

“Under the Trooper’s Hat”

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North Dakota law not only prohibits driving “under the influence” of intoxicating liquor or with a blood alcohol of .08% or greater, but also prohibits drivers who are under the influence of any drug, or substance (or combination), to a degree that renders that person incapable of safely driving. Law enforcement officers are trained in Standardized Field Sobriety Testing (SFST) to test individuals they believe to be under the influence. The SFST is a battery of three reliable tests performed during a traffic stop to determine if a driver is impaired.

The three tests have been scientifically validated and are designed to be simple and easily performed by the average person when not impaired. The tests simulate the divided attention qualities of driving and exercise the same mental and physical attributes that a person needs to drive safely. These tests, like driving, require information processing, judgment, memory, balance, steady reactions, and coordination of limbs. The three tests that make up the SFST are the Horizontal Gaze Nystagmus (HGN), the Walk-and-Turn, and the One-Leg Stand.

Horizontal Gaze Nystagmus (HGN)

The purpose of the HGN test is to observe whether nystagmus, an involuntary jerking of the eyes, is present in a suspected impaired driver. The horizontal gaze nystagmus test is considered the most reliable of all field sobriety tests because the nystagmus indicates if something is interfering with the central nervous system. The following are signs or clues an officer looks for in this test:

1. Lack of smooth pursuit –The officer should observe whether the eyes are noticeably jerking and if there is a lack of smooth pursuit;
2. Distinct and sustained nystagmus at maximum deviation – When the eye moves as far as possible and is kept at that maximum deviation for a minimum of four seconds, the officer looks for distinct and sustained nystagmus;
3. Onset of nystagmus prior to 45 degrees –The officer is looking to see whether the eye exhibits nystagmus before it has moved beyond a 45-degree angle.

There are three clues for each eye for a maximum of six clues possible. If four or more clues are present, there is a likelihood that the subject’s blood alcohol concentration is .08% or greater.

Walk and Turn (WAT)

The second standardized field sobriety test is the Walk and Turn test. While the test is being administered, the police officer is looking for eight clues:

1. Inability to balance during the instruction phase;
2. Starting before the officer has finished the instructions;
3. Stopping while walking to regain balance;
4. Not touching heel-to-toe;
5. Stepping off the line;
6. Using arms to balance;
7. Losing balance on the turn or turning incorrectly; and
8. Taking the wrong number of steps.

The presence of two or more clues indicates a likelihood the subject has a BAC of .08% or greater.

One Leg Stand (OLS)

While the test is being administered, the law enforcement officer is looking for four clues:

1. Swaying while balancing;
2. Using the arms to balance;
3. Hopping to maintain balance; and
4. Putting the foot down.

The presence of two (2) or more clues is a likelihood the subject has a BAC of .08% or greater.

When all three tests are used, an officer is extremely accurate in identifying impairment the majority of the time. This means that these tests are a very reliable tool in developing probable cause to arrest and proving “under the influence.”

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