

MOTION TO SUPPRESS CHECKLIST

Prepared by
Shaker Heights Municipal Court and Judge K. J. Montgomery

Preface by Robert G. Walton, Esq.

Revised July 25, 2018

Principles and Standards

1. Many motions to suppress evidence in OVI cases contain Fourth Amendment grounds alleging that the defendant was subjected to an unreasonable and warrantless seizure.
2. In most OVI cases there are typically three stages of detention (seizure): (1) the stop of a vehicle, (2) the OVI investigation, and (3) the OVI arrest. The greater the intrusion the more suspicion required to justify it under the Fourth Amendment.
3. The stop of a vehicle requires reasonable suspicion that a driver has engaged in a traffic, equipment or registration violation, or some other criminal activity. Expanding the scope of the stop to investigate a driver for OVI requires a reasonable suspicion that the driver's ability to operate a car is noticeably impaired by the influence of alcohol and/or drugs. An OVI investigation begins when the officer starts to focus on impairment, i.e. he asks the driver to perform "pre-exit" divided attention tests or asks the driver to exit the car to perform SFSTs. An OVI arrest requires probable cause (more than reasonable suspicion but less than proof beyond a reasonable doubt) that a driver's ability to operate a car is noticeably impaired by the influence of alcohol and/or drugs.
4. As to each stage of the detention the applicable standard is the "totality of facts and circumstances." The trial judge looks at the "whole picture" to determine whether or not the required degree of suspicion has been established by competent and credible evidence. The court should consider the "good and the bad" based upon evidence adduced during direct and cross examination of the witnesses (which often involves the use of a "dash-cam" or "body-cam" videotape and the "NHTSA Manual") and the credibility of the witnesses.
5. When a motion to suppress contains a factual and legal basis, the prosecution has the burden of going forward with the evidence and proving (by a preponderance of the evidence) that the officer acted in a constitutionally lawful manner relative to each ground.
6. Evidence submitted during a suppression hearing usually includes subjective testimony (based on an officer's police reports) and objective evidence such as a "dash-cam" or "body-cam" videotape. The tape will usually contain audio produced by in-car and body microphones. These types of evidence should be carefully compared.
7. The NHTSA Manual (National Highway Traffic Safety Administration DWI Detection & Standardized Field Sobriety Testing Participant Manual, 2018 Edition) contains extensive information concerning the three phases of OVI detection. Phase One is "vehicle in motion" and "the stopping sequence". Phase Two is "personal contact" (observing the driver and talking to him before he is ordered out of the car) and "the exit sequence". Phase Three is "pre-arrest screening" (SFSTs and observations made during those tests). The Manual sets forth various clues that an

officer might look for during each stage of detection. The officer uses his senses (sight, hearing and smell) to detect the clues. Because sensory observations are “extremely short lived” in the memory, the Manual stresses the importance of making written notes in the field and preparing narrative reports shortly after an arrest.

8. SFSTs must be administered in “substantial compliance” with the NHTSA standardized procedures in order for a court to consider the “results” of the tests in determining probable cause or admit evidence of the “results” at trial. The prosecution must prove “substantial compliance” by clear and convincing evidence. Note that probable cause for an OVI arrest can be proven even if the “results” of the tests are deemed inadmissible and/or in the absence of any SFSTs.

9. The NHTSA Manual does not constitute an exhaustive list of all clues that may or may not support an officer’s decision concerning each stage of a detention. However, it does contain a practical guide which will assist a judge in determining from the evidence whether the required degree of suspicion has been established with respect to each stage. An officer may testify that he observed a clue but cross-examination may reveal that the clue did not exist (e.g., testimony about slurred speech contradicted by the audio portion of the “dash-cam” videotape).

10. A “check-list” of what clues did or did not exist is a useful tool in determining the “totality of facts and circumstances” surrounding each stage of a detention. The Motion to Suppress Hearing Notes which follow provides such a “check-list.”

MOTION TO SUPPRESS HEARING NOTES

Case Name _____ **v.** _____

Case No. _____ **Hearing Date** _____

This packet contains information based on the February, 2018 NHTSA Participant Manual. It provides guidance concerning Phase I, Vehicle in Motion, upon which an officer may claim reasonable suspicion to stop a vehicle, Phase II, Personal Contact, upon which an officer may claim sufficient cause exists to request a driver to exit a vehicle to perform SFSTs, and Phase III, Pre Arrest Screening, upon which an officer may claim probable cause to arrest a driver for OVI.

Judge's Notes:

Law: In order for results of SFSTs to be admitted in evidence, an officer must have substantially complied with the field sobriety test procedures. R. C. 4511.19(D)(4)(b).

Hearsay is admissible in a suppression hearing. *Maumee v. Weisner*, 87 Ohio St. 3d 295, 298 (1999)

PHASE I VEHICLE IN MOTION AND STOPPING SEQUENCE

Summary: In this phase, the officer is observing a vehicle in motion and how it stops when pulled over, during which time, the officer may see initial cues of a possible OVI violation. The officer may simply notice a moving traffic, equipment, or registration violation. Perhaps, the vehicle may exhibit unusual driving actions like weaving or slow speed. Driving requires “divided attention” which simply means needing to concentrate on 2 or more things simultaneously. The OVI driver’s divided attention is impaired. Reactions could be slowed, judgment or vision impaired and coordination may be poor. Based on the conduct (a simple traffic law infraction and/or OVI cues), the officer may develop REASONABLE SUSPICION to make a stop. The stopping sequence may or may not provide indicia of impairment. *Based on reasonable suspicion, the officer may move to Phase II, Personal Contact.*

COMMON VEHICLE IN MOTION CUES

Summary: The following cues have been listed as predictors of impaired driving and are listed beginning at Session 5 pg. 9 of the 2018 NHTSA Participant Manual.

PROBLEMS MAINTAINING PROPER LANE POSITION [Pg. 9 of 66]	OBSERVED [✓]	NOTES
Weaving		
Weaving across lane lines		
Straddling a lane line		
Swerving		
Turning with wide radius		
Drifting		
Almost striking object or vehicle		
Other		
SPEED AND BRAKING PROBLEMS [Pg. 10 of 66]	OBSERVED [✓]	NOTES
Stopping problems –too far, short or jerky		
Accelerating or decelerating rapidly		
Varying speed		
Slow speed – 10 m.p.h. / under the limit		
Other		

VIGILANCE PROBLEMS [Pg. 11 of 66]	OBSERVED [✓]	NOTES
Driving in opposing lanes/wrong way on one-way street		
Slow response to traffic signal lights		
Slow/failure to respond to officer's signals		
Stopping in lane for no apparent reason		
Driving without headlights at night		
Failure to signal/signaling inconsistently with action		
Other		
JUDGMENT PROBLEMS [Pg. 12 of 66]	OBSERVED [✓]	NOTES
Following too closely (tailgating)		
Improper or unsafe lane change		
Illegal or improper turn-too fast, jerky, sharp, etc.		
Driving on other than designated roadway-on shoulder, off road entirely, straight in turn only lanes, etc.		
Stopping inappropriately in response to officer		
Inappropriate or unusual behavior (throwing objects, arguing, etc.)		
Appearing to be impaired		
Other		

POST STOP CLUES [Pgs. 13-14 of 66]	OBSERVED [✓]	NOTES
Difficulty with motor vehicle controls [Pg. 13 of 66]		
Fumbling with driver license or registration [Pg. 13 of 66]		
Difficulty exiting the vehicle [Pg. 13 of 66]		
Repeating questions or comments [Pg. 13 of 66]		
Swaying, unsteady, or balance problems [Pg. 13 of 66]		
Leaning on the vehicle or other object [Pg. 14 of 66]		
Slurred speech [Pg. 14 of 66]		
Slow to respond to officer/officer must repeat [Pg. 14 of 66]		
Provides incorrect information, changes answers [Pg. 14 of 66]		
Odor of alcoholic beverage from the driver [Pg. 14 of 66]		
Other		
OPTIONAL ADDITIONAL OVI MOTORCYCLE CUES [Pgs. 16-17 of 66]	OBSERVED [✓]	NOTES
<i>Drifting during turn or curve</i> [Pg. 16 of 66]		
<i>Trouble with dismount</i> [Pg. 16 of 66]		
<i>Trouble with balance at a stop</i> [Pg. 16 of 66]		
<i>Turning problems – unsteady, sudden corrections, late braking, improper lean angle</i> [Pg. 16 of 66]		
<i>Inattentive to surroundings</i> [Pg. 16 of 66]		
<i>Inappropriate or unusual behavior</i> [Pg. 16 of 66]		
<i>Weaving</i> [Pg. 16 of 66]		
<i>Erratic movement while going straight</i> [Pg. 17 of 66]		
<i>Operating without lights at night</i> [Pg. 17 of 66]		
<i>Recklessness</i> [Pg. 17 of 66]		
<i>Following too closely</i> [Pg. 17 of 66]		
<i>Running stop lights/signs</i> [Pg. 17 of 66]		
<i>Evasion of officer</i> [Pg. 17 of 66]		
<i>Wrong way on a street</i> [Pg. 17 of 66]		
<i>Other</i>		

STOPPING SEQUENCE

Summary: Based upon the officer's observation of a traffic, registration, or equipment violation, based upon a number of the common detection cues listed above, or a combination of both, the officer may have formed REASONABLE SUSPICION TO STOP THE VEHICLE. Cues reinforcing or giving rise to a suspicion of impairment may be exhibited during the driver's response to the command to stop because stopping places additional demands on driver's ability to divide attention. The procedures for this begin at Session 5 pg. 21 of the 2018 NHTSA Participant Manual.

STOPPING INAPPROPRIATELY IN RESPONSE TO OFFICER [Pg. 25 of 66]	OBSERVED [✓]	NOTES
Attempts to flee		
Does not respond to stopping request		
Responds slowly to stopping request		
Weaves abruptly to stop		
Strikes the curb/other object while stopping		
Stops suddenly		
New violations during stopping sequence		
Other		

PHASE II PERSONAL CONTACT AND EXIT FROM VECHICLE

Summary: In this phase the officer is determining if there is sufficient cause to instruct the suspect to step from the vehicle for further testing and then observing the exit. Sometimes, the officer's decision is based on both the vehicle in motion, stopping sequence, and the officer's interview/observations of the suspect. Other times it is based only on the interview/observations (such as where the car is stopped for equipment or tag issues or where the vehicle is stationary from an accident when the officer comes on the scene.) Officer observations are based upon officer senses and divided attention tests which require the subject to concentrate on 2 or more things at the same time. Based on SUFFICIENT CAUSE, the officer may request the driver to exit the vehicle and move to Phase III, SFSTs.

SENSORY CLUES

Summary: In this section the officer makes sensory observations about the suspect. Listing of these clues begin at Session 6 pg. 7 of the 2018 NHTSA Participant Manual.

SIGHT CLUES [Pg. 7 of 28]	OBSERVED [✓]	NOTES
Bloodshot eyes		
Soiled clothing		
Fumbling fingers		
Alcohol containers		
Drugs/drug paraphernalia		
Bruises, bumps or scratches		
Unusual actions		
HEARING CLUES [Pg. 9 of 28]	OBSERVED [✓]	NOTES
Slurred speech		
Admission of drinking		
Inconsistent responses		
Abusive language		
Unusual statements		
SMELL CLUES [Pg. 11 of 28]	OBSERVED [✓]	NOTES
Alcoholic beverages		
Marijuana		
Cover up odors like breath sprays		
Unusual odors		

DIVIDED ATTENTION CLUES

Summary: The suspect must concentrate on 2 or more things at the same time. The activities include questioning techniques in which the officer may ask for 2 things at once, interrupt, distract or ask unusual questions. Activities also include psychophysical (mind/body) tasks like the Alphabet and Finger Count tests. See: Session 6 of the 2018 NHTSA Participant Manual.

QUESTIONING

Summary: Officer asks questions constituting divided attention tasks, such as asking for two things simultaneously, asking interrupting or distracting questions, or unusual questions.

SUSPECT RESPONSE TO QUESTIONS [Pgs. 16-18 of 28]	OBSERVED [✓]	NOTES
Forgets to produce 2 documents requested at the same time [Pg. 16 of 28]		
Produces documents not requested [Pg. 16 of 28]		
Fails to see requested documents while searching for them [Pg. 16 of 28]		
Fumbles/drops wallet, purse, license, registration [Pg. 16 of 28]		
Is unable to retrieve documents with fingertips [Pg. 16 of 28]		
Ignores officer's questions while looking for items 17 of 28]		
Forgets to resume item search after answering a question [Pg. 17 of 28]		
Gives grossly incorrect answer [Pg. 17 of 28]		
Cannot answer an unusual question (like what is your middle name) [Pg. 18 of 28]		
Other		

ALPHABET TEST

Summary: This test requires suspect to recite a part of the alphabet. By telling suspect to begin and end on letters other than A and Z, the suspect's attention is divided as the person must concentrate to begin at an unusual starting point and, while reciting, remember where to stop. Test instructions can be found in Session 6 pg. 20 of the 2018 NHTSA Participant Manual.

DEMONSTRATIONS AND INSTRUCTIONS [Pg. 20 of 28]	ACTUAL INSTRUCTIONS GIVEN	NOTES
Officer tells subject to recite alphabet beginning with a letter other than A and stopping at a letter other than Z		
Officer listens and observes suspect perform test		

INDICATORS OF IMPAIRMENT/SUSPECT'S TEST PERFORMANCE	OBSERVED?	NOTES
Recites letters out of order		
Omits letters		
Stops during the recitation totally		
Stops during the recitation and starts over		
Begins or ends improperly		

COUNT DOWN TEST

Summary: This test requires the suspect to count out loud 15 or more numbers in reverse sequence. Test instructions can be found in Session 6 pg. 21 of the 2018 NHTSA Participant Manual.

DEMONSTRATIONS AND INSTRUCTIONS [Pg. 21 of 28]	ACTUAL INSTRUCTIONS GIVEN	NOTES
Officer tells subject to count down from one number to another in reverse sequence		
Officer listens and observes suspect perform test		

INDICATORS OF IMPAIRMENT/SUSPECT'S TEST PERFORMANCE	OBSERVED?	NOTES
Recites numbers out of order		
Omits numbers		
Stops during the recitation totally		
Stops during the recitation and starts over		
Begins or ends improperly		

FINGER COUNT

Summary: Subject is asked to touch the tip of thumb in turn to the tip of each finger on the same hand simultaneously counting up “1, 2, 3, 4” then reversing directions on the fingers while simultaneously counting down “4,3,2,1.” This is a divided attention test. Test instructions can be found in Session 6 pg. 22 of the 2018 NHTSA Participant Manual.

DEMONSTRATIONS AND INSTRUCTIONS [Pg. 22 of 28]	ACTUAL INSTRUCTIONS GIVEN	NOTES
Officer tells subject to count and touch his/her fingers		
Officer demonstrates by counting out loud while touching thumb to fingers as described in summary		
Officer listens and observes suspect perform test		

INDICATORS OF IMPAIRMENT/SUSPECT'S TEST PERFORMANCE	CLUE OBSERVED?	NOTES
Counts out of order		
Does not correctly touch fingers to thumb		
Omits numbers		
Adds additional counts		
Stops counting out loud		
Stops totally		
Stops and starts test over		

EXIT SEQUENCE

Summary: An officer may instruct a suspect to exit a vehicle to ensure either party's safety, which always takes precedent over all other concerns. However, if based on the TOTALITY of the facts THE OFFICER HAS A REASONABLE SUSPICION THE SUSPECT IS IMPAIRED by alcohol and/or drugs, the officer may instruct suspect to exit for further testing. The suspect is usually not under arrest when instructed to exit. Driver's exit and walk from vehicle may provide evidence of impairment. Exit instructions can be found in Session 6 pg. 23 of the 2018 NHTSA Participant Manual.

SUSPECT'S ACTIONS [Pg. 23 of 28]	OBSERVED [✓]	NOTES
Shows angry or unusual reactions		
Cannot follow instructions		
Cannot open vehicle door		
Leaves the vehicle in gear		
"Climbs" out of vehicle		
Leans against vehicle		
Keeps hands on vehicle for balance		
Other unusual reactions		

PHASE III PRE-ARREST SCREENING

Summary: In this phase, the officer administers 3 scientifically validated psychophysical SFSTs's– the One-Leg Stand (OLS), the Walk and Turn (WAT), and the Horizontal Gaze Nystagmus (HGN) tests. Based on these tests and on ALL other evidence from phases I and II the officer decides if there is PROBABLE CAUSE TO ARREST THE SUSPECT FOR OVI. *From Phase I, evidence has been gathered from the initial observation of the vehicle in motion and observation of the stop. From Phase II, evidence has been gathered from face-to-face observation and interview and observation of the exit from the vehicle. Phase III adds the SFSTs results as the final evidence in the determination of probable cause.*

HORIZONTAL GAZE NYSTAGMUS TESTING (HGN)

Summary: Horizontal gaze nystagmus is an involuntary jerking occurring as eyes gaze toward the side and about which the subject is unaware. In the HGN test, the officer observes the eyes of the subject as the subject follows a slowly moving object horizontally with his/her eyes. The officer is to use the tip of a pen, penlight, pencil eraser or fingertip, whichever contrasts with the background, hold it 12 – 15 inches from subject’s nose and slightly above eye level and move slowly. The officer looks for 3 indicators of impairment in each eye (**a total of 6 clues**): if the eye cannot follow a moving object smoothly, if jerking is distinct and sustained when the eye is at maximum deviation, or if the angle of onset of jerking is within 45 degrees of center. (*Nystagmus may also be due to other causes, including seizure medication, other drugs or, if eyes behave differently, a medical condition.*) HGN information and test instructions can be found in Session 8 pgs. 18 - 23, 29 – 57 of the 2018 NHTSA Participant Manual.

OPTIMAL TEST CONDITIONS [Pgs. 33 & 83 of 95]	ACTUAL INSTRUCTIONS/ACTIONS OF THE OFFICER	SUBSTANTIAL COMPLIANCE WITH CONDITIONS?	NOTES ABOUT WHAT SUSPECT DID
Officer checked there was no wind, dust or other eye irritants? [Pg. 83 of 95]			
Officer checked there were no visual distractions impeding test (suspect was faced away from rotating or strobe lights and passing traffic)? [Pg. 83 of 95]			
Officer directed suspect to remove glasses? [Pg. 33 of 95]			

INSTRUCTION/INITIAL POSITIONING: [Pg. 33 of 95]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
Checks for eyeglasses [Pg. 33 of 95]				
Verbal Instructions: [Pg. 33 of 95]				
Officer says, "I am going to check your eyes."				
Officer says, "Put feet together and your hands at your side."				
Officer says, "Keep your head still, look at the stimulus and follow it with your eyes only."				
Officer says, "Keep looking at the stimulus until I tell you the test is over."				

TESTING: PRELIMINARY CHECK [Pgs. 33-35 of 95]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
Officer positions stimulus approx. 12 – 15 inches from suspect's nose and slightly above eye level. [Pg. 33 of 95]				
Officer checks to see that both pupils are equal in size (<i>Unequal size may indicate head injury</i>) [Pg. 34 of 95]				
Officer checks for "resting" nystagmus – jerking as eyes look straight ahead (<i>May indicate medical impairment or drugs like PCP</i>). [Pg. 35 of 95]				
Officer moves stimulus smoothly across suspect's entire field of vision to see if eyes track together or one lags behind the other (<i>Lack of tracking together may indicate medical disorder, injury, or blindness</i>). [Pg. 35 of 95]				
Officer begins looking for all 3 clues (below) on left eye. This is then repeated on the right eye. [Pg. 35 of 95]				

CLUE: LACK OF SMOOTH PURSUIT Subject's eyes are checked to see if they move side to side smoothly or noticeably jerking (Clue #1). [Pgs. 39-41 of 95]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
1. Officer moves stimulus smoothly at a speed requiring about 2 seconds bringing suspect's <u>left eye</u> from center to as far to the right side (maximum deviation) as it can go. [Pg. 40 of 95]				
2. Officer, while moving stimulus looks at suspect's left eye to see if it is pursuing stimulus smoothly. [Pg. 40 of 95]				
3. Officer moves stimulus smoothly at a speed requiring about 2 seconds all the way back across the subject's face bringing suspect's right eye to as far to the left side (max. deviation) as it can go. [Pg. 41 of 95]				
4. Officer while moving stimulus looks at suspect's right eye to see if it pursues smoothly. [Pg. 40 of 95]				
5. Officer repeats the above steps.				
Officer notes if nystagmus found in left eye (1 clue) or right eye (1 clue). Total clues observed:				
TOTAL CLUES OBSERVED:			SUSPECT TEST RESULT: PASS FAIL	

CLUE: DISTINCT AND SUSTAINED NYSTAGMUS AT MAXIMUM DEVIATION Suspect's eyes are checked to see if they exhibit distinct and sustained jerking when the eye is held at max deviation for at least 4 seconds (Clue #2). [Pgs. 45-46 of 95]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
1. Officer checks left eye by moving stimulus to suspect's <u>left</u> side until eye has gone as far to the side as possible and holds eye at that position at least 4 but less than 30 seconds. [Pgs. 45-46 of 95]				
2. While at max deviation, officer checks for distinct and sustained nystagmus. [Pg. 46 of 95]				
3. Officer moves stimulus across suspect's face to check the right eye holding eye at max deviation at right side and holds eye at that position at least 4 but less than 30 seconds. [Pgs. 45-46 of 95]				
4. While at max deviation, officer checks for distinct and sustained nystagmus. [Pg. 46 of 95]				
5. Officer repeats the above steps.				
Officer notes if nystagmus found in left eye (1 clue) or right eye (1 clue). Total clues observed:				
TOTAL CLUES OBSERVED:			SUSPECT TEST RESULT: PASS FAIL	

CLUE: ONSET OF NYSTAGMUS PRIOR TO 45 DEGREES: Suspect's eyes are checked to see if they start to jerk prior to a 45 degree angle (Clue #3). [Pg. 51 of 95]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
1. Officer moves the stimulus towards the right (suspect's left eye) at a speed that would take about 4 seconds for the stimulus to reach the edge of suspect's shoulder. [Pg. 51 of 95]				
2. Officer watches eye for any sign of jerking and, if seen, stops and verifies that the jerking continues. Officer is careful to check to see that some white of the eye is still showing on the side closest to ear to be sure the eye has not been taken further than 45 degrees. [Pg. 51 of 95]				
3. Officer moves the stimulus to the left (over suspect's right eye) at a speed that would take about 4 seconds for the stimulus to reach the edge of the suspect's shoulder. [Pg. 51 of 95]				
4. Officer watches eye for any sign of jerking and, if seen, stops and verifies that the jerking continues. [Pg. 51 of 95]				
5. Officer repeats the above steps.				
Officer notes if nystagmus found in left eye (1 clue) or right eye (1 clue). Total clues observed:				
TOTAL CLUES OBSERVED:				SUSPECT TEST RESULT: PASS FAIL

TESTING VERTICAL NYSTAGMUS: Suspect's eyes are checked to see if they jerk up and down when the eyes gaze upward at maximum elevation. [Pg. 60 of 95]	ACTUAL TEST GIVEN	SUBSTANTIAL COMPLIANCE?	CLUE OBSERVED	SUBJECT'S RESPONSE/REACTION
1. Officer positions stimulus horizontally, 12-15 inches in front of suspect's nose.				
2. Officer says, "Hold your head still and follow the object with your eyes only."				
3. Officer raises the stimulus until the suspect's eyes are elevated as far as possible and holds there for about 4 seconds.				
4. Officer watches eyes in this position for jerking.				
Officer notes if vertical nystagmus is observed during 4 second hold.				
TOTAL CLUES OBSERVED:				SUSPECT TEST RESULT: PASS FAIL

TOTAL NUMBER OF CLUES OBSERVED ON HGN (max 6 – Vertical not included)		SUSPECT TEST RESULT: PASSED FAILED
---------------------------------------------------------------------------------	--	-------------------------------------------

BASED ON THE OFFICER'S CONDUCT COURT FINDS: SUBSTANTIAL COMPLIANCE TEST RESULTS ADMISSIBLE	NO SUBSTANTIAL COMPLIANCE TEST RESULTS INADMISSIBLE
-------------------------------------------------------------------------------------------------------	----------------------------------------------------------------

WALK AND TURN TESTING (WAT)

Summary: In the walk and turn test, the subject is directed to take nine steps, heel-to-toe, along a straight line. After taking these steps, the suspect must turn on one foot and return, in the same manner, in the opposite direction. The officer looks for eight indicators of impairment: (1) if the suspect cannot keep balance while listening to instructions, (2) begins before the instructions are finished, (3) stops while walking, (4) does not touch heel-to-toe, (5) steps off the line, (6) uses arms to balance, (6) makes an improper turn or (8) takes an incorrect number of steps. The officer is to observe the suspect from a safe distance and limit movement which may distract the suspect during the test. If the suspect has difficulty with the test (for example, steps off the line), the officer gives instructions to continue from that point, not from the beginning. WAT test instructions can be found in Session 8 pgs. 60-71 of the 2018 NHTSA Participant Manual.

TEST CONDITIONS [Pg. 62 of 95]	ACTUAL INSTRUCTIONS/ACTIONS OF THE OFFICER	SUBSTANTIAL COMPLIANCE WITH CONDITIONS?	NOTES ABOUT WHAT SUSPECT DID
Officer directed suspect to reasonably dry, hard, level, non-slippery surface? [Pg. 62 of 95]			
Officer limited movement during test so as not to distract suspect? [Pg. 62 of 95]			
Officer provided sufficient room for suspect to complete nine heel-to-to steps? [Pg. 62 of 95]			
Officer noted if suspect was over 65 (how much)? If yes, what did officer do? [Pg. 62 of 95]			
Officer inquired if suspect had back, leg or inner ear problems? If yes, what did officer do? [Pg. 62 of 95]			
Officer determined if suspect wearing heels more than 2" height and, if so, gave opportunity to remove shoes? [Pg. 62 of 95]			

INSTRUCTION/INITIAL POSITIONING: Subject stands heel-to-toe, arms at sides, listens to instructions. This divides attention between balancing task (maintaining stance) and info processing task (listening and remembering instructions). [Pg. 64 of 95]	ACTUAL INSTRUCTIONS GIVEN	SUBSTANTIAL COMPLIANCE WITH INSTRUCTIONS?	SUBJECT'S RESPONSE/REACTION
A. Officer says, "Place your left foot on the line." (Real or imaginary)			
Officer demonstrates the above			
B. Officer says, "Place your right foot on the line ahead of the left foot, with heel of right foot against toe of left foot."			
Officer demonstrates the above			
C. Officer says, "Place your arms down at your sides."			
Officer demonstrates the above			
D. Officer says, "Maintain this position until I have completed the instructions. Do not start to walk until told to do so."			
E. Officer says, "Do you understand the instructions so far?" (Make sure suspect indicates understanding.)			

DEMONSTRATIONS AND INSTRUCTIONS FOR WALKING STAGE [Pg. 65 of 95]	ACTUAL INSTRUCTIONS GIVEN	SUBSTANTIAL COMPLIANCE?	SUBJECT'S RESPONSE/REACTION
Officer says, "When I tell you to start, take nine heel-to-toe steps on the line, turn and take nine heel-to-toe steps back down the line."			
Officer demonstrates heel-to-toe steps.			
Officer says, "When you turn, keep the front foot on the line, and turn by taking a series of small steps with the other foot."			
Officer demonstrates the turn			
Officer says, "While you are walking: Keep your arms at your sides; Watch your feet at all times; and Count your steps out loud."			
Officer says, "Once you start walking, don't stop until you have completed the test."			
Officer says, "Do you understand the instructions?" (Make sure suspect indicates understanding.)			
Officer says, "Begin, the test."			
<i>If suspect has difficulty with test (for example, steps off the line) officer instructs to continue from that point, not from the beginning.</i>			

INDICATORS OF IMPAIRMENT/SUSPECT'S TEST PERFORMANCE 8 CLUES POSSIBLE (2 or more clues means failed test)	CLUE OBSERVED?	DETAILS OF CLUE OBSERVATION
1. Cannot keep balance while listening to instructions. Suspect must balance heel-to-toe on line while listening. If suspect does not maintain heel-to-toe position and feet break apart, this is a clue. Suspect's use of arms or swaying while still heel-to-toe is <u>not</u> a clue. [Pg. 66 of 95]		
2. Starts before instructions finished. If suspect begins to walk before told to begin, this is a clue (provided the subject has been properly instructed not to start walking until told begin). [Pg. 67 of 95]		
3. Stops while walking. Requires suspect to actually stop walking. Walking slowly is not a clue. [Pg. 67 of 95]		
4. Does not touch heel-to-toe. Suspect leaves a space of more than one half inch between heel and toe on <u>any</u> step is a clue. [Pg. 67 of 95]		
5. Steps off the line. Suspect steps so one foot is <u>entirely</u> off the line. [Pg. 68 of 95]		
6. Uses arms to balance. Suspect raises <u>one</u> or both arms more than 6" from sides to maintain balance. [Pg. 68 of 95]		
7. Improper turn. Suspect: removes front foot from line while turning <u>or</u> does not turn as demonstrated (spins, pivots, etc.) [Pg. 68 of 95]		
8. Incorrect number of steps. Suspect takes more or fewer than 9 steps in either direction. [Pg. 68 of 95]		
TOTAL NUMBER CLUES OBSERVED (max 8) ¹ :		SUSPECT TEST RESULT: PASSED FAILED
BASED ON THE OFFICER'S CONDUCT COURT FINDS: SUBSTANTIAL COMPLIANCE TEST RESULTS ADMISSIBLE		NO SUBSTANTIAL COMPLIANCE TEST RESULTS INADMISSIBLE

¹ If suspect exhibits the same clue more than once during the WAT or OLS it is to be recorded as only one clue. [Pg. 60 of 62]

ONE-LEG STAND TESTING (OLS)

Summary: In the one-leg stand test, the suspect is instructed to stand and raise one leg, either leg, with foot approximately 6 inches off the ground keeping raised foot parallel to ground. Suspect further instructed while looking at raised foot to count out loud by thousands (one thousand-one, one thousand-two, etc.) until told to put the foot down. The officer is to time the test for 30 seconds. The officer looks for 4 indicators of impairments: (1) swaying while balancing, (2) using arms to balance, (3) hopping to maintain balance, and (4) putting the foot down. This divides suspect's attention between balancing (standing on one foot) and small muscle group (counting out loud). The officer is to observe the suspect from a safe distance and remain motionless during the test so as not to interfere. If the suspect puts the foot down, the officer gives instructions to pick the foot up again and to continue counting from the point at which the foot touched the ground. OSL test instructions can be found in Session 8 pgs. 64-70 of the 2018 NHTSA Participant Manual.

TEST CONDITIONS [Pg. 73 of 95]	ACTUAL INSTRUCTIONS/ACTIONS OF THE OFFICER	SUBSTANTIAL COMPLIANCE WITH CONDITIONS?	NOTES ABOUT WHAT SUSPECT DID
Officer directed suspect to reasonably dry, hard, level, non-slippery surface? [Pg. 73 of 95] (Required)			
Officer limited movement during test so as not to distract suspect? [Pg. 73 of 95]			
Officer positioned suspect in safe place? [Pg. 73 of 95]			
Officer noted if suspect was over 65 (how much)? [Pg. 73 of 95]			
Officer inquired if suspect had back, leg or inner ear problems? If yes, what did officer do? [Pg. 73 of 95]			
Officer determined if suspect was overweight by 50 or more pounds? If yes, what did officer do? [Pg. 73 of 95]			
Officer determined if suspect as wearing heels more than 2 inches high and, if so, gave opportunity to remove shoes? [Pg. 73 of 95]			

INSTRUCTION/INITIAL POSITIONING: Subject stands feet together, arms at sides, listens to instructions. This divides attention between balancing task (maintaining stance) and info processing task (listening and remembering instructions). [Pgs. 75-76 of 95]	ACTUAL INSTRUCTIONS GIVEN	SUBSTANTIAL COMPLIANCE WITH INSTRUCTIONS?	SUBJECT'S RESPONSE/REACTION
A. Officer says, "Please stand with your feet together and your arms down at the sides, like this." [Pg. 75 of 95]			
Officer demonstrates the above [Pg. 76 of 95]			
B. Officer says, "Do not start to perform the test until I tell you to do so." [Pg. 75 of 95]			
C. Officer says, "Do you understand the instructions so far?" (Make sure suspect indicates understanding.) [Pg. 75 of 95]			

DEMONSTRATIONS & INSTRUCTIONS FOR BALANCE & COUNTING STAGE [Pgs. 76-78 of 95]	ACTUAL INSTRUCTIONS GIVEN	SUBSTANTIAL COMPLIANCE?	SUBJECT'S RESPONSE/REACTION
Officer says, "When I tell you to start, raise one leg, either leg, approximately six inches off the ground." [Pg. 76 of 95]			
Officer demonstrates the above [Pg. 76 of 95]			
Officer says, "Keep both legs straight and your arms at your side." [Pg. 76 of 95]			
Officer says, "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." [Pg. 76 of 95]			
Officer demonstrates count, as follows: "one thousand and one, one thousand and two, one thousand and three, etc." Officer should not look at his foot when conducting the demonstration. Officer keeps arms at his sides. [Pg. 76 of 95]			
Officer says, "Keep your arms at your sides at all times and keep watching the raised foot." [Pg. 76 of 95]			
Officer says, "Do you understand?" (Make sure suspect indicates understanding) [Pg. 76 of 95]			
Officer says, "Go ahead and perform the test." [Pg. 76 of 95]			
Officer times the test for 30 seconds. Officer stops the test after 30 seconds. [Pg. 76 of 95]			
<i>If the subject puts the foot down he/she is told to pick the foot up again and resume counting from the point at which the foot touched the ground</i> [Pg. 78 of 95]			

INDICATORS OF IMPAIRMENT/SUSPECT'S TEST PERFORMANCE 4 CLUES POSSIBLE (2 or more clues means failed test) [Pgs. 77-78 of 95]	CLUE OBSERVED	DETAILS OF CLUE OBSERVATION
1. The suspect sways while balancing. This refers to side-by-side or back-and-forth motion while the suspect maintains the one-leg stand position. [Pg. 77 of 95]		
2. Uses arms for balance. Suspect moves arms 6 or more inches from the side of the body in order to keep balance. [Pg. 77 of 95]		
3. Hopping. Suspect is able to keep one foot off the ground, but resorts to hopping in order to maintain balance. [Pg. 78 of 95]		
4. Puts foot down. The suspect is not able to maintain the one-leg stand position, putting the foot down one or more times during the 30-second count. [Pg. 78 of 95]		
<i>If suspect can't do the test, record observed clues and document the reason for not completing the test, e.g. suspect's safety. [Pg. 78 of 95].</i>		
TOTAL NUMBER OF CLUES OBSERVED (max 4):		SUSPECT TEST RESULT: PASSED FAILED

BASED ON THE OFFICER'S CONDUCT COURT FINDS: SUBSTANTIAL COMPLIANCE TEST RESULTS ADMISSIBLE	NO SUBSTANTIAL COMPLIANCE TEST RESULTS INADMISSIBLE
-------------------------------------------------------------------------------------------------------	----------------------------------------------------------------