

## Three Phases of an OWI Investigation

**Phase 1: Vehicle in Motion** – In this phase, the officer is observing how the vehicle is being operated and how it stops when pulled over, during which time the officer may see initial signs of a possible OWI violation. Following are 24 cues which police may use to detect impaired drivers. The driving cues were developed from a list of more than 100 that have been found to predict BACs of 0.08 percent or greater.

### Problems Maintaining Proper Lane Position

- (1) Weaving
- (2) Swerving
- (3) Weaving across lane lines
- (4) Straddling a lane line
- (5) Drifting
- (6) Turning with a wide radius
- (7) Almost striking a vehicle or other object

### Problems with Speed and Braking

- (8) Stopping problems (too far, too short, or too jerky)
- (9) Accelerating or decelerating for no apparent reason
- (10) Varying speed
- (11) Slow speed (10+ mph under limit)

### Vigilance Problems

- (12) Driving in opposing lanes or wrong way on one-way
- (13) Slow response to traffic signals
- (14) Slow or failure to respond to officer's signals
- (15) Stopping in lane for no apparent reason
- (16) Driving without headlights at night
- (17) Failure to signal or signal inconsistent with action

### Judgment Problems

- (18) Following too closely
- (19) Improper or unsafe lane change
- (20) Illegal or improper turn (too fast, jerky, sharp, etc.)
- (21) Driving on other than the designated roadway
- (22) Stopping inappropriately in response to officer
- (23) Inappropriate or unusual behavior (throwing, arguing, etc.)
- (24) Appearing to be impaired

Studies have shown that there is a 65% probability that the driver is intoxicated if weaving plus one of the other above listed cues are present. If any two cues other than weaving are present, the probability that the driver is intoxicated is at least 50 percent. The presence of some cues alone (such as swerving,

accelerating for no reason or driving on other than the designated roadway) have probabilities greater than 70 percent.

**Phase 2: Personal Contact** – In this phase, the officer is determining, based upon face-to-face interview and observation of the driver, whether there is sufficient reason to instruct the suspect to step out from the vehicle.

**Face-to-face observation and interview** of the driver allows the officer to use three senses to gather evidence of alcohol and/or drug influence:

Sight:

-bloodshot eyes, soiled clothing, fumbling fingers, alcohol containers, drugs or drug paraphernalia, bruises, bumps or scratches, unusual actions

Hearing:

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

Smell:

-alcoholic beverages, marijuana, “cover up” odors like breath sprays, unusual odors

**Pre-Exit Questioning of the Driver:**

Asking for two things simultaneously, be alert for the driver who:

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

Asking interrupting or distracting questions, be alert for the driver who:

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

Asking Unusual Questions

-For example, while holding the driver’s license the officer may ask the driver, “What is your middle name?”

**Exit Sequence:**

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 drug influence and the ability to describe that evidence clearly and convincingly.

**Phase 3: Pre-Arrest Screening:** In this phase, the officer administers the three scientifically validated psychophysical Standardized Field Sobriety Tests (SFSTs).

**Horizontal Gaze Nystagmus (HGN) Test** – The HGN test is the most reliable field sobriety test. HGN refers to an involuntary jerking occurring as the eyes gaze toward the side. Involuntary jerking of the eyes becomes readily noticeable when a person is impaired.

In administering the HGN test, the officer has the suspect follow the motion of a small stimulus (approximately 12-15 inches from the subject's face) with the eyes only. The stimulus may be the tip of a pen or penlight.

When the HGN test is administered, the officer always begins with the 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?

-when the eye moves as far to the side as possible and is kept at that position for several seconds (minimum of four seconds), does it jerk distinctly?

-as the eye moves toward the side, does it start to jerk prior to a 45-degree angle?

The maximum number of clues that appear in one eye is three. The maximum total number for any subject is six. Research shows that if four or more clues are evident, the test is 88% percent reliable at indicating a person's BAC is .08 grams or higher.

**Walk and Turn (WAT)** – It is a divided-attention test consisting of two stages: 1) Instruction Stage and 2) Walking Stage.

The WAT Test consists of eight clues: 1) can't balance during instructions; 2) starts too soon; 3) stops while walking; 4) doesn't touch heel-to-toe; 5) steps off line; 6) uses arms to balance; 7) loses balance on turn or turns incorrectly; and 8) takes the wrong number of steps.

Research shows that if a subject exhibits two or more of the clues, the test is 79% reliable at indicating a person's BAC is .08 grams or higher.

**One-Leg Stand (OLS)** – It is a divided-attention test consisting of two stages: 1) Instruction Stage and 2) Balance and Counting Stage.

The OLS consists of four clues: 1) sways while balancing; 2) uses arms to balance; 3) hops; and 4) puts foot down.

Research shows that, when the suspect produces two or more clues, the test is 83% reliable at indicating a person's BAC is .08 grams or higher.

**Preliminary Breath Test (PBT)** – The basic purpose of a PBT is to demonstrate the association of alcohol with the observable evidence of the subject's impairment. The PBT result is only one of many factors the officer considers in determining whether the subject should be arrested for OWI. It should never be the sole basis for an OWI arrest. In Michigan, the PBT has evidentiary limitations.

**The Arrest Decision:** Your arrest/no arrest decision is “based on the totality of the circumstances” of the three phases of an OWI investigation. If all the evidence, taken together, establishes probable cause to believe an OWI has been committed, you should arrest the subject for OWI.

Prepared by:

Kenneth Stecker/Kinga Canike

Traffic Safety Resource Prosecutors

Prosecuting Attorneys Association of Michigan

This material was developed through a project funded by the Michigan Office of Highway Safety Planning and the National Highway Traffic Safety Administration.

