

[CAPTION]

**MOTION TO EXCLUDE IMPROPERLY ADMINISTERED FIELD SOBRIETY TEST
RESULTS**

The Defendant, by counsel, respectfully moves this Court as follows:

1. On [insert date], the Defendant was arrested for Operating a Vehicle While Intoxicated.
2. On [insert date], the arresting officer requested that the Defendant perform certain field sobriety test, specifically the “finger count” test, the “one leg stand” test, the “walk and turn” test, and the horizontal gaze nystagmus test.
3. Counsel for the Defendant has reasonable cause to believe that the State intends on introducing evidence, in the form of testimony and/or video tape, of the field sobriety tests and their results.
4. Because the “finger count” test and the officer’s version of the “one leg stand” test are not recognized as standardized tests approved by the National Highway Traffic Safety Association, the results of these tests lack any tendency to make the existence of the fact that the Defendant was intoxicated more probable or less probable than it would be without the evidence, and thus, are inadmissible under Indiana Rule of Evidence 401.
5. Because the “walk and turn” and the horizontal gaze nystagmus tests were not administered in accordance with the standards set forth in the National Highway Traffic Safety Association Student and Training Manual, the results of these tests lack any tendency to make the existence of the fact that Defendant was intoxicated more probable or less probable than it would be without the evidence, and thus, are inadmissible under Indiana Rule of Evidence 401.

6. Because the “finger count” test and the officer’s version of the “one leg stand” test are not recognized as standardized tests approved by the National Highway Traffic Safety Association, the probative value of these field sobriety test results is substantially outweighed by the danger of unfair prejudice and misleading the jury and, thus, are inadmissible under Indiana Rule of Evidence 403.
7. Because the “walk and turn” and the horizontal gazes nystagmus tests were not administered in accordance with the National Highway Traffic Safety Association Student and Training Manual, the probative value of these field sobriety test results is substantially outweighed by the danger of unfair prejudice and misleading the jury and, thus, are inadmissible under Indiana Rule of Evidence 403.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to grant his Motion in Limine, and order the State of Indiana, through its prosecutors and witnesses, not to mention, refer to, interrogate concerning, or attempt to convey to the jury in any manner, either directly or indirectly the field sobriety tests and their results without first obtaining permission of the Court outside the presence and hearing of the jury; and further instruct the State of Indiana and its witnesses not to make any reference to the fact that this Motion has been filed and granted and to warn and caution each and every one of their witnesses to strictly follow these same instructions, and for all other relief just and proper in the premises.

(Signature)

CASELAW

Cooper v. State, 761 N.E.2d 900, 903 (Ind.Ct.App. 2002) (Horizontal gaze nystagmus results are admissible in Indiana, and proper foundation for such evidence should consist of describing the officer's education and experience in administering the test and showing that the procedure was properly administered). See also O'Banion v. State, 789 N.E.2d 516 (Ind.Ct.App. 2003).

Brown v. State, 915 N.E.2d 996 (Ind.Ct.App. 2009) (clarifying proper procedure for administering HGN test set forth in National Highway Traffic Safety Administration manual), *superseded by statute on other grounds*, State v. Bisard, 973 N.E.2d 1229 (Ind.Ct.App. 2012)

Smith v. State, 751 N.E.2d 280 (Ind.Ct.App. 2001) (investigating officer's training and experience is the only evidentiary foundation required for admission of field sobriety tests; tests at issue do not involve any complex scientific process or principles, and results are reported as officer's observations about the Defendant's ability to perform simple tasks).

Hinds v. State, 906 N.E.2d 877 (Ind.Ct.App. 2009) (officer's failure to check for all three clues in both eyes, twice, starting with the left eye as taught by NHTSA did not render the HGN test and its results inadmissible; moreover, unstandardized and uncertified field sobriety tests, such as the finger-to-nose and backwards count test-are admissible).

State v. Schmitt, 915 N.E.2d 520 (Ind.Ct.App. 2009) (trial court did not abuse its discretion by dismissing the case as a sanction for the State's failure to comply with Defendant's Request for Production of the arresting officer's training for the administration of traffic stops and field sobriety tests and the NHTSA manual the arresting officer used and was trained under).