

The DRE Process

The Drug Recognition Expert Procedure: A Systematic and Standardized 12 Step Process

Upon successfully completing this section participants will be able to:

- State and describe the three determinations of a DRE
- Name the components of Drug Recognition Expert Process
- Identify the tools used by DRE's to conduct evaluations

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A. The Three Determinations of a DRE

Although a DRE may initiate his or her own arrest for DUI-drugs, the usual case is for a different officer, the arresting officer, to request the expertise and assistance of the DRE after making a DUI arrest. The DRE should be requested to conduct an evaluation for drug influence when the suspect's signs of impairment are not consistent with the arrestee's BAC. Simply, the arrestee may appear more impaired than the alcohol level alone would account for. Some agencies, such as the LAPD, mandate a drug influence evaluation by a DRE whenever an individual is arrested for DUI and produces a BAC below the statutory per se level (.08% in California). In addition, an evaluation is mandated whenever the arrestee's degree and/or type of impairment are not consistent with the arrestee's BAC.

A DRE is responsible for making three determinations: (1) the arrestee's impairment is not consistent with the BAC; (2) the individual is under the influence of drugs, and not suffering from a medical condition that requires immediate attention; and (3) the individual is under the influence of a specific category (or categories) of drugs.

The ruling in or out of medical conditions (second determination) is critical. There are many medical conditions, such as stroke, epilepsy, multiple sclerosis, uncontrolled diabetes, and others that produce effects that mimic drug impairment. The DRE needs to be able to quickly and accurately assess the arrestee for the presence of these conditions. It is a frequent occurrence for DREs to determine that the arrestee, who was appropriately arrested, is actually in need of urgent medical care, and is not under the influence of drugs. Only after ruling out these medical conditions does a DRE proceed with an evaluation to determine what category of drug the person is under the influence of.

B. A Systematic and Standardized 12 Step Process

In order to reach an opinion that the individual is under the influence of a specific category (or categories) of drugs, DRE's utilize a 12 step, systematic and standardized process. The DRE will not reach a final opinion until the entire evaluation has been completed. The process is standardized in that all DRE's, regardless of agency, utilize the same procedure, in the same order, on all suspects. It is systematic in that it logically proceeds from a BAC, through an assessment of signs of impairment, to toxicological analysis for the presence of drugs. This procedure is rooted in standard medical procedures that are used to reach a diagnosis of illness or injury.¹

The 12 steps are:

Step One: The Breath (or Blood) Alcohol Concentration

Step Two: Interview of the Arresting Officer

Step Three: Preliminary Examination (includes the first of three pulses)

Step Four: Eye Examinations

Step Five: Divided Attention Tests

Step Six: Vital Signs Examinations (includes the second of three pulses)

Step Seven: Darkroom examinations of Pupil Size (includes an examination of the nasal and oral cavities)

Step Eight: Muscle Tone

Step Nine: Examination of Injection Sites (includes the third pulse)

¹A "history and physical" is the common term applied to the making of a medical diagnosis.

Step Ten: Statements, Interrogation

Step Eleven: Opinion

Step Twelve: Toxicology: Obtaining a specimen and subsequent analysis

C. Step One: BAC

This step often precedes the involvement of the DRE. If the arresting officer has determined that the BAC is consistent with both the type and degree of impairment, no DRE is called. On the other hand, if the BAC is not consistent with the degree and/or type of impairment, a DRE should be requested.

D. Step Two: Interview of the Arresting Officer

Based on the results in Step One, the arresting officer requests the assistance of a DRE. The DRE will discuss the circumstances of the arrest with the arresting officer, and will inquire as to the suspect's condition at the time of the arrest, whether the arrestee had been involved in a traffic collision, any statements the suspect had made, whether or not the suspect had drugs in his or her possession, and any other relevant matters. This step is analogous to the interview an emergency room physician conducts when an unconscious individual is brought by ambulance to the hospital. The physician will of course inquire of the ambulance attendants as to how long the person has been in that state, if the person has come in and out of consciousness, and so forth.

E. Step Three: Preliminary Examination

This step is commonly referred to as a "fork in the road." The purpose of this step is to determine if there is sufficient reason to suspect drug influence. As was mentioned earlier, there are often serious medical conditions that may mimic drug influence. Therefore, an extremely important part of this step is the determination that it is in fact a drug, rather than a medical condition, that is inducing the observed impairment. In order to make this critical determination,

the DRE will make general observations of the arrestee's condition, inquire of the arrestee as to any health problems, and conduct a pupil size and eye tracking examination. Pupils of different size and/or differences in the tracking movements of the eyes often provide evidence of serious, life-threatening medical conditions. In addition, the DRE takes the first of three pulses in this step.

Based on what the DRE detects in this phase, a number of outcomes are possible. The DRE may find no signs of drug influence, and may return the arrestee to the arresting officer for routine processing. The DRE may see evidence of a medical condition, and may obtain a medical assessment. Or the DRE may proceed with a full DRE evaluation. Even though the DRE may have decided to proceed with the drug evaluation, if the DRE at any time finds evidence of a serious medical condition, the DRE will cease the evaluation and obtain the medical assessment.

F. Step Four: Eye examination

During this step, the DRE conducts three separate eye movement examinations. They are horizontal gaze nystagmus, vertical gaze nystagmus, and an eye convergence examination.

The Standardized Field Sobriety Testing (SFST) research found that horizontal gaze nystagmus (HGN) was the best predictor of an individual's alcohol level. Although there are many different types of nystagmus, some of which are caused by pathology, the HGN examined for by DRE's is rarely confused with nystagmus caused by other physiological conditions. Simply, nystagmus refers to an involuntary, but visible jerking of the eyeballs. Horizontal gaze nystagmus refers to the visible jerking of the eyeballs as the eyes move side to side while gazing at an object. The DRE uses a pencil or pen held in front of the suspect's eyes, and moves the object horizontally in front of the individual while the individual moves his or her eyes

attempting to follow the object. In addition to alcohol, other Central Nervous System Depressants, Inhalants, and PCP induce this visible jerking.

During the vertical gaze nystagmus (VGN) examination, the suspect is directed to follow an object that is moved up and down. Importantly, any drug that induces HGN may also cause VGN, given a sufficient dose. There are no drugs, however, that may cause VGN without first causing HGN. Certain medical conditions, such as brain stem damage, may however cause VGN but not HGN.

During the convergence examination, the DRE, again using a pencil or pen, directs the suspect to look at the object while the DRE places the object at the bridge of the suspect's nose. The suspect will attempt to "cross" his or her eyes while looking at the object. CNS Depressants, Inhalants, PCP, and Cannabis impair the ability of the individual to converge (or cross) the eyes.

G. Step Five: Divided Attention Testing

To a degree, this step repeats some of the tests that were given to the suspect at the time of the arrest. The setting now, however, is a controlled environment, a police station, rather than at roadside.

The DRE administers the following tests in the following order: Romberg Balance Test, a Walk and Turn Test, the One-Leg Stand Test, and a Finger-to-Nose Test². These tests are divided attention tests, requiring the individual to balance and coordinate body movements, remember instructions, and perform more than one task at once. Frequently, the individual's performance on these tests during the DRE evaluation will be markedly different from the suspect's performance in the field. There are many explanations for this variance: the drug(s)

² Although the Romberg Balance and the Finger-to-Nose tests are not part of the Standardized Field Sobriety Test battery, experience has shown these tests to provide valuable clues of drug impairment.

may have worn off during the intermittent time period; the individual may have used multiple drugs, and a different drug may now be dominant. The officer will document the performance of the suspect, and will then continue to Step Six.

H. Step Six: Vital Signs Examination

The DRE takes three vital signs: blood pressure, using a sphygmomanometer and stethoscope, body temperature utilizing an oral thermometer, and pulse. This is the second of three pulses, the first having been taken in the preliminary examination. Of course, if the arrestee's vital signs are dangerously high or low, the DRE will immediately obtain a medical assessment. DRE's are trained to accurately take these vital signs, and to compare the results with medically-accepted normal ranges. Certain drugs elevate specific vital signs, other drugs depress the vitals, and other drugs may have no effect on certain vital signs.³

I. Step Seven: Darkroom Examination

The eyes have been called "the window to the soul." They are certainly a "window" to the inner body. The pupils enlarge in response to darkness, fear and excitement, as well as in response to certain drugs.⁴ They also constrict in response to bright light, as well as in response to certain drugs. The DRE uses a pupillometer to estimate the arrestee's pupil sizes in four different light levels: room light, near total darkness, indirect artificial light, and direct light. The DRE also examines the individual's nasal and oral cavities for evidence of drug use.

J. Step Eight: Muscle Tone

Certain drugs cause the skeletal muscles to become rigid, whereas other types of drugs,

³ DREs are taught the following normal ranges for the vital signs. Pulse rate: 60 to 90 pulsations per minute; Blood Pressure: 120 mm Hg to 140 systolic over 70 to 90 diastolic; Temperature: 98.6 degrees Fahrenheit, plus or minus one degree.

⁴ DREs are taught that the normal pupil size range in all levels of light is 3.0 to 6.5 mm.

such as alcohol, cause muscle flaccidity. The arrestee's muscle tone is evaluated throughout the examination, through observations of the arrestee's movements. During this step, however, the DRE gently moves the arrestee's arms to determine muscle tone.

K. Step Nine: Injection Sites Examinations

Many drug users inject drugs intravenously. Rarely, however, do medical procedures involve injecting drugs into an artery or vein. For example, insulin-dependent diabetics do not inject into blood vessels. During this step, the DRE examines the individual for injection sites. Although the drug user may inject anywhere on the body, the more frequently used areas are the arms, neck, and ankles. Importantly, the presence of injection marks, even recent ones, is an indicator of use, rather than drug influence. Their presence, however, may provide evidence of frequency of use, and the type of drug abused. A third pulse is also taken.

L. Step Ten: Statements, Interview

The DRE now conducts a structured interrogation of the suspect. In the United States, if the suspect has not been advised of his or her constitutional rights (Miranda warnings) previously, the DRE will do so at this point. The DRE will question the person about the use of specific drugs. Frequently, the arrestee will make self-serving denials of drug use, but may admit or even confess drug use and impairment by drugs while driving to the DRE. Arrestees often state that they were using a prescribed drug. The DRE may ask the arrestee about any warnings given to the arrestee by the prescribing physician or pharmacist regarding operating a motor vehicle while taking the drug.

M. Step Eleven: Opinion

The DRE now forms an opinion as to drug influence, and the category(s) of drug(s) causing the impairment. This opinion is not a guess nor is it a hunch. **Rather, it is an informed**

opinion that is based on the totality of the evaluation. Although opinions by nature are subjective, the DRE opinion is based, in part, on objective criteria.

It is a primary dictum of DRE training that when in doubt, the DRE shall always find "in favor of freedom" of the suspect. As written, a typical DRE opinion is: "In my opinion, the arrestee is under the influence of a Central Nervous System Stimulant, and cannot safely operate a vehicle."⁵

N. Step Twelve: Toxicology: Specimen and Subsequent Analysis

The fact that this step is the twelfth or last should not be construed to mean that it is the least important part of the evaluation. In fact, toxicological corroboration of drug use is usually necessary for successful prosecution. During this step, the DRE obtains a urine and/or blood specimen from the suspect, which is then analyzed for the presence of certain drugs by a toxicological laboratory. Under the implied consent laws that DRE states have, an individual is required to provide blood or urine to the police when requested. This blood or urine sample is required even though the suspect may have already provided a breath test.

Typically, a week or more will elapse until the laboratory reports their results. The decision to prosecute the individual will usually be delayed until these results have been obtained.

It is critical to understand the laboratory's role in a non-alcohol drug case. In a drug influence case, the laboratory's role is usually not to determine if the individual was impaired, but is to determine use of a specific substance. For example, the DRE has determined the arrestee is under the influence of a Central Nervous System Stimulant. The laboratory analyzes

⁵ The legal definitions of driving under the influence and drugs vary according to jurisdiction. For example, some jurisdictions specify "motor vehicle," while others simply use the word "vehicle."

for specific drugs, such as cocaine, amphetamines, and others. The laboratory report, assuming it corroborates the opinion of the DRE, will identify a specific stimulant the person used. In court, the consistency between the DRE's opinion and the laboratory analysis is critical in demonstrating the accuracy of the DRE.

O. The Tools of the Trade: DRE equipment

A DRE utilizes the following equipment in conducting a drug influence evaluation:

- Pupillometer: a small, approximately 3 inch by 5 inch card (approximately 7 to 12 cm), that is usually plastic, that displays dark circles ranging in half-millimeter gradations from 1.0 millimeters to 9.0 millimeters.
- Sphygmomanometer: a manual, aneroid blood pressure cuff consisting of a pumping bulb, a screw valve, an analog gauge, and a bladder.
- Stethoscope: single or double diaphragm, double tubed.
- Thermometer: oral, digital, with disposable covers.
- Penlight: low power, medical style.
- Magnifying light: generally five to ten magnification power, similar to those used by stamp collectors and model builders.
- Pen or Pencil: used as a stylus to conduct eye movement examinations.
- Evidence containers: for blood or urine.
- Protective gloves, latex and/or rubber.

In addition, DRE's may utilize a specialized, short distance, instant camera to take photos of injection marks, nasal and oral cavities, and of other evidence. DRE's may also utilize various type of breath testing equipment, including preliminary breath testers.