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..................................................................................... LEARNING ACTIVITIES
A. Three Phases of Detection...................................................................... Instructor-Led Presentation
B. DWI Investigation Field Notes .............................................................. Reading Assignments
C. Courtroom Testimony
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, behavior that is unusual, but not necessarily illegal, or almost anything else. Initial detection may carry with it an immediate suspicion that 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.
A. Three Phases of Detection

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 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 that 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.
Decisions and Possible Outcomes

Decisions
• Phase One - Stop?
• Phase Two - Exit?
• Phase Three - Arrest?

Possible Outcomes
• Yes - Do it now
• Wait - Look for more evidence
• No - Don’t do it

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.
Decisions

• Phase One: Vehicle in Motion - Should I stop the vehicle?
• Phase Two - Personal Contact - Should the driver exit?
• Phase Three - Pre-arrest Screening - Is there probable cause to arrest the suspect for DWI?

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 Preliminary Breath Test.
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, to make sure that 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 field sobriety tests 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 with the knowledge, skills and motivation to select the most appropriate words for both written reports and courtroom testimony will communicate clearly and convincingly, making them more successful in DWI prosecution.

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 and 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
- 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. DWI Investigation Field Notes

One of the most critical tasks in the DWI enforcement process is the recognition and retention of facts and clues that establish reasonable suspicion 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.
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 that 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 that 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, the vehicle, the location, and the 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.
• Section IV provides space to record the results of all field sobriety tests that were 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 that any "shorthand" system you use be describable, usable, complete and consistent.
Preparation Testimony

At time of incident:

- Recognize significant evidence
- Compile complete, accurate notes
- Prepare complete, accurate, detailed report

C. Courtroom Testimony

Testimonial evidence in DWI cases establishes that the defendant was in fact the driver and was under the influence. Your testimony should be clear, detailed, and concise. Requirements:

Preparation at the scene and prior to trial.

To be effective, testimonial evidence must be clear and convincing. The first requirement for effective testimony is preparation. 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
Preparing Testimony

Prior to trial:
• Review all paperwork
• Review all other evidence
• Mentally organize elements and evidence
• Mentally organize testimony
• Identify potential issues
• Discuss with prosecutor

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.

A “cue” is defined as a reminder or prompting as a signal to do something.

Phase Two: Personal Contact – face to face observations including personal appearance, statements and other evidence obtained during your initial contact with driver.

A “clue” is defined as something that leads to the solution of a problem.

Phase Three: Pre-arrest Screening – sobriety tests administered to the driver and the results of any preliminary breath tests.
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.
QUESTIONS?
TEST YOUR KNOWLEDGE

INSTRUCTIONS: Complete the following sentences.

1. DWI detection is defined as __________

2. The three phases in a typical DWI contact are:
   Phase One _____________
   Phase Two _____________
   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 of the following the officer should do to prepare testimony just before the trial.

A. ________________
B. ________________
12. In court, the officer’s testimony should be organized _____________.

13. Conditions and results of the chemical test are included in the arresting officer’s testimony if ________________.