

# ALBUQUERQUE CRIMINAL LAWYER BLOG

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## **Standardized Field Sobriety Tests Serve as Surrogate to Chemical Testing in New Mexico DWI**

There are two types of tests that police officers use to determine whether a driver's blood alcohol level is above the legal limit: chemical tests and field sobriety tests. The most common is the breath alcohol test. Alcohol levels can also be tested by blood and/or urine tests. Chemical testing is for the most part pretty accurate.

Field sobriety tests, on the other hand, are far less reliable but are used to justify the chemical testing, generally the breath alcohol test. Field sobriety tests will tests the driver's attention, balance and coordination. They are usually conducted on the side of the road after a driver has been pulled over on suspicion of drunk driving under less than ideal circumstances.

Field sobriety tests do not measure a subject's blood alcohol level directly. Rather, they are intended measure the degree of a driver's impairment and to predict alcohol levels. There are a number of field sobriety tests including standing on one leg, walking heel-to-toe in a straight line, touching your finger to your nose, counting down backwards and reciting the alphabet. Field sobriety tests are less reliable indicators of impairment than chemical tests. In addition, there are often irregularities in how the tests are administered rendering them even less reliable.

In order to increase the reliability, the National Highway Traffic Safety Administration (NHTSA) created standardized field sobriety testing. The standardized tests were meant to increase reliability through standardized routines. In addition, the NHTSA conducted numerous studies to determine the most reliable battery of tests.

NHTSA determined that the most reliable tests in combination were the one-leg stand, the walk-and-turn test and the horizontal gaze nystagmus test. NHTSA found that these tests conducted in a standardized manner yielded the most reliable predictors of alcohol levels at or above .08.

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Unfortunately, these standardized tests have many faults leading to reduced reliability. Perhaps the biggest problem is that different people naturally perform differently on field sobriety tests regardless of whether they are drunk or sober, and the arresting officer will not have any idea about the driver's baseline performance.

Related to the first, there is also a problems with the fact that there are many different reasons other than alcohol that lead to poor performance on the tests. Illness, allergies, tiredness, obesity, injury and emotional state to name only a few can all cause a person to perform poorly on the standardized tests.

Even under the best of circumstances, these tests have reliability issues. According to NHTSA itself, the one-leg stand is only 45% reliable on its own in predicting alcohol levels at .08 or above. The walk and turn is only 61% reliable. Notably, the horizontal gaze nystagmus has the highest reliability at 65% but it is not admissible in New Mexico courts.

Taken together, the three tests still yield only 69% reliability in predicting breath alcohol levels above .08. This is far cry from beyond a reasonable doubt. Worse yet, no matter how admirably one performs on the tests, a motivated or enthusiastic officer can see it differently finding justification for a DWI arrest.

And once the arrest is made and any alcohol whatsoever is detected by chemical testing, the defendant has an uphill battle against with New Mexico's impaired to the slightest degree standard. With the impaired to the slightest degree standard, the standardized field sobriety tests often become the case when the breath alcohol level comes in below .08 which is not uncommon.

Thus the field sobriety tests which were never meant as the final measure of impairment but simply a predictor of alcohol levels have greatly reduced the burden of proof in DWI cases from beyond a reasonable doubt to somewhere in the vicinity of 45% to 69% accuracy. And this seems good enough for the courts and the legislature. Its probably not good for you, however, if you have a little wine with dinner.

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