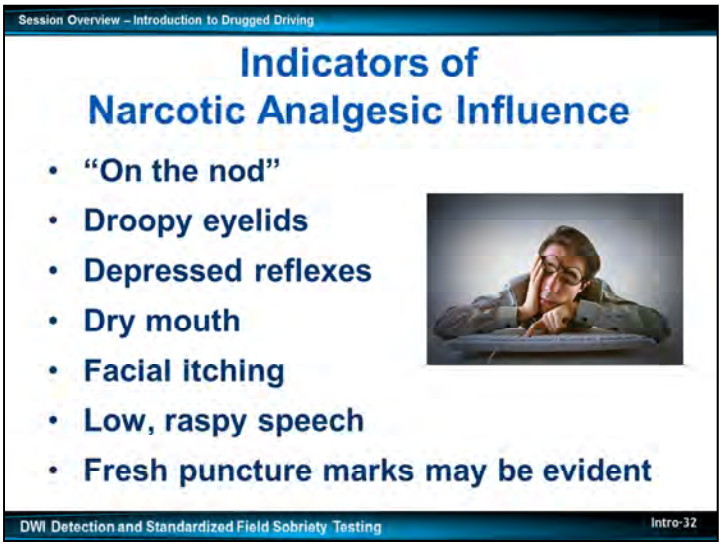
- They will relieve pain
- They will produce withdrawal signs and symptoms when the drug is stopped after chronic administration
- They will suppress the withdrawal signs and symptoms of chronic morphine administration

Some drugs classified as Narcotic Analgesics are natural derivatives of opium:

- Heroin
- Morphine
- Codeine
- OxyContin

Some are synthetic Narcotic Analgesics, such as:

- Methadone
- Demerol
- Fentanyl

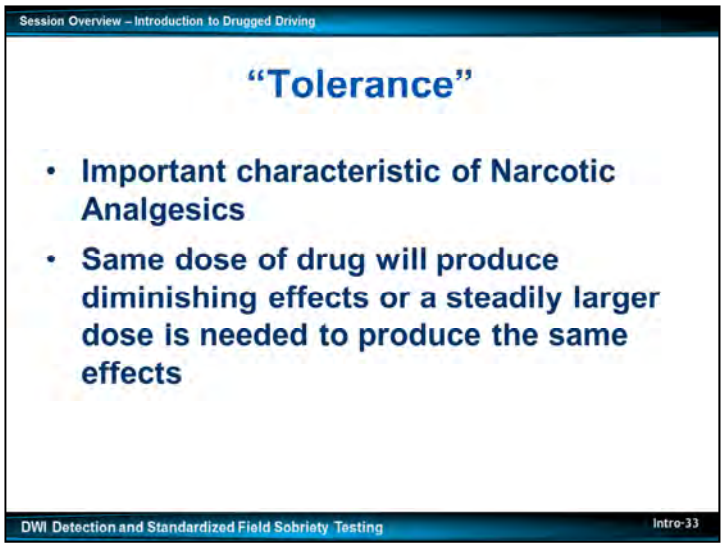


General indicators of Narcotic Analgesic influence:

- "On the nod"
- Droopy eyelids
- Depressed reflexes
- Dry mouth
- Facial itching
- Low, raspy speech
- Fresh puncture marks may be evident

Eye indicators of Narcotic Analgesic influence:

- Neither HGN nor VGN will be present
- Pupils generally will be constricted



Tolerance

An important characteristic of Narcotic Analgesics is users develop tolerance to them.

"Tolerance" means the same dose of the drug will produce diminishing effects or a steadily larger dose is needed to produce the same effects.

A tolerant user who has taken his or her "normal" dose of Heroin, for example, may exhibit little evidence of divided attention impairment.

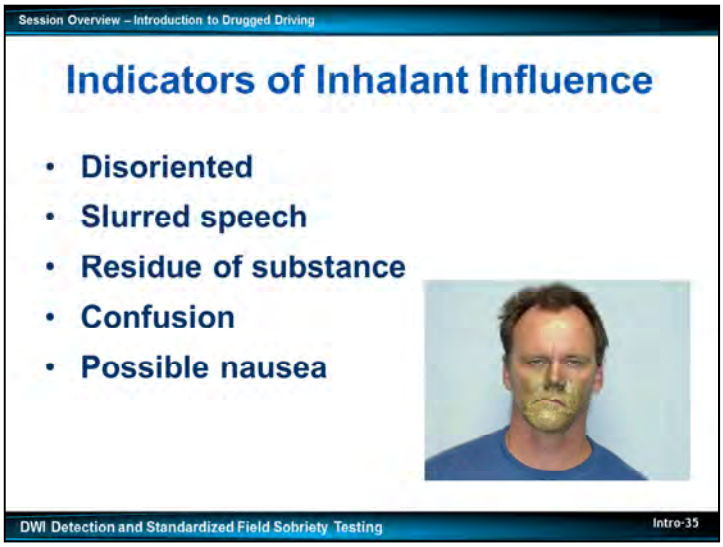


Inhalants
Inhalants are breathable chemicals that produce mind-altering results.

Inhalants include many familiar household materials such as glue ("Toluene"), paint, gasoline, aerosol sprays, etc. that produce volatile fumes.

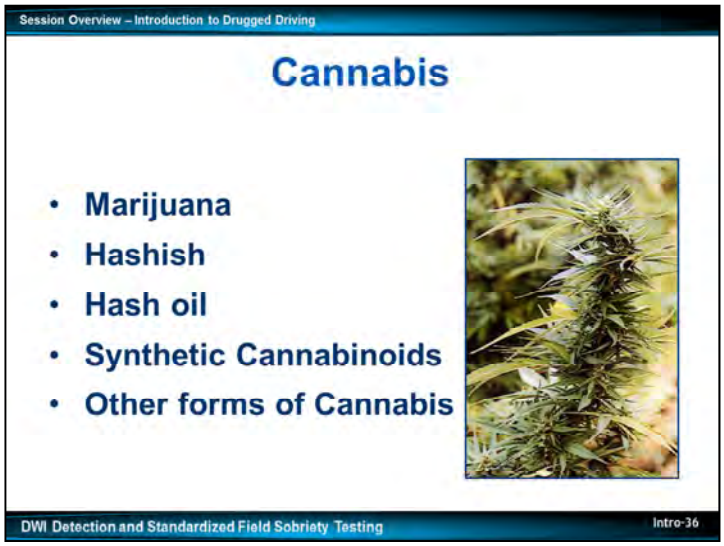
Some drugs classified as Inhalants include:
- Various glues (e.g. Toluene)
- Paint
- Gasoline
- Aerosol sprays (i.e., vegetable frying pan lubricants, hair sprays, insecticides)
- Nitrous Oxide
- Ether
- Amyl Nitrite

Certain anesthetics also may be used as Inhalants.



General indicators of Inhalant influence:
- Disoriented
- Slurred speech
- Residue of substance on face, hands, clothing
- Confusion
- Possible nausea

Eye indicators of Inhalant influence:
- HGN generally will be present
- VGN may be present (especially with high doses)
- Pupil size generally will not be affected



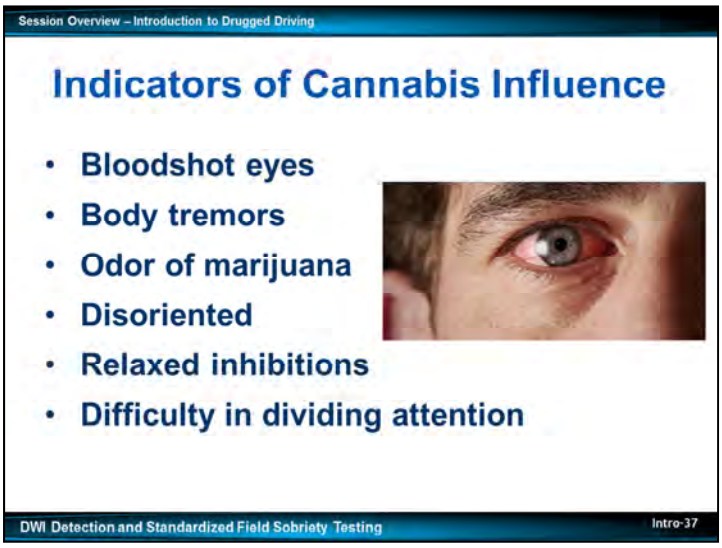
Cannabis

Cannabis is a category of drugs derived from various species of plants such as the Cannabis Sativa and Cannabis Indica.

- Marijuana
- Hashish
- Hash oil
- Synthetic Cannabinoids
  - Marinol or Dronabinol
  - Spice, K2, JWH-18, etc.

Other forms of Cannabis include edibles, butane hash oils (wax), etc.

Cannabis products generally are smoked although they also can be ingested orally.

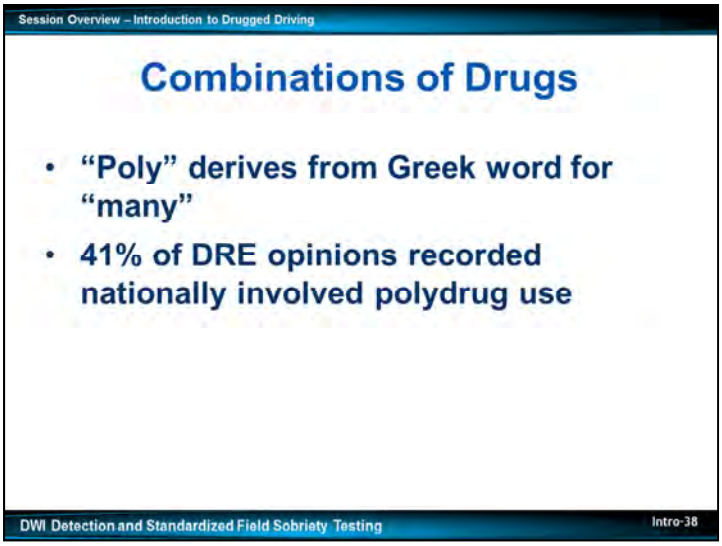


General Indicators of Cannabis Influence:

- Bloodshot eyes
- Body tremors
- Odor of marijuana
- Disoriented
- Relaxed inhibitions
- Difficulty in dividing attention

Eye indicators of Cannabis Influence:

- Neither HGN nor VGN will be present
- Pupil size generally will be dilated, but also may not be affected



E. <u>Combinations of Drugs</u>

Many drug users routinely ingest two or more different drugs at the same time. The term for this is "polydrug use".

According to the 2016 DRE Annual Report, 41 percent of DRE opinions recorded nationally involved polycategory use.



Common Combinations of Drugs

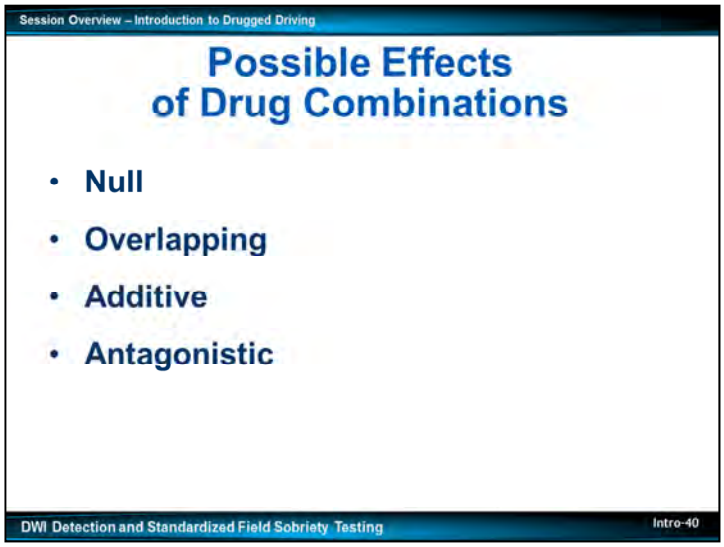
- Alcohol and some other drug is the most frequent combination
- PCP and Cannabis is another common combination
- Cocaine and Heroin is another common combination

Because polydrug use is so common, you should not be surprised to encounter subjects who are under the influence of more than one category of drugs.

At some times and places polydrug users may be more common than single drug users.

Be especially alert to the possibility subjects who have been drinking alcohol may also have ingested some other drug or drugs.

The effects of polydrug use may vary widely depending on exactly what combination of drugs is involved, how ingested, and when they were ingested.



Any particular combination of drugs may produce four general kinds of effects:

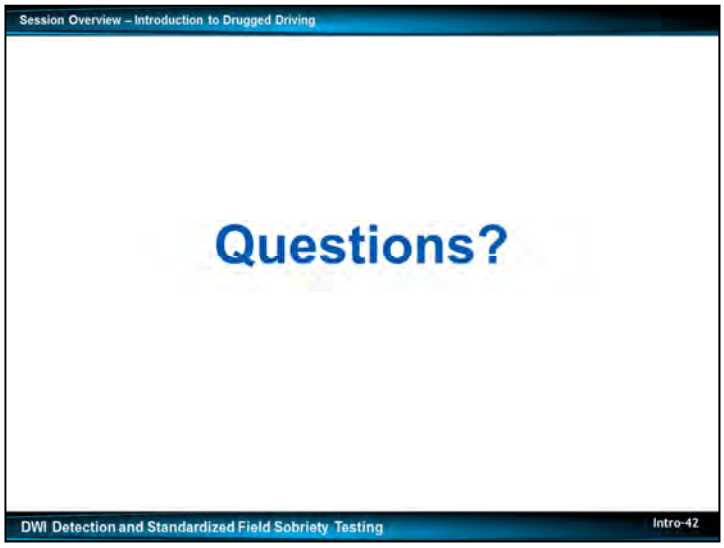
- Null: Neither drug has an effect on the indicator.
- Overlapping: Each drug may effect the subject in some different way. In combination, both effects may appear.
- Additive: The two drugs may independently produce some similar effects. In combination, these effects may be enhanced.
- Antagonistic: The two drugs may produce some effects that are exactly opposite. In combination, these effects may mask each other.



F. <u>Dealing With Suspected Drug Influence or Medical Impairment</u>

Officers should be familiar with the various medical conditions that mimic drug impairment, i.e. diabetic shock and hypoglycemia. Officers should obtain appropriate medical treatment for drivers who are impaired by these conditions.

Drivers who are suspected of drug impairment should be processed in accordance with state and local laws. Wherever possible, a local DRE should be summoned to assist with the investigation.



Closing

Consult with a DRE, if possible and document in detail all observations.

Although this course is not designed to qualify you as a DRE, it is intended to make you more knowledgeable when encountering drivers impaired by substances other than alcohol.

Standardized Field Sobriety Testing- Legal

Instructional Goal:

This course is designed to introduce a new police officer to legal parameters regarding driving under the influence of intoxicants.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Identify the elements of driving under the influence of intoxicants.
2. Demonstrate documentation of a driving under the influence of intoxicants case.
3. Explain the parameters of a driving under the influence of intoxicants investigation.

Content Outline:

Elements of Driving Under the Influence of Intoxicants

Types of Cases

DUII Documentation

Searches

Field Sobriety Tests

Miranda Warnings

Horizontal Gaze Nystagmus

Elements of a DUII

A person commits the offense of DUII if the person drives a vehicle **on a** highway or premises open to the public **while** under the influence **of** intoxicants.

Drives/Operates—ORS 801.370

Operation- Any operation, towing, pushing, movement, or otherwise propelling.

In interpreting statutes addressing driving under the influence, the Oregon Court of Appeals has held that "driving" is synonymous with "operation." Oregon law requires there to be some (even the slightest amount) to constitute driving. This includes a person in the passenger seat who takes hold of the steering wheel and presses the accelerator. If there is **NO** evidence of driving (circumstantial or otherwise), but a person is sitting in the driver's seat with the ignition on, you can consider citing for attempted DUII based on *State v. Baty*, 243 Or App 77 (2011). Implied consent does not apply to attempted DUII, but you can still get FST's and breath tests based on P.C. and exigency.

In the following cases, the court determined that an individual can be "driving" a vehicle even if he is not in the driver's seat:

Case Law:

State v. Cruz, 121 Or App 241 (1993) In this case, the defendant propelled the car by taking hold of the steering wheel and pressing accelerator as a passenger. The appeals court used the definition for "operates" from implied consent statute.

Moe v. MVD, 133 Or App 75 (1995) In *Moe*, a passenger turned on the ignition and reached for the window. Instead, the passenger hit the gear shift, lurched the car forward, and hit eight vehicles before stopping.

State v. Martinelli, 6 Or App 182, 187, 485 (1971). Driving usually understood to mean in motion.

Vehicle ORS 801.590

Vehicle- Any device in, upon or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means.

Premises Open to the Public—ORS 801.400

Premises Open to the Public includes any premises open to the general public for the use of motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for the use of the premises.

Examples of privately owned premises open to the public include business parking lots, commercial parking garages, and private roads that serve several property owners.

Privately owned premises NOT open to the public include individual private driveways and ranch roads not intended for public use.

Under the Influence of Intoxicants—ORS 813.010

- .08 percent or more by weight of alcohol in the blood of the person as shown by chemical analysis of the breath or blood

  OR
- Within two hours after driving a vehicle, and without consuming alcohol in the intervening time period, has 0.08 percent or more weight of alcohol in the blood of the person, as shown by chemical analysis of the breath or blood of the person.

  OR
- Is under the influence of intoxicating liquor, a controlled substance, or an inhalant, or a combination of any.

BAC .08- Intoxilyzer or Blood Draw

BAC is typically measured using an Intoxilyzer, or a blood draw from a hospital. BAC is measured in grams of alcohol per 100 ml of blood or 210 l of breath. A BAC of .08 or greater is called per se impairment. This means that a .08 BAC legally constitutes impairment. Even though a .08 BAC is supposed to be impairment per se, it is not always enough to convince a jury that the defendant is impaired. Other factors contributing to the officer's belief that a defendant is impaired should be

observed and documented. Give the example of rising BAC defense, .08 is not enough to convince the trier of fact.

Under the Influence Versus Drunk

Juries may have the perception that "under the influence" and "drunk" can be used interchangeably. The law does not put the standard at "drunk." The danger in this is that if the defendant does not fit the jury's definition of "drunk," then the jury may choose not to convict an impaired driver.

Drunk	Under the Influence
The types of behavior members of a jury might typically consider signs of being "drunk" include: • Commode Hugging • Staggering • Falling Down • Urinate in pants • Belligerent	Under the influence of intoxicating liquor includes not only the well-known and easily recognized conditions and degrees of intoxication but also any abnormal mental or physical condition that results from consuming intoxicating liquor, and that deprives the person of that clearness of intellect or control that the person would otherwise possess.

Under the influence means: The defendant's mental or physical faculties were adversely affected by the use of intoxicating liquor to a noticeable and perceptible degree. Only one of the person's mental or physical faculties must be noticeably impaired to be guilty of DUII.

Officers should be ready to testify about an impaired individual's ability to safely operate a vehicle, even if the defendant does not exhibit extreme signs of intoxication.

Felony DUII—ORS 813.010(5)

DUII is a class C felony if the defendant has been convicted of DUII in violation of this section or its statutory counterpart in another jurisdiction at least three times in the ten years prior to the date of the current offense and the current offense was committed in a motor vehicle.

BUII/Aircraft DUII—ORS 813.010

Convictions for BUII (boating) ORS 830.325 or Prohibited Operation of an Aircraft ORS 837.080(1)(a), shall be considered a prior conviction of DUII.

Non-Driving DUII

There are times when officers will be called upon to investigate a DUII where the driver is no longer at the wheel. Circumstances may include:

- Crash scene
- Citizen complaint
- Abandoned vehicle

In these circumstances, officers may be able to file criminal charges for DUII by carefully investigating the scene, interviewing witnesses, and documenting their findings. Some techniques include:

- Developing a timeline to determine if the suspected driver could have reasonably been driving the vehicle. This includes determining the timeline from the call to contact.
- Locating and interviewing named witnesses.
- Determining if the suspected driver has consumed any alcohol since getting out of the car.
- Determining the level of impairment observed by the officer with the defendant's story.
- Determining what the suspected driver drank, when the drinking occurred, and where she drank it.
- Looking for damage to the vehicle that might indicate a prior crash.
- Noting additional items of evidence, including alcohol containers, seat position, bar receipts, identification, injuries to the suspected driver, and anything else that might indicate that the driver was operating the vehicle while impaired.

DUII Documentation

Part of the officer's job in any DUII investigation is to properly document statements made by drivers to ensure the successful prosecution of the offender. To this end, officers should obtain a variety of information from the driver, including:

Alcohol DUIIs	Drug DUIIs
• Who were they drinking with? • What were they drinking? • When did they start drinking? When did they stop drinking? • Where were they drinking? • Why were they drinking? Was there a special occasion or celebration? • How much did they drink? How many drinks? How big were the drinks?	Pill Bottles: • Was the right drug in the container? • What dose was prescribed? • How many pills are in the bottle, and what is the date of the prescription? Do these two figures add up? • Are these pills prescribed to the driver? • Is this a new prescription for the driver? • What does the warning label state? Does it tell the driver not to drive or operate machinery? • Seize the bottle as evidence or photograph the bottle. Statements of Use: • Time Taken • Amount Taken

Searches

The case of *State v. Nagel* (320 OR 24, 1994) decided the issue of whether or not the administration of field sobriety testing constituted a "search." The court determined that FST's are a search within the meaning of the Constitution and that a warrant would normally be required except that a search without a warrant can be justified with probable cause and the exigent circumstances exception to the search warrant requirement.

In ***State v. Nagel***, 320 Or 24, 880 (1994), the specific indicators that were used to develop probable cause were:

- The odor of alcohol
- Glassy eyes
- Fumbling to get driver's license

A driver has no legal right to refuse FSTs, per ORS 813.135. This is the basis of the Implied Consent law in Oregon. By virtue of operating "...a vehicle upon premises open to the public or the highways..." a person "...shall be deemed to have given consent to submit to field sobriety tests upon the request of a police officer...".

An officer can administer field sobriety testing under either of the following circumstances:

The investigating officer has probable cause to believe the person is DUII **and** exigent circumstances are present. (*State v. Rutherford*)

The officer has obtained the voluntary consent of the person.

In the event the officer is not able to develop probable cause and is unable to gain voluntary consent from the person, the field sobriety tests cannot be performed. However, before allowing a driver to leave, an officer should ask if he or she feels safe, allowing this person to continue driving.

Administration of Field Sobriety Tests

In the 2000 Ohio case of *State v. Homan*, the officer did not follow the NHTSA standardized procedures while administering field sobriety testing. The court held that for the results of a field sobriety test to serve as evidence of probable cause to arrest, the police must have administered the test in strict compliance with standardized testing procedures. The court went so far in the opinion as to call FST's that were conducted in a manner that departs from established methods and procedures "inherently unreliable." The test battery contained in the Standardized Field Sobriety Testing was validated in a standardized manner and should be administered in the same standardized manner.

That is not to say that alternative tests are never of value. Alternative tests should be given if unusual conditions apply. For example, if the driver is overweight, has a false limb, is over 65 years old, or suffers from an injury or illness that would preclude the person from completing the SFST's, then the officer should consider administering alternative tests.

To determine if the person has any of these conditions, officers should ask pre-test questions designed to elicit this information. For example, asking if there is a medical condition that would keep the person from completing the walk and turn test can provide the officer with the information necessary for her investigation.

Officers should be sure to follow-up on the statements made by the person. As an example, a person claiming to have a physical defect should be asked exactly what the defect is if a doctor has diagnosed the defect, and what treatment the person is undergoing.

Horizontal Gaze Nystagmus Test

The 1995 Oregon case of ***State v. O'Key*** (321 OR 285) held that the Horizontal Gaze Nystagmus test is admissible as long as:

- The officer is properly trained;
- The test is properly administered; and,
- The test is recorded (officer notes).

O'Key also held that HGN could not be used in court to establish a blood alcohol concentration. Therefore, officers may not refer to any percentages they may have learned regarding the HGN test, even if such percentages are based on a SFST validation study.

Miranda Warnings

Typically, a DUII investigation is not custody for purposes of Miranda. The typical DUII investigation does not generally rise to the level of a custodial interrogation. However, providing a Miranda warning before asking probative questions may be a prudent course of action.

The Miranda warning must be given prior to custodial interrogation. However, an officer who asks a driver to perform FST's is not interrogating that individual unless the person invokes State v. Shevyakov. Also, questions relating to Intoxilyzer and breath test requests do not constitute an interrogation. Remember, though, that any questions asked after FST's may require Miranda if they are related to the circumstances of the offense. By practice, officers should give Miranda warnings after FST's (if not already done so at first contact).

Officers should also be aware that an extended traffic stop (one which takes longer than normal due to time spent waiting for other officers or resources to arrive on the scene) may develop into what the courts might consider a situation involving a custodial arrest of the driver. If in doubt as to whether or not this has occurred, officers should err on the side of caution and read Miranda.

Again, department policy and the requirements of your local District Attorney may dictate when the Miranda warning should be issued.

Verbal Portion of Field Sobriety Tests

The Oregon case of *State v. Fish* (321 OR 48) determined that verbal statements made by a subject stopped by the police are testimonial, and if compelled, could violate suspect's rights.

If a driver refuses to perform the SFST's, an officer cannot use that refusal in court UNLESS, the officer has excluded the speaking parts from the test battery.

Field Sobriety Test Refusal

The Oregon case of *State v. Rohrs* (157 OR App 494) provided officers with a method for handling FST refusals. According to the court's opinion, an officer can compel a driver to perform physical, nontestimonial testing if the officer demonstrates and describes which tests he will have the person perform and omits the verbal portions of the field sobriety testing from the instructions.

Only after these conditions are met, and the driver continues to refuse to perform FST can that refusal be used against the person in court.

The following example is taken verbatim from the Oregon Department of Justice's recommended language. Recognize that your locally elected District Attorney may have a preferred version for your agency's use. Please consult your District Attorney or your department's policies for the correct version for your agency.

Rohrs Admonition

I am asking you to provide physical cooperation and submit to purely physical field sobriety tests. None of the tests I will ask you to perform will require you to reveal your thoughts, beliefs or state of mind. The tests will include the horizontal gaze nystagmus test, the walk and turn test and the one leg stand test ***(briefly explain & demonstrate tests excluding counting out loud)***. Do you have any questions regarding these tests or what I am asking you to do? Your failure to provide physical cooperation and submit to these purely physical tests *may* be used against you in any criminal or civil proceeding.

Make sure when you are indicating that a refusal to perform tests can be used against the person that you use the word "MAY," not "will," and document that fact in your report.

A driver has no right to attorney contact (telephone, text, or otherwise) at the roadside prior to FST's. Additionally, a driver has no right to have her attorney present prior to an officer administering FST's.

The Arrest Decision

The decision to arrest is based upon the officer's belief that under the totality of the circumstances, it is more likely than not that the suspect is under the influence. This means that there usually is not just one particular piece of evidence or action that is the determining factor when making an arrest. Instead, the "totality of the circumstances" (the combination of evidence, statements, and behavior observed by the officer) leads the officer to reasonably believe that the driver is impaired.

Considerations:

The time of night, driving behavior, all evidence and statements at the scene and then form a belief based on training and experience.

Officers MUST be able to articulate probable cause to arrest for DUII.

Implied Consent—ORS 813.100

Any person who operates a motor vehicle upon premises open to the public or the highways of this state shall be deemed to have given consent, subject to the implied consent law, to a chemical test of the person's breath, or of the person's blood if the person is receiving medical care in a health care facility immediately after a motor vehicle accident, determining the alcoholic content of the person's blood if the person is arrested for driving a motor vehicle while under the influence of intoxicants in violation of **ORS 813.010 (Driving under the influence of intoxicants)** or of a municipal ordinance. A test shall be administered upon the request of a police officer having reasonable grounds to believe the person arrested to have been driving while under the influence of intoxicants in violation of ORS 813.010 (Driving under the influence of intoxicants) or of a municipal ordinance. Before the test is administered, the person requested to take the test shall be informed of consequences and rights as described under **ORS 813.130 (Rights of and consequences for the person asked to take the test).**

No chemical test of the person's breath or blood shall be given, under subsection (1) of this section, to a person under arrest for driving a motor vehicle while under the influence of intoxicants in violation of **ORS 813.010 (Driving under the influence of intoxicants)** or of a municipal ordinance, if the person refuses the request of a police officer to submit to the chemical test after the person has been informed of consequences and rights as described under **ORS 813.130 (Rights of and consequences for the person asked to take the test).**

If a person refuses to take a test under this section or if a breath test under this section discloses that the person, at the time of the test, had a level of alcohol in the person's blood that constitutes being under the influence of intoxicating liquor under ORS **813.300 (Use of blood alcohol percentage as evidence)**, the person's driving privileges are subject to suspension under **ORS 813.410 (Suspension upon receipt of the police report on implied consent test)**. The police officer shall do all of the following:

(a) Immediately take custody of any driver's license or permit issued by this state to the person to grant driving privileges.

(b) Provide the person with written notice of intent to suspend, on forms prepared and provided by the Department of Transportation. The written notice shall inform the person of consequences and rights as described under **ORS 813.130 (Rights of and consequences for the person asked to take the test).**

(c) If the person qualifies under **ORS 813.110 (Temporary permit upon confiscation of license),** issue to the person, on behalf of the department, a temporary driving permit described under **ORS 813.110 (Temporary permit upon confiscation of license).**

(d) Within a period of time required by the department by rule, report action taken under this section to the department and prepare and cause to be delivered to the department a report as described in **ORS 813.120 (Police report to department),** along with the confiscated license or permit and a copy of the notice of intent to suspend.

If a blood test under this section discloses that the person, at the time of the test, had a level of alcohol in the person's blood that constitutes being under the influence of intoxicating liquor under **ORS 813.300 (Use of blood alcohol percentage as evidence)**, the person's driving privileges are subject to suspension under **ORS 813.410 (Suspension upon receipt of the police report on implied consent test)**. The police officer shall report to the department within 45 days of the date of arrest that the person failed the blood test.

Nothing in this section precludes a police officer from obtaining a chemical test of the person's breath or blood through any lawful means for use as evidence in a criminal or civil proceeding including, but not limited to, obtaining a search warrant. [1983 c.338 §591; 1985 c.16 §298; 1985 c.672 §19; 1993 c.305 §1; 1995 c.568 §1; 2013 c.642 §1]

Under the administrative side of Implied Consent, as it relates to DUII, the following applies:

- The person has a right to communicate with counsel or others;
- There is no right to privacy during this communication; and,
- The officer must give the defendant a "reasonable opportunity" to communicate.

However, this information should not be confused with rights the person has under the U.S. and Oregon Constitutions and the requirements of criminal law. According to these laws:

- The person has a right to counsel (does not include "others" but always let them talk to "others");
- The person has the right to speak privately with counsel prior to performing the breath test; and,
- The officer must give the person a "reasonable opportunity" to consult with counsel.

"Reasonable Opportunity" has been broadly defined as the officer providing the person with a working telephone and a phone book and the opportunity to consult with counsel. This opportunity to consult with counsel should not interfere with the effective administration of the breath test, meaning that officers are not expected to wait indefinitely while the person attempts to contact his attorney while evidence dissipates. The courts have indicated that officers are required to give the person 15-20 minutes to consult with his attorney.

If the officer ends the opportunity to communicate, whether it is under implied consent or whether it is communication with an attorney, the officer must articulate the reasons for ending the call in the report.

A person has a right to consult privately with counsel prior to making a decision to submit to a chemical test. For the purposes of this section, "privacy" means:

- The conversation with the attorney is not recorded by law enforcement; and,
- The conversation occurs out of earshot of law enforcement.

Privacy cannot be denied to the suspect based on general security concerns. For example, even though the officer believes that the defendant might damage the telephone, he is still required to provide privacy to consult with an attorney. The idea of "privacy" does not mean, however, that an officer cannot maintain visual contact with the defendant, and the defendant can remain handcuffed if the officer believes it is necessary.

The case of *State v. Matviyenko*, 212 Or App 125 (2007), held that the defendant is not required to request privacy when consulting with a lawyer – officers must recognize this right and provide privacy during any such consultation. Additionally, officers must tell the defendant beforehand that privacy will be given during the consultation.

If the person asks to call for a ride, the officer may simply tell the person they can call the person after the breath test is complete. Any other substantive request for a phone call should result in an opportunity to make a call.

If the person refuses SFSTs but does not ask to talk to an attorney, it is still good practice to give the person privacy and an opportunity to make a phone call. If the suspect asks to make a phone call to anyone, including an attorney, at any time before taking the breath test, read implied consent and the following before providing the person a telephone:

> "I am providing you with a phone and privacy to make a phone call. This is your opportunity to attempt to communicate or consult with anyone you want, including an attorney. A phone book will be provided to you. You will have a reasonable amount of time-based on the circumstances to use the phone, up to 15 to 20 minutes".

Breath Test Refusal

Anything short of taking a completed test is a refusal, regardless of why the test is not completed. This includes any action or inaction. A suspect does not have the right to have an attorney present while the breath test is being conducted. The suspect also does not have the right to take a test other than the one requested. In other words, if an officer offers a breath test, the suspect does not have the right to refuse the breath test and instead submit to a blood test.

Examples:

- "Not until I talk to my attorney" is a refusal.

- Puffing, putting a tongue over the mouthpiece to block the flow of breath, and sucking rather than blowing are all refusals.

- In cases of real medical reasons for not completing the test, IT IS STILL A REFUSAL, and it is up to the suspect to prove medical problems at the hearing.

Department of Justice Recommendation for a Standard DUII

- Read Implied Consent then ask the person if they will take the breath test (document answer in quotes). If they agree, administer the test.
- If the person refuses a breath test, apply for a warrant.
- In crash cases where someone other than the defendant is injured, do an exigency draw and be sure to follow it up with a warrant. Make sure you articulate all the factors involved in the case that would give rise to exigency, including judge availability and the other officers' availability.
- If the defendant is injured, an added factor to support exigency is that the hospital will give fluids and/or drugs as part of treatment. There is a need to preserve the blood evidence to prevent dilution interference by other substances.

Department of Justice Recommendation for a Drug DUII

The Machuca case did not find that the presence of drugs indicates exigency by itself. More recent case law suggests that the presence of drugs creates exigency since drugs affect the body differently and leave the body at different rates. The officer must testify to the fact that there is no way to know what drug was taken when and in combination with any other drug.

Because of this, the Oregon DOJ recommends that for cases where impairment is suspected due to a controlled substance or an inhalant, the following procedure be followed:

- Follow the procedures already outlined for alcohol DUII cases.
- If the breathalyzer BAC does not match the level of impairment observed and you have a reasonable suspicion that impairment is caused by a controlled substance or inhalant, then call your DRE.
- If no DRE is available, read Section II of the suspension form prior to requesting urine
- If the defendant refuses urine, consider seeking a warrant.

Resources

Your best resource for prosecuting DUII cases in your jurisdiction is your local District Attorney's Office.

An excellent general resource for questions regarding the prosecution of DUII in Oregon the Oregon Department of Justice:

Deena Ryerson
deena.a.ryerson@doj.state.or.us
(503) 934-2030 or (503) 348-5942.

Amy Seely
Amy.seely@doj.state.or.us
(503) 378-6347

Check Your Understanding

What are the main points? Summarize the main points into your own words.	Give examples	What do you still need to know or spend more time on?

Basic Police Academy

Supporting Victims of Crime



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Supporting Victims of Crime

Instructional Goal:

This course is designed to develop a new officer's awareness surrounding victim's rights laws and practices.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Explain notification responsibilities for law enforcement related to victims
2. Given a circumstance, determine the need to provide victim's rights information to a victim

Content Outline:

Victim's Rights

- What are Victim's Rights?
- Law Enforcement Role
- Oregon Victim's Rights Laws
- Oregon Crime Victim's Bill of Rights
- Statutory Application
- Best Practice

Supporting Victims of Crime

- Major Needs of Victims
- Resources

Victim's Rights

The criminal justice system is our society's method of addressing crime and promoting public safety. It is designed to prevent and respond to crime; identify, apprehend, and prosecute persons charged with a crime; and incarcerate and supervise convicted offenders with efforts to rehabilitate them and hold them accountable for their criminal actions. The criminal justice system is a sequential process that includes numerous phases:

Law enforcement
Prosecution
Judiciary and courts
Probation
Institutional corrections
Parole
Appellate courts

While the agencies in each phase have specific roles and responsibilities in promoting public and victim safety, often, their roles are shared and require on-going cooperation among agencies to ensure effective operations and collaborative responses to victims' rights and needs. They are responsible for protecting individual rights under state and federal constitutions and laws, and for implementing procedures that are fair and equitable to all parties involved. Throughout the phases of the criminal justice system, all justice agencies have a role and responsibility to:

Provide information about and referrals to available crime victim services.	Provide information about the Crime Victim Compensation Program and professionals who can help victims of crime complete an application to cover out-of-pocket financial losses directly resulting from the crime.

What are victim's rights? Victims' rights are rights personally held by the victim that can be legally asserted during the criminal case. Victims have rights throughout the criminal process: pre-trial through post-trial, and there are a variety of services in place to assist them.

Oregon Victims' Rights Laws

Crime victims' legal rights are guaranteed by the Oregon Constitution and Oregon Revised Statutes. Victims' right to justice includes the right to:

- Play a meaningful role in the criminal or juvenile justice process.
- Be treated with dignity and respect.
- Receive fair and impartial treatment.
- Receive reasonable protection from the offender.

Crime Victims' Rights apply to the adult criminal justice system and the juvenile justice system. Many of these rights go into effect automatically, while others must be requested through the local District Attorney's office or Juvenile Department.

Chapter 147 of the Oregon Revised Statutes is dedicated to Victims of Crime, including rights to compensation and the Oregon statutes on Victim's Rights.

Victim compensation is money paid from the government to a victim, usually to cover certain out of pocket costs incurred as a result of the crime.

There are numerous statutes pertaining to the various compensations, and it is NOT expected that police will know all of these. Most jurisdictions will have Victim's Rights Specialists (learn where yours are located) who are prepared to assist crime victims with these statutes. However, it IS required that police provide notification to victims of these rights.

ORS 147.365- Law Enforcement agencies to inform crime victims of the compensation procedure

(1) All law enforcement agencies in this state shall deliver cards to victims of crime, stating the procedure to be followed in applying for compensation under ORS 135.905 and 147.005 to 147.367.

(2) No law enforcement agency shall be civilly liable for a failure to comply with subsection (1) of this section.

Oregon Crime Victim's Bill of Rights

ORS 147.410 Purpose

We, the people of the State of Oregon, declare that victims of crime are entitled to fair and impartial treatment in our criminal justice system. The purpose of chapter 2, Oregon Laws 1987, is to declare to our legislature and our courts that victims' rights shall be protected at each stage of the criminal justice system. We reject the notion that a criminal defendant's rights must be superior to all others. By chapter 2, Oregon Laws 1987, we seek to secure balanced justice by eliminating unbalanced rules.

ORS 147.417 Victims to be notified of constitutional rights

(1) As soon as is reasonably practicable in a criminal action in which there is a victim, a law enforcement agency shall notify a person who reasonably appears to be a victim of the offense of the person's rights under section 42, Article I of the Oregon Constitution. The notice may be oral or written. If exercise of any of the rights depends upon the victim making a request, the law enforcement agency shall include in the notice the time period in which the victim is required to make the request. A law enforcement agency satisfies the requirements of this section if the law enforcement agency:

(a) Provides notice to the victim named in the accusatory instrument, the victim's guardian or, in a homicide case, the victim's next of kin; and

(b) Presents, if written notice is given, the notice directly to the victim or sends the notice to the last address given to the law enforcement agency by the victim.

(2) Failure by a law enforcement agency to properly notify the victim as required by this section:

(a) It is not grounds for setting aside a conviction.

(b) It does not affect the validity of a plea, except as provided by section 42 or 43, Article I of the Oregon Constitution.

(3) Nothing in subsection (2) of this section justifies a failure to notify the victim properly.

(4) (a)As used in this section, "law enforcement agency" means the police agency that initially responds in the case, the police agency that investigates the case or the district attorney who prosecutes the case.

(b) The district attorney shall determine if the notice required by this section has been given and, if not, shall provide the notice.

Statutory Application

ORS 147.365 and ORS 147.417 have in common, a legislative mandate to provide notice of certain victims' rights to crime victims. The duty to provide notice outlined in ORS 147.417 is a shared duty among the "law enforcement agencies" defined by that statute, with the DA serving as the final check on that responsibility.

The Oregon Department of Justice provides victims' rights notification cards, which set forth both the information victims need to inquire about possible compensation, as required by ORS 147.365, as well as the victim rights ensured by the Oregon Constitution, as required by ORS 147.417. The provision of this card to a crime victim would satisfy the obligations created by both statutes.

Victims' rights

As a victim of a crime that happened in Oregon, you have certain rights that help protect you and ensure you're treated fairly. These rights also apply to you if your child is the crime victim.

Often, you must request rights. One way to do this is to contact your District Attorney's Office.

What rights do I have as a victim of crime?

For any case in which you're the victim or the legal guardian of the victim, you have the rights to do these things:

- Attend open court proceedings.
- Have a support person with you.
- Receive **restitution** (payment from the defendant for losses caused by the crime) for eligible crime-related expenses.
- Request a transcript or recording of open court proceedings. (You may need to pay a fee.)
- Protect information that could help an offender identify you or your home, such as your address, phone number, and Social Security number.

Your attorney can also exercise these rights for you. If you don't wish to speak at a hearing (when that right is available), you can have someone speak on your behalf.

Your rights after an arrest

If someone is arrested for the crime, you have the rights to do the following:

- Have the judge consider your safety at any hearings on releasing the defendant.
- Have the prosecutor consider your recommendations about potential **diversion programs** (programs that offer an alternative to criminal prosecution and imprisonment, usually through treatment or care) for the defendant.
- Refuse to speak to the defendant's attorney or private investigator.
- Receive notifications about early **disposition** (the court's final determination in a case) programs that may apply to your case.

Your rights in court proceedings

If your case goes to court, you have the rights to do the following:

- Have the court consider your schedule when setting dates for the trial and required hearings.
- To be heard at pre-trial release hearings.
- Include your statement in the pre-sentence investigation report if one is ordered.
- Know the outcome of your case.

Your rights after disposition (sentencing)

If hearings occur on any of the following topics as part of your case, you have the right to speak at those hearings:

- Setting aside or dismissing the case.
- Removing the charge from the offender's criminal record.
- Determining whether the offender must register as a sex offender.
- Psychiatric Security Review Board (PSRB) hearings.

The outcome of your case determines who will supervise the offender and notify you about hearings. To request these notifications, provide your contact information to the following entities:

Case outcome	Where to provide your contact information
Sentenced to prison	Board of Parole and Post-Prison Supervision: 503–945–0907
Sentenced to probation	Your county's community corrections or probation department
Placed under the jurisdiction of the PSRB	PSRB: 503–229–5596

Crime Victim and Survivor Services Division

Oregon Department of Justice

1162 Court St. NE
Salem, OR 97301

503-378-5348

or

1-800-503-7983

doj.state.or.us/victims

cvssd@doj.state.or.us

Accessible Materials

For a more accessible version of this brochure, or to learn about other ways to access this information and CVSSD programs, contact us.

Email: cvssd@doj.state.or.us

Call: 503–378–5348 or
1–800–503–7983

Updated 2021



Victims' Rights Guide

Crime Victim and Survivor Services Division

Oregon Department of Justice

1162 Court St. NE
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cvssd@doj.state.or.us

Every victim, every crime, every right, every time.

What other rights can I request?

For any case in which you're the victim or the legal guardian of the victim, you can ask to:

- Limit the sharing of images or recordings that are sexually explicit.
- Be notified of certain open court proceedings.
- Get certain information about the criminal history of the offender.
- Test the offender for HIV or other diseases if diseases may have been transmitted.

Rights after an arrest

If someone is arrested for the crime, you can request to:

- Be notified of certain open court proceedings.
- Be notified about an upcoming release hearing.
- Be consulted about the plea in a violent felony case.

Rights in court proceedings

If your case goes to court, you can request to:

- Speak at a sentencing hearing or submit a written statement.
- Prevent photography and audio and video recording of court proceedings if the case involves a sexual offense.

Rights after disposition

In sex offense cases, you have a right to not be contacted by the offender. For all criminal cases, depending on the sentence the offender receives, you can request certain rights.

Case outcome	What you can request
Sentenced to prison	• Notification when the offender is released from prison. • 30-day notice of parole hearings.
Sentenced to probation	• Notification about any hearings on revoking probation.
Placed under PSRB jurisdiction	• Certain information about the offender's case. • Notification of hearings.

Rights for certain victims

If you are a victim of **abuse, sexual assault, domestic violence, or stalking**, you may have the right to:

- Take time off work to attend court or medical appointments.
- End a rental agreement early.
- Not be disqualified from unemployment benefits.
- Have your locks changed.
- Get special arrangements for public housing.
- Set up a payment plan with your phone company.

If you are a **victim of family or sexual abuse, stalking, or abuse against a disabled person or elder**, you can request a protective order (an order instructing a person to stop abusing or harassing you).

If you are a **victim of sexual assault**, you have the right to receive emergency contraception from a hospital.

If you are a **victim of domestic violence**, you may be able to get financial help through the Oregon Temporary Assistance to Domestic Violence Survivors fund.

If you are an **immigrant**, you may have additional legal options. Your immigration status doesn't affect your rights as a victim of crime.

If you are the **victim of a crime that involved physical injury or death**, you may be able to get financial help for costs related to counseling, medical care, and funeral expenses. Contact the Crime Victims' Compensation program for more information.

How do I request rights?

Contact your local District Attorney's Office or Victim Assistance Program to request rights or get more information.

What if my case is appealed?

If your case is being appealed (if the court is asked to reverse the decision), you may have additional rights. Contact the Oregon Department of Justice Appellate Advocacy Program for more information.

How can I make sure my rights are protected?

Make sure the District Attorney's Office has your current contact information.

If you believe your constitutional rights are not being honored, you can file a claim of violation within a certain timeframe. For more information, visit doj.state.or.us/victims-rights-enforcement.

Can I request additional copies of this brochure?

Yes. Please call us using the contact information below. This brochure is also available in:

- Korean
- Russian
- Simplified Chinese
- Spanish
- Vietnamese

Contact us

Crime Victim and Survivor Services Division
Oregon Department of Justice
1162 Court St. NE
Salem, OR 97301

Phone: 503–378–5348 or 1–800–503–7983

Fax: 503–378–5738

doj.state.or.us/victims

cvssd@doj.state.or.us

Exercising any of these rights does not prevent a crime victim from filing a civil suit.

Victim Services Contact Information

Appellate Advocacy Program
503–378–4284

Call to Safety: Statewide Referral to Local Crisis Programs
1–888–235–5333

Catholic Charities Immigration Legal Services
503–542–2855

Crime Victims' Compensation Program
1–800–503–7983

Disability Rights Oregon, Crime Survivor Project
502–243–2081 x243

Immigration Counseling Service
503–221–1689

Oregon Board of Parole & Post-Prison Supervision
503–945–0907

Oregon Crime Victims Law Center
503–208–8160

Oregon State Bar
1–800–452–8260
osbar.org/public

Oregon State Police Sex Offender Registry
503–934–1258

Oregon Youth Authority
503–373–7205

Psychiatric Security Review Board (PSRB)
503–229–5596

Statewide Legal Aid Information
oregonlawhelp.org

Victim Information and Notification Everyday (VINE)
877–674–8463
vinelink.com

Supporting Victims of Crime

Everyone is affected by crime, either as a direct victim or a friend or family member of a victim. Even individuals who are not direct victims of crime can be negatively affected in a variety of ways, such as developing an increased fear of crime or experiencing the financial impact of crime (e.g., higher insurance rates, lost workdays). While primary victims of crime might be identified easily, secondary victims such as family and clan members may not be so readily identifiable and may not receive needed services. Identifying services offered for neighborhoods and communities can be even more difficult.

Another group affected by crime is first responders. These people typically are first on the scene or first to respond to crime, including police officers, firefighters, and emergency medical technicians. A vivid example of the impact of crime on first responders involves those who responded to the September 11, 2001, terrorist attacks. Descriptions of stepping through or on body parts while trying to find survivors illustrate the experiences that can cause long-term trauma to first responders. An officer interviewing a child sexual abuse victim may be reminded of her or his own child of the same gender and age. You will cover more about this topic in your Resiliency and Self-Care series.

Major Needs of Victims

Crime has significant, yet varying consequences, on individual crime victims, their families and friends, and communities. The impact of crime on victims results in emotional and psychological, physical, financial, social, and spiritual consequences.

The way people cope as victims of crime depends largely on their experiences and on how others treat them immediately after the crime. As a law enforcement officer, you are usually the first official to interact with victims. For this reason, you are in a unique position to help victims cope with the immediate trauma of the crime as well as to help them regain a sense of security and control over their lives.

The circumstances of a crime frequently dictate when and how responding officers first address victims and their needs. You may have to delay fully attending to victims as you juggle many tasks. Tasks may include: determining what other emergency services are needed and calling for them, evacuating people from the site, securing the crime scene, or advising other public safety personnel upon their arrival. As soon as the responding officer's most urgent tasks have been completed; however, attention can be focused on victims and their needs. At that point, how you approach and relate to victims, explain your various law enforcement responsibilities, and work with victims is crucial to their recovery.

Moreover, the responding officer's awareness of the needs of victims, the many dimensions and consequences of crime for victims, common responses to victimization, and the particular needs of distinct victim populations can help the officer avoid a re-victimization of victims.
For example:

- Inadvertently making comments or asking questions that are hurtful to victims by seemingly implying that victims are partially responsible for their own victimization.
- Forgetting to return property taken from victims as evidence.
- Or, in any other way, unknowingly being insensitive to victims.

By approaching victims in a respectful and supportive manner, officers can gain their trust and cooperation. Victims may then be more willing to provide detailed information about the crime to officers and later to investigators and prosecutors, which, in turn, will lead to the conviction of more criminals. But always remember that you are there for the victim; crime victims are not just witnesses who are there to assist you with your duties.

You can better respond to individual types of crime victims and specific types of criminal victimizations by first understanding the three primary needs most victims have after a crime has been committed:

- The need to feel safe
- The need to express their emotions, and
- The need to know "what comes next."

Victims' Need to Feel Safe	Victims' Need to Express Their Emotions	Victims' Need to Know "What Comes Next"
People often feel helpless, vulnerable, and frightened by the trauma of their victimization.	Victims need to air their emotions and tell their story after the trauma of the crime. They need to have their feelings accepted, and their story heard by a nonjudgmental listener. In addition to fear, victims may have feelings of self-blame, anger, shame, sadness, or denial. Emotional distress may surface in seemingly peculiar ways, such as laughter or an expressionless face. Sometimes victims feel rage at the sudden, unexpected, and uncontrollable threat to their safety and lives. This rage can even be directed at the people who are trying to help them—including law enforcement officers.	Victims often have concerns about their role in the investigation of the crime and the legal proceedings. They may also be concerned about issues such as media attention on themselves and their ability to pay for medical care or property damage. Some of their anxiety may be alleviated if victims know what to expect in the aftermath of the crime. This information will also help victims prepare themselves for upcoming stressful events and disruptions in their lives related to the crime.

Although it is important that the officer not give legal advice to victims, the officer should explain the investigation and arrest procedures. Additionally, explain the victim's responsibility as a witness to assist the grand jury and trial process. The victim will need to provide information and documentation of expenses, items damaged or stolen, etc. to further the investigation and seek restitution.

Be conscientious of the varying needs of victims, consider elderly versus children, or victims with disabilities or mental health issues. What happens when a victim is deaf or hard of hearing? How do you think a victim who is an immigrant might react? How does the type of crime relate? The victim of a sexual assault will be different than a victim of domestic violence, will be different than a victim of a drunk driving crash. What about a victim of a bias crime, what might they need?

Oregon Department of Justice Bias Crimes
Non-Emergency Hotline
1-844-924-BIAS
Hearing Impaired- Dial 711 for Oregon Relay
Monday through Friday 9 a.m. to 5 p.m.

Part of your on-going professional development should include attending additional training and educating yourself. Also, know your agency's policies and your jurisdiction's resources.

Resources

National Crime Victim Law Institute- Lewis and Clark
https://law.lclark.edu/centers/national_crime_victim_law_institute/

National Center for Victims of Crime
http://www.victimsofcrime.org/

Oregon Department of Justice- Crime Victims' Services
https://www.doj.state.or.us/crime-victims/

U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime
https://ojp.gov/ovc/welcome.html

U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime
First Response to Victims of Crime: A Guidebook for Law Enforcement Officers
https://ojp.gov/ovc/publications/infores/pdftxt/FirstResponseGuidebook.pdf

DPSST gratefully acknowledges the Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, for allowing us to reproduce, in part or in whole, the First Response to Victims of Crime: A Guidebook for Law Enforcement Officers (NCJ 217272, released in 2008).

Basic Police Academy

Tactical Medicine



OREGON
DEPARTMENT OF PUBLIC SAFETY
STANDARDS AND TRAINING
THE UNION

Basic Tactical Medicine

Instructional Goal:

This course is designed to introduce a new officer to techniques for providing immediate care for victims in response to certain wounds.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate critical factors in hemorrhage control.
2. Apply a tourniquet to self and others.

Content Outline:

- Why basic tactical medical training
- THREAT Response
- Hemorrhage Control
- Tourniquet Use
- Tactical Emergency Casualty Care Guidelines
- Resources
- Practical Application

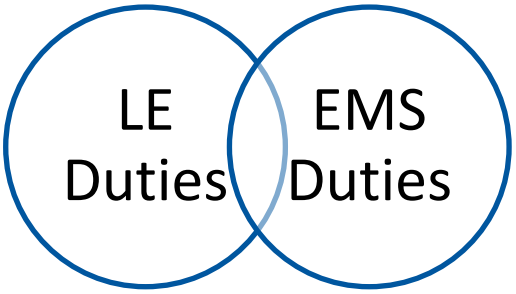
Even in times of utmost crisis, law enforcement officers are capable not only of performing traditional duties but also of providing care to individuals around them.

Source: www.bleedingcontrol.org

Representatives from law enforcement, fire, prehospital care, trauma care, and the military convened after the fatal shooting of children and staff at Sandy Hook Elementary School, followed by mass injuries in the Boston Marathon bombing. The representatives focused on identifying strategies to increase survivability in these situations. A concept document resulted from this convention and became known as the Hartford Consensus.

The Hartford Consensus insists that some form of basic "tactical" medical training is essential for every law enforcement officer. The rationale is simple: law enforcement officers will be the first responders to any mass injury incident involving violence.

Typically, in mass-casualty shootings, law enforcement's initial focus is on the perpetrator. EMS is unable to attend to victims until the shooter has been neutralized, or law enforcement has declared the site of the event to be safe. This situation may cause a significant delay in treating survivable victims. Unfortunately, mass-casualty shooting may create scenes that remain unsafe for extended periods, increasing the likelihood that victims who are not immediately killed will die from a lack of medical care. Once the immediate threat is contained or stopped, law enforcement officers should play an essential role as the bridge between the law enforcement phase of the operation and the rescue response.



In addition to response during mass injury events, officers must be able to mitigate their injuries as well as those of fellow officers during dynamic or active threat environments.

To improve survivability in these circumstances (and others), the Hartford Consensus developed an acronym to describe the needed response. The acronym is THREAT:

- **T**hreat suppression
- **H**emorrhage control
- **R**apid **E**xtrication to safety
- **A**ssessment by medical providers
- **T**ransport to definitive care

The focus of this class will be on hemorrhage control.

Hemorrhage Control

Hemorrhage control is the highest priority in caring for an injured individual. Hemorrhage control must occur as soon as possible after the wounding event to be maximally effective. The window of opportunity to save a life by controlling major arterial bleeding from an extremity wound may be as short as five minutes. Unfortunately, uncontrolled hemorrhage remains the single most preventable cause of death after both military and civilian injuries.

Steps from Stop the Bleed *Source: bleedingcontrol.org*

- Find the source of bleeding
- Open or remove the clothing over the wound so you can see it. By removing clothing, you will be able to see injuries that may have been hidden or covered.
- Look for and identify "life-threatening" bleeding. Examples include:
    - Blood that is spurting out of the wound.
    - Blood that won't stop coming out of the wound.
    - Blood that is pooling on the ground.
    - Clothing that is soaked with blood.
    - Bandages that are soaked with blood.
    - Loss of all or part of an arm or leg.
    - Bleeding in a victim who is now confused or unconscious.

Several methods can stop bleeding, and they all have one thing in common—compressing a bleeding blood vessel to stop the bleeding.

Direct pressure and gauze compression dressings can be useful in hemorrhage control; however, the lack of dedicated personnel to apply continuous, direct pressure, a less than-secure environment, and extremity injuries that could lead to exsanguination are all challenges.

Early use of tourniquets can largely prevent deaths from extremity bleeding. In 2016, the American Medical Association recommended that all law enforcement, firefighters, and the general public receive training in the appropriate use and application of a tourniquet. Tourniquets and hemostatic agents used by trained first responders are known to be quick and effective in stopping the bleeding from extremity and other severe wounds, and evidence shows emergency tourniquets are life-saving when used at the right time and in the right way

If you don't have a trauma first aid kit:	If you do have a trauma first aid kit:
Direct pressure on the wound (Cover the wound with a clean cloth and apply pressure by pushing directly on it with both hands) 1. Take any clean cloth (for example, a shirt) and cover the wound. 2. If the wound is large and deep, try to "stuff" the cloth down into the wound. 3. Apply continuous pressure with both hands directly on top of the bleeding wound. 4. Push down as hard as you can. 5. Hold pressure to stop bleeding. Continue pressure until relieved by medical responders.	For life-threatening bleeding from an arm or leg and a tourniquet is NOT available OR for bleeding from the neck, shoulder or groin: Pack (stuff) the wound with a bleeding control (also called a hemostatic) gauze, plain gauze, or a clean cloth and then apply pressure with both hands 1. Open the clothing over the bleeding wound. 2. Wipe away any pooled blood. 3. Pack (stuff) the wound with bleeding control gauze (preferred), plain gauze, or clean cloth. 4. Apply steady pressure with both hands directly on top of the bleeding wound.

	5. Push down as hard as you can. 6. Hold pressure to stop bleeding. Continue pressure until relieved by medical responders. For life-threatening bleeding from an arm or leg and a tourniquet is available: Apply the tourniquet 1. Wrap the tourniquet around the bleeding arm or leg about 2 to 3 inches above the bleeding site (be sure NOT to place the tourniquet onto a joint—go above the joint if necessary). 2. Pull the free end of the tourniquet to make it as tight as possible and secure the free end. 3. Twist or wind the windlass until bleeding stops. 4. Secure the windlass to keep the tourniquet tight. 5. Note the time the tourniquet was applied.

Definitions:

Proximal- Situated nearer to the center of the body or the point of attachment.

Distal- Situated away from the center of the body or the point of attachment.

Effective hemorrhage control does not stop with the initial tourniquet application:

Source: www.bleedingcontrol.org

- Waiting too long to place a tourniquet is a mistake.

- Tourniquets should be applied just proximal to the site of the severe bleeding and never placed directly over a joint.

- Tourniquets should be tightened as necessary to stop bleeding from the distal injury.

- If bleeding is not controlled with one tourniquet, a second tourniquet should be applied just proximal to the first.

- The need for a second tourniquet is especially applicable when applying tourniquets to generously sized lower extremities.

- The purpose of tourniquets is to stop arterial bleeding. If a distal pulse is still present, the tourniquet should be tightened or a second tourniquet applied just proximal to the first, and the pulse should be rechecked.

- If a tourniquet is used, it should be an effective arterial tourniquet and not an ineffective venous tourniquet, as the use of the latter can increase bleeding.

- Casualties with tourniquets in place should be rechecked periodically to ensure that the tourniquet is still working and that bleeding is controlled.

- Pulses distal to every tourniquet should be checked.

- Correctly applied tourniquets can cause significant pain, but this pain does not signify that the tourniquet has been misused or that it should be removed.
  Pain should be managed with analgesics as appropriate, but not for patients in shock.

Mistakes regarding tourniquets include the following:

- Not having an effective commercial tourniquet available.
- Not using a tourniquet when one should be applied.
- Using a tourniquet for minimal or minor bleeding when one should not be used.
- Putting the tourniquet on too proximally.
- Not making the tourniquet tight enough to stop the bleeding effectively.
- Not using a second tourniquet if needed.
- Waiting too long to put the tourniquet on.
- Not reevaluating the tourniquet's effectiveness.
- Periodically loosening the tourniquet to allow blood flow into the injured extremity.

Tactical Emergency Casualty Care Guidelines

See TECC for complete lists- goals, principals, and guidelines

Source: Tactical Emergency Casualty Care (TECC) Guidelines.
http://c-tecc.org/images/content/TECC_Guidelines

Hot Zone	Danger	**T**hreat Suppression
Warm Zone	Not Secure	**H**emorrhage Control **R**apid **E**xtrication
Cold Zone	Safe	**A**ssess Patient **T**ransport to Hospital

Direct Threat / Hot Zone Care Principles:

1. Establish tactical supremacy and defer in-depth medical interventions if engaged in ongoing direct threat (e.g., active firefight, unstable building collapse, dynamic post-explosive scenario, etc.).

2. Threat mitigation techniques will minimize risk to casualties and providers. These should include techniques and tools for rapid casualty access and egress.

3. Defer triage to a later phase of care. Base prioritization for extraction on resources available and the tactical situation.

4. Minimal trauma interventions are warranted.

5. Consider hemorrhage control
    a. Tourniquet application is the primary "medical" intervention to be considered in Direct Threat.
    b. Consider instructing casualty to apply direct pressure to the wound if no tourniquet available or application is not tactically feasible.

6. Consider quickly placing or directing casualty to be placed in a position to protect the airway.

Indirect Threat / Warm Zone Care Principles:

1. Maintain tactical supremacy and complete the overall mission.

2. As applicable, ensure the safety of both first responders and casualties by rendering weapons safe and rendering any adjunct tactical gear safe for handling (flashbangs, gas canisters, etc.).
3. Conduct dedicated patient assessment and initiate appropriate life-saving interventions as outlined in the ITC guidelines. DO NOT DELAY casualty extraction/evacuation for non-life-saving interventions.

4. If encountering multiple casualties, consider establishing a casualty collection point.

5. Unless in a fixed casualty collection point, triage in this phase of care should be limited to the following categories:
    a. Uninjured and/or capable of self-extraction
    b. Deceased / expectant
    c. All others

6. Establish communication with the tactical or command element and request or verify the initiation of casualty extraction/evacuation.

7. Prepare casualties for extraction and document care rendered for continuity of care purposes.

Evacuation / Cold Zone Principles:

1. Reassess the casualty or casualties.
2. Utilize a triage system/criteria per local policy that considers priority AND destination.
3. Utilize additional resources to maximize advanced care.
4. Avoid hypothermia.
5. Communication is critical, especially between tactical and non-tactical EMS teams.
6. Maintain situational awareness- In dynamic events, there is NO threat-free area (e.g., green or cold zone)

Police Training Resources

Tactical Combat Casualty Care (TCCC) The NAEMT Tactical Combat Casualty Care (TCCC) course is designed to teach strategies for the best trauma care on the battlefield. It is designed for combat EMS/military personnel. The course can be adapted for law enforcement special weapons and tactics and special response teams. TCCC guidelines, available at www.naemt.org/education/TCCC/TCCC_home.aspx, provide a foundation for the standardization of tactical emergency medical support protocols.

The Committee for Tactical Emergency Casualty Care (C-TECC) was formed in 2010 to adapt military TCCC principles to civilian high threat prehospital environments. The C-TECC does not offer courses but directs that its principles be used as written by educational partners. The C-TECC is a not-for-profit organization. Representatives from several federal agencies, including the Federal Emergency Management Agency, Department of Homeland Security Office of Health Affairs, and multiple federal law enforcement agencies, are involved with C-TECC. TECC is included in the Joint Counter Terrorism Workshop Series, which is a program to assist urban areas in preparing for mass casualty incidents. More information is available at:

http://c-tecc.org/images/content/CTECC-Overview.pdf

The Law Enforcement and First Response Tactical Casualty Care (LEFR-TCC) course is designed for public safety first responders (nonmedical) to provide them with skills for hemorrhage control and the use of gauze packs, topical hemostatic agents, and tourniquets. The course also emphasizes opening an airway. It conforms with the TECC guidelines and the recommendations of the Hartford Consensus. More information about this one-day course is available at:

www.naemt.org/education/LEFR-TCC/What IsLEFRTCC.aspx

The Bleeding Control Course (B-Con) is a course lasting two and a half hours to teach civilians with little or no medical training on how to respond before EMS personnel arrive. Examples of potential students include non-tactical law enforcement officers, firefighters, security personnel, and teachers. The course includes a lecture and skill stations for tourniquet application, wound packing, and jaw thrust. B-Con may be used along with a module about the Hartford Consensus to introduce the LEFR-TCC course to law enforcement personnel. More information is available at:

https://www.bleedingcontrol.org/

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Law Enforcement Tactical Emergency Casualty Care (TECC) Training and Individual First Aid Kits (IFAK) White Paper- The Interagency Board | Health, Medical & Responder Safety Subgroup (2015).

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The Hartford Consensus: THREAT, A Medical Disaster Preparedness Concept (2013)

Rothschild, H., & Mathieson, K. (n.d.). Effects of Tactical Emergency Casualty Care Training for Law Enforcement Officers. *Prehospital and Disaster Medicine*, 1-6. DOI:10.1017/S1049023X18000730

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Basic Police Academy
Threat Assessment



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Threat Assessment

Instructional Goal:

This course is designed to introduce a new officer to basic factors related to preventing acts of targeted violence.

Learning Outcomes:

Upon completion of instruction, students will be able to:

1. Describe the role of police in targeted violence prevention.
2. Identify factors related to the pathway to targeted violence.
3. Describe key findings related to the behaviors of active attackers.

Content Outline:

- What is Threat Assessment?
- What is Targeted Violence?
- Pathway to Violence
- Typical Suspect
- Risk Factors
- Resources

Historically, traditional law enforcement techniques have focused on the apprehension and prosecution of violent offenders after violent crimes are committed. When police are given information that someone may potentially commit a crime or become violent in the future, their responsibilities, authorities, and available investigative tools are suddenly less clear.

The first and most fundamental potential barrier to engagement is lack of knowledge- knowledge about threat assessment and management itself, about risk factors and warning signs, about what goes into managing potential threats. This knowledge is a key to implementing viable strategies to reduce targeted violence. Without it, prevention efforts are far less effective because they may be guided by assumption and fear of the unknown rather than knowledge and experience.

Prevention is not and cannot be a passive process. It requires a strong and overt commitment by organizations and communities to prioritizing public safety and caretaking for those in need.

Source: Department of Justice and Federal Bureau of Investigation, Making Prevention a Reality: Identifying, Assessing, and Managing the Threat of Targeted Attacks

What is Threat Assessment?

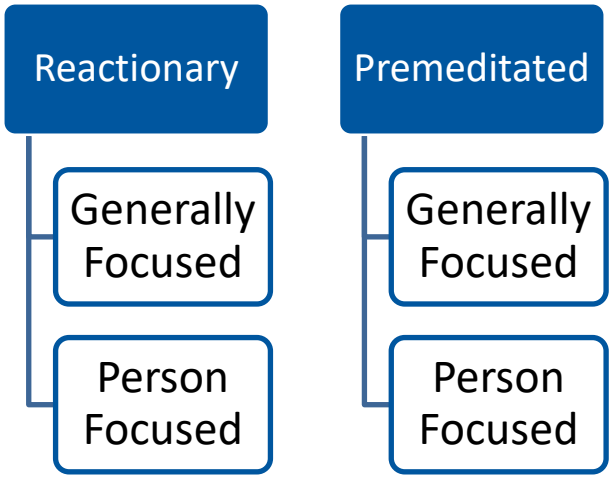
In general, threat assessment is the concept of utilizing given information to assess the threat a person imposes to themselves and/or others.

What is Targeted Violence?

Violence can be categorized in one of two ways:

1. Reactionary
2. Premeditated

These two types of violence are distinctly different.



Reactionary: Often an impulsive and emotionally charged event within a close time frame to a specific situation.

- Generally Focused: Can be primarily centered around a particular event, location, or entity.

  An example could be a fight breaking out at a local nightclub between members of rival gangs, and someone pulls a gun.

- Person Focused: Usually is centered on a specific person, but others nearby may still be harmed in the attack.

  An example might be an argument starting during a sporting event between two individuals, and one of them stabs the other with a concealed knife.

Premeditated: A significant amount of thought, planning, and effort has been put into implementing the violence.

- Generally Focused: Primarily centered around a particular event, location, or entity.

  An example would be a particular group or person planning to attend a rally or protest in which they have planned to engage in violence (possibly with weapons) against the event and/or the opposite group.

- Person Focused: A specific person is the focal point, and most or all of the thought and planning has been centered on them. There may or may not be collateral injury or death as the plan is implemented.

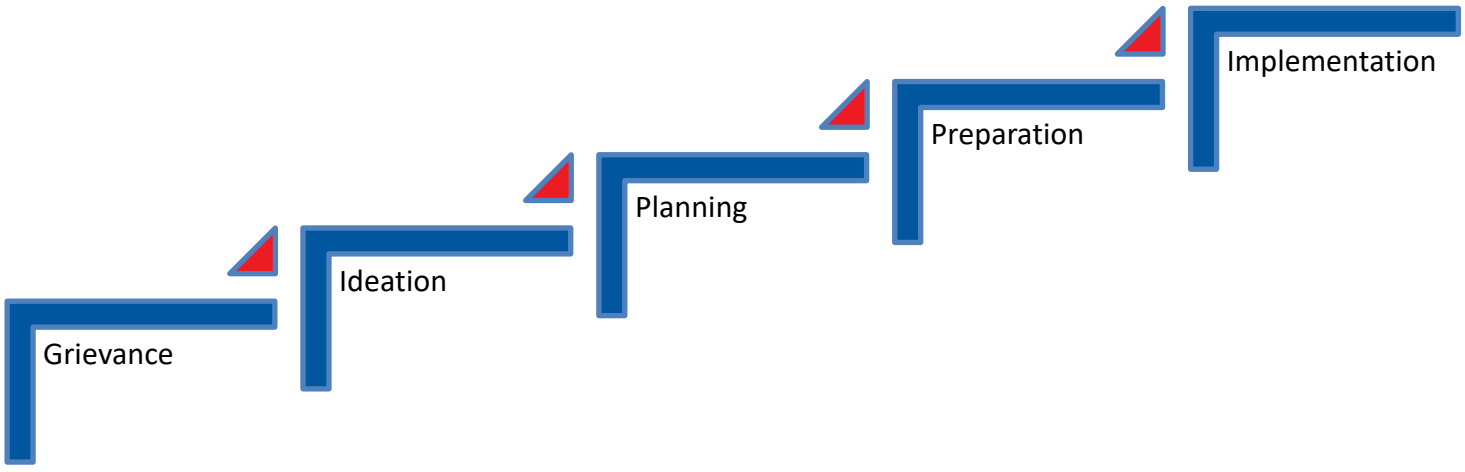
  An example may be a person who has been fired from their job and plans a violent attack against their boss at the place of work and kills a number of co-workers in the process.

Clinical and forensic data on adult and adolescent mass murder reveal that virtually all of these acts are premeditated, rather than impulsive, violence. Two obvious signs indicate this: the planning and preparation for days, weeks, or months, sometimes recorded by these offenders and often observed by others, and the utter lack of emotion witnessed by survivors while the perpetrators committed their crimes.

Source: Department of Justice and Federal Bureau of Investigation, Making Prevention a Reality: Identifying, Assessing, and Managing the Threat of Targeted Attacks

Pathway to Targeted Violence

It is generally believed that persons intending to engage in targeted violent acts move along an identifiable pathway on their journey to attack. The progression may be rapid or slow and will not follow the same course from person to person. Pathways can exist in multiple and complex forms or may not exist at all in some cases. Both state of mind and the person's outward behaviors are inextricably intertwined—behavior is a manifestation of thought.



Grievance

This is the usual starting place. The potential suspect feels that they have been wronged or threatened in some way by someone or something. The focus of this perceived 'offense' can be a person, persons, or entity. To the outside observer, it may seem very trivial or even non-existent, but to the potential suspect, it can be very real and emotionally charged.

Ideation

The potential suspect begins having and dwelling on thoughts toward the use of violence as a way to handle the perceived offense. These are more than an occasional thought and can develop into fantasies. The thoughts and/or fantasies can evolve and grow with intensity.

Planning

The potential suspect begins progressing from merely having thoughts toward violence but actually calculating how it might be accomplished and on who or what their targets may be. This could take the form of searching for information locations, targets, and weapons. Leakage can occur here in various ways, including verbal statements, social media postings, and questions to others about the information sought.

Preparation

The potential suspect moves from the more cognitive planning stage to more physical participation. This may include gathering weapons, tools, and modes of transportation. “Dry Runs” can occur at this stage as the person tests the obstacles that may or may not be in the way of their goal. Depending on the outcome of tests, their intended target, location, or method can change or remain the same.

Implementation

The suspect acts on their plan.

It is important to note that sometimes a Grievance may not always be present and the lack of one by itself should not necessarily stop further investigation.

The Mandalay Bay mass shooting incident in Las Vegas is a clear example of this.

The "Typical Suspect"

There is no demographic profile of a targeted violence offender. Any individual, no matter what age, sex, race, religion, education or income level, marital status, or occupation, has the potential to engage in targeted violence. The first step in preventing future violence is identifying and evaluating a person's behaviors. No single behavior is predictive of targeted violence; rather, a "perfect storm" sometimes develops based on a multitude of factors and conditions.

A general stereotype exists that people who have a mental illness may be dangerous. There is a small but significant relationship between serious mental illness, such as psychosis, and the risk of violence toward others. However, misinformation and/or lack of knowledge or exposure to the mentally ill may grossly exaggerate this fact. Certainly, the unpredictable behaviors associated with some forms of mental illness can provoke concern. However, many times it is just the fear of the unknown associated with mental illness that makes people uncomfortable.

Source: Department of Justice/Federal Bureau of Investigation

- Most do not have a diagnosis of mental illness
- Most do not have much, if any, criminal history
- Most (adults) could pass a background check to purchase a firearm, and many legally obtain one.
- The offender is often experiencing multiple stress factors in their life
- Inhibitors (factors that would inhibit the person from committing the attack) may begin to decrease
    - As inhibitors decrease and stressors increase, the “dominoes” begin to line up for an attack.

Risk Factors

Risk factors are existing realities about the person of concern that may increase the risk of violence they pose in a given situation. As opposed to the behaviors a person may demonstrate, risk factors can either be static or dynamic.

- Static risk factors are historical or dispositional, will not change over time or change very slowly, and are not amenable to intervention (e.g., gender, history of prior violent acts).

The best predictor of future violence in many cases is past violence.

Past violence might not be indicated in a criminal history report, so it is important to cover this in interviews, social media reviews, personnel file reviews, or other available sources.

- Dynamic risk factors are situational or clinical and can often change rapidly (e.g., weapons possession, illegal drug abuse). Some risk factors are highly interrelated with behaviors (e.g., current access to a gun (risk factor) and actively attempting to acquire more guns (behavior)).

It is easier and more lethal to engage in targeted violence, particularly toward multiple targets, with a firearm. Possession of, access to, experience or familiarity with weapons are all risk factors because they improve one's ability to carry out the act. Unfortunately, this can be difficult to determine in many cases. Edged weapons and stabbing instruments have been successfully used in attacks as well; they are often more accessible than firearms.

The How and What Does This Mean for You?

Knowing what to observe can help you notice something even if you were not searching for it in the first place. This follows the concept of "if you see something, say something."

Scenarios for In-Class Activity

1- Basic Disturbance Call

Parent reports that their 14-year-old son has been talking about suicide. The parent said that he has been having trouble at school and got kicked off the soccer team about three weeks ago. You are invited into the house by the parent and can see the teenager in their bedroom from where you stand in the hall. He says that you may come in. You see the high school soccer game schedule lying on a table next to his bed with a future date circled. You see the high school website on his computer screen, and you happen to notice a tab behind that page, but the tab is labeled semi-automatic.

What do you do?

2- Parent Custodial Rights Revocation

You are called to a DHS office and are told that they would like a stand-by officer during a custodial rights hearing because the caseworker has received information that the father has made threats to DHS and that he will “make them pay” for what they have done to him. You have identified the father and have also been given a description of his vehicle. While waiting in the main lobby, you see that vehicle drive by. Two minutes later, the vehicle pulls into the parking lot, circles it, and then leaves.

What do you do?

3- Worker Terminated

You respond to a call at a local office building requesting a stand-by officer while an employee is terminated. The office manager tells you that, in a half-hour, they will be terminating an employee that has been on a work program over the last year and has not been successful. The manager further reveals that the worker has been "on a downward spiral" and becoming more and more agitated with co-workers. The employee has made comments to some of the co-workers that the "world would be a better place" if the manager were "wiped off the face of the earth."

What do you do?

4- Stalking Order Call

You respond to a call of a woman reporting that her ex-boyfriend is stalking her. On contact, she tells you that her ex-boyfriend has been posting, on a social media site, statements that she will be "very sorry she left him" and that she will "wish she were dead." She says mutual friends have recently told her that he has suddenly stopped communication with them, and they do not currently know where he is. She also shows you pictures that he has texted her today with a gun in his hand with her car and apartment complex in the background. She says he does have a felony record and a parole officer.

What do you do?

5- Traffic Stop

At 11:12 AM on a Tuesday morning, you stop a vehicle for failing to signal a turn near a large department store. During contact, you notice the driver is looking straight ahead and will not make eye contact with you. The driver appears very nervous, is sweating, and will only respond with short answers to your questions about the turn signal while keeping their hands on the steering wheel the entire time. You see a map with a red circle around what appears to be the department store you are near on the front passenger seat. Also written in red on the map is the time 11:30. You see a large duffle bag in the back seat with what appears to be something long and rigid pushing the material out at each end.

What do you do?

Resources

- FBI Behavioral Threat Assessment Center- BTAC
- Secret Service: National Threat Assessment Center- NTAC
- Local Threat Assessment/ Threat Advisory Teams
- Association of Threat Assessment Professionals- ATAP

SOURCES and/or RESOURCES

Calhoun, F. S., & Weston, S. W. (2015). Perspectives on threat management. *Journal of Threat Assessment and Management, 2*(3-4), 258–267. https://doi.org/10.1037/tam0000056

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Basic Police Academy

Use of Force



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Use of Force Law for Civilians

Instructional Goal:

This course is designed to develop a new officer's understanding of the legal authority guiding the use of force decisions of Private Persons and the ability to apply those statutes appropriately.

Learning Outcomes:

Upon completion of instruction, the student will be able to:

1. Articulate the appropriate statute(s) guiding a Private Persons use of force

Content Outline:

Oregon Criminal Code – The Civilian Justification Statutes

- Use of Physical Force in Defense of a Person
- Limitations on Use of Physical Force in Defense of a Person
- Limitations on Use of Deadly Physical Force in Defense of a Person
- Use of Physical Force in Defense of a Premises
- Use of Physical Force in Defense of Property
- Use of Physical Force by Private Person Assisting an Arrest
- Use of Physical Force by Private Person Making Citizen's Arrest

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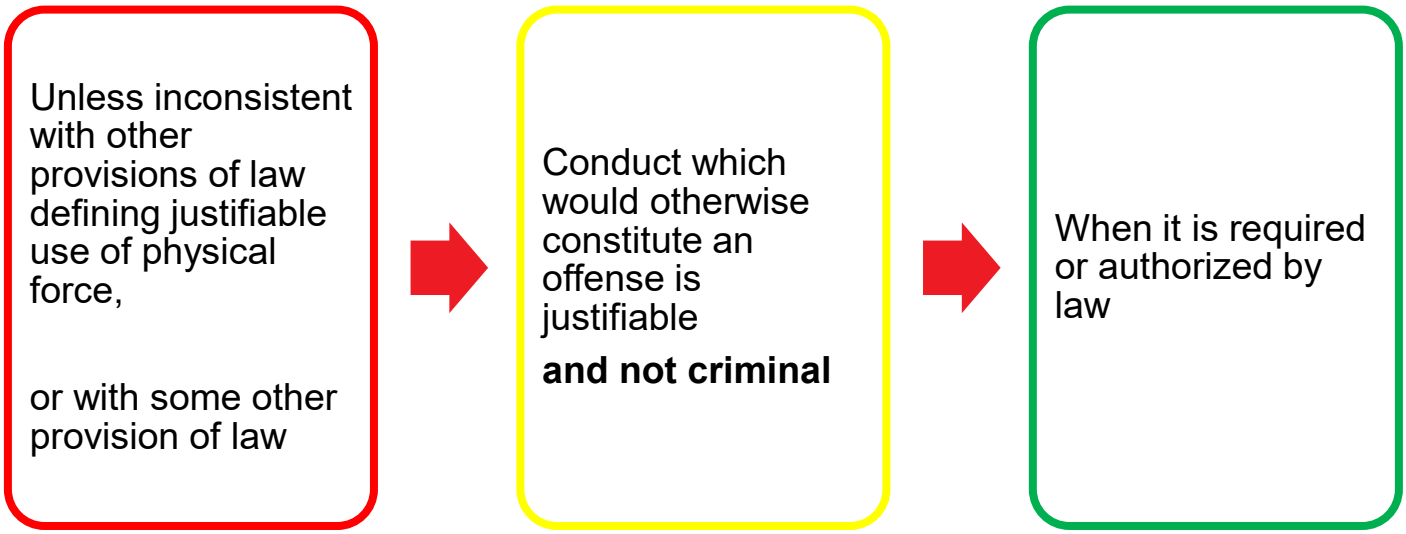
Oregon Criminal Code: The "Justification" Statutes

The Oregon Criminal Code uses the concept of "justification" to explain when a person who uses force that results in injury or death would be "justified" and not criminally responsible for that outcome. "Justification" is a recognized *criminal* defense under Oregon law, and its definition is found in ORS 161.195.

This justification discussion will differ from the considerations that bind peace officers when making use of force decisions. Peace officers are also constrained by:
Constitutional Law – which we will discuss throughout all of your Use of Force classes, and which is relevant to *civil* lawsuits, (and less frequently federal criminal prosecutions), and Policy – which because of its uniqueness to each agency, we will not discuss in detail during the Use of Force classes.

"Justification" described – ORS 161.195



Following this definition of "justification," there are several statutes that follow. One interesting fact about the civilian use of force statutes is that they all remain virtually unchanged since their enactment in 1971.

The "Civilian" Justification Statutes

Most of these statutes pertain to all potential users of force in the State of Oregon. For convenience, we will focus on the "civilian" justification statutes. We will also be skipping ORS 161.205 (2), which pertains to the use of force by corrections officers

Watch for how each statute we encounter will make apparent which lawful purposes for force give rise to potential justification.

Use of Physical Force Generally – ORS 161.205
https://oregon.public.law/statutes/ors_161.205

The first two subsections pertain to an adult's ability to "use force" on a child. In general, this means a parent, a legal guardian, or a teacher. Let us look at the specific language around a parent or guardian's "ability" to use force and when it is appropriate.

Use of Physical Force Generally – ORS 161.205 (1)(a)
https://oregon.public.law/statutes/ors_161.205

Take note of the number of times the legislature requires the adult to be reasonable. Also, notice that the reason that force may be used is only to "maintain discipline" or "promote the welfare".

Subsection (b) is specific to teachers or other "public education" personnel.

Use of Physical Force Generally – ORS 161.205 (1)(b)
https://oregon.public.law/statutes/ors_161.205

This subsection has additional links to other statutes such as ORS 339.285, which includes the definitions of who are Public Education Personnel and other descriptions of public education use of force reasons. Public Education Personnel are never permitted to use force for punishment.

ORS 161.205 (1)(b) only provides public education possible protection from *criminal prosecution*. Like peace officers, public education personnel *can* be authorized to use force under state law, but still be constrained by their own body of civil case law and individual school district policies.

The third subsection is in reference to "common carriers" of passengers. In general, a common carrier is an airplane, bus, train, etc. and a "person responsible" could mean the driver/pilot, or possibly any employee on the "carrier" or of the company.

This is also *the only* section of 161.205 that authorizes the use of deadly physical force for a specific group of people besides peace officers.

Use of Physical Force Generally – ORS 161.205 (3)
https://oregon.public.law/statutes/ors_161.205

Notice that the "person responsible..." for the common carrier may empower another to act in their stead. This is similar to a peace officers' ability to authorize others to take action to assist an officer. This is incredibly rare, and no known cases can be readily found to illustrate further.

The fourth subsection is the statute that allows anyone, including peace officers, to stop someone from harming themselves. Notice that only physical force is allowed to stop the attempt, not deadly.

Use of Physical Force Generally – ORS 161.205 (4)

https://oregon.public.law/statutes/ors_161.205

A final note regarding 161.205 (4), there is no separate statute that authorizes peace officer's to use force to stop someone from harming themselves. This statute will be revisited in other classes more specific to an officer's use of force to prevent suicide or self-harm.

The last subsection states that any person may use force to: defend themselves, others, property, to make an arrest, or to prevent escape.

Use of Physical Force Generally – ORS 161.205 (5)

https://oregon.public.law/statutes/ors_161.205

Notice that this subsection is brief, vague, and seems to cover quite a few reasons to use force without much explanation. Additional statutes will further explain the limitations of the use of force in these circumstances.

That brings us to the end of the introductory statute relating to the use of physical force. Next, we will examine the limitations and exceptions to the use of force in specific circumstances.

Limitations: "Civilian" Physical Force Statutes

The first specific statute relating to the use of physical force by a person, begins to define more clearly what was covered by 161.205 (5).

Use of Physical Force in Defense of a Person – ORS 161.209
https://oregon.public.law/statutes/ors_161.209

Note the qualifiers of **reasonable belief**, **unlawful force**, and **degree of force necessary**. These are like the qualifiers that will be present in the peace officer use of force statutes later.

ORS 161.215 establishes the circumstances where it is not allowed to use "self-defense" as a defense to criminal prosecution. This statute has three subsections, and we will look at them individually.

Limitations on Use of Physical Force in Defense of a Person – ORS 161.215 (1)
https://oregon.public.law/statutes/ors_161.215

Notice that the first subsection has two basic components. The first is the intent of the unjustified person. The second is about the behavior of the unjustified person.

The second subsection is the most complicated. This subsection covers what happens if a person "starts" a fight. It also gives that person some protection if they use unlawful force but then tries to retreat or quit.

Limitations on Use of Physical Force in Defense of a Person – ORS 161.215 (2)
https://oregon.public.law/statutes/ors_161.215

This section requires a breakdown of the law as written.

1. A person who starts a fight has no right to self-defense
2. **Unless**, the person:
    a. Stops "fighting"
    b. Communicates that they want to stop fighting
    c. The "other" person will no longer stop
3. In this case the "fight starter" **NOW** has the right to self-defense.

The third subsection covers circumstances where two people "agree" to the fight.

Limitations on Use of Physical Force in Defense of a Person – ORS 161.215 (3)
https://oregon.public.law/statutes/ors_161.215

This is often referred to as "mutual combat" and neither party should be able to claim the right to self-defense in these cases. However, this **may not** be true if, as seen in subsection (2), one person communicates a desire to "withdraw" from the encounter.

At this point you have probably noticed the legal term Notwithstanding. You will continue to see this throughout this section. It is defined below.

Notwithstanding – despite, nevertheless, however, although

Merriam-Webster Dictionary

Understanding this legal phrase will be important in a case law ruling regarding the deadly physical force statute in the ORS.

Limitations: "Civilian" Deadly Force Statutes

This is the sole statute *specifically* relating to deadly physical force. There are other statutes that also relate to *both* physical and deadly physical force. This statute generally establishes the circumstances when it **is** justifiable to use deadly physical force.

Limitations on Use of Deadly Physical Force in Defense of a Person – ORS 161.219 (1)
https://oregon.public.law/statutes/ors_161.219

Note the two separate elements in this section: a felony and physical force. It should be mentioned again that this statute was created in 1971. There is a significant body of case law about cases like this, and many changes to what is and is not a felony during the last 50 years. This specific subsection, and subsection (2), are both legally complicated.

Subsection (2) specifically deals with burglary in the home.

Limitations on Use of Deadly Physical Force in Defense of a Person – ORS 161.219 (2)
https://oregon.public.law/statutes/ors_161.219

As with subsection (1), this statute is not an absolute right. See State v. Haro below for clarification.

Subsection (3) is the most legally sound of the reasons for the use of deadly physical force by a civilian. It still requires the person to have a "reasonable belief" about the actions they are defending against.

Limitations on Use of Deadly Physical Force in Defense of a Person – ORS 161.219 (3)
https://oregon.public.law/statutes/ors_161.219

Below is an excerpt from a case in which a "burglary" occurred, and the resident shot the "intruder". As you can see the statute 161.219 (2) would seem to allow a resident to do this.

> *…Nothing in the language of ORS 161.219 eliminates the general "necessity" requirement defined in ORS 161.209. Therefore, even when one or more of the threatening circumstances described in ORS 161.219 is present, the use of deadly force is justified only if it does not exceed the "degree of force which the person reasonably believes to be necessary" in the circumstances.*
>
> ***State v. Haro – Oregon Court of Appeals***
> *https://cite.case.law/or-app/117/147/*

The legislature has not created an unlimited right for civilians to use deadly force against a burglar. The court properly instructed the jury on self-defense in this case.

Use of Force in Defense of Premises and Property

The next two statutes deal directly with a person's legal authority to use force to protect premises and property. These an individual need not be in danger for the use of physical force to be legal. Several subsections authorize the use of deadly force. Be advised that the same legal issues exist as the previous statutes.

Use of Physical Force in Defense of Premises – ORS 161.225 (1)
https://oregon.public.law/statutes/ors_161.225

Note that in this subsection the person authorized to use force does not need to be the "possessor" of the premises.

In this subsection you are directed back to the previous statute regarding the limitations on deadly physical force.

Use of Physical Force in Defense of Premises – ORS 161.225 (2)(a)
https://oregon.public.law/statutes/ors_161.225

Subsection (2)(b) includes two different circumstances where deadly force could be authorized by law: arson, or a felony *plus* violence. See the previous case law (State v. Haro) regarding the dangers of relying solely on the text of any statute.

Use of Physical Force in Defense of Premises – ORS 161.225 (2)(b)
https://oregon.public.law/statutes/ors_161.225

Note that in this statute relating to property does not allow the use of deadly force to stop theft or criminal mischief under any circumstances.

Use of Physical Force in Defense of Property – ORS 161.229

https://oregon.public.law/statutes/ors_161.229

This ends the more common reasons for civilians to use force. Next we will examine the specific circumstances where civilian use of force interacts with the use of force by peace officers.

Private Person's and Law Enforcement Use of Force

There are several statutes that allow a "private person" (civilian) to use force in a manner similar to a law enforcement officer. The first statute justifies the use of force to assist an officer in several different circumstances.

Use of Physical Force by Private Person Assisting an Arrest – ORS 161.249 (1)
https://oregon.public.law/statutes/ors_161.249

This language if very similar to the peace officer justification statute prior to the rewriting of the statute in 2020. The essential elements of reasonable belief and necessity are nearly identical. Based on this statute the officer must "direct" the private person to assist them.

The next subsection relates to the use of deadly physical force and is nearly identical to the language found in previous statutes.

Use of Physical Force by Private Person Assisting an Arrest – ORS 161.249 (2)(a)
https://oregon.public.law/statutes/ors_161.249

The final subsection of this statute clarifies that if the civilian knows the use of force is not reasonable or necessary, then the civilian would not be justified.

Use of Physical Force by Private Person Assisting an Arrest – ORS 161.249 (2)(b)
https://oregon.public.law/statutes/ors_161.249

The ORS has two statutes that give limited authority to civilians to make “citizens arrest’s”. These are written much like the Law Enforcement statutes with one specifying the ability to use physical force...

Use of Physical Force by Private Person Making Citizen's Arrest – ORS 161.255 (1)
https://oregon.public.law/statutes/ors_161.255

...and the other statute specifying the circumstances for deadly force.

Use of Physical Force by Private Person Making Citizen's Arrest – ORS 161.255 (2)
https://oregon.public.law/statutes/ors_161.255

These both link back to an ORS statute that clarifies the specific conditions in which a civilian may make a “citizen’s arrest”. The two primary conditions of this arrest is that the civilian must have probable cause, and they must not delay bringing the arrested person to a magistrate or a peace officer.

Arrest by private person – ORS 133.225
https://oregon.public.law/statutes/ors_133.225

As most civilians do not completely understand the concept of probable cause this often creates significant legal issues for the arresting civilian.

Use of Force Classroom: Law Enforcement

Instructional Goal:

This series is designed to:

1. Develop a new officer's understanding of the legal authority guiding use of force decisions and the ability to apply that authority appropriately.
2. Provide a new officer with opportunities to practice conducting safe and effective encounters involving force or the possibility of force.

Learning Outcomes:

Upon completion of instruction, students will be able to:

1. Articulate authority guiding an officer's use of force
2. Describe subject behaviors that could require officer intervention or response
3. Articulate governmental interest in a given situation
4. Differentiate between "type" of force and the "amount" of force that can be used by officers
5. Demonstrate effective communication to include verbal warnings
6. Analyze a given situation and respond with a reasonable type and amount of force

Content Outline:

- Oregon Use of Force Laws
- The Reasonable Officer Standard
- Evaluating the Severity of a Crime
- Communication: Before and During the Use of Force
- Types and Amounts of Force
- Identifying an Immediate Threat
- Resisting Arrest and/or Evading Arrest by Flight
- Totality of the Circumstances
- Force and Behavioral Health

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Handout Introduction

The material in this handout is meant to be a reference and review guide that can enhance the classroom instruction. It is also intended to introduce terms and phrases that frequently used in Use of Force discussions. This handout is not a replacement for quality classroom and case law discussions or use of force scenario debriefs.

This handout is also not replacement for an agency's policy and procedure manual. Take note, some legal terms and jargon in this guide have been written in plain language whenever possible.

For more information or clarification regarding this subject matter, it is recommended that continue your law enforcement education by seeking out linked source material.

Disclaimer:

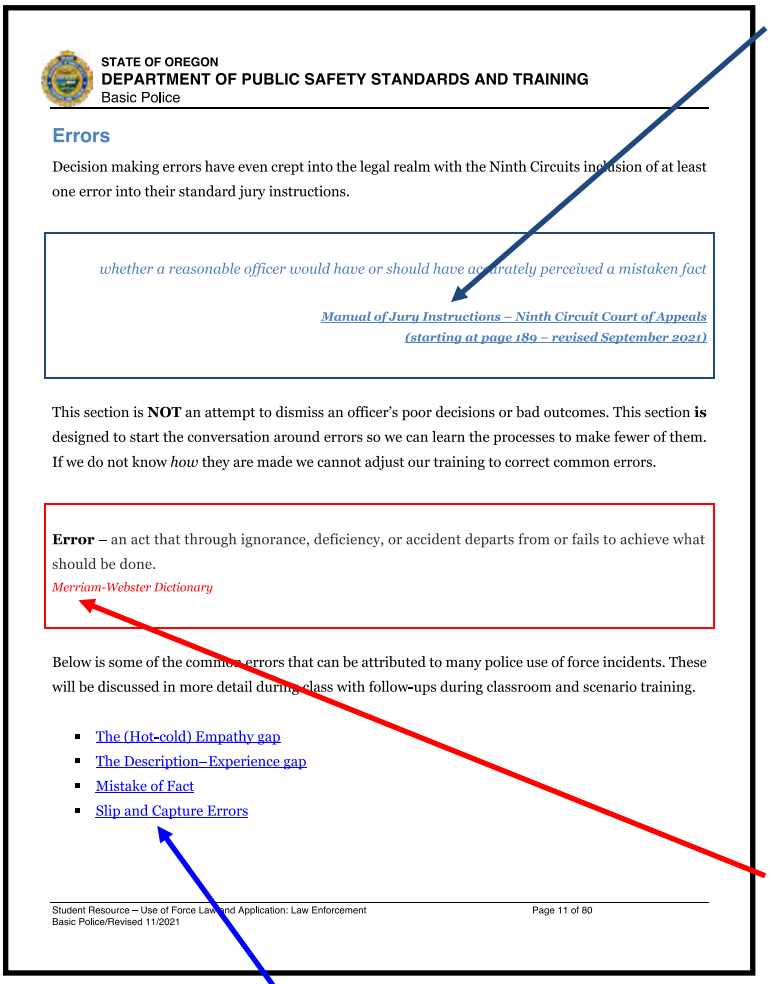
*This handout represents only a **partial treatment** of the subject matter presented. Its use without class participation and instruction is discouraged. This may result in the dissemination of misleading or incomplete information.*

Additionally, this handout is produced to provide general information on the topics presented. It is distributed with the understanding that DPSST is not engaged in rendering legal services. Although this publication is prepared by professionals, it should not be used as a substitute for professional or legal services.

If legal or other professional advice is required, the services of a professional should be sought.

About this Handout

A few words about this handout and how it is meant to work. It is designed to be interactive. Many of the sections and information are hyperlinked to the actual laws, research, summaries, definitions, and other documents you may want to research further. Do not just take the instructors word for it, look at it yourself.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DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING
Basic Police

Errors

Decision making errors have even crept into the legal realm with the Ninth Circuits inclusion of at least one error into their standard jury instructions.

whether a reasonable officer would have or should have accurately perceived a mistaken fact

Manual of Jury Instructions – Ninth Circuit Court of Appeals (starting at page 189 – revised September 2021)

This section is **NOT** an attempt to dismiss an officer's poor decisions or bad outcomes. This section **is** designed to start the conversation around errors so we can learn the processes to make fewer of them. If we do not know *how* they are made we cannot adjust our training to correct common errors.

Error – an act that through ignorance, deficiency, or accident departs from or fails to achieve what should be done.
Merriam-Webster Dictionary

Below is some of the common errors that can be attributed to many police use of force incidents. These will be discussed in more detail during class with follow-ups during classroom and scenario training.

- The (Hot-cold) Empathy gap
- The Description–Experience gap
- Mistake of Fact
- Slip and Capture Errors

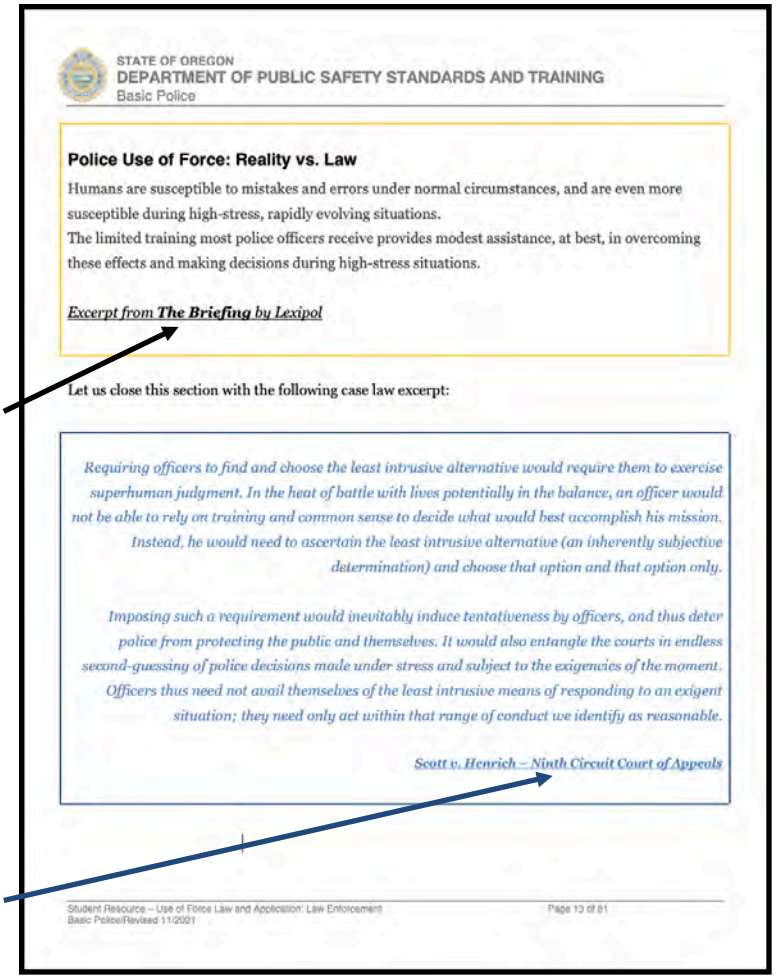
Student Resource – Use of Force Law and Application: Law Enforcement Page 11 of 80
Basic Police/Revised 11/2021

There are different colored sections in the handout. **Blue boxes** with **blue writing** are legal sections. Some of these are specific sections from the Oregon Revised Statutes or the new House Bill replacing some of our current statutes. These are linked to the corresponding statutes of case here:

Other boxes are **red** with **black writing**, and these are definitions. When possible, definitions are taken from the Dictionary, but others are called "working definitions". These are *combinations* of Dictionary definitions and case law definitions from well-established cases. These definitions are important, so we all are using the same language to describe things. The **Dictionary words** are linked to the source. Working definitions are not.

You may see bullet lists in sections that are underlined, and most are **colored** to draw your attention. These are all topics that will be touched on but not in any substantial detail. Because these are often talked about during class, we wanted to make sure you could locate the material or summaries if you wished.

Sections that an **orange/yellow** with **black writing** are <u>articles</u> from either a scientific, legal, or other law enforcement source. These articles are related to the specific section in the manual and are another resource for you should you wish to read more about the specific topic. These articles will take you directly to the article by clicking the <u>underlined</u> section at the bottom listing the reference.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Police Use of Force: Reality vs. Law

Humans are susceptible to mistakes and errors under normal circumstances, and are even more susceptible during high-stress, rapidly evolving situations.
The limited training most police officers receive provides modest assistance, at best, in overcoming these effects and making decisions during high-stress situations.

*Excerpt from **The Briefing** by Lexipol*

Let us close this section with the following case law excerpt:

Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and that option only.

Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment. Officers thus need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable.

Scott v. Henrich – Ninth Circuit Court of Appeals

Student Resource – Use of Force Law and Application: Law Enforcement
Basic Police/Revised 11/2021 Page 13 of 81

Finally, like the previous legal sections, there are sections of case law specific to the topic being discussed. As above they are **blue boxes** with **blue writing**. These case law quotes only reference the specific section however if you wish to read more, click the underlined section with the case law name and you will be redirected to the proper site.

As you can see the manual was designed specifically for use for your electronic device. It is also meant as a longer-term resource but be aware, as time goes on, many of the links will stop working. However, by that point in your training and career, and by starting off with this manual, you should be able to look up this information on your own.

Module 1: Use of Force Program Introduction

Arguably, the most important thing for a peace officer to learn about use of force is "The Law". This is for one simple reason, a perfectly executed takedown is irrelevant if the arrest is unlawful because the officer did not understand that they lacked probable cause or a reasonable belief.

Because of this we are going to start with an officer's authority. A peace officers authority comes from many different statutes within Oregon Law and with varying levels of interconnectivity. In this module we will start with what makes an action that would normally be criminal, lawful.

> *… conduct which would otherwise constitute an offense is justifiable and not criminal when it is required or authorized by law or by a judicial decree or is performed by a public servant in the reasonable exercise of official powers, duties or functions.*
>
> ***"Justification" described – ORS 161.195 (1)***

"Justification" is the foundation of the use of force. But is also dependent that a peace officer *knows* the laws and statutes that they are allowed to enforce. The "Laws" trigger "Justification" during an arrest or use of force. Not the other way around.

Next, we examine the Oregon Revised statute regarding Reasonable Belief.

> *… a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances which, if true, would constitute an offense.*
>
> ***Reasonable Belief Described – ORS 161.245 (1)***

A peace officer making an arrest is justified in using physical force...unless the arrest is unlawful, and the peace officer knows it is unlawful.

Reasonable Belief Described – ORS 161.245 (2)

The statute does not so much spell out lawful purposes for force. It does remind us that knowing the law on which we rely is *essential* to use of force decision making. Notice how the Oregon Legislature reminds us that we lose our "justification" if we *knowingly* make an unlawful arrest *and* we do so with force.

Reasonable Suspicion and the Crossbow

The fact that Coleman's suspicious behavior was on school grounds "would immediately heighten a reasonable officer's concern, particularly that of a school resource officer." Adding in Coleman's driving away when the deputy drove up, the court held that an officer could reasonably suspect "Coleman presented a credible threat of physical harm to students, faculty, and/or staff at the school by possessing a dangerous weapon."

Excerpt from a Lexipol article

There are many Oregon Revised Statutes that a peace officer should look to regarding their starting authority to make arrests and use force. The four that are covered below are the primary ORS's that grant an officer the authority to stop pedestrians or motorists and make arrests.

The next statute we will look at authorizes officers to stop "persons" based on an officer's reasonable suspicion that the person is involved in criminal activity. This statute is directly related to Reasonable Belief discussed above. Let's look at the subsection regarding an officer's ability to use force to detain the "person" if the officer has specific and articulatable facts *or* if there are reasonable safety concerns during the stop.

> *A peace officer making a stop may use the degree of force reasonably necessary to make the stop and ensure the safety of the peace officer, the person stopped or other persons who are present.*
>
> ***Stopping of persons – ORS 131.615 (5)***

To fully understand this statute, it's important to familiarize yourself with all its aspects. This subsection specifically demonstrates how a peace officer is authorized to use force under this law. Additionally, other statutes exist that grant officers additional powers, which will be covered in future training modules on the use of force.

There are three (3) additional statutes that further explain the authority and process of making stops or arrests and your ability to use force when doing so. The first two are directly connected and are listed below in the same text box.

> ***Authority of peace officer to arrest without warrant – ORS 133.310***
>
> *In order to make an arrest, a peace officer may use physical force as justifiable under…*
>
> ***Arrest by a peace officer; procedure – ORS 133.235 (4)***

The final statute is listed in Module 2: The Severity of the Crime on page 18.

The Federal "Objectively Reasonable Officer" Standard

The DPSST Use of Force program places significant emphasis on the United States Supreme Court's rulings of the "Objectively Reasonable Officer" standard, placing the Use of Force by law enforcement, under the Fourth Amendment of the United States Constitution. The specifics of this standard, its rules, and court rulings are the foundation of use of force rules and decisions. See below for relevant definitions and uses of objective reasonableness.

The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation

Graham v. Connor – Supreme Court of the United States

Let us breakdown the components of the expression "objectively reasonable".

Objectively – in an objective rather than subjective or biased way**:** with a basis in observable facts rather than feelings or opinions.

Merriam-Webster Dictionary

Reasonable – being in accordance with reason; not extreme or excessive.

Merriam-Webster Dictionary

And finally, we must remember that the analysis should be evaluated from the "perspective" of a reasonable officer on the scene.

Perspective – the appearance to the eye of objects in respect to their relative distance and positions.

Merriam-Webster Dictionary

When thinking about the "objective reasonableness" analysis, all three elements are important to the evaluation of a Use of Force event.

What happened to Perception of the Officer?

...it is clear that the application of an officer's perception is a foundational principle. After attending the Force Science certification training, and watching experts testify in court on issues of memory and perception, I agree that we tend to remember things in dits and dashes. Our memory is not a fluid video and we are inclined to experience what experts call tunnel vision and auditory exclusion. I think we can all agree that once the officer watches his/her video prior to writing his/her report, the video fills in the officer's memory.

Excerpt from the Daigle Law Groups learning center articles

Tennessee v. Garner: Introduction

In 1985 the United States Supreme Court noted that an apprehension by use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement. To determine the reasonableness of the seizure, the extent of the intrusion on the suspect's rights under that Amendment must be balanced against the governmental interests. As we will see in Graham and later cases, this balancing test is used when analyzing all uses of force.

Tennessee v. Garner required the Supreme Court to determine the constitutionality of the use of deadly force to prevent the escape of an apparently unarmed suspected felon. The court concluded a police officer *may* use deadly force only when it is necessary to prevent the escape **and** the officer has probable cause to believe that the suspect poses a threat of serious harm, either to the officers or others.

Tennessee v. Garner: The enduring test of "objective reasonableness"

... the Court ruled that police use of deadly force should be viewed in light of the Fourth Amendment as a seizure of a person. As such, the Court decided that going forward, the use of deadly force should be governed by the reasonableness requirement found in the Fourth Amendment.

Excerpt from an article on ***Police 1***

Graham v. Connor: Introduction

In the United States Supreme Court Case Graham v. Connor, the courts established specific questions that will be asked during a review of a use of force case at the federal level.

> *Because the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case, including...*
>
> ***Graham v. Connor – Supreme Court of the United States***

These points will be covered individually during class. The objective is for all officers to have a thorough understanding of the questions and how they are relevant both during and after a use of force event.

New Study: Stress, Training, and the Objective Reasonableness Standard

It is well-settled that a police officer's use of force must be reasonable. It is equally well-established that reasonableness is to be judged from the perspective of the officer on the scene. This "on scene" perspective properly requires agencies and courts to consider the influences that emotional arousal and stressors, like time compression, may have on these use-of-force decisions.

Excerpt from the Force Science Institute's news section

From this point forward we will use a Graham analysis when evaluating videos, scenarios, and cases to help us determine the reasonableness of a use of force event.

Oregon's "Objectively Reasonable Officer" Standard

In 2020 the Oregon Legislature adopted a version of the "objectively reasonable" standard relating to a Peace Officers legal ability to use force while carrying out their duties. As of this writing, there is no current Oregon Case Law that spells out specific rules of exactly *how* this will be interpreted. However, it did seem to be the intent of the Oregon Legislature to bring Oregon's use of force laws "in line" with the current Federal Case Law. As such, DPSST will continue to teach the United States Supreme Courts objectively reasonable officer standard as the most current and legally defensible standard for the use of force.

> *A peace officer may use physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe...*
>
> ***Use of physical force by peace officer – ORS 161.233 (1)***

What is "Governmental Interest"?

The term "governmental interest" is frequently used when evaluating a Fourth Amendment issue like a law enforcement officers use of force. This term is also often misunderstood to mean "what was the severity of the crime?" Even though, as discussed earlier, the severity of the crime is an important question and a Graham Factor, this is not what the courts refer to when they discuss "governmental interest".

> *We measure **the governmental interests at stake** by evaluating a range of factors: they include (1) the severity of the crime at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others. (3) whether he was actively resisting arrest or attempting to evade arrest by flight, and any other exigent circumstances that existed at the time of the arrest.*
>
> ***Deorle v. Rutherford – Ninth Circuit Court of Appeals***

Governmental interest **is all** the Graham Factors that you will be learning about. Only by evaluating all the factors does the government evaluate its interest in a specific arrest or circumstance.

> *To summarize, Aikala used the intermediate force of a Taser in dart-mode on Jayzel after he and the other officers arrived to ensure her safety. Her offense was minimal at most. She posed no threat to the officers. She minimally resisted Troy's arrest while attempting to protect her own body and to comply with Agarano's request that she speak to him outside, and she begged everyone not to wake her sleeping children. She bears minimal culpability for the escalation of the situation.*
>
> ***Mattos v. Agarano – Ninth Circuit Court of Appeals***

Module 2: The Severity of the Crime

The United States Supreme Court, the Ninth Circuit Court of Appeals and our own Oregon law all ask a similar question when evaluating a police officer's use of force.

> *The first (Graham) factor, "the nature of the crime or other circumstances known to the officer at the time force was applied," should be modified as appropriate when the officers are acting under their community caretaking function rather than to counter crime. In such circumstances, "the better analytical approach" focuses the inquiry on the seriousness of the situation that gives rise to the community-caretaking function. Officers have a duty to independently evaluate a situation when they arrive, if they have an opportunity to do so.*
>
> ***Manual of Jury Instructions – Ninth Circuit Court of Appeals (starting at page 191 – revised September 2022)***

The Ninth Circuit goes on in their list of jury instructions to include two additional references to the severity or nature of the crime.

> *Whether the officers are facing or expecting a domestic disturbance is a specific factor relevant to the totality of the circumstances in assessing an excessive force claim. Domestic violence situations are 'particularly dangerous' because 'more officers are killed or injured on domestic violence calls than on any other type of call.*
>
> ***Manual of Jury Instructions – Ninth Circuit Court of Appeals (starting at page 191 – revised September 2022)***

whether there was probable cause for a reasonable officer to believe that the suspect had committed a crime involving the infliction or threatened infliction of serious physical harm.

Manual of Jury Instructions – Ninth Circuit Court of Appeals (starting at page 191 – revised September 2022)

The Oregon Revised Statutes are more mechanical as there are several statutes that begin with the reason for the contact but also include a generalized "justification" for the officer to use force. For example, see the ORS listed below that outlines an officer's authority to use force during a traffic stop or other "violation level" encounter.

...may arrest or issue a citation to a person for a traffic crime at any place within or outside the jurisdictional authority of the governmental unit by which the police officer is authorized to act...

A police officer: May use the degree of force reasonably necessary to make the stop and ensure the safety of the police officer, the person stopped or other persons present.

Arrest and Citation (Vehicle Code) – ORS 810.410 (3)(f)

Recently the Oregon Legislature brought Oregon's laws regarding the use of force in line with well-established federal case law, such as that of Tennessee v. Garner. Notice the similarities between the two and the specific Oregon definition of the term "violent felony".

> *While we agree that burglary is a serious crime, we cannot agree that it is so dangerous as automatically to justify the use of deadly force.*
>
> ***Tennessee v. Garner – Supreme Court of the United States***

The importance of a crime being violent or egregious **does not** mean that a police officer may use force only when trying to arrest a violent felon. It does mean that high levels of force, such as deadly force, can *only* be justified if the crime is a violent felony and **there are other factors.**

> *...deadly physical force (may be used to)...Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a violent felony.*
>
> *(4) As used in this section, "violent felony" has the meaning given that term in ORS 419A.004 (38).*
>
> ***Use of deadly physical force by peace officer – ORS 161.242 (1)(c)***

Regardless of the seriousness of the original crime, you are always allowed to use *some* amount of force to place a suspect under arrest, if the force is reasonable. The suspect's *response* to your attempts to arrest them can escalate from what started as a low-level crime into very serious and violent crimes.

...However, we have no difficulty deciding that failing to sign a traffic citation and driving 32 mph in a 20 mph zone are not serious offenses. Indeed, our case law demonstrates that far more serious offenses than Brooks's do not constitute severe crimes in a Graham analysis.

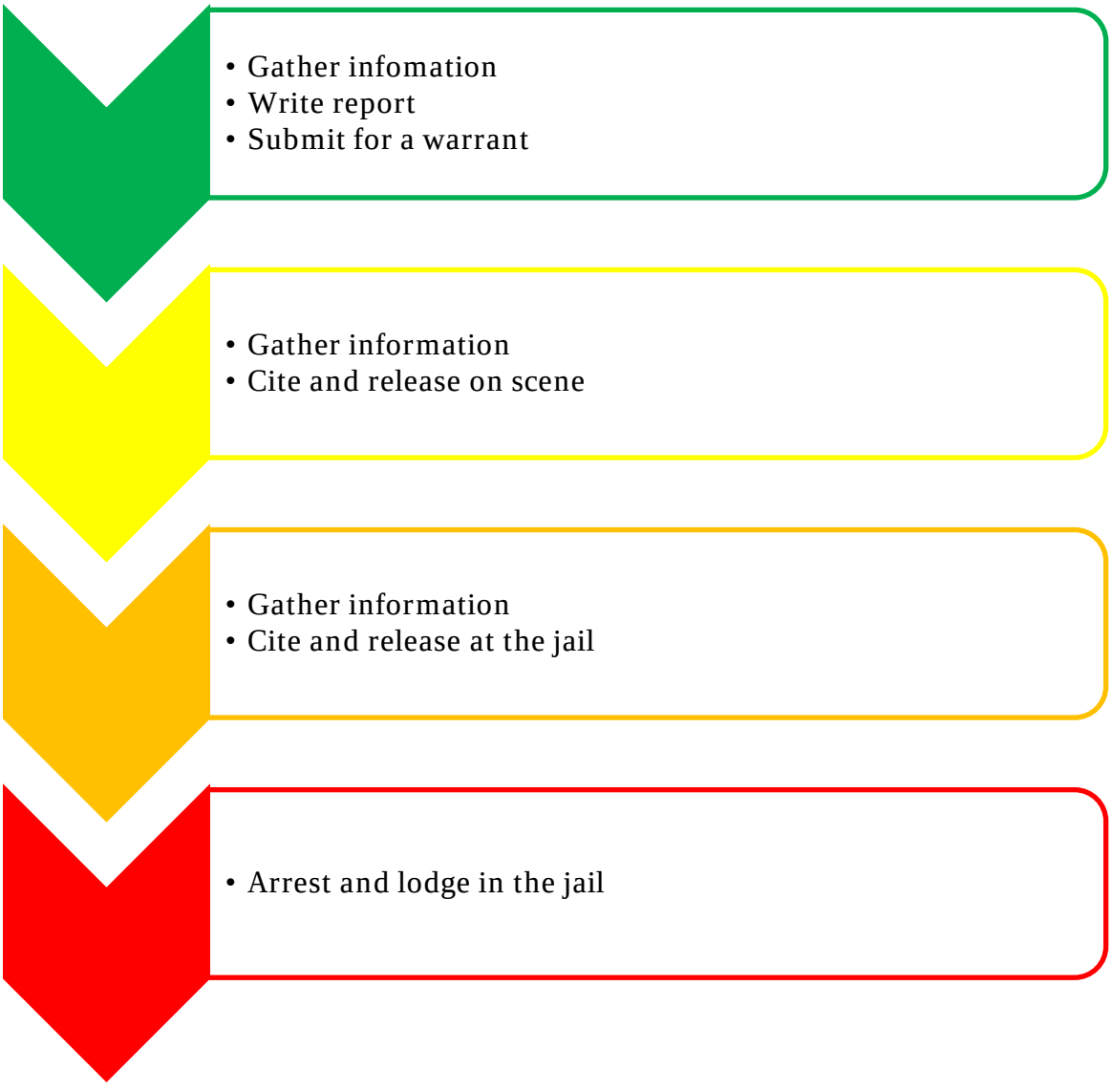
Brooks v. City of Seattle – Ninth Circuit Court of Appeals

Throughout your classroom and scenario training we will discuss different tactics and procedures when dealing with different types of criminal actions. Just because the ORS says you "can" does not always mean that you need to "right now". See the graphic below for an overview of different options and the conditions that may make those options a better tactic that just saying "you're under arrest".

Arrest Options

Now that we have established how the Courts and the Oregon Revised Statutes look at your ability to use force for a variety of lawful reasons, we will combine this information to start making decisions *before* you become engaged in a use of force encounter. With the knowledge of the "level" of criminal conduct; violation, misdemeanors, felonies, an officer must know the *other* circumstances that would cause them to need to use force in a seemly low-level criminal act.

Before going into the long list of mitigating and exacerbating factors, let us look at the four basic options an officer has available to deal with a suspect of a crime.



Mitigating and Exacerbating Factors

The general goal of most police encounters is to resolve them with the least amount of government intrusion to the civil rights of the citizens (private persons) involved. However, this is often not possible based on the behavior of the suspects involved or other factors. For example, you cannot gather the basic information about the people involved with the goal of merely writing a report, if the suspect will not identify themselves.

The following are some of the factors that mitigate or exacerbate an officer's decision-making options for a resolving a situation.

Lodge in the Jail	Cite at the Jail	Cite on Scene	Report and Warrant
• measure 11 • mandatory arrest • danger to victim • danger to others • continues to commit the crime • etc.	• seperate from other parties • formal realease agreement • cannot be identified • continues to commit the crime • etc.	• suspect is known • non-violent crime • parties are seperated • low level warrant • low level crime • etc.	• suspect is known • non-violent crime • parties are seperated • low level crime • investigation needs more time • unknown victim • uncooperative victim

Your knowledge of the laws may be the **most important element** in your decision-making process relating to the use of force. An experienced officer understands when is necessary to attempt to make a physical arrest. Experienced officers seek non-physical resolutions to situations before resorting to force. This does not mean you will never physically arrest someone for a low-level crime. It also does not mean that if you must make that decision, you are not allowed to use force to effect that arrest. It does mean that when you make that decision, and if that situation goes poorly, your reasons for choosing to make the arrest will be scrutinized.

We want to arrest the right people, for the right reasons, at the right time.

Module 3: Communication, Commands, and Warnings

Proper verbal skills can prevent the need for force and help justify the use of force when avoidance is not possible. This is the **second most important topic** for a law enforcement officer to learn. If you understand how to speak to people properly you can avoid causing problems, verbally repair an encounter, and communicate your boundaries to others.

Police Expertise and Use of Force: Expert and Novice Use-of-Force Decision-Making

Relative to novices, expert police officers were more likely to report the importance of force mitigation opportunities to any given scenario in close-ended questions and were more likely to use words associated with verbal de-escalation; novices were more likely to use words associated with physical control.

Laura Mangels & Joel Suss & Brian Lande

The need for proper communication can be seen in videos of officers using poor verbal skills that then devolve into a use of force incident. This often leads to an illegitimate use of force.

The communication style should be driven by the **context** of the situation. Your ability to know **when** to use the appropriate style may impact the outcome of the situation legally or tactically. There are some verbal warnings, commands and statements **that are legally required** by Federal Case Law and the Oregon Revised Statutes.

There is a time and place for verbal de-escalation. However, if you or someone else is in immediate danger, verbal tactics such as negotiation or de-escalation are often inappropriate, confusing, and detrimental to other necessary tactical decisions. Deciding *when* to use verbal tactics is equally as important as *how* to use them.

The added benefit from good communication is officer safety. If you are being appropriate and calm, and the suspect is acting in a manner that is not calm, that is an officer safety clue. This could indicate several different issues. Regardless of what their intent is, you should act. Call for a cover officer, gain distance, break contact, etc. Whatever you choose, trying to complete the contact normally is no longer safe until you assess the new information.

Proper communication skills will put you in a better position to assess the situation and maybe resolve the encounter without force.

Re-thinking "Show me your Hands"

Officers know that "hands kill" and that they should "watch the hands." These well-founded concerns are what prompt demands for suspects to "show me your hands!"

The irony is that an order to "show me your hands" or "take your hands out of your pockets" may invite the same movement from a compliant suspect as it does from an assaultive one. Meaning, compliance can look like pre-assault behavior—and **pre-assault behavior can look like compliance**. Neither is good.

Excerpt from the Force Science Institute's news section

Persuasion

No amount of persuasive communication skills can convince a person to cooperate if they do not want to. However, verbal persuasion is still important, and the attempt is often required during encounters with uncooperative people. Verbal persuasion demonstrates that *you are trying* to resolve the situation without force.

When it is safe to do so, attempt a verbal resolution prior to force. These attempts, *even if you feel they are ineffective*, demonstrate to the public that the reason this situation has resulted in force is due to the actions of the suspect and *not* you as the officer.

Cops Give Weaker Commands in Violent Encounters Studies Reveal

"Obviously language alone cannot prevent or defuse all violence," Lewinski says. "Often there is nothing an officer can say or do to prevent a shooting. But these studies suggest that language style can be an important element in where many encounters end up.

Excerpt from the Force Science Institute's news section

Commands

Regardless of how compliant the subject is you will still have to give some commands. These could be as routine as "go ahead and get your driver's license for me". Commands can also be used for trying to ensure the safety of the officer such as "I want you to keep your hands on the steering wheel".

Not all commands are equally legal or effective. First, **your commands must be lawful.** Your position as a law enforcement officer does not make every command or warning you say "lawful". See this example from case law below.

> *An order that restrains an individual's liberty in violation of [Oregon Constitution], is not a "lawful order" for purposes of that statute.*
>
> ***Oregon v. Kreis – Supreme Court of the State of Oregon***

Lawful commands should also be effective. You may have covered this in the Communication Series of classes earlier in your academy training.

Conflicting Commands

Is there anything we can do to help ensure that a suspect can understand our commands? Yes. Commands should be clear and concise. And commands should be given by one officer only.

*Excerpt from **Today's Tip's** from Lexipol*

Boundary Commands

If you look at the Command Types research paper (starting on page 99), you see that the researchers have a list of the different command types. The Use of Force Program has a modified command referred to as **Boundary Commands.**

Boundary Commands would probably be considered Regular, Don't, or Other commands in the research but for our purposes we will call them **Boundary Commands**. A proper boundary command explicitly and preemptively establishes conduct that the subject either should or should not do.

There are two purposes for Boundary Commands. First, the boundary should remind *you*, the officer, of what conduct you find unacceptable. Second, it removes any legal debate about what you wanted the subject to do, or not do.

Before we establish when or how to give proper commands and warnings, we should define what these words mean.

Command – to direct authoritatively: ORDER

Merriam-Webster Dictionary

Warnings

Oregon's new law and Federal Case Law require you to give a warning before you use force. You must also give the person a reasonable opportunity to comply with your commands and/or warnings before you use force. The following are some of the rules, and the exceptions to the rules, surrounding verbal warnings and commands regarding the use of force.

> *...if the peace officer has a reasonable opportunity to do so, the peace officer shall...Give a verbal warning to the person that [force] may be used and provide the person with a reasonable opportunity to comply.*
>
> ***Use of physical force by peace officer – ORS 161.233 (3)***

> *whether it was practical for the officer[s] to give warning of the imminent use of force, and whether such warning was given*
>
> ***Manual of Jury Instructions – Ninth Circuit Court of Appeals (starting at page 191 – revised September 2022)***

Notice that neither of the statements mention commands. There *is* a legal difference between commands and warnings. It is understandable that an officer in a time compressed, and stressful situation might *only* give commands to a suspect. However, as you can see, when time and safety allow it, only warning meets the legal requirements listed above. Failure to do so will leave you open to criminal prosecution or civil lawsuits.

Our conclusion is strongly supported by Rutherford's failure to give Deorle any warning that he would be shot if he approached any closer or any order to drop the can or bottle or stop where he was. Deorle certainly could not have been expected to comply with instructions that were never given to him.

Deorle v. Rutherford – Ninth Circuit Court of Appeals

The purposes of commands and warnings are similar. The difference is not listed in the dictionary definition. A command is telling someone that you want them to do (or not do) something. "Put down the knife!" for example.

Warning – the act of warning: the state of being warned.
Merriam-Webster Dictionary

A warning is a command **plus** the consequences for **NOT** following the command. "Drop the knife or you will be shot with the bean bag gun!" is a warning.

Boundary Warnings

As above with boundary commands, we also can use boundary warnings. These meet all of the legal requirements *plus* they remind the officer of **what behaviors will trigger your need to use force**. The "standard" warnings and commands are almost always a Beta command and too vague to be easily understood. An Alpha "Boundary" Warning is specific, clear, and easily understood.

The Alpha warning takes longer to say. This means you should be giving commands *after* you have gained Time, Distance, and Cover. Remember that you are only required to give a warning before force *if* you have a "reasonable opportunity" or if its "practical" to do so. If you are in immediate danger or being attacked, **you do not need to give a warning.**

During your Use of Force scenarios, you will have many opportunities to practice giving boundary warnings. We will be evaluating not only **how** you give your warnings, but if you select the **right time** to give a warning.

Keep in mind; this is not the mindless task of throwing out some verbal warning. It is a reasonable attempt to warn the suspect about the force you will use because of their action or inaction and giving reasonable time to comprehend and decide to comply.

Verbal De-Escalation

You have had some de-escalation training during the Behavior Health series. This section is *not* specifically meant to apply to behavioral health scenarios but there will be significant crossover of verbal skills.

Before an officer can work on *how* to verbally de-escalate, we need to establish ***when*** these skills are appropriate. Not every situation can be de-escalated and *attempting* de-escalation in these situations can lead to serious injuries.

> *Prior to using [force] upon another person, if the peace officer has a reasonable opportunity to do so, the peace officer shall: (a) consider alternatives such as verbal de-escalation…*
>
> ***Use of physical force by peace officer – ORS 161.233 (3)***

The Oregon Legislature makes it clear that you **are required** to attempt verbal de-escalation. The Legislature also made it clear that this requirement **is conditional**. The phrase "reasonable opportunity" is the key condition. It does not say "every possible opportunity", however, that does not mean "whenever you feel like it".

The standard legal understanding of "reasonable opportunity" is that the situation is safe for the officer or others, and that you have time to carry out the attempted course of action.

To be clear, you **DO NOT** need to attempt to de-escalate *while* a subject is: physically assaulting you, resisting arrest, or fleeing. You **DO** need to de-escalate if the subject is: sitting or standing still, and exhibiting no "pre-assault/officer safety" indicators.

Module 4: Type and Amount of Force

Before we discuss all the different types and categories of force, a brief word on *selecting* the *right* force for a situation. The Ninth Circuit has held, in essence, that there is no "one way" or "perfect choice" when selecting a type of force. As you can see in the ruling below, officers need to act withing a range of reasonableness. Keep that in mind as we explore all the different kinds of force available for an officer to use while performing their duties.

> *Requiring officers to find and choose the least intrusive alternative would require them to exercise superhuman judgment. In the heat of battle with lives potentially in the balance, an officer would not be able to rely on training and common sense to decide what would best accomplish his mission. Instead, he would need to ascertain the least intrusive alternative (an inherently subjective determination) and choose that option and that option only.*
>
> *Imposing such a requirement would inevitably induce tentativeness by officers, and thus deter police from protecting the public and themselves. It would also entangle the courts in endless second-guessing of police decisions made under stress and subject to the exigencies of the moment. Officers thus need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable.*
>
> ***Scott v. Henrich – Ninth Circuit Court of Appeals***

Type of Force vs. Amount of Force

Case law has long recognized that the right to make an arrest or stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it.

Let us look at the different types and amounts of force used by both law enforcement and suspects. The United States Supreme Court called this "the nature and quality of intrusion". This topic is now part of the Ninth Circuit's instructions to jurors in use of force cases and is simplified to the phrase "type and amount of force".

> *In determining whether the officer used excessive force in this case, consider all of the circumstances known to the officer on the scene, including:*
>
> *(5) the type and amount of force used;*
>
> ***Manual of Jury Instructions – Ninth Circuit Court of Appeals***
> ***(starting at page 191 – revised September 2022)***

These two terms are often thought to be interchangeable. They are not. A *type* of force, or force *option*, relates to a specific technique or tool, for example, a firearm or a focused blow (physical strike with a body part). The *amount* of force can be harder to define. The "amount" encompasses not only how much effort you put into that force, but other factors such as: the response from the target, the area of intended contact and/or the officer's innate physical abilities.

You must understand what force falls into a specific category. Both Ninth Circuit rulings and Oregon Law limit your ability to use certain categories of force unless specific and articulatable conditions are met. Based on the category of force you used, you **must** be able to explain specific factors about the circumstances of your situation.

Definitions of Categories of Force

The definitions that are used are a combination of legal definitions from the Oregon Revised Statutes, definitions from Federal and Ninth Circuit case law, and when necessary, from the dictionary. Nearly all the definitions and cases are linked to the appropriate references. You are encouraged to research further if you have additional questions.

Administrative Force

Administrative Force – physical force that *does not* cause pain or injury.
DPSST Working Definition

Administrative Force includes the lowest "level" physical force techniques. It identifies the fact that *some* force was used, but this force did not cause injuries or pain. Administrative Force acknowledges that these techniques meet the legal definition of a seizure which is covered by the Fourth Amendment.

Administrative force is physical force that is used to move or control a person and includes using directional contact or an escort-hold on a person. Generally directional contact, escort holds, and/or handcuffing does not require a Use of Force Report. Because the courts considered Physical Contact a "seizure" you should still thoroughly document *what* you did and *why* you did it in your Arrest Report.

Civil Liability for the Use of Handcuffs: Part I – Handcuffs as Excessive Force

A number of cases have found excessiveness when handcuffs are unnecessarily tightened, when they caused significant pain or injury...

Excerpt from the 2008 (10) AELE Monthly Law Journal 101

Physical Force

There is a significant body of law that spells out what is considered **physical force**. The following sections illustrate what is considered physical force.

Force – violence, compulsion, or constraint exerted upon or against a person.
Merriam-Webster Dictionary

Physical – of, or relating to the body.
Merriam-Webster Dictionary

The Oregon Revised Statutes definition is both the least descriptive and least helpful.

Physical force includes, but is not limited to, the use of an electrical stun gun, tear gas or mace.

General Definitions – ORS 161.015 (6)

The definition adopted by the Ninth Circuit is the most accurate and is the standard that we will use to define Physical Force.

Physical Force is "force capable of causing physical pain or injury to another person".

Flores v. Ashcroft – Seventh Circuit Court of Appeals (adopted by the 9th Cir.)

Any technique that is used to physically control people could be considered physical force. As listed above, the use of physical force can result in injuries. All force, including physical force, must be reasonable under the totality of the circumstances.

Physical Force could include using *directional contact* or *escort holds* on a person if the way the technique is used would likely cause some injury and/or pain.

Techniques that are generally considered **physical force** are:

- ☐ *some* handcuffing (also see: Administrative Force)
- ☐ digital finger control
- ☐ pressure points
- ☐ wrist locks
- ☐ joint locks
- ☐ takedowns
- ☐ *some* focused blows (also see: Intermediate Force)
- ☐ *some* baton strikes, or other baton uses (also see: Intermediate Force)

The Future of Defensive Tactics

With more than 320 million people in the U.S. and well more than 60 million face-to-face contacts with law enforcement each year, there are estimated to be something over 880,000 uses of force. Most of these force usages are low level, and still only occur in approximately 1.4% of all of the above encounters.

Excerpt from an article by Calibre Press

Intermediate Force

There is a no category of "intermediate force" in the Oregon Revised Statutes. However, the Ninth Circuit created a distinct category of force that falls in-between physical force and deadly force in 2009. The following sections illustrate what is considered **Intermediate Force**.

Intermediate – being or occurring at the middle place, stage, or degree or between extremes
Merriam-Webster Dictionary

The Ninth Circuit Court of Appeals offered the following description.

Intermediate Force is force that creates "physiological effects, high levels of pain, and foreseeable risk of physical injury".

We therefore conclude that Tasers like the X26 constitute an "intermediate or medium, though not insignificant, quantum of force,"

Bryan v. MacPherson – Ninth Circuit Court of Appeals

Combining these elements, we will use the following definition.

Intermediate Force – force that under the circumstances in which it is used, that is readily capable of causing high levels of pain and/or foreseeable risk of physical injury.
DPSST Working Definition

The use of intermediate force will nearly always result in some type of injury to the suspect. This amount of force, as with all force, must be reasonable under the totality of the circumstances and requires after care of the suspect.

Weapons and techniques that are typically categorized as **Intermediate Force** include but are not limited to:

- ☐ *some* focused blows
- ☐ *some* takedowns
- ☐ *some* expandable baton strikes
- ☐ pepper spray (OC)
- ☐ extended range impact weapons
  (Bean Bag shotguns, 40mm direct impact rounds, Pepper Ball weapons, etc.)
- ☐ electronic control devices (Tasers)
- ☐ police canines (K-9 bite dogs)

> *…constitutes force which carries a significant risk of serious injury, and, thus, is not to be deployed lightly. To put it in terms of the test we apply: it is to be used only when a strong governmental interest compels the employment of so high a degree of force.*
>
> ***Deorle v. Rutherford – Ninth Circuit Court of Appeals***

Even though Oregon does not specifically identify the separate *category* of intermediate force, this type of force can, and often does, lead to Use of Force investigations, lawsuits, and occasionally, criminal prosecutions. As noted above, this amount of force, is only reasonable when there is an Immediate Threat or "strong governmental interest".

Governmental Interest will be discussed later in your training.

"Choke Holds"

Recently the Oregon State Legislature has passed a series of laws relating to what is commonly referred to as **"choke holds"**. Due to the language in the new statute this includes any physical force technique that impedes the breathing or blood flow to a suspect's neck through pressure on the neck or throat.

For the purposes of clarity, the legislature did not use the typical Law Enforcement terminology of; Carotid Neck Restraint, Vascular Neck Restraint, Lateral Vascular Neck Restraint, or Rear Naked Choke. They defined what those techniques do.

For brevity, all these techniques, moves, terms, and definitions will simply be referred to as "chokes".

It is not justified/reasonable under any circumstance for a peace officer or corrections officer to knowingly use physical force that impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person except in circumstances in which physical force is justified under ORS 161.209 and 161.215.

Use of physical force involving pressure on throat or neck by peace officer or corrections officer – ORS 161.237 (1)(2)

As you can see the first subsection makes it clear that "peace officers" are **not** allowed to "choke". But this subsection also makes it clear that you **are allowed** to use a "choke" **IF** you need to defend yourself, or another person, from unlawful physical force.

Notice how your justification for defense *is not related* to a peace officers' authority to use force against an imminent threat under Sections (7) or (8) of this same bill. That is because those sections relate to an officer's authority to use of force while trying to make an arrest.

The legislature is making it clear, you **may not** use a "choke" for the purposes of arrest, to prevent escape, or to end resistance.

It must also be noted that you are allowed to use a "choke" to stop a *physical* assault. A suspect **is not** required to be a *deadly* threat to you or another for you to use a "choke".

Civil Liability for the Use of Neck Restraints

Improperly applied neck restraints that turn into choke holds and restrict the intake of breath can and have in some instances resulted in tragic consequences including death or permanent disability. In a number of such cases, these consequences have resulted in very large civil liability settlements or judgments. They have also resulted in some agencies greatly restricting or even banning the use of neck restraints altogether.

Excerpt from 2013 (12) AELE Monthly Law Journal 101

To be clear, the use of a "choke" for the purposes of arrest, to stop an escape, or to overcome a suspect's attempts to resist arrest **is forbidden** by Oregon Law.

Deadly Physical Force

Much like physical force, there is a significant body of law that spells out what is considered deadly force. The following sections illustrate what is considered **deadly physical force**.

Deadly – likely to cause or capable of producing death

Merriam-Webster Dictionary

The Oregon Revised Statutes has a clearly defined definition of deadly physical force.

Deadly physical force means physical force that under the circumstances in which it is used is readily capable of causing death or serious physical injury.

General Definitions – ORS 161.015 (3)

As does the Ninth Circuit Court of Appeals.

Deadly Physical Force is force that "creates a substantial risk of death or serious bodily injury".

Smith v. Hemet – Ninth Circuit Court of Appeals

Notice that the available definitions are all nearly identical. Because of this consensus DPSST does not need a working definition.

Weapons and techniques that are considered **Deadly Physical Force** are:

- ☐ edged weapons
- ☐ firearms
- ☐ vehicles (depending on the manner of use)
- ☐ OR, any physical force used in a manner readily capable of causing death or serious physical injury

As noted in the Tennessee v. Garner, it is essential to remember that this discussion is unique to public safety officers or "color of law" actors, whose force conduct has a constitutional dimension as well as potentially criminal. Private persons interacting with one another by force may have criminal implications to their force conduct or civil lawsuit remedies. However, they are not bound by these constitutional principles.

How Are Courts Analyzing the Use of Deadly Force?

When training officers on how to provide a clear picture of the force incident, officers should be told to focus on the ability, opportunity, and intent of the subject during the interaction with the officer. Departments should use the Graham factors as part of the use of force decision-making curriculum, and as a report writing template. To their benefit, the officers in this case provided a clear, concise, and factually-based accounting of the incident, which the Court found to be reasonable.

Excerpt from the Daigle Law Groups learning center articles

Firearms Ready Positions

This **is not** a section on *what* the different ready positions are. That material has been covered in your Firearms Training sessions. This section is to clarify the myths and misunderstandings about pointing firearms and, to a lesser extent Tasers. The question is whether these actions are a Use of Force under the Fourth Amendment. To be clear, it is.

> *...pointed the gun at Thompson's head and threatened to kill him if he did not surrender. This type and amount of force can hardly be characterized as "minor," as the government contends. We have previously held, in the context of a residential confrontation, that "pointing a loaded gun at a suspect, employing the threat of deadly force, is use of a high level of force."*
>
> ***Thompson v. Copeland – Ninth Circuit Court of Appeals***

The above case is not a "one off" ruling. There is a large body of case law that makes it clear that pointing a weapon at someone is an "intrusion" under the Fourth Amendment and is considered a "high level of force". Notice that the court did not categorize this force into either Intermediate or Deadly, merely calling it a High Level.

This may be due to several reasons, but the point is clear, you **may not** point your firearm directly at a person unless the force is reasonable under the totality of the circumstances, including the "Graham Factors".

There are other reasons that pointing a weapon, especially a firearm, may not be the best tactic. Pointing your firearm or Taser directly at a person puts the subject in jeopardy if there is an unintended discharge. There are many legal cases, scientific articles, and other reports that detail why this is a danger that cannot be overstated.

There is a recent scientific study that gives us one more reason to be wary of who, how, and when we point firearms at people.

Muzzle position can have major impact on your shooting decisions

...In contrast, officers who initially confronted the suspect in the low-ready position performed significantly better. Only 30% of those officers misjudged the threat and fired at the suspect when he brandished the cellphone.

In other words, at an average "cost" of merely 11/100 seconds of additional reaction time, officers on average could "cut their chances of making a misdiagnosis shooting error by more than half by starting in a low-ready position rather than an aimed position," according to the study's findings.

Excerpt from an article by Calibre Press

None of this says that an officer is **never** allowed to point a weapon directly at a person. What the case law indicates is that you must have articulatable, reasonable, and justifiable factors to point your firearm directly at a person. In addition, nothing says you cannot draw your firearm and have it pointed in a "low ready" position for less clear or obviously dangerous reasons.

Remember this:

- ☐ Pointing a firearm (or Taser) **is force**
- ☐ Different "ready positions" are different **amounts** of force
- ☐ Mistake-of-Fact shootings **are more likely** when pointing directly at a person
- ☐ For all intents and purposes, officers **are not "less safe"** when in the "low-ready" position
- ☐ Unintended discharges that hit an innocent person can be considered **unconstitutional** and possibly a **criminal** act

Which leads us to our last topic in this section.

Deadly Force Accidents

The term "accidental" use of deadly force is not the legal definition in the Oregon Revised Statutes or the term many instructors will use. Regardless and for the purposes of this section, it gets to the point of what will be explored. When an officer uses deadly force against a person and either it was the wrong person entirely, or against the person they wanted to stop, but the wrong force was "accidentally" used.

Accidental – happening without intent or through carelessness and often with unfortunate results
Merriam-Webster Dictionary

These accidents can occur for a variety of reasons and in a variety of different ways. Many of these are considered "errors" in the scientific community. Many of these were introduced at the beginning of the Use of Force series. For the purposes of this section, we will be looking at the ORS to see how these errors are interpreted legally.

Nothing in…this section constitutes justification for reckless or criminally negligent conduct by a peace officer constituting an offense against or with respect to innocent persons whom the peace officer is not seeking to arrest or retain in custody.

Use of deadly physical force by peace officer – ORS 161.242 (3)

Often referred to as the "Million Dollar Bullet" this section establishes when an officer shoots and hits "an innocent". Simply put, this means a bystander, not the suspect.

The Federal Case Law does not delve much into this territory. This is because the Fourth Amendment deals with Search and Seizure. As you were not attempting to "seize" the bystander, this amendment does not apply and is outside the scope of this course.

Officers are almost never liable monetarily for accidental shootings, especially in chaotic situations where your life is in immediate danger. None of this is to say that you are not responsible for your misses, just that your need to be as accurate as possible is not due to monetary or criminal liability.

Your need to be accurate is a *moral* obligation. If you accidentally shoot an innocent person, you probably will not go to prison or lose your house, but you must live with it.

New Study on Shooting Accuracy. How Does Your Agency Stack Up?

"Given the amount of firearms training the police receive, it would be assumed that they hit their target more often than not," the researchers state. But the truth is that "officers are routinely inaccurate in their use of deadly force."

Excerpt from the Force Science Institute's news section

Remember this:

- ☐ Gunshots that hit an innocent person are a **criminal** act **IF** you are Reckless or Negligent.
- ☐ ***Other*** deadly force used against innocent persons is also criminal if you are Reckless or Negligent (i.e. crashing into innocent people during a pursuit).
- ☐ The presence of a **Deadly Immediate Threat** actively assaulting the officer or others generally negates criminal liability if a bystander is struck.
- ☐ As a law enforcement officer, you have a **Moral Responsibility** to learn how to operate your firearm and vehicle as safely and effectively as possible.

Module 5: Immediate Threat

One of the most fundamental human rights is to self-defense. Both the Oregon Revised Statutes and Federal Case Law make this point clear.

> *Next, it is necessary to apply the Graham criteria, beginning with the "most important single element of the three specified factors: whether the suspect poses an immediate threat to the safety of the officers or others.*
>
> ***Smith v. Hemet – Ninth Circuit Court of Appeals***

If this is so clear in the eyes of the law and the general public, how do we often get this so wrong? This can happen for a variety of reasons, some of which we touched on when discussing "errors".

Let us begin with the basic definition of an Immediate Threat. The following is **DPSST's Working Definitions** of the three required elements:

Intent – the person must demonstrate their intent to cause physical injury, serious physical injury, or death through either; body language, verbalization or both.

Ability (or Means) – The person must have either the physical ability or possess a weapon to carry out the demonstrated intent.

Opportunity – the person must have access to the officer, a weapon or both to carry out the perceived attack.

Unreasonable force is often the result of an officer who either misjudges a person to be an immediate threat when they are not, or more often, they do not draw the correct distinction between a person resisting arrest, a physical threat, or a deadly threat.

The following are the two *basic* types of immediate threats.

Deadly Immediate Threat – A person demonstrating the Intent, having the Ability (Means) and the Opportunity, *(to attack the officer)* and, under the circumstances, is readily capable of causing serious physical injury or death.
DPSST Working Definition

A peace officer may use deadly physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe that the person poses an imminent threat of death or serious physical injury to the peace officer or to a third person and the use of deadly physical force is necessary to:

(b) Defend the peace officer or a third person from the imminent threat of death or serious physical injury

Use of deadly physical force by peace officer – ORS 161.242 (1)

A deadly threat does not need to be armed with a firearm or a knife. Deadly threats can be unarmed if they possess the physical strength or skill. A deadly threat could be someone in a car driving directly at the officer or so recklessly that the public is in danger. This will be discussed further in class.

Physical Immediate Threat – A person demonstrating the Intent, having the Ability (Means) and the Opportunity, *(to attack the officer)* and, under the circumstances, is readily capable of inflicting physical injury.

DPSST Working Definition

There can be a lot of fluidity between a deadly threat and a physical one. However, this does not give officers the right to treat all suspects, including threats, as though they are deadly. Even when dealing with a person attempting to assault you your use of force must be objectively reasonable under specific circumstances of this situation.

A peace officer may use physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe:

(a) That the person poses an imminent threat of physical injury to the peace officer or to a third person

Use of physical force by peace officer – ORS 161.233 (1)

In a world of dynamic, deceptive, and chaotic suspects it is often difficult to identify if a person is trying to hurt you, kill you, or just get away from you. Proper processes and procedures can reduce the risk to officers and suspects. This is why so many agencies require multiple officers be present for any physical arrest, as just one example.

Below is a summary of a recent Ninth Circuit Case regarding a suspect that could be described as both physically resisting arrest and a physical threat. Note at the end of the summary the emphasis on a well written use of force report.

Ninth Circuit – Excessive Use of Force

When the officers arrived, O'Doan was naked and moving quickly on a busy street. O'Doan repeatedly resisted the officers' command to stop and then turned toward the officers in a threatening manner with his fists clenched. The court concluded that the officers acted reasonably in deciding to bring O'Doan under control and that the use of the "reverse reap throw" maneuver was a reasonable way in which to achieve this.

Excerpt from the Daigle Law Groups learning center articles

Whether or not someone is an immediate threat specific to that moment in time and reasonableness. No one factor overrides the Oregon Revised Statutes requirement to "use a degree of force which the person reasonably believes to be necessary for the purpose."

This material will be discussed further in class.

"Officer Safety" Indicators vs. Ambushes

When discussing **Immediate Threats** to officers we should then look at whether an officer can reduce the risk of assault. In essence, threats to officers can be broken into two basic groups, situations where the officer *could have seen* clues that there was danger, and situations with *little or no* warning.

Clue – a piece of evidence that leads one toward the solution of a problem
Merriam-Webster Dictionary

Officer Safety Clues, sometimes called **pre-assault clues**, or **contextual clues**, are the obvious and subtle behaviors demonstrated by a person that indicate their intentions to either attack, resist or flee from an officer. These clues can be either verbal or physical in nature and must be taken in with the totality of the situation. A person putting their hands in their pockets may be indicating that they have a weapon; or, they may just be cold.

We have broken these clues into two categories: verbal clues and physical clues. These clues can be obvious, for example, when a suspect yells, "I'm not going back to jail!" or they can be subtle, "Warrant? What do you mean I have a warrant?"

The following are some of the more common examples of clues you may hear:

Verbal Clues – Obvious	Verbal Clues – Subtle
▪ "I'm not going back to jail!"	▪ Tone of voice.
▪ "No!"	▪ Repeating questions.
▪ Yelling curses.	▪ Not answering questions directly.
▪ Direct threats.	▪ Words do not match physical actions.
	▪ Asking specific questions.
	▪ Attempts to begin distracting conversation.

Try to consciously look for the presence of officer safety clues during your contacts with unknown people, suspects of crimes, and possibly some witnesses or bystanders. At the beginning of your career, this will need to be done deliberately and should be a priority during unknown contacts.

Physical Clues – Obvious	Physical Clues – Subtle
▪ Red face. ▪ Clenched jaw. ▪ Clenched fists. ▪ Rolling up sleeves. ▪ Removing clothing or jewelry. ▪ Putting hands into pockets. ▪ Moving towards the officer.	▪ Widening their stance. ▪ Hiding part of their body. ▪ Target glancing. ▪ Touching the face or nose. ▪ Touching the waistband or pockets. ▪ Moving to a better position. ▪ Assuming a handcuffing position. ▪ Practicing assault movements.

Officer safety clues must be taken in context. How is the suspect dressed? Where is this situation located? Are there other indicators that, when *combined* with the physical and verbal clues, lead the officer to objectively and reasonably believe that there is a significant officer safety issue that should be controlled?

Ambush – the act of approaching or confronting someone with something unexpected
Merriam-Webster Dictionary

But what about situations where the officer has little or no warning? For our purposes we will call these situations **Ambushes**. Ambushes are an unfortunate reality in law enforcement today. Below is an article you can link to for more information about *some* ambush situations.

Deadly Connection: Domestic Incidents and Police Ambushes

...NLEOMF researchers found that police officers are also being ambushed while responding to domestic incidents. "Responding to a call for service was the most common circumstance in ambush cases, accounting for 25 out of the 81 cases examined," the report notes. "The call types varied widely but Domestic Dispute was the call or underlying cause in six of the responses that culminated with an officer(s) being ambushed."

*Excerpt from **The Briefing** by Lexipol*

Ambushes can occur during situations *other than* domestic violence calls. However, domestics are both dangerous, and common enough that the Ninth Circuit has made it part of their Jury Instructions for Use of Force cases.

Whether the officers are facing or expecting a domestic disturbance is a specific factor relevant to the totality of the circumstances in assessing an excessive force claim.

Manual of Jury Instructions – Ninth Circuit Court of Appeals (starting at page 191 – revised September 2022)

Because ambushes, by their very nature, cannot be predicted through observation we go back to our philosophy of Process over Outcomes. We continue to try and build good tactical procedures to give an officer as many advantages as possible if or when you are be involved in an ambush.

Expect several of your Use of Force Scenarios to be these types of situations. These will be discussed further in class and during scenarios.

Module 6: Suspect Resistance or Evasion

The following definitions and explanations are meant to help you identify what type of resistance you are dealing with. When you document your use of force you should thoroughly explain what behaviors and actions you perceived.

Resist – to exert oneself so as to counteract or defeat.
Merriam-Webster Dictionary

Below are several ORS statutes that inform an officer's legal authority to use force to overcome a suspect's physical resistance, however this authority is not without limits.

Resists means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person and includes, but is not limited to, behavior clearly intended to prevent being taken into custody by overcoming the actions of the arresting officer.

The behavior does not have to result in actual physical injury to an officer.

Resisting Arrest – ORS 162.315 (2)(c)

In addition to the crime of resisting arrest, there is a section in the ORS section relating to the use of force of both civilians and law enforcement. This elaborates on the admonishing to private people NOT to resist arrest, regardless of the reason.

> *A person may not use physical force to resist an arrest by a peace officer who is known or reasonably appears to be a peace officer, whether the arrest is lawful or unlawful.*
>
> ***Use of physical force in resisting arrest prohibited – ORS 161.260***

When you are attempting to arrest or detain a person, the mere act of "non-compliance" with your orders for the person to "turn around and put your hands together behind your back" is not the act of ***actively*** resisting arrest. However, it is a contextual clue that they are not going to physically cooperate. Do not confuse your reasonable belief that they will not cooperate with the, legally defined act of ***actively*** resisting arrest.

With that being said, the result is the same, you will likely need to use force to physically arrest and handcuff this person, regardless of whether they are ***actively*** resisting or whether you think they are *about to* actively resist you.

> *A peace officer may use physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe:*
>
> *(A) Make a lawful arrest when the peace officer has probable cause to believe the person has committed a crime*
>
> ***Use of physical force by peace officer – ORS 161.233 (1)***

We now look at a case from the Oregon Supreme Court regarding whether a suspect is "resisting arrest" or they are defending themselves against unlawful and excessive force.

This case, then, presents an apparent conundrum: A person may not use force to resist arrest, even if the arrest is unlawful, but any person is entitled to use such force as is necessary to overcome what the person reasonably believes to be the unlawful use of physical force by anyone, including a police officer. (Citing ORS 161.209). How can a person obey the statutes prohibiting the use of force to resist arrest and still exercise his right under ORS 161.209 to use force in self-defense?

To answer that question, as this court stated in Wright,
It is crucial to distinguish between (1) the use of physical force in resisting arrest and (2) the use of physical force in defending oneself, i.e., self-defense, against excessive use of force by the arresting officer. The former is unlawful. Depending on the circumstances, the latter may be justifiable and not criminal.

If (defendant) believed, and a reasonable person in his position would have believed that the use or imminent use of force against him exceeded the force reasonably necessary in effecting the arrest, then he was entitled to defend himself from that use of force.

State v. Oliphant – Oregon Supreme Court

Every case will be evaluated on its merits. For the officer that may have just used physical force to overcome a suspects resistance remember this, the suspect just committed *a new crime* and it will need to be investigated, usually by you.

A suspects physical resistance *does not* automatically ensure a successful case. As you can see by the case law ruling above you will need to ask specific questions to establish probable cause for a resisting arrest case. This will be discussed further in class.

Active Resistance

To clearly establish the two basic types of resistance, see the following definitions and case law excerpts.

Active – producing or involving action or movement

Merriam-Webster Dictionary

Resistance – an opposing or retarding force

Merriam-Webster Dictionary

Note how the courts instruct the officers that what *they believe* is resistance does not qualify as "active resistance".

First, defendants maintain that because Mr. Beaver had not complied with Officer Laird's commands, he was actively resisting arrest and further Tasing was warranted. As previously discussed, the defendants confuse involuntary non-compliance with active resistance.

Beaver v. Federal Way – Ninth Circuit Court of Appeals

Next, note how the courts also reject the claim that "non-compliance" is not enough to rise to the level of "active resistance".

Even if Bryan failed to comply with the command to remain in his vehicle, such noncompliance does not constitute "active resistance" supporting a substantial use of force. Following the Supreme Court's instruction in Graham, we have drawn a distinction between passive and active resistance.

Bryan v. MacPherson – Ninth Circuit Court of Appeals

With all this information in mind we will use the following to clearly define what our working definition of active resistance IS.

Active Resistance – A person resists arrest or detention by engaging in physical action(s) that hinder the officer's ability to control that person with force.
DPSST Working Definition

Officers Try to Avoid an Arrest and De-Escalate and Are Rewarded with a Lawsuit

... an officer grabbed him and told him to sit down. Todd refused, then tightened up, clenched his fists and pulled his hands in toward his chest in a fighting pose. Another officer saw that Todd...appeared to be preparing to hit the officer...The second officer tried to help Todd sit, but he refused. The officers took Todd to the ground, told him to stop resisting and handcuffed him.

*Excerpt from **The Briefing** by Lexipol*

With the previous information in mind note in the following excerpt what the Ninth Circuit DOES consider "active resistance".

> *…she grasped the steering wheel and wedged herself between the seat and steering wheel, and she refused to get out of the car when asked. Brooks's conduct was defined by the SPD Use of Force Training Guideline as "actively resistant" because she employed force to defeat the Officers' attempts to control her. Our precedent also classifies Brooks's conduct as active resistance…*
>
> *While Brooks's resistance may not have been violent or aggressive, those aspects are more relevant to the second Graham factor, leaving the fact of her resistance here to weigh against finding the force used excessive.*
>
> ***Brooks v. City of Seattle – Ninth Circuit Court of Appeals***

Finally, note the subtle distinction the courts make between "violent or aggressive" actions being more in line with the actions of an immediate threat. Even though a suspect trying to prevent an officer from taking them to jail *can* use violence against an officer, the courts are going to view those actions differently than active resistance. This puts the Federal Courts opinions regarding "resistance" somewhat at odds with the Oregon Revised Statutes.

Passive Resistance

Whether it is in the Oregon Revised Statutes or case law, there is a distinction between active resistance and passive. See the following definitions and cases to clarify your understanding.

Passive – lacking in energy or will

Merriam-Webster Dictionary

Next is an excerpt from a case that is from the Oregon Supreme Court so it is one of the best examples of what would be considered passive resistance for an Oregon officer.

Passive Resistance refers to noncooperation with a peace officer's lawful order that does not involve violence or active conduct, whatever the motivation for the noncooperation. Passive Resistance includes being "engaged in inactive, nonviolent noncooperation"

Oregon v. McNally (2017) – Oregon Supreme Court

Take note of the following excerpt from a Ninth Circuit Court of Appeals case. The Ninth Circuit makes clear what actions are NOT "active resistance".

> *Defendants asserted at trial that the protestors' use of black bears constituted "active resistance to arrest" meriting the use of force. Characterizing the protestors' activities as "active resistance" is contrary to the facts of the case...the protestors were sitting peacefully, were easily moved by the police, and did not threaten or harm the officers.*
>
> ***Headwaters v. Humboldt County – Ninth Circuit Court of Appeals***

An officer needs to identify a resistant person based on their words, actions, and other objective factors. When trying to explain your perceptions to others in a report, it can help if we all use the same definitions, but these types of situations will not fall neatly into an individual category. Knowledge of the basic types of resistance can also help you decide what force is reasonable to use in the situation. After the use of force encounter these basic categories should also help you decide if additional crimes need to be charged, for example resisting arrest.

Determining what type of resistance, a person is exhibiting is only a starting point in your use of force decision making process. Other contextual factors will ultimately determine the reasonableness of your use of force decision.

Finally, it should be noted that for a person to be resisting arrest or detention, certain elements must be present. You must identify yourself or it should be readily apparent that you are a law enforcement officer. You should tell the subject that they are under arrest or that they are being detained. Finally, you must be or have just been in physical contact with the subject. It is more important to include the words and behaviors of the suspect, specifically describing their resistant behavior, than it is to categorize the type of resistance.

> *"Resistance, however, should not be understood as a binary state, with resistance being either completely passive or active. Rather, it runs the gamut from the purely passive protestor who simply refuses to stand, to the individual who is physically assaulting the officer. We must eschew ultimately unhelpful blanket labels and evaluate the nature of any resistance in light of the actual facts of the case.*
>
> ***Bryan v. MacPherson – Ninth Circuit Court of Appeals***

As you can see in so many 9th circuit rulings, non-compliance with commands alone, does not equal "active" resistance. The words and actions of the person *can* lead you to believe that they are *going* to resist arrest. That belief can justify an officer to use force, just remember that it is not *technically* resisting arrest without physical contact.

> *She posed no threat to the officers. She minimally resisted Troy's arrest while attempting to protect her own body and to comply with Agarano's request that she speak to him outside, and she begged everyone not to wake her sleeping children. She bears minimal culpability for the escalation of the situation.*
>
> ***Mattos v. Agarano – Ninth Circuit Court of Appeals***

Types of Evading Arrest by Flight.

A person can also attempt to avoid arrest by flight. This *can* occur after a person physically resists arrest but, unlike resisting arrest, physical contact with the person is not required. Essentially, a person evades arrest or lawful detention when an officer indicates that the person should stop, and the person then tries to get away on foot or in a vehicle.

A peace officer may use physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe:

(B) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a crime

Use of physical force by peace officer – ORS 161.233 (1)

The officer can indicate their desire for the person to stop explicitly by saying "Stop! You are under arrest". An officer can also indicate for a person to stop implicitly, for example, turning on the overhead lights on their police vehicle. By law, you are allowed to use force to stop someone from fleeing your lawful detention but, as always, it must be objectively reasonable.

(4) ***Custody*** *means the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order…*

(5) ***Escape*** *means the unlawful departure of a person from custody or a correctional facility.*

Definitions for 162.135 to 162.205 – ORS 162.135

Evading Arrest – The person attempts to flee on foot or by vehicle, from the custody of a peace officer, in carrying out an arrest or lawful detention.

DPSST Working Definition

When using force to stop an escape the courts have drawn a distinction between stopping a fleeing person that is running and stopping a car during a pursuit. A person fleeing on foot, without other factors, is not considered a threat to anyone based solely on their flight. A person fleeing in a car can *also* be considered an immediate threat based on the specific circumstances of how they are operating the vehicle. If they are operating the car in a manner that appears to be an immediate threat to the officers or the public, we revert to how the courts would define an immediate threat.

The third Graham factor is whether Mr. Beaver was actively resisting arrest or attempting to evade arrest by flight. Initially, Mr. Beaver was attempting to flee and the Court has no trouble concluding that the first tasing was justified to stop him.

Beaver v. Federal Way – Ninth Circuit Court of Appeals

You will likely have a considerable amount of guidance from your agency's policy and procedures about when you can and cannot pursue a vehicle or person. Remember that your agency, to protect its officers and the public, may limit your ability to pursue. The decision to pursue a vehicle at a high rate of speed must be made, like all uses of force, based on a weighing of the governments interest against the risk to all parties involved. However, as you can see below, the Ninth Circuit makes it clear that even if a traffic stop *begins* with a minor violation, officers have significant legal latitude to pursue.

A minor offense, even a traffic violation, followed by an attempt to flee gives law enforcement a greater measure of interest in affecting a stop. [A] suspect's decision to evade arrest by flight favors government's use of force

Manual of Jury Instructions – Ninth Circuit Court of Appeals (starting at page 191 – revised September 2022)

Finally, the use of deadly force to prevent the escape of all felony suspects, whatever the circumstances, is constitutionally unreasonable (see next page). Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.

A peace officer may use deadly physical force upon another person only when it is objectively reasonable, under the totality of circumstances known to the peace officer, to believe that the person poses an imminent threat of death or serious physical injury to the peace officer or to a third person and the use of deadly physical force is necessary to:

(c) Prevent the escape from custody of the person when the peace officer has probable cause to believe the person has committed a violent felony.

Use of deadly physical force by peace officer – ORS 161.242 (1)

Deadly Force Pursuit & Qualified Immunity: Monzon v. City of Murrieta

Reviewing these factors, the court noted that "the severity of the crime weighs in favor of the use of force". Monzon had led the officers on a reckless, high-speed chase, and Monzon created an imminent danger of serious physical harm to the officers when he accelerated the van towards them.

Excerpt from the Daigle Law Groups learning center articles

Federal Constitutional Analysis of Police Use of Force

The 1980s were a time of great significance in the United States Supreme Court, concerning public safety use of force. Tennessee v. Garner in 1985 was the first of the landmark cases. It is most widely known as the case that abandoned the "fleeing felon rule," which at the time was still good law in more than 30 states. This rule was found unconstitutional and recently the Oregon Legislature brought Oregon Law in line with this federal standard.

> The fact that Garner was a suspected burglar could not, without regard to the other circumstances, automatically justify the use of deadly force. (The officer) did not have probable cause to believe that Garner, whom he correctly believed to be unarmed, posed any physical danger to himself or others...While we agree that burglary is a serious crime, we cannot agree that it is so dangerous as automatically to justify the use of deadly force."
>
> ***Tennessee v. Garner – Supreme Court of the United States***

Module 7: Time and Circumstances

The Ninth Circuit Court of Appeals has a standard jury instruction that further illustrates the courts interest in whether an officer had time to make a reasonable decision.

> *What was the amount of time and any changing circumstances during which the officers had to determine the type and amount of force that appeared to be necessary?*
>
> ***Manual of Jury Instructions – Ninth Circuit Court of Appeals (starting at page 191 – revised September 2022)***

This statement is based on the United States Supreme Court ruling Graham v. Connor. For the purposes of discussion and for the duration of your time at DPSST we will consider this the Fifth Graham Factor.

> *The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.*
>
> ***Graham v. Connor – Supreme Court of the United States***

One of the most important things to understand about this part of the Graham ruling is that it goes both ways. It has been consistently demonstrated that the courts understand when an officer is faced with a "tense, uncertain, and rapidly evolving" event. These officers are usually given latitude in how they used force for that specific event.

However, when the situation *is not* tense, uncertain, or rapidly evolving, the courts have made it clear that rash decision making will be looked at very thoroughly.

For example, below is a typical Ninth Circuit ruling illustrates when the courts find the situation ***is*** tense, uncertain, and rapidly evolving.

the Court finds that Officer Laird was faced with unenviable choices and had to make split-second decisions, and this Court will not second-guess his decision to apply the use of the Taser.

The officer was alone with a fleeing felony suspect, who was apparently under the influence of controlled substances, who ignored his commands to stop, and who was attempting to rise and perhaps to flee.

Beaver v. Federal Way – Ninth Circuit Court of Appeals

And a Supreme Court ruling overriding the Ninth Circuits interpretation of what actually seems to be a tense, uncertain, and rapidly evolving situation.

SCOTUS Continues to Caution Lower Courts from Second-Guessing the Actions of Officers in Tense, Rapidly Evolving Situations

In January 2019, the Supreme Court threw out the Ninth Circuit's decision entirely as to one officer, concluding that the claim against him had been erroneously reinstated. And the court instructed the lower court to reconsider the case against a second officer, explaining that the 9th Circuit should have been more specific in defining the clearly established law that the officer allegedly violated: The Ninth Circuit had said only that there is a clearly established "right to be free of excessive force" when it "should have asked whether clearly established law prohibited the officers from stopping and taking down a man in these circumstances."

Excerpt from the Daigle Law Groups learning center articles

Some situations do allow for more time before the use of force occurs, which in turn allows for more resources to be brought to bear on the situation.

> *Officer MacPherson knew additional officers were en route to the scene. He was, or should have been, aware that the arrival of those officers would change the tactical calculus confronting him, likely opening up additional ways to resolve the situation without the need for an intermediate level of force.*
>
> *Therefore, there was simply "no immediate need to subdue [Bryan]" before Officer MacPherson's fellow officers arrived or less-invasive means were attempted... Officer MacPherson's desire to quickly and decisively end an unusual and tense situation is understandable. His chosen method for doing so violated Bryan's constitutional right to be free from excessive force.*
>
> ***Bryan v. MacPherson – Ninth Circuit Court of Appeals***

Your ability on the scene to recognize when you have discretionary time is an important element in a use of force event. And your ability to describe the situation is equally important. If the situation unfolds rapidly with little time to think you need to get that information into your report or testimony.

Totality of the Circumstances

Under Graham v. Connor, we evaluate the government's interest in the use of force by examining three core factors, the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. These factors, however, are not exclusive. Rather, we examine the totality of the circumstances and consider whatever specific factors may be appropriate in a particular case, whether or not listed in Graham.

Bryan v. MacPherson – Ninth Circuit Court of Appeals

In plain language this means *context*. The context of the situation, from the words coming out of the person's mouth, to the way the person is standing, or size and layout of the room you are in, are all contextual. The *perceived context* by the officer, when they decide to use force, is a large factor the courts will look at when deciding the reasonableness of force.

Your ability to assess the situation will help you make better decisions. If you ignore or miss contextual clues you increase the risk of injury to yourself. You also increase the chance of causing someone else significant injury because you acted without considering the relevant information.

The following is a list of factors that *could* be considered as part of the totality of the circumstances.

Totality of the Circumstance Factors: this list is not exclusive

- Availability of Back-Up Officers
- Confinement (small spaces or tight locations)
- Ground Level
- Officer Disability (previously existing conditions)
- Officer Exhaustion (due to length of shift or physical exertion)
- Officer Injury (caused by this or a recent incident)
- Officer Training and Experience (e.g. you are an expert conducting DUII stops)
- Number of Officers
- Number of Persons, Suspects or Threats
- Special Knowledge (background on the person, floor plans, informant tips, etc.)
- Person's Age compared to the Officer's
- Person's Apparent Mental State
- Person's Physical Size compared to the Officer's Size
- Person's Sex compared to the Officer's
- Person's Skill Level compared to the Officer's Skill Level
- Person's Strength and Fitness level compared to the Officer's
- Terrain (wet, dry, sandy, muddy, snow, ice, carpet, concrete, etc.)

The totality of the circumstances is where we adjust our decisions about the use of force for a given situation. What is also difficult is drawing these facts out of our memories to put them down in a report. A good assessment and reasonable decisions can become irrelevant if you cannot document the information well enough to explain yourself clearly.

The Force Must Match the Circumstance

...it was undisputed that Williamson's crime was minor, that she posed a low threat of harm to the officers, and she was not actively resisting arrest, Williamson did not have the right to prevent the National City from conducting its city council meeting. Officers repeatedly warned the protesters that they had to leave the front of the meeting room, or they would be arrested. When the protestors refused to comply, the council meeting was adjourned "for order to be restored." The court found that Williamson did not identify any "less intrusive means" available to the officers for restoring order...

Excerpt from the Daigle Law Groups learning center articles

The totality of the circumstances is important during all stages of a use of force encounter. Quick and intuitive recognition of the specific circumstances in the beginning of a contact can be difficult for new officers. It can become a subconscious act as you gain more experience with the different types of circumstances that you encounter most often. Even for a veteran officer, an effective assessment is difficult when faced with circumstances that they have never encountered before.

Module 8: Use of Force and Behavior Health Issues

The subject's mental state may be a factor in your consideration to use force. Many of the people you will come across in your day-to-day responsibilities are at some level of a behavioral health crisis. The crisis may be due to a chronic mental illness, medical condition, or induced by drugs or alcohol. The fact that a person is in a behavioral health crisis does not mean that they are not a threat to you or others or that a lesser level of force is appropriate. However, if you realize that you are dealing with a person experiencing a behavioral health crisis, you will consider that as you determine what tactics or force may be appropriate and effective.

> *The problems posed by, and thus the tactics to be employed against, an emotionally distraught individual who is creating a disturbance or resisting arrest are, and must be, differentiated from those involved in efforts to subdue an armed and dangerous criminal who has recently committed a serious offense...*
>
> *...Even when an emotionally disturbed individual is "acting out" and inviting officers to use deadly force to subdue him, the governmental interest in using such force is diminished by the fact that the officers are confronted, not with a criminal, but with a mentally ill person.*
>
> ***Deorle v. Rutherford – Ninth Circuit Court of Appeals***

This concept will be particularly important in the event you encounter such a person who has either committed no crime or very low-level crimes. In other words, you should be extremely judicious in your force applications when the primary interest is in providing care to the person encountered. Mental state as a force consideration will be discussed in more detail in your Mental Health for Legal Considerations training.

Risk Assessment

When confronting an individual that you have been told or you suspect is emotionally disturbed or mentally distraught you need to assess who is at risk? If only the subject is at risk of physical harm, then we as law enforcement need to slow down and activate our Crisis Intervention Team protocols. If you or others are risk of physical harm, then you are legally allowed to use force under the Fourth Amendment of the U.S. Constitution. Once the subject has stopped being a threat to others then you should ensure that they are treated appropriately for their mental or emotional issue.

Given Reynolds's erratic behavior and the fact that he had a weapon, it was reasonable for Jackson to attempt to restrain him...The gas station attendant also perceived Reynolds as a threat-twice calling the Sheriff's Department to report Reynolds's behavior.

It was thus reasonable for Jackson to consider Reynolds a threat to the people in the area...Reynolds was not in a confined area and there were other people in the vicinity.

Reynolds v. County of San Diego – Ninth Circuit Court of Appeals

Excited Delirium/Agitated Chaotic Events

It should be first noted that an "agitated chaotic event" (also referred to as Excited Delirium or Excited Delirium Syndrome-ExDs) is not a medical diagnosis but set of traits with many underlying diagnoses. *Why* this person is suffering from what appears to be an "agitated chaotic event" is not relevant to your job as a law enforcement officer. *Identifying the traits* and taking the correct steps to assist the individual is your objective.

New Study: Excited Delirium, Injury, and Use of Force

Excited delirium encounters can be dangerous medical emergencies that simultaneously place officers, subjects, and communities at risk. It's recommended that officers who intervene in cases involving probable excited delirium respond with containment and quick, coordinated, multiple-officer restraint techniques that minimize the suspect's exertion and maximize their ability to breathe. This approach will also help expedite monitoring of vitals and handing off to EMS for immediate medical intervention.

Excerpt from the Force Science Institute's news section

The problems posed by, and thus the tactics to be employed against, an emotionally distraught individual who is creating a disturbance or resisting arrest are, and must be, differentiated from those involved in efforts to subdue an armed and dangerous criminal who has recently committed a serious offense...

...Even when an emotionally disturbed individual is "acting out" and inviting officers to use deadly force to subdue him, the governmental interest in using such force is diminished by the fact that the officers are confronted, not with a criminal, but with a mentally ill person.

Deorle v. Rutherford – Ninth Circuit Court of Appeals

The following sections describe the Fact Patterns that suggest a subject suffering from an agitated chaotic event (ExDs). Not every call or contact will demonstrate all or even most of the behaviors listed. Take the totality of the situation into account to make your determination if this is an agitated chaotic event case.

Dispatch Information

- known or suspected to have a psychiatric illness
- known or suspected to of some type of drug intoxication
- dispatch has receive previous or multiple calls from this location or for the same person
- callers described agitated, bizarre, and/or destructive behavior

Traits Visible to Officers

- subject appears agitated and/or is destructive
- subject exhibits bizarre behavior
- subject is yelling, screaming, incoherent, or not making sense
- subject acts aggresively towards inanimate objects
- subject is inappropriately dressed (naked, shirtless, etc.)

Traits During Contact

- does not respond "normally" to law enforcement
- subject is insensitive to pain
- subject is hot to the touch
- subject is sweating profusely, OR
- subject is very dry to the touch
- subject seems to have "super-human" strength

Response Measures for an Agitated Chaotic Event (ExDs):

If this appears to be an Agitated Chaotic Event prior to arrival, if possible, approach the scene without lights and sirens. Notify other officers of this as well. This can help keep the subject from becoming more agitated.

- ☐ **Identify**: Observe and note the signs and behaviors related to an agitated chaotic event for early medical intervention. Handle this call as a medical condition and get emergency services to respond as soon as practical.
- ☐ **Control**: Control and/or restrain the subject as soon as practical and safe to decrease problems related to a prolonged struggle with law enforcement or with others. This should be done with multiple officers, planning and acting together to contain the subject while being conscious of the amount of force used.
- ☐ **Sedate**: Have sedation applied in the field as soon as practical and safe to help stop or reverse the process of the agitated chaotic event.
- ☐ **Transport**: Get the subject to the hospital as soon as practical for medical treatment.

Remember, these individuals usually do not need to go to jail, they need to go to the hospital. That does not mean you will not need to use force. There can be no treatment without restraint.

A mentally ill individual is in need of a doctor, not a jail cell, and in the usual case—where such an individual is neither a threat to himself nor to anyone else—the government's interest in deploying force to detain him is not as substantial as its interest in deploying that force to apprehend a dangerous criminal. Moreover, the purpose of detaining a mentally ill individual is not to punish him, but to help him. The government has an important interest in providing assistance to a person in need of psychiatric care; thus, the use of force that may be justified by that interest necessarily differs both in degree and in kind from the use of force that would be justified against a person who has committed a crime or who poses a threat to the community.

Bryan v. MacPherson – Ninth Circuit Court of Appeals

As we saw in Graham, the Ninth Circuit is free, post-Graham, to continue to analyze and modify what it means for the force to be "objectively reasonable under the totality of the circumstances." The Ninth Circuit has delivered a considerable number of rulings post-Graham, the practical effect of which is an "addition" to the "Graham factors." As an Oregon peace officer, you are in the Ninth Circuit and therefore, bound by these additional considerations.

The previous sections are meant to help you identify individuals that may be Emotionally Disturbed. This information should aid you in making decisions prior to a use of force incident. These are partial treatments meant to supplement the discussions you will be having in the classroom. This material does not replace your mental health training classes or and de-escalation training you have received.

The first (Graham) factor, "the nature of the crime or other circumstances known to the officer at the time force was applied," should be modified as appropriate when the officers are acting under their community caretaking function rather than to counter crime. In such circumstances, "the better analytical approach" focuses the inquiry on the seriousness of the situation that gives rise to the community-caretaking function. Officers have a duty to independently evaluate a situation when they arrive, if they have an opportunity to do so.

Manual of Jury Instructions – Ninth Circuit Court of Appeals (starting at page 191 – revised September 2022)

Module 9: Suicidal Subjects

The threat of Self Harm – Oregon Law and the Courts have affirmatively granted law enforcement the ability to use *reasonable* force to prevent suicide but have also decided recent cases disapproving of using a significant amount of force that can cause serious physical injury or death to prevent suicide.

Suicide by cop is a situation that is both dangerous and unfortunate for all the people involved. However, as mentioned in risk assessment above, our first question and our duty is to protect ourselves and innocent people first. If you have the opportunity then this is the time to properly evaluate the situation and look at the totality of the circumstances; is the subject armed and if so, with what? Is the subject confined or are they in the open? Do I have distance and cover? Are less lethal tools available and would they be effective? Etc.

Expert Testimony on "Suicide by Cop" Theory Ruled Admissible

The Ninth Circuit found that Boyd's actions were consistent with an attempt to commit suicide by cop, particularly in light of various aspects of Boyd's personal history that made it more probable that Boyd was attempting to provoke a police shootout rather than trying to surrender. The court found the suicide by cop theory to be an acceptable scientific theory within the field of psychiatric forensics and determined that the trial court did not err in admitting the testimony.

Excerpt from a Library of Congress article

For the purposes of our discussions regarding the use of force on suicidal people it should be reiterated; in Oregon you are only allowed to use physical force to prevent someone from harming or killing themselves. Remember that even if the person is known to be suicidal, if they become a deadly immediate threat to you or others, you are allowed to use deadly force to stop that person from harming people other than themselves.

The circumstances of this case can be viewed in multiple ways: as "suicide by cop," as officers suddenly threatened with a deadly weapon, or as a depressed man simply holding a knife when confronted by law enforcement. As with most excessive force claims, the correct determination of the circumstances here will require a careful balancing of the evidence and the inferences that can be made therefrom.

Hayes v. County of San Diego – Ninth Circuit Court of Appeals

Additionally, if the subject is trying to force officers to shoot, the type of weapon they are in possession with is very important. Officers must remember that a suicide by cop suspect that is armed with a gun can become a deadly threat to others much faster and from a longer range than a suicidal subject with a knife. However, regardless of what weapon they are armed with, they must still demonstrate an intent to use it on the officer or others. No situation is an "automatic" use of deadly force.

Other Available Resources

The subject of "other available resources" is an interesting one. As you can see below the Ninth Circuit has this phrase as part of their jury instructions. This is referenced in many of the cases that have excerpts listed throughout this handout.

Importantly, although officers must consider the availability of other, less intrusive means, officers "need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable."

Manual of Jury Instructions – Ninth Circuit Court of Appeals (starting at page 191 – revised September 2022)

Because of this long-standing Appellate Court Standard, the Oregon Legislature added similar language to the Use of Force standard in House Bill 4301.

Prior to using...force upon another person, if the peace officer has a reasonable opportunity to do so, the peace officer shall:

(a) Consider alternatives such as verbal de-escalation, waiting, using other available resources and techniques if reasonable, safe and feasible, or using a lesser degree of force; and

Use of physical force by peace officer – ORS 161.233 (3)

As you can see the legislature even went so far as to list a few of alternatives that they thought were important for officers to consider. We will discuss this more thoroughly in class but for reference purposes we will also address several points in this handout.

We should first look at the legal qualifier in the House Bill, "Consider".

Consider – to think about carefully: such as...**a** : to think of especially with regard to taking some action. OR **b** : to take into account

Merriam-Webster Dictionary

It should be noted that neither the Oregon Legislature or the Federal Courts have said you *have to* use their listed alternatives. In fact, as mentioned several times in this handout **and** during your classroom instruction, the courts have said to *require* an officer to find and use the "least intrusive methods" of force would require superhuman judgement.

If this is true, then why is it included? What seems apparent is that the Court (and now the Oregon Legislature) want officers to explain themselves and the situations in more detail. In essence if you *did not* use "other methods" or tactics, why not? For more clarity let us look at the specific suggestions in House Bill 4301.

Tools and techniques that are listed as **Alternative Methods** include but are not limited to:

- ☐ Verbal De-escalation
- ☐ Waiting
- ☐ Other Resources (if available)
- ☐ Other Techniques
- ☐ Lesser degrees of Force

The listed alternatives seems quite vague. How long should an officer wait? Which resources? What counts as "available"? It seems clear that there are no hard and fast rules regarding these "other alternative methods" and that each situation will be evaluated by the totality of the circumstances. Based on the Federal case law officers are often found to be reasonable. The courts' discussions generally revolve around how thorough the officers' explanations regarding **WHY** other *reasonable* alternatives were, or were not, used.

On a final note, the legislature made it clear, by including the phrase "*if reasonable, safe and feasible*", that officer safety is a priority. No officer is required to put themselves in jeopardy by ineffectively attempting as many "other options" as they can think of.

This legal standard is being discussed in the Suicidal Subjects section but is *by no means* restricted to Behavioral Health type calls. The use of Alternative Methods can be applicable in all use of force situations. It is merely placed within this section as Behavioral Health calls best lend themselves to the use of (and need for) Alternative Methods.

With that in mind, below is an excerpt to one of the resources that we used in establishing our basic outline for how we teach dealing with suicidal subjects.

Suicide by Cop: Protocol and Training Guide

Each year from 2015 to 2018, there were approximately 900 to 1,000 fatal officer-involved shootings in the United States.1 And by various estimates, approximately 10 to 29 percent or more of officer-involved shootings involve Suicide by Cop incidents.2 Thus, it is reasonable to believe that there may be 100 or more fatal SbC incidents each year.

*Excerpt from the **Police Executive Research Forum** training guide*

Every suicidal, behavioral health, or agitated chaotic event will be judged by all the Graham and totality of the circumstances present. Regardless of the context of the situation, when force is used, it is all judged by the same standards.

Final Thoughts

A few final thoughts as we wrap up the Use of Force Series. First, remember you need a *legal reason* to contact your suspect/subject if you are planning on detaining them for any reason. Second, your use of force, or seizure, will be judged by looking at all the *relevant* factors. It is up to you to explain *why* those factors are relevant to you in *this* situation. Do not assume that the investigators or "tryers of facts" will come to the same conclusion as you. And third, your use of force needs to only be within a "range of reasonable" choices. There is no "right answer".

Reasonable Response, Even if Not Perfect, Entitles Officers to Judgement

The court began its opinion noting, "With hindsight we can say that [Turner's] death might have been avoided." The court's duty, however, is to determine whether the police conduct was objectively reasonable, "judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" (Graham v. Connor, 490 U.S. 386 (1989)). The court framed its task as determining "not whether officers used best police practices but whether they violated his rights under the Fourth Amendment."

*Excerpt from **The Briefing** by Lexipol*

This ends your specific instruction of use of force topics. Your final Use of Force classroom module will be a review of all the previous content by reviewing longer and more complex videos of use of force events.

Be safe and thank you for your dedication to the profession.
The DPSST Survival Skills Team.

Oregon Revised Statutes relevant to Use of Force issues.

Chapter 131

131.005 (11) - definition of "probable cause"
131.605 (6) - definition of "reasonably suspects"
131.605 (7) - definition of "stop"
131.615 (5) - force used in making a stop (non-traffic)
131.625 - frisk of stopped persons

Chapter 133

133.005 (1) - definition of "arrest"
133.033 - "community caretaking"
133.235 (4) - force used in making an arrest
133.605 - force used in executing a search warrant

Chapter 161

161.015 (3) - definition of "deadly force"
161.015 (6) - definition of "physical force"
161.015 (7) - definition of "physical injury"
161.015 (8) - definition of "serious physical injury"
161.190 - defense of justification
161.195 - "justification" described
161.233 - Use of physical force by peace officer
161.237 - Use of physical force involving pressure on throat or neck by peace officer or corrections officer
161.242 - Use of deadly physical force by peace officer
161.245 - liability for mistakes of law and knowingly using force for unlawful arrest

Chapter 810

810.410 (3)(f)- force used in making a traffic stop

Sources/Resources:

Americans for Effective Law Enforcement (AELE) and the Law Enforcement Legal Center. Case summaries and legal articles can be found at
http://www.aele.org/law/index.html

Daigle Law Group. Case summaries and legal articles can be found at
https://daiglelawgroup.com/publications/

Force Science Institute Ltd. Peer-Reviewed Research publications can be found at
http://www.forcescience.org/force-science-research.html

Lexipol. Tips, Articles, and Case Studies can be found at
https://www.lexipol.com/resources/

Merriam-Webster – for definitions
https://www.merriam-webster.com/

Oregon State Legislature. *Oregon Revised Statutes (ORS) – 2021 Edition*
https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

Police Executive Research Forum. Research, articles, and case studies can be found at
https://www.policeforum.org

United States Court of Appeals, Ninth Circuit. Selected opinions can be found at
http://www.ca9.uscourts.gov

United States Library of Congress. Articles can be found at
https://catalog.loc.gov

United States Supreme Court. Selected opinions can be found at
http://www.supremecourt.gov

Basic Police Academy

Vehicle Stops



OREGON DEPARTMENT OF PUBLIC SAFETY STANDARDS AND TRAINING

Introduction to Vehicle Stops and Motor Vehicle Code

Basic Police



Course Goals

This course is designed to:

Develop the officers understanding, knowledge, and skills relating to unknown-risk and high-risk vehicle stops

Develop the officers ability to assess conditions and respond appropriately to maintain personal and public safety

Minimize potential liability and public concern by using accepted vehicle stops practices

Learning Outcomes

Following completion of this course, students will be able to:

Demonstrate a clear understanding of subject matter issues, objectives, purpose of vehicle stops and officer safety.

Demonstrate knowledge and skills related to critical tactical concepts: Cover and Concealment, Communication, Control and Containment, Contact and Cover, and Tactical Advantage.

Perform fundamental skills: Pre-stop communication, tactical communication, vehicle positioning, preparing and issuing a citation, officer approach, violator control tactics, officer positioning, transition to high risk, weapon control, vehicle clearing.

Why do we conduct traffic stops?

To present a positive public image

To correct poor or dangerous driving behaviors

To educate citizens on safe traffic movement

To interdict wanted persons, stolen property, illegal drugs, etc.

What do we stop vehicles for?

Moving violations	Equipment violations	Investigative reasons
Speeding	Inoperable headlights	Driving complaints
Fail to signal turn	Inoperable signals	DUII investigations
F.O.T.C.D.	Inoperable taillights	Rolling domestic
Fail to maintain lane	Expired registration	Other A.T.L's

How important is it to know your authority to stop a car for a violation?

Know your authority well and use it wisely

Charles P. Pray

What is a violation?

ORS 801.557 - "Traffic violation"

"Traffic violation" means a traffic offense that is designated as a traffic violation in the statute defining the offense, or any other offense defined in the Oregon Vehicle Code that is punishable by a fine but that is not punishable by a term of imprisonment.

ORS 153.039 - Stop and detention for violation

1. An enforcement officer may not arrest, stop or detain a person for the commission of a violation except to the extent provided in this section and ORS 810.410 (Arrest and citation).

ORS 153.039 continued

2. An enforcement officer may stop and detain any person if the officer has reasonable grounds to believe that the person has committed a violation.

   Reasonable Grounds = Probable Cause

ORS 153.039 continued

3. Except as provided in subsection (4) of this section, the period of detention may be only as long as is necessary to:

   a) Establish the identity

   b) Conduct any investigation reasonably related to the violation; and

   c) Issue a citation for the violation.

4. The authority of an enforcement officer to stop and detain a person for a traffic violation as defined by ORS 801.557 ("Traffic violation") is governed by ORS 810.410 (Arrest and citation).

ORS 810.410 - Arrest and citation

1. A police officer may arrest or issue a citation to a person for a traffic crime at any place within or outside the jurisdictional authority.

    - ORS 133.235 (Arrest by peace officer) and 133.310 (Authority of peace officer to arrest without warrant).

ORS 810.410 continued

2. A police officer may issue a citation to a person for a traffic violation at any place within or outside the jurisdictional authority:

   a) When the traffic violation is committed in the police officer's presence; or

   b) When the police officer has probable cause from another police officer who observed the traffic violation.

ORS 810.410 continued

3.A police officer:

a) Shall not arrest a person for a traffic violation.

ORS 810.410 continued

b) May stop and detain a person for a traffic violation

- Investigate reasonably related to the traffic violation,
- Identification
- And issuance of citation.

ORS 810.410 continued

c) May make an inquiry into circumstances arising during the course of a detention and investigation that give rise to a reasonable suspicion of criminal activity.

ORS 810.410 continued

c) May make an inquiry into circumstances arising during the course of a detention and investigation that give rise to a reasonable suspicion of criminal activity.

Oregon v. Arreola-Botello 2019 – Unavoidable lull

ORS 810.410 continued

d) May make an inquiry to ensure the safety of the officer, the person stopped or other persons present, including an inquiry regarding the presence of weapons.

ORS 810.410 continued

d) May make an inquiry to ensure the safety of the officer, the person stopped or other persons present, including an inquiry regarding the presence of weapons.

State v. Jimenez 2014 – Specific facts for specific stop

ORS 810.410 continued

e) May request consent to search or search for items of evidence otherwise subject to search or seizure under ORS 133.535 (Permissible objects of search and seizure).

SB 1510 (2022) added new language that says:

- Only if the officer first informs the person that the person has the right to refuse the request.
- If consent is obtained, the officer shall ensure that there is a written, video or audio record that the person gave informed and voluntary consent to search.
    - Effective January 1, 2023

ORS 810.410 continued

f) May use the degree of force reasonably necessary to make the stop and ensure the safety of the police officer, the person stopped or other persons present.

ORS 810.410 continued

f) May use the degree of force reasonably necessary to make the stop and ensure the safety of the police officer, the person stopped or other persons present.

Governmental interest?

ORS 810.410 continued

g) May make an arrest of a person as authorized by ORS 133.310 (Authority of peace officer to arrest without warrant) (2) if the person is stopped and detained pursuant to the authority of this section.

ORS 810.410 continued

4. Police officer at the scene of a traffic accident based upon the police officer's personal investigation, to believe person committed a traffic offense in connection with the accident, the police officer may issue to the person a citation for that offense.

ORS 133.310 - Authority of peace officer to arrest without warrant

1. A peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following:
   a) A felony.
   b) A misdemeanor.
   c) An unclassified offense for which the maximum penalty allowed by law is equal to or greater than the maximum penalty allowed for a Class C misdemeanor.
   d) Any other crime committed in the officer's presence.

ORS 133.310 continued

2. A peace officer may arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer's jurisdiction.

ORS 133.310 continued

3. A peace officer shall arrest and take into custody a person without a warrant when the peace officer has probable cause to believe that:
   a) There exists an order restraining the person;
   b) A true copy of the order and proof of service on the person has been filed, and
   c) The person to be arrested has violated the terms of that order.

ORS 133.310 continued

4. A peace officer shall arrest and take into custody a person without a warrant if:
   a) The person protected by a foreign restraining order as defined by ORS 24.190 presents a copy of the foreign restraining order to the officer and represents to the officer that the order supplied is the most recent order in effect between the parties and that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order; and
   b) The peace officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining order.

ORS 133.310 continued

5. A peace officer shall arrest and take into custody a person without a warrant if:
   a) The person protected by a foreign restraining order has filed a copy of the foreign restraining order with a court or has been identified by the officer as a party protected by a foreign restraining order entered in the Law Enforcement Data System or in the databases of the National Crime Information Center of the United States Department of Justice; and
   b) The peace officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining order.

ORS 133.310 continued

6. A peace officer shall arrest and take into custody a person without a warrant if the peace officer has probable cause to believe:
   a) The person has been charged with an offense and is presently released as to that charge under ORS 135.230 to 135.290; and
   b) The person has failed to comply with a no contact condition of the release agreement.

Now that we know what we can do, we are going to talk about how to do it



Initiating a traffic stop

Group Activity: (4 groups)

Discuss and make a list of things an officer can do prior to making the actual traffic stop (5 minutes)

Pre-stop Preparations

- Choose a safe location for the stop
  - Stop as close to the area of the violation as tactically possible (Exceptions?)
- Radio stop location to dispatch
  - (First street is the road you are on, second is a nearby intersecting street, milepost, landmark, etc.)
- Give license plate number (and state)
- Give color and vehicle description (i.e. White GMC pickup)
  - Which is more accurate, plate or vehicle description?

How important is Mindset?

- Sets the tone
- Puts mind in right place
- Action versus reaction

ACTIVITY – Practice radio traffic with partner

Location	License Plate/State	Vehicle Description
Main / 3rd	OR – ABC 978	Red GMC Pickup
10th / Pine Street	OR – GMT 631	Blue Honda Accord
I-5 NB / Mission Street (MP 253)	AZ – 231 FHQ	Green Dodge Charger
Maria Mignano / Scott Collins	CA - 6TRH244	Blue Toyota Prius
Kathy Beck / Main Street	OR – ZBL 862	White Ford Mustang

The Stop

- Activate overhead lights (Be prepared for vehicle to come to immediate stop)
- Release your seatbelt/clear seatbelt from your equipment, vest, etc. (Appropriate time? Method?)
- Check traffic before exiting your patrol vehicle
- Exit as quickly as conditions and the situation allows
- Pause and observe the vehicle prior to approach (Why? and from what position?)

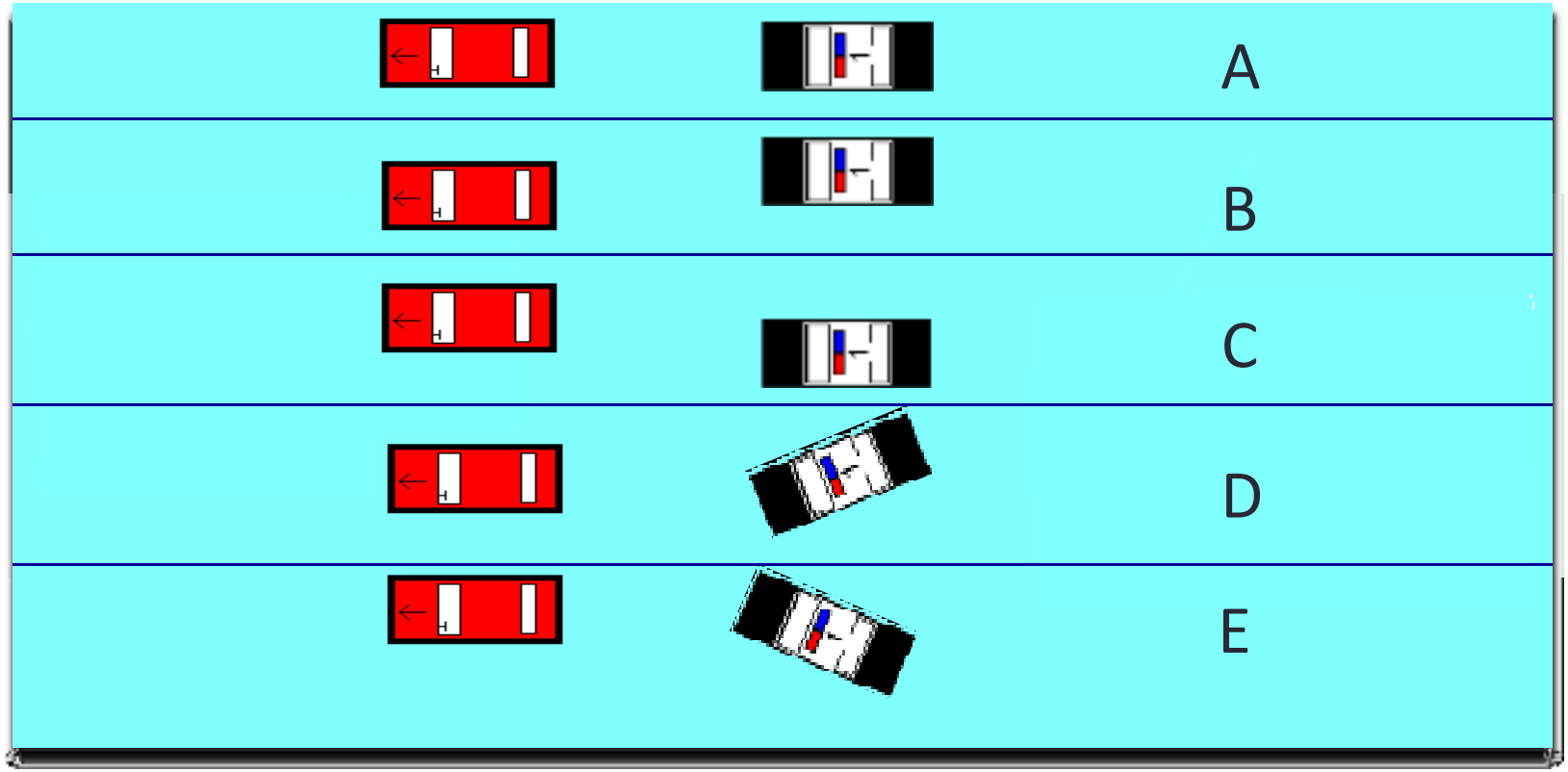
Patrol Car Positioning

- How far back do you stop from violator vehicle? and why?
  - About one car length (see rear tires touch roadway over hood)
    - Match stop time
    - Create reaction time
    - Proximity to equipment in car

Patrol Car Positioning

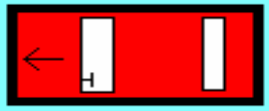
Do you offset? How? Why?

Patrol Car Positioning



Approaching the vehicle

- Cautiously approach the vehicle (How do you make a safe approach?)
  - Driver side approach
  - Passenger side approach





Approaching the vehicle

- Scan for additional passengers or contraband ("slice the pie").
- Watch the driver and passengers hands. (Why?)
- Watch for suspicious movements from vehicle occupants. (How do you address these?)
- Be tactical with your flashlight day or night.

Where do you make contact? Why?

Positions of Contact

1. Behind the passenger's side door post
2. In front of the passengers side door post
3. Behind the drivers side door post
4. In front of the drivers side door post



Positions of Contact

1. Behind the passenger's side door post
2. In front of the passengers side door post
3. Behind the drivers side door post
4. In front of the drivers side door post



Movement from one position to another may be necessary to increase visibility or safety.

What does science say about approaching a vehicle?

- Force Science study on traffic stops

  https://www.youtube.com/watch?v=xuHSjOx00fg

What does science say about approaching a vehicle?

- Positioning on the passenger side seems to offer the fastest access to a “mitigation zone” where the danger of incoming rounds is lessened

- Officers standing on the passenger side were able to reach the mitigation zone in .54 seconds faster than those on driver side

What does science say about approaching a vehicle?

- Officers who back-pedal away from the threat, move at an angle that prevents them from ever reaching a zone of reduced danger.

- Officers who first disengaged and then drew their weapons seemed to be more successful than those who had tried to draw and then move or who drew and moved simultaneously.

What does a traffic stop sound like?

- What concepts did you learn in Legitimacy? (Voice, Respect, Neutrality, Trustworthy)

- What concepts did you learn in communication? (Empathy, Rapport building)

Is it this?

- Do you know why I stopped you today?

- I need your license, registration and proof of insurance!

Tactical Communication (review)

- Greeting the driver: “Hello”, “Morning”, “Evening”, “Good morning”?
- Identify yourself and department
- Advise recording if applicable
- Advise reason for the stop
- Ask for justification for the violation (Why?)
- Ask where documents are located in the vehicle (Why?)
- Ask for drivers documents (DL, Registration, Insurance)
    - Verify information is accurate (address)
- Set expectations for occupants of the vehicle

Tactical Communication cont…

Appropriate and safe return to your vehicle

- What does this look like?
- Check drivers status and write citation if applicable

Appropriate and safe return to stopped vehicle, **same as initial approach,** look for changes, items being moved, etc**.**

- Deliver and explain citation (“You’ve been issued a citation”)
- Or warning (“I am going to give you a warning today. Provide education)
- Return drivers documents
- Non-confrontational close: “Thank you for your cooperation”; “You are free to leave”; “Drive safely” etc.

Appropriate and safe return to your vehicle

Completing the contact

Departure Options?:

- Remain outside of your vehicle and wait for the driver to leave
- Wait inside of your vehicle for the driver to leave
- Get into your vehicle and leave before the driver departs
- Get into your vehicle and back-up or move vehicle position to allow the driver to enter the roadway more safely

What do you do if the driver gets out?

- Attempt to persuade the driver to return to their vehicle for their safety

  OR

- Direct the driver to a safe place to stand (off the roadway)

- If they refuse, don't overreact or become hostile

- If possible put a physical barrier between you and the driver

Activity – Traffic stop communication

(Groups of 3 or 4)

- Practice your tactical communication as though you've just approached the driver on an unknown risk traffic stop.
- Practice first contact, delivery of a warning and a non-confrontational close.
- Observer(s) provide feedback.

Unknown Risk Vehicle Stop Checklist

	Task
☐	Check out w/dispatch; location, license plate and vehicle description
☐	Position patrol car appropriately
☐	Check for traffic before exiting patrol car
☐	Visually scan vehicle and occupants upon approach
☐	Pick side of approach based on context and circumstance.
☐	Utilize vehicle as barrier/cover.
☐	Introduce yourself and your agency.
☐	Advise driver of the reason for the stop
☐	Ask if there is a reason for the offense
☐	Obtain license, insurance and registration
☐	Observe/control driver while obtaining documents
☐	Confirm current address and info on driver's license
☐	Observe vehicle while returning to patrol car
☐	Choose a safe position for writing citation or waiting for dispatch returns
☐	Observe driver and occupants while writing citation or waiting for dispatch returns
☐	Check with dispatch for driving status/warrants-Uses appropriate radio procedures
☐	Safely re-approach the vehicle
☐	Communicate appropriately while issuing warning or citation
☐	Safely disengage and return to patrol vehicle