Finger-to-Nose Test

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Aaron Botts has served as a police corporal in Denver, CO, since July 2016, following his tenure as a police officer in Wheat Ridge, CO, from July 2008 to July 2016.

After his graduation from the Jefferson County Sheriff's Office Regional Basic Law Enforcement Academy in December 2008, he assumed the role of a dedicated patrol officer in the City of Wheat Ridge. In this capacity, he demonstrated his proficiency in handling a wide array of police incidents, ranging from routine traffic enforcement to complex DUI investigations. His expertise also extends to specialized tactical operations, having been an integral member of the West Metro SWAT Team from 2012 to 2016. His commitment to professional development is evident through his certification as a Less Lethal Munitions Instructor, School Resource Officer, I-9000 EBAT Instructor, and Standardized Field Sobriety Testing Instructor.

In July 2016, he transitioned to the Denver Police Department, where he was assigned to District 6 on patrol before transferring to the DUI/DRE Enforcement Unit in October 2017. His dedication to enhancing his skills is notable through his participation in the Drug Recognition Expert (DRE) Course in April 2019, and subsequent selection to attend the DRE Instructor school in March 2021. His commitment to excellence was further underscored by his successful completion of certification for Police RADAR & LIDAR Instructor in November 2021.

Recognizing his exceptional performance and leadership, he was promoted to the rank of Police Corporal in February 2022. In this elevated role, he continues to serve in the DUI/DRE Enforcement Unit and has expanded his expertise as a certified Crowd Control Instructor. He has also taken on the responsibility of Lead Instructor for the Impaired Driving Courses at the Denver Police Academy. In this capacity, he oversees the comprehensive Impaired Driving Enforcement training provided to recruit officers during their field training. Moreover, his role as the DRE Agency Coordinator solidifies his pivotal role in maintaining DRE-related certifications between the Denver Police Department and the Colorado Department of Transportation.

His commitment to community engagement and public safety has been widely recognized. Notably, in 2020, he was honored with the Optimist Club of Monaco South Officer of the Year Award for his significant contributions to organizations such as Mothers Against Drunk Driving (MADD) and Volunteers of America's Camp POSTCARD. This dedication persisted, leading to his reception of the Col. Mark V. Trostel Law Enforcement Officer of the Year Award by MADD and Colorado Department of Transportation in 2022. This esteemed recognition highlights his unwavering dedication to the fields of DUI enforcement, traffic safety, and prevention of underage drinking.

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Background and Development

In the realm of law enforcement, the assessment of impaired driving and boating holds paramount significance to ensure public safety. The Finger-to-Nose (FTN) test has emerged as a critical tool in this pursuit, utilized by law enforcement to detect impairment caused by alcohol and various drugs. Through a comprehensive examination, this report delves into the multifaceted aspects of the FTN test—from its origins and development within the framework of field sobriety tests to its clinical applications and effectiveness in identifying impairment. By analyzing its role in diverse contexts and its integration into law enforcement protocols, this report sheds light on the significance of the FTN test in safeguarding roadways and waterways.

The FTN test is taught to law enforcement officers in the Advanced Roadside Impaired Driving Enforcement (ARIDE), Seated Field Sobriety Exercises (FSE), and Drug Recognition Expert (DRE) curricula. It is used for investigating cases of Driving Under the Influence and Boating Under the Influence. Additionally, it is one of four psychophysical tests administered during a DRE evaluation. The FTN test differs from other divided attention tests in that the officer must continue to provide instructions to the subject throughout the test.

Clinical Use

The FTN test is a basic and simple physical examination that has conventionally been used to assess cerebellar function. Emergency departments can employ this test to screen for isolated dizziness and determine the need for further diagnostic evaluation. Studies have indicated that abnormalities in the FTN test are significantly associated with cerebrovascular events (i.e., stroke) and other medical conditions such as Alzheimer's disease and upper limb impairment (Nishida et al., 2022).

Other studies involve the medical application of the FTN test to detect and measure dysmetria and intention tremor during coordinated upper limb movements between the tip of the nose and the tip of the examiner's index finger. This variant of the test can also be used to quantify early onset ataxia or developmental coordination disorder. This approach measures arm speed and curvature in comparison to healthy adults (Aguilar et al., 2019). Multiple sclerosis patients often experience upper limb dysfunction, and the FTN test is employed in a clinical setting to provide an objective measure of function (Di Giovanni et al., 2021).

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The FTN Test

Patients were instructed to alternately touch their own nose and the examiner's finger several times. The examiner's finger was held at the furthest point of the patient's reach and occasionally moved to different locations. If the patient smoothly followed the examiner's instructions, it was deemed normal. Any hesitation, tremor, undershooting, or overshooting during this test was considered abnormal (Nishida et al., 2022).

Development of the FTN Test

The Finger-Finger Test

Goldberg (1943) conducted quantitative studies on alcohol tolerance in humans, which included a laboratory investigation of various effects of alcohol on motor functions using the Finger-Finger test. In this test, patients were required to touch the tips of the fingers of one hand to the opposite fingertips. The entire battery of tests utilized by Goldberg took 25–40 minutes and required substantial experimental apparatus.

Penttila and colleagues (1971) completed a study on the clinical examination for intoxication, analyzing 6,839 cases. During these cases, the Finger-Finger test was administered with the arms extended and spread. Upon the examiner's command, the subject brought the index fingers of both hands together, stopping intermittently, 10 times in total. The test was scored on a scale of 0 to 3, yielding the following results:

- Degree 0: No Instability (42%)
- Degree 1: Approximately half of the attempts showed slight deviations (44%)
- Degree 2: None of the attempts succeeded, or some attempts displayed significant deviations, often resulting in the subject crossing their arms (13%)
- Degree 3: The performance attempted on command was a complete failure (0%)

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The FTN Test

Burns and Moskowitz (1977) completed the Psychophysical test for DWI arrests study through the Southern California Research Institute. Researchers visited multiple law enforcement agencies in the United States, including the Denver Police Department, to determine the best tests being used to detect and prosecute impaired drivers. Through these visits, the researchers chose the FTN test as one of the tests to include in the research study. The researchers then created standardized instructions and procedures, trained the observers and evaluators, and completed the evaluation.

The conclusion of this study found that the FTN test was sensitive to alcohol with a consistent increase in mean score with increase in mean BAC. However, the FTN test was not adopted for use in the Standardized Field Sobriety Tests in favor of the One Leg Stand, which had higher correlations and better arrest decisions by the evaluators.

Further, one of the goals of the researchers was to minimize the amount of time officers needed to spend to make an arrest decision and decided not to include the FTN test as a fourth test.

1977 SCRI Testing Procedure

Finger-to-Nose
Position person facing camera and examiner (back to wall stripes).

Watch what I do so you will be able to do the same thing. Don't begin until I tell you.
Stand with your feet together and hold your arms out like this (demonstrate arms fully extended level with shoulders).
I want you to close your eyes, and when I say "Right," bring your right index finger to touch your nose then return your arm.
When I say "Left," touch your nose with your left index finger.
(Demonstrate for right and left.)
Do you understand? Ready?

Give a random sequence of five:
For example, R-L-L-R-L
L-R-R-L-R

Check: Eyes closed, arms fully extended,
arms at shoulder height,
nose touched only with index finger,
arms returned to position after each trial.

Interrupt if there is significant
deviation from the above.
Repeat demonstration.
Give second trial or discontinue.

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Definitions

Advanced Roadside Impaired Driving Enforcement (ARIDE): A law enforcement program aimed at training officers to detect impaired drivers using a range of standardized field sobriety tests, including the FTN test.

Ataxia: A neurological condition characterized by lack of coordination and balance.

Boating Under the Influence (BUI): Refers to operating a watercraft while under the influence of alcohol and/or drugs.

Cerebrovascular events: Refers to conditions affecting blood flow to the brain, such as strokes.

Developmental Coordination Disorder: A condition affecting motor coordination and often diagnosed in childhood.

Divided Attention: Concentrating on more than one thing at a time. The four psychophysical tests used by DREs require the suspect to divide their attention (NHTSA, TSA, & IACP, 2023).

Drug Recognition Expert (DRE): A program that trains law enforcement officers to identify individuals impaired by drugs, utilizing assessments including the FTN test. The standards for certification are established by the IACP and NHTSA.

Dysmetria: A lack of coordination in controlling the distance, power, and speed of movements.

Dystonic tremor: involuntary shaking caused by an intermittent muscle contraction known as dystonia.

Essential tremor: a nervous system condition that causes involuntary and rhythmic shaking.

Etiologies: the cause, set of causes, or manner of causation of a disease or condition.

Finger-to-Nose (FTN) test: A physical examination used by law enforcement to assess impairment caused by alcohol and drugs.

Intention tremor: A type of tremor that occurs when a person tries to perform voluntary movements.

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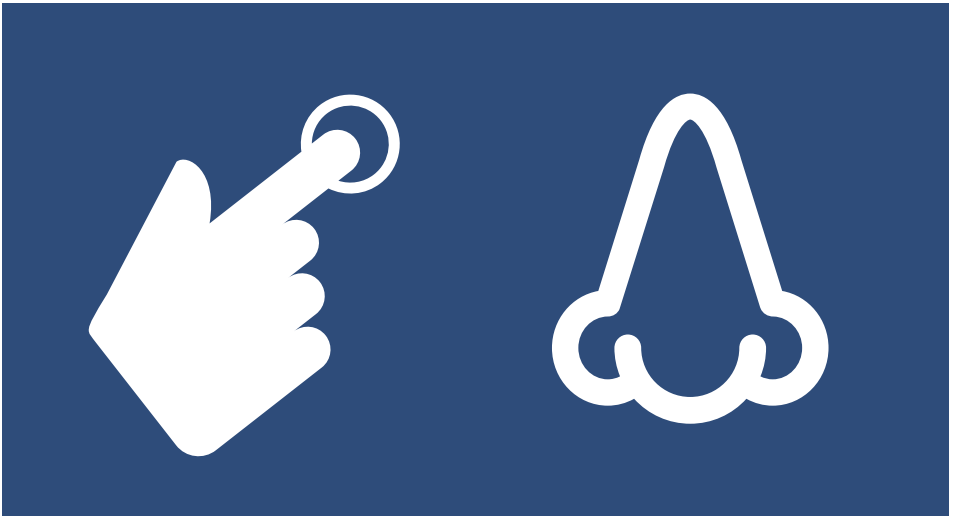
Definitions

Isolated dizziness: Dizziness experienced without other accompanying symptoms.

Multiple sclerosis: A chronic autoimmune disease affecting the central nervous system.

Unilateral: Relating to, occurring on, or affecting only one side of an organ or structure, or of the body.



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Administration of FTN

The FTN test currently has two different versions: one used by law enforcement for use in impaired driving investigations involving vehicles and motor vehicles, and one for watercraft called the Seated FTN test.

The FTN test as taught by the ARIDE and DRE programs.

1. The subject must be told they will be given a series of commands (i.e., “left, right, etc.” to indicate which fingertip is to be brought to the tip of the nose).
2. The subject must be told to stand with feet together, arms down at the sides, facing the officer.

Demonstrate the stance.

1. The subject must be told to close their hands, rotate the palms forward, and then extend the index fingers from the closed hands.

Demonstrate the proper extension of the fingers.

1. The officer must tell the subject they will be asked to touch the tip of the index finger to the tip of the nose.

Demonstrate to the subject how they are expected to touch the fingertip to the nose (without actually touching the nose).

1. Demonstrate and say, “When I say ‘Left,’ touch the tip of your left index finger to the tip of your nose.”
2. The officer must tell the subject they are expected to return the arm to the side immediately after touching the fingertip to the nose.

Demonstrate the movement of the fingertip to the nose by standing at an angle to the subject so they can see the proper method for touching the nose.

1. The subject must be told to tilt the head back slightly, close the eyes, and keep them closed until the officer says to open them.

Demonstrate the stance with head tilted back, arms at the sides with index fingers extended. Officers should not close their eyes during the instructions for safety reasons.

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Recommended Instructions from the State of Colorado
Impaired Driving Enforcement Manual

"Stand-up straight, place your feet together, heels touching heels, toes touching toes, tilt your head back slightly so I can see your eyes are closed. Put your arms to your side palms facing forward and extend the index finger on each hand.

When we begin, I will say left or right. If I say left touch the tip of your left index finger to the tip of your nose and return your hand to your side. If I say right touch the tip of your right index finger to the tip of your nose and return your hand to your side."

The proper sequence is left, right, left, right, right, left. It is necessary for you to establish a routine for this test.

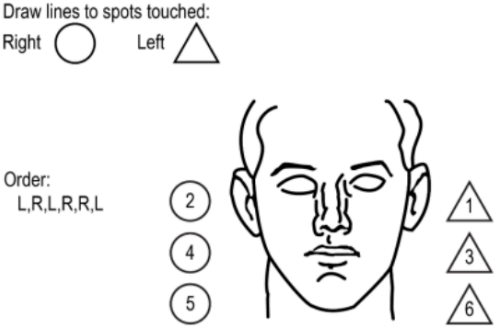
Your instructions should be given the same way every time. When you routinely use this method it is easier for you to remember how the subject performed when recording this in your police report and recalling this information when you testify to this test in court.

All tests should be demonstrated for the subject, keeping officer safety in mind at all times (Colorado Department of Transportation, 2019).

Recording Results of the FTN Test

The results of FTN test are recorded by drawing a "map" showing where the fingertips touched on each attempt. A line should be drawn to the appropriate circle or triangle to indicate where the subject touched their nose.

Suggestion: If the officer draws the line from the place where the subject touches to the appropriate circle or triangle, it enables them to draw a straighter line. There are no validated clues for this test, only observations made by the officer.



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The Seated FTN test as taught by the Comprehensive BUI Detection and Enforcement Course (National Association of State Boating Law Administrators, 2020):

This test requires the subject to bring the tip of the index finger to touch the tip of the nose. It is performed with eyes closed and head tilted back and the subject seated. This test should be administered in an environment where the subject is stable and is able to tilt the head back with eyes closed without risking personal injury.

Set Up

The standard instructions for the FTN test are as follows:

1. Make a fist with both hands, extend your index fingers, and turn your palms forward. (Demonstrate but do not close your eyes)
2. Remain in this position while I explain the test. Do you understand? (Response)
3. When I say "Begin," tilt your head back to about a 45-degree angle and close your eyes. (Demonstrate but do not close your eyes)
4. When I tell you to, touch the tip of your nose with the tip of your index finger and immediately return it to your side. (Demonstrate but do not close your eyes and explain the fingertip, pad and side, and demonstrate touching tip of nose)
5. When I say "Right," you must touch your right index finger to your nose; when I say "Left," you must touch your left index finger to your nose. Do you understand? (Response)
6. Begin. (After head tilt) Left, right, left, right, right, left. (After performance) Open your eyes and straighten your head.

In addition to the instructions for this test, the form provides a system to document any clues observed during either the instruction or performance stage. There are many possible clues for this test, and there is potentially a lot of evidence to be observed and documented in a very short period of time. Familiarization and practice with this section of the form is important to ensure effective and accurate documentation of clues.

There are 48 possible validated clues that can be recorded for the Seated FTN test.

Instruction Stage

Unable to follow instructions ☐
Started at wrong time ☐

Performance Stage

Did not close eyes ☐
Did not tilt head ☐
Opened eyes during test ☐
Moved head during test (1"+) ☐

Clues	Left	Right	Left	Right	Right	Left
Wrong hand						
Wrong finger						
Hesitated						
Searched						
Not fingertip						
Missed nose (tip)						
Did not bring down						

Total Clues: _____

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Interpretation of FTN

FTN Test

The observations to be recorded for the FTN test are:

- If the subject displays eyelid tremors
- If the subject displays muscle tremors
- If the subject sways while performing the test
- If the subject brings the head forward during the test
- If the subject misses the nose with the finger
- If the subject uses the tip or pad of the finger
- If the subject uses the wrong hand to touch the nose
- If the subject held the finger on the nose
- If the subject had to be reminded to remove their finger
- If the subject searched for the tip of the nose

Muscle and Eyelid Tremors

Drug-induced tremor usually resembles essential or parkinsonian tremor, depending on the offending drug; however, features such as unilateral, task-specific, position-dependent tremor or sudden onset, distractibility, entrainment and arrest with contralateral movements suggest etiologies such as dystonic or functional (psychogenic) tremor (Baizabal-Carvallo & Morgan, 2022). Drugs that can cause tremors include, but are not limited to:

- Amiodarone (an antiarrhythmic)
- Selective serotonin (and norepinephrine) reuptake inhibitors (SSRIs/SNRIs) (Antidepressants)
- Amitriptyline (Antidepressant)
- Lithium (Antipsychotic)
- Valproate (Antiseizure)
- β-adrenoceptor agonists (Bronchodilator)
- Dopamine receptor antagonists (Anti-psychotics, neuroleptics, and major tranquilizers)
- VMAT2 inhibitors (Medicine for movement disorders such as Huntington's disease)

Drugs of abuse:

- Ethanol (CNS Depressant)
- Cocaine (CNS Stimulant)
- MDMA (Hallucinogen)
- Cannabis

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Sway

If the subject is unable to maintain proper postural control during the FTN, this may indicate that three functions of the body responsible for balance (visual, vestibular, and proprioception) are compromised by either a medical defect or drug impairment. The vestibular system (also known as the inner ear) detects body position relative to gravity and provides a sense of balance to the body (Purves et al., 2001). Proprioception, otherwise known as kinesthesia, is the body's ability to sense movement, action, and location (Ager et al., 2019).

Upper Limb Coordination

The ability to control the various joints in the upper limbs can indicate impairment of the person's ability to drive. In healthy, non-impaired individuals, coordinated movements are described in terms of spatial variables related to the various positions of different joints or body segments in space, or the timing between movements of joints during the task (Rodrigues et al., 2018). These movements are measured in the clinical settings for stroke and through the development discussed earlier, can be scored to indicate impairment by drugs. When utilizing a criterion of $\geq$3 misses, the FTN best predicated cannabis impairment at $\geq$87.1% (Hartman et al., 2016).

Seated FTN Test

The validated clues for the Seated FTN test are divided into two stages: the Instruction Stage and the Performance Stage.

Instruction Stage:

A. Unable to follow instructions: Check this if the test had to be explained to the subject more than twice or if the subject did not remain in the instruction position.

B. Started at wrong time: Check this if the subject began the test before being told to either by tilting head back and/or closing eyes or by raising either finger before being told to do so.

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Performance Stage:
A. Did not close eyes: Check this if the subject failed to close eyes when told to begin the test.

B. Did not tilt head back: The subject failed to tilt head back when told to begin the test.

NOTE: If subject tilted head back too far or not far enough, this clue would not be assessed, however the officer would ask the subject to move the head up or down to about the 45-degree position.

C. Opened eyes during test: The subject opened eyes at all during the test.

D. Moved head during test: The subject moved head backward, forward, or side to side after beginning the test. Movement of the subject's head in any direction of at least one inch is necessary to check this clue.

The following require compliance with each attempt (L, R, L, R, R, L)

E. Wrong hand: The subject makes contact to the nose with the wrong hand.

F. Wrong finger: The subject used any finger other than the index finger.

G. Hesitated: The subject started with one hand but then changed to the other hand prior to making contact with the nose or when the subject pauses or significantly slows down upon approach to and prior to making contact with the nose.

H. Searched: The subject makes any distinct vertical or horizontal movement with the finger upon approach to and prior to making contact with the nose.

NOTE: Hesitation and searching may both be observed during the same attempt.

I. Not fingertip: (Synonymous with "missed fingertip") The subject touches the nose with any part of the finger other than the area of the index finger immediately below fingernail tip. The fingerprint pad area of finger is not the fingertip.

J. Missed tip of nose: The subject fails to touch any part of the finger to the tip of the nose. The tip of the nose shall be considered a dime-sized portion of the nose furthest away from the face.

K. Did not bring hand down: The subject failed to immediately (if contact is more than one second) bring finger back down to the side after making contact with the nose. (If a subject does not return the hand to the side as instructed, tell him to move hand down into the start position.)

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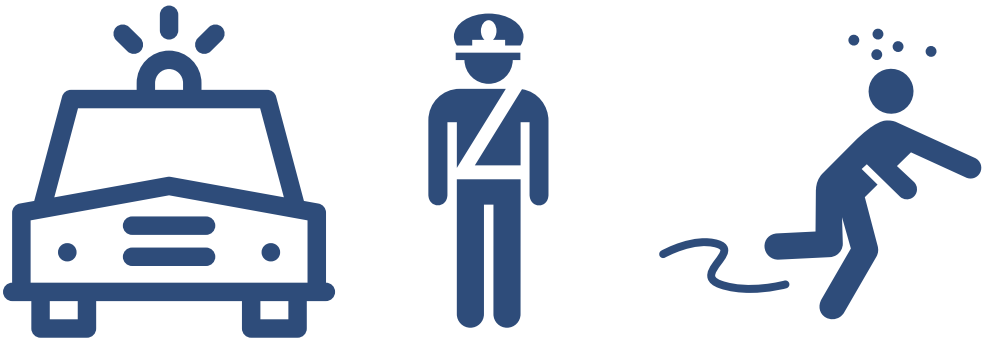
Reliability of FTN

The FTN test has been evaluated and determined to be a valid assessment for detecting impairment caused by both alcohol and various other drugs. It functions as a tool that has displayed notable accuracy in aiding law enforcement officers to establish probable cause for impaired driving and boating, serving as a reliable standalone test. Its accuracy is further enhanced when combined with other FSTs. In the original SCRI study, the FTN test was ranked as the fourth best Standardized Field Sobriety Test, closely trailing the accurate arrest decision rate of the Walk and Turn test. It was excluded from the initial reduced "best" test set SFST battery to encompass a range of skills and maintain roadside testing under 5 minutes (Burns & Moskowitz, 1977).

The FTN has demonstrated sensitivity to alcohol, with a consistent increase in mean scores corresponding to rising mean BAC levels. The FTN on its own successfully identified subjects with a BAC over 0.10 in 70% of cases, utilizing a criterion of ≥3 misses (Burns & Moskowitz, 1977). The seated FTN has established a statistically significant correlation (ranging between 0.25 and 0.30) with Blood Alcohol Values. As a sole measure, the seated FTN test accurately predicted BACs at a 75% rate with a criterion of nine clues (Fiorentino et al., 2011).

The FTN test emerges as the most effective Field Sobriety Test for detecting cannabis impairment, with an accuracy rate of 87.1%. When combined with the Walk and Turn test, One Leg Stand test, and Modified Romberg Balance test, it achieved a prediction accuracy rate of 96.7% for cannabis impairment (Hartman et al., 2016). Furthermore, it has effectively discerned impairment due to ketamine (Cheng et al., 2007) and CNS Depressant intoxication (Clarkson et al., 2004).



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Studies on the current versions of the FTN and Seated FTN tests

In 1977, the original SCRI Lab Study was concluded, wherein the current FTN test was systematized and standardized. Throughout this process, researchers established that the test demonstrated sensitivity to alcohol, correlated with BAC levels, and exhibited criterion validity with the driving simulator test. The researchers were able to differentiate a subject's BAC being above or below 0.10 with 70% accuracy using a threshold of two or more misses. Despite this, the test didn't make it into the final selection of the three Standardized Field Sobriety Tests. Consequently, no field studies were conducted, and standardized clues were not developed (Burns & Moskowitz, 1977).

In 2007, a study assessing ketamine impairment symptoms in relation to concentration in oral fluid and urine was carried out in China. This study revealed that 62% of subjects displayed impairment on the FTN test, with an average number of correctly executed nose touches being two. During this study, only one drug-free subject showed impairment on the FTN test (Cheng et al., 2007).

In 2011, research was initiated to devise Sobriety Tests for the Marine Environment, intended for law enforcement investigating Boating Under the Influence cases. This endeavor yielded a systematic and standardized procedure for the Seated FTN test. The threshold for a positive or negative result on the FTN was set at nine clues. Employing this criterion, a full model test with FTN against a constant-only model yielded statistically significant results ($p < 0.05$). The FTN alone accurately predicted BAC status in 59.9% of cases (Fiorentino et al., 2011).

This study was subsequently validated through field testing, revealing that nine or more clues on the FTN test alone indicated impairment above a BAC of 0.08% at a rate of 65%. The combination of HGN and FTN emerged as the most effective pairing of two tests, correctly predicting BAC status in 75% of cases (Fiorentino, 2011).

In 2016, data was scrutinized from drivers who had been apprehended for impaired driving and had participated in a Drug Influence Evaluation (DIE). The analysis involved 602 drivers arrested with only THC present, and 4,799 drivers with THC and another substance present. Notably, the FTN test was the sole indicator for which performance varied based on whether the subjects were in the ≥5 ng/mL THC group or the <5 ng/mL THC group. The number of misses on the FTN test was higher in the higher THC group (Logan et al., 2016).

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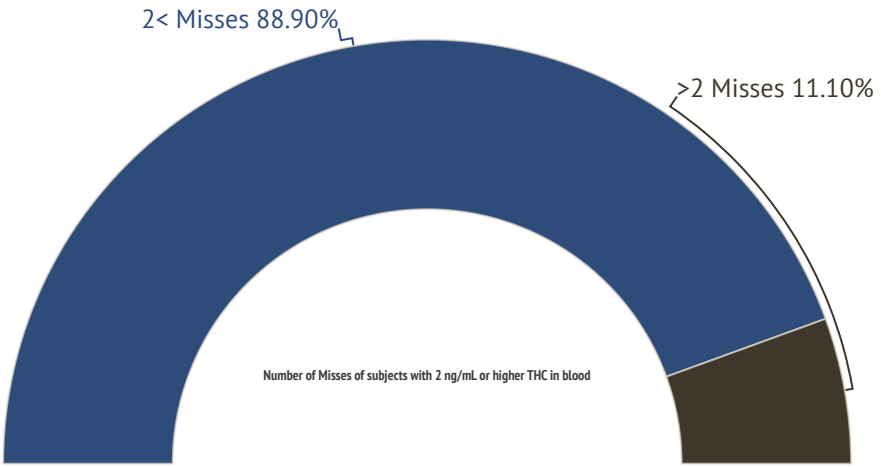
Also in 2016, the "302 Study" investigated the Drug Recognition Expert (DRE) examination attributes of cannabis-related impairment. The objective was to identify the most reliable DECP metrics for detecting cannabis-related driving impairment. The FTN test emerged as the most effective predictor of cannabis impairment (with sensitivity, specificity, positive/negative predictive value, and efficiency ≥87.1%) using a threshold of ≥3 misses. Requiring ≥2 out of 4 criteria: ≥3 FTN misses, MRB eyelid tremors, ≥2 OLS clues, and/or ≥2 WAT clues yielded highly favorable results (all metrics ≥96.7%). Cases and controls demonstrated contrasting patterns in the number of "misses" (unsuccessful attempts, out of 6 possible misses) on the FTN. Cases exhibited considerably more misses than controls (median [range] 5 [0–6] vs. 0 [0–6] respectively, $p < 0.0001$). Notably, the study determined that the FTN test and the Modified Romberg Balance test produced the best results for detecting cannabis impairment, even though neither test had yet been validated (Hartman et al., 2016).

In 2016, a 2-year study was conducted to explore the correlation between impairment on the FSTs and THC concentration in whole blood. The study involved over 5,000 drivers suspected of driving under the influence who underwent FSTs administered by both DREs and non-DREs. Using the threshold of two or more misses, no correlation was observed between the number of misses and THC concentration in the blood. Nevertheless, it was found that 88.9% of subjects with a THC concentration of 2 ng/mL or higher in their blood missed two or more attempts. Regardless of THC concentration, the average number of misses was four (Declues, Perez, & Figueroa, 2016).



Source: Declues, K., Perez, S., & Figueroa, A. (2016). A 2-year study of Delta 9-tetrahydrocannabinol concentrations in drivers: Examining driving and field sobriety test performance. *Journal of Forensic Sciences, 61*(6), 1664–1670. doi:10.1111/1556-4029.1316

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Court Admissibility

No court has specifically addressed the admissibility of FTN evidence. Several impaired driving cases involving a DRE have allowed testimony involving the FTN. Several courts have allowed testimony involving the FTN test when used as part of the decision to make an arrest or determine impairment. The listed cases involve the testimony of officers using the FTN as part of the DRE protocol:

- In *State v. Klawitter*, 518 N.W.2d 577 (1994), the Minnesota Supreme Court considered the admissibility of DRE testimony in a case of driving under the Influence of a controlled substance. A DRE administered a drug influence evaluation on the defendant using the full 12-step process. A county physician (who was called by the defense) testified he has used the FTN test in a clinical setting, but opined it is "not reliable for determining impairment because 'it has [not] been validated . . . and . . . it is certainly not something that is accepted by the medical community." *Id*. at 584. The Court found, "it seems to us that the use of a standard 12-step procedure for recognizing drug impairment leads to greater accuracy and consistency in the opinions of various officers than is likely if each officer develops her or his own format for deciding whether the suspect is drug impaired. We agree with the trial court that the officer should be allowed to give an opinion based on the officer's training and experience and his or her observations following the 12-step drug recognition protocol, as long as (a) there is sufficient foundation for the specific opinion expressed, (b) the state does not attempt to exaggerate the officer's credentials by referring to the officer as a 'Drug Recognition Expert' or to unfairly suggest that the officer's opinion is entitled to greater weight than it deserves, and (c) the evidence otherwise survives Minn.R.Evid. 403 analysis. We add only that it should be obvious that the mere fact that such opinion testimony is admitted does not necessarily mean that such testimony by itself will be sufficient to support a guilty verdict." *Id*. at 586.

- In *State v. Olenowski II*, 304 A.3d 598 (N.J. 2023), the New Jersey Supreme Court reviewed two cases involving DRE evidence to determine if it is admissible at trial and, if so, under what circumstances. In its examination, the Special Master (on behalf of the Court) made findings about the FTN test writing "DREs are familiar with the components of Step 5 from prerequisite training. The rationale for performing the tests in drugged driving cases is that any drug that impairs driving ability will also impair the driver's ability to perform divided attention tests, which help evaluate a driver's "psychomotor" skills. Among other things, divided attention deficits may impair a driver's ability to maintain lane position on a roadway while monitoring the surrounding environment." *Id*. at 613. The Court found DRE testimony sufficiently reliable to be admitted under the *Daubert v. Merrell Dow Pharmaceuticals, Inc*., 509 U.S. 579 (1993) standard with certain limitations (unrelated to finger-to-nose).

    - The NJ Supreme Court found DRE testimony sufficiently reliable to be admitted. It adopts several limitations on the admissibility and probative use of a DRE's opinion in criminal and quasi-criminal cases: First, a DRE is only allowed to opine in court that the protocol has presented indicia that are "consistent with" the driver's usage of certain categories of drugs. The DRE's expert opinion testimony must not go further than that. Proof of consistency can be pertinent as one component within the totality of the evidence to support an inference that drugs caused a driver's impairment.

Second, a toxicology report corroborating a DRE's opinion is important evidence. DRE officers must make a reasonable attempt to obtain a toxicology report when it is feasible to do so – and preferably to obtain a blood sample rather than a urine sample – when their protocol indicates at Step 11 an opinion of consistency with drug use. If the court finds no reasonable attempt was made, despite its feasibility, the DRE evidence shall be excluded. However, if the State establishes a reasonable justification for the lack of a toxicology report, then the DRE evidence is admissible, subject to defense impeachment and counterproofs. Third, if the trial court admits DRE evidence for the State, the defense shall have a fair opportunity to impeach or rebut it through cross-examination of the DRE and with counterproofs.

- In People v. Bowden, 344 Mich.App.171 (2022), the Michigan Court of Appeals did an extensive review of the Drug Evaluation and Classification Program (DECP). The FTN was conducted as part of the DIE protocol in this case but was not specifically mentioned. The lower found that the studies on the DECP from the 1980s were enough to show reliability to meet the requirements of Michigan Rules of Evidence 702 to allow the DRE to opine about the category of drug a suspect has have taken. However, the defendant appealed, and the Court of Appeals found the "prosecution did not meet its burden to establish the reliability, and thus the admissibility, of the proposed expert testimony. See Gilbert, 470 Mich. at 779-781, 789, 685 N.W.2d 391; Muhammad, 326 Mich. App at 52, 931 N.W.2d 20. Therefore, the proposed expert testimony was inadmissible under MRE 702." Bowden, 344 Mich.App. at 192. The court precludes expert testimony, but not lay witness testimony based on observations and performance during the Drug Influence Evaluation. The Michigan Supreme Court, 512 Mich. 958 (2023), declined further review. Therefore, the appellate decision stands: DRE-trained officers cannot testify as "expert witnesses."

    - The Michigan Supreme Court issued an order (SC 165187, Sept. 20, 2023), declining to review the appellate decision in *People v. Bowden*, stating that it should not review the question presented. Therefore, the appellate decision stands: DRE-trained officers cannot testify as "expert witnesses" under Michigan Rules of Evidence 702.

Conclusion

Within the domain of law enforcement, the FTN test occupies a pivotal role in the effort to detect and apprehend impaired drivers and boaters. A staple of programs such as ARIDE, DRE, and BUI, this test has undergone decades of refinement, rendering it a dependable and robust tool. When administered alongside a suite of well-coordinated assessments, the FTN test provides law enforcement officers with a valid and consistent means to identify and apprehend individuals operating vehicles and watercraft under the influence of alcohol and/or drugs.

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