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BASIC COURSE INSTRUCTOR UNIT GUIDE

28

TRAFFIC ENFORCEMENT

June 1, 1994

NCJRS

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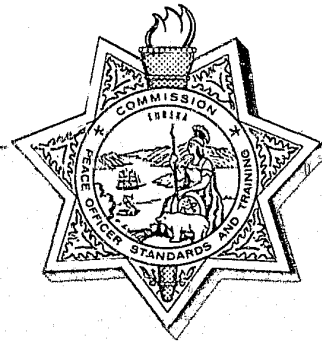
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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

1577

The curricula contained in this document is designed as a *guideline* for the delivery of performance-based law enforcement training. It is part of the POST Basic Course guidelines system developed by California law enforcement trainers and criminal justice educators in cooperation with the California Commission on Peace Officer Standards and Training.

The training specifications referenced herein express the required minimum content of this domain.

UNIT GUIDE 28

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SPECIFICATIONS FOR LEARNING DOMAIN #28: TRAFFIC ENFORCEMENT

June 1, 1994

I. INSTRUCTIONAL GOALS

The goals of instruction on **Traffic Enforcement** are to provide students with:

- A. an understanding of the purpose of traffic laws and traffic law enforcement;
- B. knowledge of the traffic laws commonly enforced by patrol officers; and
- C. the skills necessary to effectively direct and control traffic;
- D. knowledge of laws and techniques related to driving under the influence enforcement; and
- E. knowledge of laws related to the storage and impound of vehicles.

II. REQUIRED TOPICS

The following topics shall be covered:

- A. Vehicle code definitions
- B. Vehicle registration violations
- C. Unsafe vehicle violations
- D. Hit and run laws
- E. Violations of traffic controls and devices
- F. Right-of-way violations
- G. Failing to yield to an emergency vehicle violations
- H. Stopping and turning violations
- I. Speed laws
- J. Passing a school bus with flashing lights

DOMAIN #28: TRAFFIC ENFORCEMENT

- K. Stop violations
- L. Equipment violations
- M. Following too close
- N. Public offenses
- O. Unsafe passing violations
- P. Failing to obey an officer's lawful orders
- Q. Unrestrained occupant
- R. Red signal violation
- S. Pedestrian violation
- T. Officer's duties to a DUI suspect
- U. Driving under the influence (DUI)
- V. Possession of an open alcoholic beverage in vehicle
- W. Authority to remove vehicles from a roadway
- X. Traffic direction hand signals
- Y. Traffic direction using a flashlight
- Z. Traffic control devices
- AA. Preparing a storage and impound report
- BB. Drivers license violations
- CC. Vehicle Code laws governing arrest
- DD. Lighting and extinguishing a highway flare
- EE. Concepts of traffic enforcement

DOMAIN #28: TRAFFIC ENFORCEMENT

III. REQUIRED TESTS

The following tests shall be administered:

- A. The POST-constructed knowledge test for Domain #28
- B. An exercise test that requires the student to conduct a field sobriety test
- C. An exercise test that requires the student to direct traffic using hand signals
- D. An exercise test that requires the student to direct traffic using a flashlight
- E. An exercise test that requires the student to determine the proper placement of warning devices at a simulated traffic incident
- F. An exercise test that requires the student to prepare a storage/impound report

IV. REQUIRED LEARNING ACTIVITIES

- A. The student will participate in a learning activity that involves the safe lighting and extinguishing of a highway flare.
- B. The student will participate in a learning activity that involves a simulated DUI investigation

V. HOURLY REQUIREMENTS

Students shall be provided with a minimum of **20 hours** of instruction on traffic

VI. ORIGINATION DATE

July 1, 1993

VII. REVISION DATES

June 1, 1994



CURRICULUM

I. INTRODUCTION TO TRAFFIC ENFORCEMENT

- A. The goal of traffic enforcement is the safe and efficient flow of vehicular and pedestrian traffic
- B. Attitudes towards traffic enforcement
 - 1. **Peace officer attitude.** Many peace officers do not see traffic enforcement as an important part of their duties.
 - 2. **Public attitude.** Most people consider traffic enforcement as a low law enforcement priority, a personal affront when stopped and an expensive occurrence.
- C. The importance of traffic enforcement
 - 1. The positive effects of traffic enforcement:
 - a. Opportunity to build positive, personal and professional contacts
 - b. Reduces collision rate which saves lives and reduces economic loss
 - c. Provides officers with probable cause to stop which often results in an arrest for other non-traffic crimes
 - d. Where traffic laws are stringently enforced crime rates have been reduced

NOTE: There are a variety of studies available to support this fact. Supporting data is available from the California Office of Traffic Safety and the National Institute of Justice.
 - 2. The negative effects of not enforcing traffic laws
 - a. Presents poor public image of peace officers and reduces voluntary compliance with the law
 - b. Increases human suffering and real dollar loss
 - c. Reduces ability to effect officer initiated arrests
- D. Peace officer's role
 - 1. Enforce traffic law
 - 2. Control traffic
 - 3. Investigate collisions

4. Prepare accurate and complete reports
5. Educate the public

NOTE: The three "E's" of traffic are Education, Enforcement and Engineering.

II. VEHICLE CODE TERMINOLOGY (PO 9.2.1)

A. Organization of the Vehicle Code

1. Aids

- a. Traffic law enforcement begins with knowledge of what types of conduct or conditions constitute violation of the Code. By studying the Code, the student will learn to recognize these acts and conditions. But recognition of the unlawful acts or conditions is only the first step. When writing a citation, the officer must identify the particular section of the Code that has been violated. Aids in the Code help do this.
 - (1) The Index (Appendix C)
 - (2) The List of Violations (Appendix B)
 - (3) Table of Contents
 - (4) Other related laws (Appendix A)
- b. Students are not expected to memorize section numbers. They are expected to be able to find the appropriate sections in the Vehicle Code.
- c. Categories of sections - Statutes fall within four categories according to their content. Each section must be carefully read as it may fall within one or more of the categories. Only punitive sections are enforceable.
 - (1) Definitive Sections - define, limit, or explain the meaning of words or phrases. They are not citeable.
 - (2) Procedural Sections - describe the method of proceeding in a course of action or provide rules of law by which legal actions are conducted. Such statutes state the proper method to follow without requiring punishment for failure to comply.
 - (3) Authoritative Sections - grant authority to individuals or entities.
 - (4) Punitive Sections - require or prohibit certain action and usually provide a prescribed punishment or penalty for violations. Acts committed or omitted are a violation of the law and are enforceable by citation or arrest. Such acts are felonies, misdemeanors, or infractions.

NOTE: Although "cheat" sheets and QWIK-Code references are frequently used in the field, the only reference allowed during this POSTRAC test is the Vehicle Code.

2. Using the Index (Appendix C)
 - a. Subjects are listed alphabetically and referenced to applicable sections. For example, for a speeding violation, look in the index under "speed."
 - b. Most violations are cross-indexed to provide many different ways of looking up a section. For example, if a driver makes a left-hand turn without giving any sort of signal one might go to the index thinking, "Signs and Signals," or one might be thinking "Arm Signal," or even more generally, "Turning." Not all possible listings are included, of course, but there are usually enough to make it easy to find the section needed.
 - c. Not all sections listed in the Index describe violations. The very first listed topic, for example, is "Abandoned Vehicles." This topic primarily lists procedural sections. The Index provides references for all contents of the Vehicle Code, but does not include appendix codes published within the same volume.
3. Using the List of Violations (Appendix B)
 - a. The List of Violations immediately precedes the Index.
 - b. The following key points should be noted about the list of violations:
 - (1) Only punitive sections are listed in this area.
 - (2) The crime classification is given: Infraction (I), Misdemeanor (M), and Felony (F).
 - (3) Violations are listed numerically by section number and subdivision.
 - (4) Only a brief description of the violation is given.
4. Using the Table of Contents
 - a. It identifies each division, chapter, article, and their corresponding sections.
5. Using the Contents of Appendix A
 - a. It identifies segments of various codes related to "the use of highways or the operation of motor vehicles".
 - b. Selected code sections from Appendix A (not a complete listing of appendix codes)
 - (1) Education Code
§ 49307 - unlawful to disregard the traffic direction of a School Safety Patrol member

- (2) Fish & Game Code
§ 2006 - unlawful to possess a loaded rifle or shotgun in a vehicle on a road open to the public
- (3) Government Code
§ 6253 - Public Records Act
- (4) Harbor & Navigation Code
§ 655 - unlawful to operate a vessel or water ski in a reckless manner or while under the influence
- (5) Health & Safety Code
§ 13001 - Throwing Burning Articles or Substances From Vehicles (misdemeanor)
- (6) Insurance Code
§ 488.5 - no insurer may increase the premium on a peace officer's private vehicle, because of a collision which occurred while driving an authorized emergency vehicle
- (7) Military & Veterans Code
§ 390 - provides immunity from arrest for military personnel enroute to military duty
- (8) Penal Code
§§ 191.5, 192, 192.5 - Vehicular manslaughter
- (9) Revenue & Tax Code
§ 10753 - modifications to vehicles over \$200 need to be reported to Department of Motor Vehicles (excludes repair work).

B. Definitions

Although most definitions are found starting with Section 100 in Division 1 "Words and Phrases Defined," definitive sections are found through out the code.

The words and phrases in Division 1 are listed alphabetically:

1. Alley, § 110 CVC - highway less than 25 feet wide, primarily for rear and side access
2. Crosswalk, § 275 CVC - marked, or unmarked boundary of sidewalks at right angle to the intersection
3. Darkness, § 280 CVC - any time from 1/2 hour after sunset to 1/2 hour before sunrise, or when visibility is not sufficient to see a person or vehicle at a distance of 1,000 feet.

NOTE: Penal Code definition - Darkness is sunset to sunrise.

4. Freeway, § 332 CVC - highway with limited access

5. Highway, § 360 CVC - publicly maintained, open to public for vehicular travel, extends from property line to property line
6. Intersection, § 365 CVC - area within prolongation of lateral curb lines, where vehicles on different highways may come in conflict.
7. Limit Line, § 377 CVC - solid white line, 12 -24 inches wide
8. Roadway, § 530 CVC - portion of highway ordinarily used for vehicular travel
9. Sidewalk, § 555 CVC - portion of highway set apart for pedestrian travel
10. Street, § 590 CVC - same as highway
11. Vehicle, § 670 CVC - device which moves persons or property upon a highway, except under human power or on rails

C. Related sections

1. Business and Residence Districts: Determination, § 240 CVC
apartments and condo complexes (multiple dwelling houses) are included as business structures
2. Pedestrian, § 467 CVC
included are: skaters, skateboarders, and persons in wheelchairs (when self-propelled by the person)

NOTE: See Pictorial Description of Highway Components from SWITRS Collision Investigation Manual in reference section.

III. **VEHICLE REGISTRATION VIOLATIONS (PO 9.3.1)**

A. **Registration Required, § 4000(a) CVC**

No person shall drive, move, or leave standing upon a highway or in an off-street public parking facility any vehicle or trailer unless it is registered and fees paid.

1. Offstreet public parking facility means either:
 - a. Any publicly owned parking facility
 - b. Any privately owned parking facility for which no fee is charged and which is held open for retail customers.
2. Primary exceptions
 - a. Off highway vehicle in a offstreet public parking facility when displaying off highway identification (issued pursuant § 38010).
 - b. Off highway vehicle when crossing a highway as allowed in section 38025.
 - c. Vehicles stored in a privately owned offstreet parking facility with the property owner's permission.
 - d. When a vehicle is towed on order of a peace officer.
 - e. Vehicles operated under permit or other exceptions (§§ 4002-4021).
3. New residents must register their vehicle(s) within 20 days (§ 6700).

NOTE: Although mopeds are exempt from registration (§ 4020), a moped plate is required (§ 5030).

B. **Notice of Change of Address, § 4159 CVC**

1. Requires DMV to be notified of change of address within 10 days.

C. **Registration Card Kept with Vehicle, § 4454(a) CVC**

1. Requires owner to keep registration card or a copy with the vehicle for which it was issued. (Except during the registration process)

D. **Display of License Plates, § 5200 CVC**

1. Must be attached to the proper vehicle
2. When two issued, one must be in front and one on rear

NOTE: See Section 4850.5 CVC - Truck tractor: display of plates, only one plate required.

- E. Positioning of Plates, § 5201 CVC
 - 1. Must be securely fastened to the vehicle for which they are issued
 - 2. No covering shall be used (exception for car covers)

- F. Tabs, § 5204(a) CVC
 - 1. Indicate month and year of expiration
 - 2. Must be current
 - 3. Attach to rear plate, except for semi-trucks
 - 4. Exempts fleet vehicles subject to Division 3, Article 9.5 (commencing with § 5300).

- G. Related sections
 - 1. Seizure of Documents and Plates, § 4460 CVC
Gives peace officers the authority to seize any false evidence of registration.
 - 2. Presentation of Evidence of Registration, § 4462(a) CVC
Required to present registration on demand of peace officer.
 - 3. Unlawful Display of Evidence of Registration, § 4462.5 CVC
Misdemeanor to display false evidence of registration to avoid registration fees.
 - 4. False Evidences of Document Devices or Plates, § 4463 CVC
Felony to defraud DMV. The legislative intent is to use this felony section for large scale violators, those "competing with DMV."
 - 5. Facsimile License Plates, § 4463.5(a) CVC
Misdemeanor to manufacture or sell.

IV. DRIVER LICENSE VIOLATIONS (PO 9.3.2)

A. Unlawful to Drive Unless Licensed, § 12500 CVC

Driving on California highways is a **privilege**, not a right. That privilege may be suspended or revoked by DMV or the courts, even when no California Driver's License was ever issued.

1. 12500(a) CVC - Makes it unlawful for a person to drive a motor vehicle upon a highway without being licensed. (Misdemeanor)

A driving permit is not a license, therefore, violation of permit restrictions is a violation of § 12500(a) CVC.

NOTE: See CVC § 12501 for exemptions.

2. 12500(b) CVC - Makes it unlawful for a person to drive any motorcycle, motor-driven cycle or motorized bicycle on a highway unless holding a license or endorsement for that class. (Infraction)

a. M-1, valid for all motorcycles

b. M-2, valid for mopeds and motor driven cycles less than 150cc.

NOTE: A person with a valid Class "C" License may operate a moped on a short term rental (48 hours or less).

3. 12500(c) CVC - Makes it unlawful for a person to drive a motor vehicle, or combination of vehicles, without the proper classification of license. (Infraction)

NOTE: 12804.9 CVC defines drivers license classifications.

4. 12500(d) CVC - Requires a license when driving in an offstreet parking facility.

"Offstreet parking facility" means any offstreet facility held open for use by the public for parking vehicles and includes any public or private facilities where no fee is charged and which is held open for the common public use of retail customers.

B. Possession of License, § 12951 CVC

1. 12951(a) CVC - Requires a driver to have a valid license in possession at all times while driving a motor vehicle upon a highway. (Infraction)
2. 12951(b) CVC - Makes it unlawful for driver to refuse to present his or her driver's license upon the demand of a peace officer. (Misdemeanor)

C. Driving When Privilege Suspended or Revoked, § 14601(a) CVC

No person shall drive at any time when their privilege is suspended or revoked for one of the following listed reasons **and** the person so driving has knowledge of the suspension or revocation.

1. Reckless driving in violation of § 23103 or § 23104
 2. DMV refused to issue a license pursuant to § 12809 (a) - (c)
 - a. applicant not entitled to a license
 - b. failed to furnish required information
 - c. applicant has made or permitted unlawful use of any driver's license
 3. Negligent operation as prescribed in § 12810 - Violation Point Count
- D. Driving When Privilege Suspended or Revoked for Other Reasons, § 14601.1(a) CVC
No person shall drive when his or her driving privilege is suspended or revoked for any reason other than those listed in Section 14601 or 14601.2 CVC and when the person so driving has knowledge of the suspension or revocation.
- E. Driving When Privilege Suspended or Revoked for Driving Under the Influence, With Excessive Blood Alcohol, or When Addicted, § 14601.2 CVC
No person shall drive when that person's driving privilege is suspended or revoked for a conviction of a violation of Section 23152 or 23153 CVC and when the person so driving has knowledge of the suspension or revocation.

NOTE: No person shall drive a vehicle at any time when his or her driving privilege is suspended or revoked, except to obtain medical service. Another exception is when driving an employer's vehicle in the course of employment on the employer's private property (except may not drive on an offstreet parking facility as defined in § 12500 CVC).

NOTE: If service is required, take the license and issue DMV form DL310. When knowledge of the suspension can be shown, procedures will vary by the situation and jurisdiction.

- F. Violation of License Restrictions, § 14603 CVC Prohibits driving in violation of the provisions of a restricted license.

NOTE: Restrictions may include special mechanical control devices, additional mirrors, corrective lenses, no driving at night, no driving on a freeway or any other restrictions appropriate to assure the safe operation of a motor vehicle by the licensee.

NOTE: Court mandated restrictions may be stamped on, typed on, or attached to license. Do not use 14603 CVC for court mandates. Section 14601.2(b) CVC should be used for license restrictions after a DUI conviction. Check local enforcement policy.

G. Related sections

1. Change of Address, § 14600
2. Licenses, Lost, Destroyed, or Mutilated, § 12815
3. Suspended License (administrative), § 14601.5

V. **STOP VIOLATIONS (PO 9.4.10)**

A. Stop Requirements, § 22450 CVC

The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection, or railroad grade crossing shall stop at a limit line, if marked, otherwise before entering the crosswalk on the near side of the intersection.

If there is no limit line or crosswalk, the driver shall stop at the entrance to the intersecting roadway or railroad grade crossing.

NOTE: Full stop required

B. Related sections

1. Stops for Train Signals, § 22451 CVC
2. Railroad Crossings, § 22452 CVC

VI. RED SIGNAL LIGHT VIOLATIONS (PO 9.4.17)

A. Red signal light violations

1. Circular Red or Red Arrow, § 21453 CVC

- a. 21453(a) CVC - Circular red light requires driver to stop and remain standing at the limit line, or if there is no limit line then before entering the near crosswalk, or if there is no crosswalk, then before entering the intersection.
- b. 21453(b) CVC - After stopping and yielding to traffic lawfully using the intersection and pedestrians lawfully within an adjacent crosswalk, the driver may turn right or turn left from a one-way street onto a one-way street, unless there are signs prohibiting such movement.

NOTE: This is an issue of right of way on a right turn after the stop.

- c. 21453(c) CVC - The driver facing a red arrow shall not enter the intersection to make the movement prohibited by the arrow.
- d. 21453(d) CVC - Pedestrians facing a steady circular red signal or red arrow are not permitted to enter the roadway unless otherwise directed by a pedestrian control signal.

2. Flashing Signals, § 21457 CVC

- a. 21457(a) CVC - flashing red
Has the same effect as stop sign. Driver must stop at limit line if there is one, before entering near crosswalk if there is one, or before entering intersection, driver may then proceed after yielding to traffic on through highway (CVC § 21802 - Duty to Yield After Stopping - see PO 9.4.4)
- b. 21457(b) CVC - flashing yellow
Requires the driver proceed with caution.

NOTE: This section is listed as a punitive section. However, in most cases a driver who did not exercise caution would display the lack of caution by unsafe speed. It may be more appropriate to cite the driver for unsafe speed 22350 CVC.

NOTE: This section applies only to official traffic control devices. It does not apply to the flashing yellow lights on authorized emergency vehicles, tow cars, pilot cars for wide loads, etc.

B. Related sections

- 1. Circular Green or Green Arrow, § 21451 CVC
- 2. Lane Use Control Signals, § 21454 CVC
- 3. Signal at Other Places, § 21455 CVC

4. Walk, Wait, or Don't Walk, § 21456 CVC)

VII. VIOLATIONS OF TRAFFIC CONTROLS AND DEVICES (PO 9.4.3)

A. Official Traffic Control Devices and Signals

1. Definitions

- a. Official Traffic Control Device, § 440 CVC
Signs, signals, or markings excluding islands, curbs, traffic barriers, or other roadway design features. Examples of devices include, stop signs; flashing lights; double center lines, pavement arrows, and many others.
- b. Official Traffic Control Signals, § 445 CVC
A traffic control signal directs traffic to alternately stop and go. For example, the red and green lights on a three-phase traffic signal

2. Double Lines, § 21460 CVC

A driver may not pass to the left of double parallel solid lines (double center line) except:

- a. To make left turns or U-turns if otherwise allowed
- b. If there is a broken line on the driver's side of the solid line

NOTE: Raised pavement markers may simulate painted lines.

3. Two-Way Left-Turn Lanes, § 21460.5(c) CVC

Designated by parallel double yellow lines with dashed lines on the inside and solid lines on the outside. The lane may be used only by drivers making left turns from or onto the highway and lawful U-turns. Travelling in the lane is not to exceed 200 feet. It is unlawful for a driver to make a left turn or U-turn from any other lane.

4. Obedience by Driver to Official Traffic Control Devices, § 21461(a) CVC

Makes it unlawful for a driver to fail to obey any signal or device. Used when there is not a more specific section available, for example, use for violations of a "No U-turn" or "Do Not Enter" sign. Do not use this section for a stop sign, red signal, or violations covered by § 22101(d) CVC.

This section does not apply to parking violations.

5. Related sections

- a. Obedience by Pedestrian to Official Traffic Control Devices, § 21461.5 CVC
Makes it unlawful for pedestrians to fail to obey official traffic control devices.

- b. Regulation of Turns at Intersection, § 22101(d) CVC
Unlawful to disobey official traffic control devices regulating right and left turn movements at intersections (see Performance Objective 9.4.6)
- c. Entering Occupied Intersection or Marked Crosswalk, § 22526 CVC -
"Anti-Gridlock" section, not a moving violation.
- d. Exclusive- or Preferential-Use Lanes for High Occupancy Vehicles, §
21655.5 - Carpool lanes

VIII. PASSING VIOLATIONS (PO 9.4.14)

A. Driving on right side

1. Right Side of Roadway, § 21650 CVC

- a. The general rule is except when overtaking and passing and turning left, drivers are to drive on the right side of the roadway.

Exceptions:

- (1) when legally overtaking and passing
- (2) making a legal left turn
- (3) right side closed for construction or repair
- (4) one-way street
- (5) where roadway is too narrow
- (6) slow moving vehicle may travel on shoulder temporarily when it is safe to avoid impeding the normal movement of traffic
- (7) bicycles may operate on shoulder where not otherwise prohibited

2. Divided Highways, § 21651 CVC

a. 21651(a) CVC - Infraction

Whenever the highway has been divided into two or more roadways by means of intermittent barriers, or a dividing section of not less than two feet in width (either unpaved, or delineated by curbs or double parallel lines) it is unlawful to drive over, upon, or make any turn across such a divider, except at an opening.

b. 21651(b) CVC - Misdemeanor

Prohibits driving to the left of an intermittent barrier or divider ("wrong way" driving where no injury results)

c. 21651(c) CVC - Misdemeanor/Felony

Any willful violation of driving the wrong way on a divided highway resulting in injury or death

3. Related sections

a. Laned Roadways, § 21658 CVC

b. Bicycle Operated on Roadway or Highway Shoulder, § 21651.1 CVC

B. Passing

1. When Driving on Left Prohibited, § 21752 CVC

- a. Approaching crest of grade or curve and driver's view is obstructed
- b. Within 100 feet of tunnel or bridge
- c. Approaching intersection within 100 feet of or traversing any intersection or railroad grade crossing

NOTE: This section does not apply on a one-way roadway.

2. Pass on Right Safely, § 21755 CVC

Unlawful to pass on right if unsafe or to drive off the paved or main-traveled portion of the roadway.

NOTE: It is unlawful to pass on right using the shoulder of the road.

3. Related sections

- a. Overtake and Pass to Left, § 21750 CVC
- b. Passing Without Sufficient Clearance, § 21751 CVC

C. Unsafe lane change

1. Laned Roadways, 21658(a) CVC

Whenever any roadway has been divided into two or more clearly marked lanes for traffic in one direction, a vehicle shall be driven as nearly as practical entirely within a single lane and shall not be moved from the lane until such movement can be made with reasonable safety.

IX. SCHOOL BUSES (PO 9.4.9)

A. School bus: Meeting and Passing, § 22454 CVC

1. 22454(a) CVC - drivers meeting or overtaking a school bus, which has stopped to load or unload school children, and is displaying its flashing red lights and the stop signal arm, if so equipped, shall stop and remain stopped until the lights cease operation (on highways and private roadways)
2. 22454(b) CVC - exceptions
 - a. When the highway is divided into separate roadways
 - b. When the school bus is stopped at an intersection where traffic is controlled by a signal or a traffic officer

B. Related sections

1. School bus, § 545 - any motor vehicle designed, used, or maintained for the transportation of any school pupil at or below the 12th-grade level to or from a public or private school or to or from public or private school activities (see vehicle code for exceptions).
2. School bus Signal and School bus Stops, § 22112 CVC
3. School bus Warning Signal System, § 25257 CVC
4. Local Regulation of Traffic, § 21100.3
5. School Safety Patrol, Education Code § 49307

X. **SPEED VIOLATIONS (PO 9.4.7)**

A. **Speed**

There are three major types of speed law:

1. Basic or safe speed limits
2. Absolute or maximum speed limits
3. Minimum speed limits

B. **Prima Facie Speed Limits, § 22352 CVC**

1. Prima facie means good and sufficient on its face; that which suffices for the proof of a particular fact until contradicted and overcome by other evidence. These speed limits are guides to the safe speed.
2. Drivers are presumed to know the prima facie speed limits, therefore these limits need not be posted.
3. Any change to a prima facie limit must be posted.
 - a. 15 MPH
 - (1) Uncontrolled railroad grade crossings with limited visibility
 - (2) Uncontrolled "blind" intersections
 - (3) Any alley (CVC § 110)
 - b. 25 MPH
 - (1) Business or residence district
 - (2) Posted SCHOOL zones, when children are present
 - (3) Posted SENIOR zones

NOTE: Section 22352 CVC is non-punitive. Cite for violation of the basic speed limit, CVC § 22350.

C. **Speed Law Violations, § 22351 CVC -legal presumptions**

1. 22351(a) CVC - states that any speed not in excess of those established in Section 22352, prima facie limits, or other limits established by the code is lawful unless clearly proved to be unsafe. In other words the **burden of proof is upon the officer to establish that the speed** which was alleged, even though it did not exceed the prima facie or absolute speed limit, **was unsafe**. A common example is the violator driving 55 mph on a 55 mph freeway in a 15 mph fog. The officer will be required to prove that the safe speed was 15 mph.

This is done by noting visibility, slick road surface, speed of other vehicles, number of vehicles passed by violator, etc.

2. 22351(b) CVC - states that the speed of any vehicle in excess of the prima facie limits established in Section 22352, or other prima facie limits established by the Code, is unlawful unless the defendant can prove that the excess speed was not unsafe. **The burden of proof shifts to the defendant to prove that the prima facie violation was not an unsafe speed.**

A common defense is that there was no traffic at the time the citation was issued, therefore no one was endangered. It is important for the officer to note number of vehicles passed and their average speed, lane changes, intersections passed, number of passengers in violator's vehicle, etc.

NOTE: Subdivision (b) does not apply to the 55 mph maximum speed limit. The defendant may not overcome a violation of Section 22349 CVC by attempting to show that the excess speed was not unsafe.

D. Excessive speed violations

1. Maximum Speed Limit, § 22349 CVC

- a. The maximum speed limit is 55 mph. It is unlawful to exceed 55 mph except as provided in § 22356 (when posted 60 or 65 mph). The officer is not required to prove that the speed in excess of 55 was either unreasonable or unsafe.

NOTE: 22348(b) CVC - Driving greater than 100 mph; 22348(c) CVC - Vehicles listed in § 22406 limited to specified lanes at a maximum speed of 55 mph

2. Basic Speed Law, § 22350 CVC

- a. No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for:
 - (1) **Weather**, which includes fog, rain, and snow which affect road surface which affects stopping and steering. Weather also includes wind which could affect steering and control.
 - (2) **Visibility**, which, in addition to bad weather, includes blowing sand or dust and smoke.
 - (3) **Traffic**, defined by Section 620 CVC as pedestrians, ridden animals, vehicles, etc., while using the highway. Its density, light, moderate, or heavy, is considered.
 - (4) **Surface**, includes any defects such as holes or loose material, and any conditions which might reduce its coefficient of friction such as water, ice, snow, oil, etc.

- (5) **Width**, includes roadway, individual lanes, and reductions such as narrow bridges, narrowing roadway, or even temporary obstructions such as roadwork or the scattered vehicles of a previous traffic collision
- (6) In no event shall a person drive at a **speed which endangers life or property.**

NOTE: The basic (safe) speed law is always in effect. Even though the sign says the limit is 55 mph, conditions may be such that the safe speed is less.

E. Minimum speed laws - impeding traffic

1. Minimum Speed Law, § 22400 CVC

- a. Prohibits driving so slow as to impede the normal flow unless the reduced speed is necessary for safe operation, because of a grade, or in compliance with the law.
- b. The section also prohibits unnecessary stopping which impedes or blocks the normal flow.
 - (1) 22400(a) CVC - shall not stop or drive so slow as to impede the normal and reasonable movements of traffic.
 - (2) 22400(b) CVC - authorities may post minimum speed requirements - When posted, the minimum posted speed shall be maintained unless unsafe.

2. Slow-Moving Vehicles, § 21654 CVC

- a. 21654(a) CVC - if driving at less than the normal speed of traffic, the driver must be in the right lane unless making a left or U-turn

F. Related sections

- 1. Golf Cart Operation, § 21716 CVC
- 2. Turning Out of Slow-Moving Vehicles, § 21656 CVC

XI. FOLLOWING TOO CLOSELY VIOLATIONS (PO 9.4.12)

A. Following too Closely, § 21703 CVC

1. Unlawful to follow more closely than is reasonable or prudent considering speed, traffic upon, and condition of roadway.

B. Application

1. A guide is a two-second interval between vehicles.
2. Keep in mind the average combined perception/reaction time while driving is 1.5 seconds (complex v. simple reaction).
3. Discuss the difference between § 22350 CVC and § 21703 CVC enforcement when investigating rear end collisions.

XII. FAILURE TO YIELD TO AN EMERGENCY VEHICLE (PO 9.4.5)

A. Authorized Emergency Vehicles, § 21806 CVC

Upon the immediate approach of an authorized emergency vehicle sounding a siren and having at least one red light visible for 1000 feet to the front, drivers shall yield the right-of-way, drive as near, and parallel to, the right hand edge of the roadway, stop clear of any intersection, and remain stopped until the emergency vehicle has passed, unless otherwise directed by a traffic officer.

Pedestrians must remain in, or proceed to, a place of safety until the emergency vehicle has passed.

B. Related sections

1. Authorized Emergency Vehicle, § 165 CVC
2. Effect of Exemption, § 21807 CVC
3. Following Emergency Vehicle, § 21706 CVC - not within 300 feet
4. Exemption of Authorized Emergency Vehicles, § 21055 CVC
5. Effect of Exemption, § 21056 CVC
6. Sirens and Illegal Speed of Escorts, § 21057 CVC

XIII. FAILURE TO YIELD RIGHT-OF-WAY VIOLATIONS (9.4.4)

A. Right-of-way

1. Definitions: Right-of-way, § 525 CVC
"Right-of-way" is the privilege of the immediate use of the highway.
 - a. One person has the privilege of occupying a given space on a highway.
 - b. Questions of right-of-way arise between two users of a highway only when there is danger of a collision between them if both proceed on their respective ways without delay. (McLachlan (1939) 36 Cal. App. 2d. 754).

NOTE: The question of right-of-way arises only when there is a chance of collision if each party continues on his respective course. If there is no possibility of conflict, there is no question of right-of-way. To provide a question of right-of-way, it is necessary for one of the contending parties to swerve, slow, stop, or increase speed to avoid conflict or the potential for immediate conflict. Speed and distance must therefore always be considered.

2. Lawful Operation Required

- a. Before the driver of any vehicle is entitled to the right-of-way, such driver himself must be operating a vehicle within the law and not in violation thereof. (Carley (1958) 156 Cal. App. 2d 643).
- b. An operator of a motor vehicle which has entered an intersection prior to or at the same time as another vehicle cannot arbitrarily rely on the right-of-way gained as the result of excessive speed or by other negligent act or violation of law. (Brown (1948) 84 Cal. App. 2d 401).

Note: The implication is that to lose the right-of-way the driver must be far out of line.

- c. A driver of a motor vehicle who is obeying the law has a right to presume that other persons operating motor vehicles upon the highway will perform their duty and obey the law. (Bartmess (1956) 139 Cal. App. 2d 394).
- d. If the law requires a motorist on an intersecting highway to stop, the driver on the through highway may assume that the driver will stop and yield the right-of-way. (Brinson (1963) 212 Cal. App. 2d 168).

NOTE: A review of cases nationwide will generally indicate a loss of right-of-way during unlawful operation from exceeding posted speed limits to reckless driving. However, the majority are for unreasonable violations such as high rates of speed, reckless driving, speed exhibitions, and driving at night without lights.

3. Waiver of Right-of-Way

- a. A motorist having the right-of-way at an intersection may intentionally waive it, or the driver may give the appearance of intent to waive. If, for example, a through motorist stops at the intersection and remains at a

standstill while continuing to look away from the route of travel, or otherwise conducts self in such a manner as to create a reasonable belief in the mind of a motorist intending to turn left that the right-of-way has been waived, then the left-turning motorist may be entitled to assume it has been relinquished and rely and act upon that assumption until the person receives notice such as to cause a person of ordinary prudence to believe to the contrary. (Tye (1959) 174 Cal.App.2d 431).

4. Lane-by-Lane Application

- a. Right-of-way refers to a particular place of potential conflict and therefore applies lane-by-lane. A driver may enter a lane if free, but must yield to traffic in other lanes if such traffic would be a hazard. A driver cannot pull into a lane when it is obvious oncoming traffic will have to stop. A driver must consider any hazard on second or successive lanes at the time he is prepared to make use of them. (Bartmess (1956) 236 Cal.App. 2d 555).
- b. Even when an oncoming vehicle in the lane closest to the left-turning vehicle surrenders its right-of-way, the left-turner may not proceed beyond the first lane of traffic, if vehicles approaching in other lanes will constitute hazard during turning movement. (Kirk (1962) 202 Cal.App. 2d 288).

5. Intersections, § 21800 CVC

- a. 21800(a) CVC - The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different highway.

This section applies only to intersections without traffic control devices. The first vehicle to enter the intersection has the right-of-way.

- b. 21800(b) CVC - When two vehicles enter the intersection from different highways at the same time, the driver of the vehicle on the left shall yield the right-of-way to the driver of the vehicle on his or her right, except that the driver of a vehicle on a terminating highway shall yield the right-of-way to of any vehicle on the intersecting continuing highway.

"At the same time" has been interpreted as approximately the same time.

"Terminating highway" means a highway which intersects, but does not continue beyond the intersection, with another highway which does continue in each direction beyond the intersection.

This section applies only to intersections without traffic control devices.

- c. 21800(c) CVC - When two vehicles enter an intersection controlled from all directions by stop signs from different highways at the same time, the driver of the vehicle on the left shall yield the right-of-way to the driver of the vehicle on his or her immediate right.
- d. 21800(d) CVC - A driver approaching an intersection where official traffic control signals are inoperative, shall stop and may proceed with caution

when it is safe. After stopping, the provisions of subdivision (b) apply when two vehicles enter the intersection from different highways at the same time.

6. Left-Turn or U-Turn, § 21801 CVC

- a. 21801(a) CVC - The driver of a vehicle intending to turn to the left at an intersection or into public or private property or an alley shall yield the right-of-way to all vehicles which have approached or are approaching from the opposite direction and which are so close as to constitute a hazard at any time during the turning movement and shall continue to yield the right-of-way to such approaching vehicles until such time as the left turn can be made with reasonable safety.

The necessity of yielding the right-of-way is no longer limited to vehicles in motion, but applies as well to those not in motion, if they have arrived so close to the intersection as to constitute a hazard to the driver as he makes his left turn. Two cars that seem about to occupy the same space at the same time, are obviously both "hazards," each is a hazard to the other. If both cars are stopped by a red signal at an intersection, generally speaking, each becomes a hazard to the other at the moment the signal turns green, releasing them both. "Hazard" has been defined as not a certainty, but a risk. (Miller (1958) 161 Cal.App. 2d 842).

- b. 21801(b) CVC - A driver having so yielded and having given a signal when and as required by this code may turn left or complete a U-turn, and the drivers of all other vehicles approaching the intersection from the opposite direction shall yield the right-of-way.

7. Stop Signs: Intersections, § 21802 CVC

- a. 21802(a) CVC - The driver of any vehicle approaching a stop sign (or a flashing red signal) at the entrance to or within an intersection shall stop as required by Section 22450 (and 21457) and shall then yield the right-of-way to other vehicles which have approached or are approaching so closely from another roadway as to constitute an immediate hazard and shall continue to yield the right-of-way to such approaching vehicles until such time as he can proceed with reasonable safety.

- (1) The section requires a driver to stop and also yield. A stop is not required to make this section operative.
- (2) The section applies to an official stop sign at the entrance to a highway from a private property. When an official device is installed, a private road or driveway is deemed a highway only for the purpose of determining the existence and location of an intersection (CVC § 21360).
- (3) A truck driver elected to begin movement of 60-foot long truck and trailer from side road (with stop sign) into a major arterial highway while an approaching vehicle was between 500 feet and 1000 feet away and traveling 45 to 50 miles-per-hour. In starting from a

stop, he knew he could only gradually accelerate from zero to about four miles-per-hour. The other vehicle would have reached the intersection before his vehicle could have cleared it, and the other driver would have been compelled to either stop or at least appreciably slow his automobile. The truck driver did not have right-of-way as matter of law. (Elliott (1960) 183 Cal.App.2d 263).

(4) Immediate hazard is determined primarily between the factors of speed and distance of the approaching vehicles. The courts are reluctant to lay down a hard and fast rule.

b. 21802(b) CVC - The driver having so yielded may proceed and the drivers of all other approaching vehicles shall yield the right-of-way to the vehicle entering or crossing the intersection.

The shift or transfer of right-of-way is the same as in 21801 CVC. The wording is different, but the concept is the same.

c. 21802(c) CVC - This section has no application where stop signs are erected upon all approaches to the intersection.

8. Yield Signs: Intersections, § 21803 CVC

a. 21803(a) CVC - The driver of any vehicle upon approaching any yield right-of-way sign shall yield the right-of-way to other vehicles which have entered the intersection from an intersecting street or which are approaching so closely on the intersecting street as to constitute an immediate hazard and shall continue to yield the right-of-way to such approaching vehicles until such time as he or she can proceed with reasonable safety.

This section assigns right-of-way by the use of a sign. A stop is required if necessary.

b. 21803(b) CVC - The driver, having so yielded, may then proceed and the drivers of other vehicles approaching the intersection on the intersecting roadway shall yield the right-of-way to him.

The right-of-way transfer is the same as in preceding right-of-way sections.

9. Entry Onto Highway, § 21804 CVC

a. 21804(a) CVC - The driver of a vehicle about to enter or cross a highway from any public or private property, or from an alley, shall yield the right-of-way to all traffic, as defined in Section 620, approaching so closely on the highway as to constitute an immediate hazard and shall continue to yield the right-of-way to such approaching vehicles until such time as the driver can proceed with reasonable safety.

b. 21804(b) CVC - A driver, having so yielded, as prescribed in subdivision (a), may proceed to enter or cross the highway and the drivers of all other

vehicles approaching on the highway shall then yield the right-of-way to that driver.

NOTE: Also includes backing onto a highway, usually from a driveway.

XIV. PEDESTRIAN VIOLATIONS (9.4.18)

A. Pedestrian rights and duties

1. Right-of-way is not a duty which a pedestrian must exercise but something which may be waived. (Nolan (1948) 83 Cal.App.2d Supp. 819).
2. There must be a question of right-of-way. Conflict is required. If the pedestrian is not compelled to change speed or direction there is no violation. (Ops. Cal. Atty. Gen. 61-59 [1961])
3. Does not require motorist to anticipate pedestrian will reverse course. (Parsyekyan v. Thompson, 25 Cal. Rptr. 691 [1962])
 - a. Right-of-Way at Crosswalks, § 21950 CVC
 - (1) 21950(a) CVC - Driver to yield to pedestrian in marked or unmarked crosswalk
 - (2) 21950(b) CVC - This does not relieve the pedestrian from using due care. No pedestrian shall cross into the path of a vehicle to create an immediate hazard. No pedestrian shall stop or delay traffic unnecessarily while in a crosswalk.
 - (3) 21950(c) CVC - The provisions of § 21950(b) do not relieve the driver of a duty to exercise due care for the safety of the pedestrian.

NOTE: If there are no sidewalks and no approximate right-angle intersection, there is no unmarked crosswalk. There is no unmarked crosswalk where one road joined together at a 60-degree angle. (Ward v. Sun Garden Packing Co., 332 P. 2d 300 [1959])

NOTE: A trodden or well-worn path is a sidewalk.

- (4) The driver of a vehicle is required to yield the right-of-way to a pedestrian who has stepped into a crosswalk and halted, if there is a danger of collision should the pedestrian resume his progress across the highway and the pedestrian has not conveyed to the driver or caused him to reasonably assume that the pedestrian has waived his right-of-way. (Ops. Cal. Atty. Gen. 61-59 [1961]) (38 Ops. Cal. Atty. Gen. 100 (1961).)
- (5) A pedestrian using a crosswalk in obedience to signals is entitled to rely upon others obeying law, until something occurs which would place the person on notice as person of ordinary prudence that law is being or is about to be violated. (Novak v. Dewar, 13 Cal. Rptr. 101 [1961]) (Dewar (1961) 55 Cal. App. 2d.749).

b. Pedestrians Outside Crosswalks, § 21954 CVC

- (1) 21954(a) CVC - Every pedestrian upon a roadway at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the roadway so near as to constitute an immediate hazard.

NOTE: A pedestrian who crossed the street outside crosswalk had positive duty to yield right-of-way to all vehicles. (Hine v. Carmichael, 23 Cal. Rptr. 331 [1962])

- (2) 21954(b) CVC - The provisions of this section shall not relieve the driver of a vehicle from the duty to exercise due care for the safety of any pedestrian upon a roadway.

NOTE: A motorist, who was traveling at 65 miles-per-hour, the statutory limit, with lights on low beam providing forward vision of only about 100 feet (covered in about one second), was driving at negligent and excessive speed, inconsistent with any right-of-way he may otherwise have had over pedestrian outside crosswalk. (Bove v. Beckman, 46 Cal. Rptr. 164 [1965])

Even if the victim was not in an unmarked crosswalk, the defendant had a duty to exercise due care for the pedestrian's safety by virtue of 21954(b) CVC. (Peo. v. Walker, 72 Cal. Rptr. 224 [1968])

c. Vehicles Stopped for Pedestrians, § 21951 CVC

Whenever any vehicle has stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the roadway the driver of any other vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

d. Related sections

- (1) Hitchhiking, § 21957 CVC
- (2) Crossing Between Controlled Intersections, § 21955 CVC
- (3) Pedestrian on Roadway, § 21956 CVC

XV. TURNING VIOLATIONS (PO 9.4.6)

A. Turning Upon a Highway - 22100 CVC

1. 22100(a) CVC - Right turns

- a. Unless there are signs indicating otherwise, both the approach and the turn shall be made from as close to the right hand curb or edge of the roadway as is practical.
- b. If more than one lane is designated by signs or markings as a right turn lane, drivers may turn right from any such marked lane.
- c. A motorist who, although in right lane commenced her right turn far enough from the right-hand curb to permit another automobile to maneuver between her and curb violated provisions of this section. (Tecson (1964) 227 Cal.App.2d 655).

2. 22100(b) CVC - Left turns

- a. The approach shall be made as close as practical to the left edge of the extreme left lane or portion of the roadway lawfully available in the direction of travel. At intersections the turn shall not be started prior to the vehicle entering the intersection.
- b. On highways that have three marked lanes in one direction and terminate (T intersection) at a highway with traffic in both directions, drivers may turn either right or left from the center lane (unless otherwise posted).
- c. The completion of any turn after entering an intersection must be made in any lane lawfully available. A lane lawfully available refers to any lane available in the appropriate direction of travel in which the driven vehicle does not interfere with the lawful movement of any other vehicle.
- d. Reasonable consideration should be given to large truck combinations and buses which must swing wide to negotiate turns. While not in the extreme right or left lane, the approach may be as near as practical.

B. U-Turns

- 1. U-Turn, § 665.5 CVC - The turning of a vehicle upon a highway so as to proceed in the opposite direction whether accomplished by one continuous movement or not.

The definition implies a 180° turn which is accomplished without leaving the highway.

- 2. U-Turn at Controlled Intersection, § 22100.5 CVC

U-turns are permissible unless a sign prohibits the turn.

The U-turn must be made from the farthest left lane lawfully available, when the intersection is controlled by official traffic signals or devices.

3. U-Turn In Business District, § 22102 CVC

Prohibited except at an intersection or an opening in a divided highway. When permitted, they must be from the left lane.

4. U-Turn in Residence District, § 22103 CVC

Permitted except where there is a vehicle approaching from either direction within 200 feet.

5. Turning Near Fire Stations, § 22104 CVC

U-turns are prohibited in front of fire station driveways. No person shall use a fire station driveway to make a U-turn.

6. Unobstructed View Necessary for U-Turn, § 22105 CVC

A U-turn is permitted only where there is an unobstructed view for at least 200 feet in both directions. Obstructions include weather such as fog or heavy rain, curves, vehicles, hill crests, embankments, etc.

C. Failure to Obey Official Traffic Control Devices at Intersections, § 22101 CVC

Drivers must obey signs that regulate or prohibit right or left turns at intersections. For example, violation of a sign prohibiting a left turn or violation of signs and lane markings requiring a left turn would be cited for section 22101(d) CVC.

NOTE: Section 21461(a) CVC would be used for a violation of a "No U-Turn" sign at an intersection.

D. Turning Movements and Required Signals, § 22107 CVC

1. Prohibits turning movements that might interfere with a vehicle moving straight ahead. Puts a greater burden of care upon the driver turning. Also requires turning driver to signal the intent to turn if any other vehicle might be affected by the movement.

2. The driver whose vehicle runs off the roadway would be in violation of either § 22107 CVC (unsafe turning movement), or § 21650 CVC (failure to drive on the right half of the roadway). (Peo. v. Smylie, 31 Cal Rptr, 360).

NOTE: This section applies to turning movements which do not constitute a lane change.

E. Duration of Signal, § 22108 CVC

1. Any signal of intention to turn right or left shall be given continuously during last 100 feet travelled by the vehicle before turning.

F. Related sections

1. Starting Parked Vehicles or Backing, § 22106 CVC

This section is a continuation of the philosophy that drivers who are doing other than moving straight ahead must exercise a greater level of care. Consequently, driver's starting or backing must yield to others. This section applies to starting and backing that originates on the highway. A driver who started or backed unsafely onto a highway from adjoining property and violated the right-of-way of a driver on the highway would be in violation of section 21804 CVC.

2. Laned Roadways, § 21658(a) CVC - unsafe lane changes

XVI. VEHICLE CODE PUBLIC OFFENSES (PO 9.4.13)

A. Public offenses

1. Reckless Driving, § 23103 CVC - Misdemeanor

- a. 23103(a) CVC - Any person who drives any vehicle upon a highway in willful or wanton disregard for the safety of persons or property
- b. 23103(b) applies to off-street parking facilities (as defined in CVC § 12500)
- c. "Willful" means intentional and "intentional" relates to disregarding the safety of persons and property, and not merely an act done in disregard of safety. "Wantonness" includes consciousness of one's conduct, intent to commit or omit the act in question, realization of probable injury to another, and reckless disregard of consequences. (Schumacher (1961) 194 Cal.App.2d 335).

NOTE: The willful or wanton disregard for safety may be shown by a single act, but is generally shown by a series of overt acts

2. Speed Contests, § 23109 CVC - Misdemeanor

- a. 23109(a) CVC - No person shall engage in any motor vehicle speed contest against another vehicle, clock or timing device on any highway. The most common violation is the spontaneous drag race at the signalized intersection. However, there have been some highly organized speed contests involving dozens of participants and hundreds of spectators.
- b. 23109(b) CVC - Unlawful to aid or abet a speed contest. This includes persons signaling starts and finishes, or timing the event.
- c. 23109(c) CVC - "exhibition of speed"
 - (1) There must be someone to be exhibited to, however, that person need not be known to the exhibitor. (Grier (1964) 226 Cal.App.2d 360). It is sufficient for the officer to be the observer.
 - (2) Intentionally causing tires to lose traction on highway "burning rubber" constitutes a violation (Grier 1964).
- d. 23109(d) CVC - Unlawful to barricade the road to facilitate a speed contest

3. Throwing Substances at Vehicles, § 23110 CVC

- a. 23110(a) CVC - Misdemeanor
throwing any substance at a vehicle (or occupant) on a highway
- b. 23110(b) CVC - Felony

throwing any substance capable of doing serious bodily injury with specific intent to injure, at a vehicle (or occupant) on a highway

4. Related sections

- a. Throwing Substances on Highways or Adjoining Areas, § 23111 CVC - Infraction
vehicle occupants and pedestrians prohibited from throwing any lighted or non-lighted cigarette upon any highway
- b. Throwing Objects at Common Carrier Vehicles, Penal Code § 219.1 - Felony
- c. Reckless Driving: Bodily Injury, § 23104 CVC - Misdemeanor

NOTE: There is no "felony" reckless driving per se

XVII. FAILURE TO OBEY A LAWFUL ORDER OF AN OFFICER (PO 9.4.15)

A. Lawful orders and inspections

1. Obedience to Traffic Officers, § 2800 CVC - Misdemeanor

Unlawful to willfully fail or refuse to comply with any lawful order, signal, or direction of any peace officer who is in uniform and performing duties under any provisions of the Vehicle Code. Examples:

- a. Driver or pedestrian who willfully fails to comply with the directions of a peace officer who is directing traffic
- b. Pedestrian who has been verbally ordered off a freeway
- c. Pedestrian who fails to leave a bridge or overpass after being ordered off pursuant to CVC § 21962, which authorizes any peace officer who has reasonable cause to believe that a pedestrian is standing on any bridge or overpass for the purpose of dropping or throwing objects at passing vehicles to order such person from the bridge or overpass

2. Evading a Peace Officer, § 2800.1 CVC - Misdemeanor

- a. Unlawful to attempt to intentionally elude a pursuing uniformed police officer, when the officer is driving a distinctively marked vehicle, sounding a siren, and exhibiting at least one lighted red lamp visible from the front.

3. Evading a Peace Officer: Reckless Driving, § 2800.2 CVC - Misdemeanor/Felony

- a. Driving in a willful or wanton disregard for the safety of persons or property when in violation of CVC § 2800.1

NOTE: Refer to CVC § 23103 in performance objective 9.4.13

4. Evading a Peace Officer Causing Injury or Death, § 2800.3 - Misdemeanor/Felony

- a. Driving in a willful or wanton disregard for the safety of persons or property when in violation of CVC § 2800.1 and causing death or serious bodily injury to any person

NOTE: The legislative intent is to apply this section when the injury is sustained by anyone other than the suspect driver.

5. Crossing Flare or Cone Patterns, § 2818 - Infraction

- a. Where public safety personnel are using it for traffic control or emergency scene management.

XVIII. EQUIPMENT VIOLATIONS (PO 9.4.11)

A. Vehicle equipment requirements

1. Specific sections should be cited when possible
2. Equipment citations issued pursuant to CVC § 40610 (Notice to Correct) should contain the time requirement for correction

B. Lighting violations

1. Headlamps on Motor Vehicles, § 24400 CVC

- a. During darkness, all motor vehicles except motorcycles and vehicles manufactured prior to 1930 must have at least **two lighted** headlamps
- b. The lamps must be between 22" and 54" in height, with one on each side

NOTE: Heavy fog, rain, smoke, or dust may create a condition of darkness requiring lights.

2. Stoplamps, § 24603 CVC

- a. 24603(a) CVC - every vehicle must have one or more
- b. 24603(b) CVC - all vehicles need **two**, except for those manufactured prior to 1958 and trailers less than 30" wide
- c. 24603(f) CVC - at all times, stoplamps must be activated on the application of brakes [on the rear of the vehicle, or on the last vehicle in a combination of vehicles]
- d. 24603(g) CVC - supplemental stoplamps (red) may be mounted inside the rear window, if centerline and no light is visible to the driver

3. Related lighting sections

- a. Tail lamps, § 24600 CVC
- b. Turn Signal System, § 24951 CVC
- c. Motorcycles
 - (1) Headlamps on Motorcycles, § 25650 CVC
 - (2) Headlamps on Motorcycles Manufactured After 1978, § 25650.5 CVC
- d. Flashing Lights, § 25250 CVC
- e. Lighting During Darkness, § 24250 CVC

- f. Lighting Equipment, § 40151 CVC
 - (1) 40151(a) CVC - remove illegal equipment within 24 hours
 - (2) 40151(b) CVC - repair faulty equipment within 48 hours
- g. Lighting Equipment Requirements, § 24252 - All lighting equipment of a required type installed on a vehicle shall at all times be maintained in good working order. (use of this section should be guided by local enforcement policy)

NOTE: Read individual sections for exceptions regarding antique cars.

C. Exhaust system requirements

- 1. Adequate Muffler Required, § 27150 CVC
 - a. 27150(a) CVC - muffler must be properly maintained and contain no cutout or bypass type device
- 2. Related sections
 - a. Modification of Exhaust Systems, § 27151 CVC - modified to increase the noise emitted
 - b. Exhaust Products, § 27153 CVC - excessive smoke or flame

NOTE: Correction of exhaust system violations must be certified by an authorized motor vehicle Pollution Control Device Inspection station.

D. Other required equipment

- 1. Windshields: Exception, § 26700 CVC - windshield required
- 2. Defective Windshields and Rear Windows, § 26710 CVC - repair within 48 hours
- 3. Windshield Wipers, § 26706 CVC - generally two required
- 4. Material Obstructing or Reducing Driver's View, § 26708 CVC - "after market" window tinting
 - a. Tinting materials may be attached to side windows behind the driver and to the rear windows, if the vehicle is equipped with effective outside mirrors on both sides of the vehicle.
 - b. 26708(a) CVC - prohibits driving a vehicle if anything obstructs or reduces the driver's clear view through the windshield or side windows

NOTE: This section has been upheld as constitutional (Geierman (1990) 226 Cal.App.3d Supp.1).

5. Mirrors, § 26709 CVC

6. Horns or Warning Devices, § 27000 CVC

XIX. UNSAFE VEHICLES (PO 9.4.1)

A. Introduction

1. The provisions of Division 11 (Rules of the Road), and Division 12 (Equipment of Vehicles), Division 13 (Towing and Loading of Equipment) pertain to the operation of vehicles upon highways unless a different place is specifically referred to. (§§ 21001 and 24001 CVC). In other words, unless specifically stated, these laws do not apply on private property.
2. Additionally, there are a number of persons and vehicles exempt from most of the rules of the road under certain conditions. (§§ 21051-21060 CVC).

B. Vehicle Not Equipped or Unsafe, § 24002 CVC.

1. The section prohibits the operation of a vehicle or combination of vehicles which is in an unsafe condition, not equipped as required, or which is not safely loaded.
2. Use when there is not a more specific section available. For example, for a bald tire or nonworking light, cite the specific section. However, if after stopping a vehicle for weaving and determining that the weaving was caused by a half-turn of slack in the steering wheel, it would be appropriate to use CVC § 24002.
3. Section 24002 CVC is also used when a vehicle has multiple equipment violations. For example, use it instead of the specific sections when a vehicle is stopped with bald tires, cracked windshield and no operational lighting equipment.

C. Unlawful Operation After Notice by Officer, § 24004 CVC.

This section prohibits the operation of vehicles or combination of vehicles which are in an unsafe condition or are not equipped as required, except as necessary to return the vehicle to the owner or driver's residence or place of business, or to a garage for repair.

1. Vehicle is to remain off the highway until properly equipped
2. If advised of 24004 CVC, you must document on the face of all equipment citations that the driver or owner was "advised of § 24004".

D. Related sections .

1. Modification of Vehicles, § 24008 CVC - lowered vehicle
2. Frame and Floor Height, § 24008.5 CVC - raised vehicle
3. Owner's Responsibility, § 40001 CVC

XX. UNRESTRAINED OCCUPANT IN A MOTOR VEHICLE (PO 9.4.16)

A. Passenger safety laws

1. Mandatory Seat belt Law, § 27315 CVC

a. The legislative intent of the mandatory seat belt law was to reduce highway deaths and injuries by encouraging greater usage of existing manual seat belts.

b. 27315(c) CVC - defines the vehicles covered by this section

NOTE: Applies to passenger vehicles manufactured after January 1, 1968.
Applies to trucks (under 6,001 lbs. unladen weight) manufactured after January 1, 1972.

c. 27315(d) CVC - (Cite driver)

Requires driver and all passengers four years of age and older to be properly restrained by seat belts, when the vehicle is being operated on a highway.

Exemptions:

(1) Rear seat passengers of emergency vehicles, taxis, and limos for hire

NOTE: Front seat passengers must be properly restrained

(2) Taxi driver when on a city street (taxi defined: CVC § 27908).

d. 27315(e) CVC - (Cite passenger)

Requires all passengers 16 years of age or older to wear seat belts

e. 27315(f) CVC - (Cite registered owner)

Requires all safety belts to be maintained in good working order, if originally installed in the vehicle (includes taxis and limos).

f. 27315(g), (n), and (o) CVC - exemptions

The following persons are exempt from safety belt requirements:

(1) Persons with certified medical conditions or disabilities

(2) Peace officers in the front seat of an emergency vehicle, unless required by agency policy

(3) Persons engaged in delivery of newspapers or rural delivery carrier for the U.S. Postal Service, (must be belted prior to starting the route and after finishing deliveries)

NOTE: This does not prohibit carrying more passengers than belts are available nor carrying passengers in the "load area" of a vehicle (such as in the back of a station wagon).

2. **Child Passenger Seat Restraints: Requirements, § 27360 CVC**
Requires all children under the age of four or weighing less than 40 pounds to be in a child passenger seat restraint system when they are a passenger in a passenger vehicle (or a truck with an unladen weight of less than 6,001 pounds), when it is on the highway
 - a. 27360(a) CVC - (cite parent)
When a parent or legal guardian is also in the vehicle, even if they are not the driver
 - b. 27360(b) CVC - (cite driver)
When a parent or legal guardian **is not** in the vehicle

3. **Carrying Passengers In a Motor Truck, § 23116**
 - a. 23116(a) CVC - No person driving a pickup truck or flatbed motor truck on a highway shall transport any person in or on, and no person shall ride in or on, the back of the truck
 - b. Exemptions:
 - (1) The person being transported is restrained by a restraint system (which meets federal standards).
 - (2) The person riding in the back of the truck or the flatbed is being transported in an emergency response situation by a public agency (or pursuant to the direction or authority of a public agency).
 - (3) The person in the back of the truck is being transported in an enclosed camper or camper shell that prevents the person from being discharged.

NOTE: This section is commonly violated when camper shell doors are left open. With the shell door open, the load area is no longer completely enclosed.
 - (4) The person is an employee being transported under Labor Code provisions.

4. **Safety Helmets: Required, § 27803 CVC**
Requires all persons to wear a helmet on motorcycles, motor driven cycles, or motorized bicycles (moped) when being operated on a highway.
 - a. 27803(b) CVC - (cite driver)
 - b. 27803(c) CVC - (cite passenger)
 - c. 27803(e) CVC - defines "wearing a helmet"
The helmet must be an approved type (pursuant CVC § 27802), fastened with straps, of the correct size, and secure on the head.

NOTE: If either is not wearing (or properly wearing) a helmet, both the driver and passenger may be cited.

5. Related sections

- a. Carrying Animal in Motor Truck, § 23117 CVC
- b. Unlawful Riding and Towing, § 21712 CVC
- c. Riding on Bicycle, § 21204b CVC
Requires passengers on bicycles four years of age or younger or weighing 40 pounds or less to wear approved safety helmets.
- d. Bicycle Helmet Requirements - All persons under 18 year of age shall wear a bicycle helmet. (not punitive until January 1995)
- e. Hitching Rides, § 21203 CVC

XXI. HIT AND RUN COLLISION VIOLATIONS (PO 9.4.2)

A. Application of Division, § 20000 CVC

1. Collision reporting requirements apply on highways as well a public and private property throughout the state.

NOTE: For the purposes of this learning domain, "accident" and "collision" are synonymous.

B. Duty to Stop at Scene of an Accident, § 20001(a) CVC - Felony

1. Driver of any vehicle involved in an accident resulting in injury to any person other than himself, or death of any person shall immediately stop the vehicle at the scene of the accident and fulfill the requirements of Sections 20003 and 20004 CVC.

a. Duty Upon Injury or Death, § 20003 CVC

Give name, address, vehicle registration number, and vehicle owner's name and address to the person struck or driver or occupants of the vehicle collided with or give such information to a traffic or police officer at the scene.

Render reasonable assistance to any injured person, including assisting in transportation to medical care. Must show driver's license upon request of involved person or peace officer.

b. Duty Upon Death, § 20004 CVC

If an accident results in the death of any person and there is no officer at the scene, all drivers involved shall, without delay, report the accident to the nearest office of the CHP or police authority and provide the information required by 20003 CVC.

NOTE: It is rare when law enforcement officers are not called to the scene of major injury or fatal accidents. These sections were enacted to cover situations where drivers leave accident scenes to avoid responsibility or liability.

C. Duty Where Property Damaged, § 20002(a) CVC - Misdemeanor

1. Immediately stop the vehicle at the scene
2. Locate owner or person in charge of the property damaged:
 - a. Provide name and address of driver and registered owner
 - b. Upon request, the driver or registered owner must show their driver's license and vehicle registration
3. If owner cannot be located:

- a. Leave a note containing the above information about the identity of the driver and the registered owner and the circumstances of collision on the damaged property and;
 - b. Without unnecessary delay, notify the police department of the city in which accident occurred or the CHP if the accident occurred in an unincorporated area.
4. The last driver of a runaway vehicle involved in a collision shall comply with the reporting requirements of this section.

D. Related sections

1. Duty to Report Accidents, § 20008 CVC
Required to report injury accidents to law enforcement agency
2. Accident Report, § 16000 CVC
Reports to DMV concerning financial responsibility have different criteria than those prescribed by section 20000. Under § 16000, all injury collisions and any collision where one person sustained over \$500 property damaged must be reported, enforced by administrative license suspensions.
3. Evidence of Financial Responsibility, § 16020(a) CVC - Infraction
Drivers must carry evidence of financial responsibility, including name of insurance company and policy number.
4. Mandatory Exchange of Information, § 16025(a) CVC - Infraction
Drivers must exchange specified information.

NOTE: An accident is something out of the usual course of events, which happens suddenly and unexpectedly and without design. Generally property damage or an injury result. For purposes of CVC § 40300.5, no injury or property damage is required. (Cowan (1978) 86 Cal.App.3d 851.)

XXII. VEHICLE CODE ARREST AUTHORITIES (9.16.1)

A. Vehicle Code arrest procedures

1. Arrest without a warrant - exception (40300.5 CVC)

Notwithstanding any other provision of law, a peace officer may, without a warrant, arrest a person involved in a traffic accident or observed by a peace officer in or about a vehicle which is obstructing a roadway, when the officer has reasonable cause to believe that such person had been driving while under the influence of intoxicating liquor or any drug, or under the combined influence of intoxicating liquor and any drug.

NOTE: This is an exception to the general rule that the misdemeanor violation must occur in the officer's presence. There is no requirement that the officer be present at the time of the offense, but he must have reasonable cause to believe the suspect committed the offense of intoxication on the part of the suspect identified as the driver.

The arrest is authorized for offenses occurring both on and off a highway as driving under the influence (23152 CVC) is a violation on public or private property. The provisions of the Implied Consent Law for chemical testing apply (23157 CVC).

NOTE: 40501 CVC requires 21 days given a notice to appear unless specified by the court.

2. Felonies (40301 CVC)

Whenever a person is arrested for a violation of the Vehicle Code declared to be a felony, he shall be dealt with in like manner as upon arrest for the commission of any other felony.

3. Mandatory appearance - MUST TAKE (40302 CVC)

Whenever any person is arrested for any violation of the Vehicle Code, not declared to be a felony, the arrested person shall be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest is made in any of the following cases:

- a. When the person arrested fails to present his driver's license or other satisfactory evidence of his identity for examination.
- b. When the person arrested refuses to give his written promise to appear in court.
- c. When the person arrested demands an immediate appearance before a magistrate.
- d. When the person arrested is charged with violating Section 23152 CVC.

NOTE: With regard to the county in which the offense was committed and jurisdiction, the section refers to the magistrate's authority to consider the case as well as venue, the geographical limits of jurisdiction, including boundary lines of judicial districts and counties. When the offense was committed within 500 yards of a jurisdictional territory, either competent court has jurisdiction (782 P.C.). This allows for a situation where an officer is not sure in which jurisdiction the offense was actually committed.

When the arrested person is taken before a magistrate who is available (40306 CVC), the arresting officer shall file with the magistrate a complaint stating the offense with which the person is charged. A written notice to appear shall constitute a complaint (40513 CVC).

When the magistrate is unavailable (40307 CVC), the arresting officer shall take the arrested person to the clerk of the magistrate who shall admit him to bail or before the officer in charge of the most accessible jail who shall admit him to bail or release him on his written promise to appear.

Circumstances enumerated:

The arrested person fails to present his driver's license or other satisfactory evidence of identity.

A driver's license is not specifically required. The person arrested need not be a driver, but a passenger, hitchhiker, etc. However, the arrested person must satisfy the officer concerning identity. Such identification may be satisfied through appropriate answers to the officer's questions about vehicle ownership; contents of the glove compartment, trunk, and interior; and answers received from passengers.

If the arrested person is taken into custody pursuant to 40302(a) CVC involving the operation of a motor vehicle, the jailer may detain the person, not to exceed two hours, to verify his identity (40307 CVC).

The arrested person refuses to give his written promise to appear in court.

Explain to the arrested person that he has been arrested and the only legal way you can release him from custody is to receive his written promise to appear which is not an admission of guilt (40504 CVC).

Usually individuals refuse to sign the citation because they are angry. If it is known that a magistrate is unavailable, the officer should explain he has no choice but to take the person to jail.

It is often helpful to call a supervisor to the arrest scene to further explain the officer's legal obligation upon an arrested person's refusal to provide a written promise to appear.

The arrested person should be permitted to sign a written promise to appear at any time prior to booking. If a signature is obtained the

individual should be transported back to his vehicle or place of arrest or another location convenient to communication or transportation.

If the physical arrest would only result in further alienation or injury and no useful purpose would be served through incarceration, a complaint may later be filed. This option may be considered in situations involving overly excited persons with small children; elderly, confused persons; sick persons or pregnant women; and juveniles.

The arrested person demands an immediate appearance before a magistrate.

The arrested person may either be taken or escorted. If the magistrate is not available, it should be fully explained that he must either sign the promise to appear, post bail, or go to jail.

The arrested person can only demand an appearance before the nearest or most accessible magistrate. This means nearest in distance or most accessible physically.

If the nearest or most accessible magistrate is not available, then the arrested person must be taken to the clerk of the magistrate or to jail (40307 CVC). There is no requirement to take the arrested person before another magistrate. The violator should be made fully aware of the unattractiveness of his demand from his point of view in the above situation.

The arrested person is charged with 23152 CVC, Driving Under the Influence of Alcohol or Drugs.

The driver is an obvious hazard to self and others and must be removed to a place of safety.

Magistrates have generally made themselves unavailable to persons arrested under these circumstances. The courts wish to maintain decorum and are usually not accessible to persons arrested for driving under the influence. Most magistrates have a standing policy to take such arrestees directly to jail.

B. Optional appearance - MAY TAKE (40303 CVC)

Whenever any person is arrested for any of the following offenses and the arresting officer is not required to take the person without unnecessary delay before a magistrate, the arrested person shall, in the judgement of the arresting officer, either be given a 21-day notice to appear as herein provided or be taken without unnecessary delay before a magistrate within the county in which the offense charged is alleged to have been committed and who has jurisdiction of the offense and is nearest or most accessible with reference to the place where the arrest was made.

Subdivisions:

- (a) Section 10852 or 10853, relating to injuring or tampering with a vehicle.

- (b) Section 23103 or 23104, relating to reckless driving.
- (g) Sections 20002 or 20003, relating to duties in the event of an accident.
- (h) Section 23109, relating to participating in speed contests, exhibition of speed, or aiding and abetting same.
- (i) Section 14601, 14601.1, or 14601.2, relating to driving while license is suspended or revoked.
- (j) When the person arrested has attempted to evade arrest.
- (k) Section 23332, relating to persons upon vehicular crossings (certain bridges).
- (m) Section 21461.5, insofar as it relates to a pedestrian who, after being cited for a violation of Section 21461.5, is, within 24 hours, again found upon the freeway in violation of Section 21461.5 and thereafter refuses to leave the freeway after being lawfully ordered to do so by a peace officer and after having been informed that his or her failure to leave could result in his or her arrest.
- (n) Section 2800, insofar as it relates to a pedestrian who, after having been cited for a violation of Section 2800 for failure to obey a lawful order of a peace officer issued pursuant to Section 21962 is, within 24 hours, again found upon the bridge or overpass and thereafter refuses to leave after being lawfully ordered to do so by a peace officer and after having been informed that his or her failure to leave could result in his or her arrest.
- (o) Relating to riding a bicycle while under the influence.

NOTE: The officer has a choice of action under the law to cite and release or take the arrested person before a magistrate.

Officers should refer to departmental policy and procedures concerning optional physical arrests.

C. Offense by Nonresident - MAY TAKE (40305 CVC)

Whenever nonresident is arrested for violating any section of the Vehicle Code while driving a motor vehicle and does not furnish satisfactory evidence of identity and an address within this state at which he can be located, he may, in the discretion of the arresting officer be taken immediately before a magistrate within the county where the offense charged is alleged to have been committed, and who has jurisdiction over the offense and is nearest or most accessible with reference to the place where the arrest is made . . .

NOTE: Language follows within the statute relating to further procedures if no one is available to accept bail. The statute was enacted at a time when all jailers were not bonded and were not eligible to accept bail. This is no longer true - all jailers may now accept bail.

A nonresident is a person who is not a resident of this state (435 CVC). A residence is defined as where one makes his home rather than a place where he may be living temporarily. (Black's Law Dictionary)

The provision applies only to drivers of motor vehicles; not to pedestrians or passengers.

XXIII. LEGAL AUTHORITY TO REMOVE VEHICLES FROM ROADWAY (POS 9.15.1 and 9.15.2)

A. Definitions

1. Storage tow

- a. Removing a vehicle from public or private property.
- b. Vehicle can be released to the owner with proper identification for the person and their vehicle.

2. Impound tow

- a. Removing a vehicle from public or private property while the investigation is still in progress. (Police hold)
- b. Vehicle can be released to the owner only after the impounding agency authorizes a release.

3. Abatement process

- a. Civil process involving specific procedures and advance notifications to vehicle and property owners
- b. If the vehicle is abated, it is not returned to the owner or lien sold.

NOTE: Abatement law is beyond the scope of this knowledge domain

4. Cost Recovery Programs - 22850.5 CVC

- a. Local programs to attach fees to recover costs involved in towing vehicles because of their owner's negligence

5. Terminology

- a. SVS - stolen vehicle system
- b. VIN - vehicle identification number

B. Legal authority to remove vehicles

1. Prohibition of Removal, § 22650 CVC - Infraction

Unlawful to remove any unattended vehicle except as provided in the Vehicle Code

2. Storage of Vehicle, § 22850 CVC

When removing a vehicle, the officer shall note the mileage on the vehicle impound/storage report.

C. Authority to remove vehicles

NOTE: This section is limited to removal sections listed in the performance objective. It is not a complete listing of storage authorities.

1. Vehicle is abandoned

a. Removal of Abandoned Vehicles, § 22669(a) CVC

- (1) Any peace officer or other designated employee may remove an obviously abandoned vehicle from a highway, or from public or private property.

NOTE: See Abandonment Prohibited, § 22523 CVC

- (2) 22669(d) CVC - Motor vehicles which are parked, resting, or otherwise immobilized on any highway or public right-of-way and which lack an engine, transmission, wheels, tires, doors, windshield, or any other part or equipment necessary to operated safely on the highways of this state, are hereby declared a hazard to public health, safety, and welfare and may be removed immediately upon discovery by a peace officer or other designated employee of the state, county, or city.

2. Vehicle is a traffic hazard

a. Circumstances Permitting Removal, § 22651(b) CVC

Any peace officer or designated employee may remove a vehicle when it is

- (1) left on a highway and
- (2) obstructing the normal movement of traffic, or in a condition so as to create a hazard to other traffic.

3. Incident to an Arrest

a. Circumstances Permitting Removal, § 22651(h) CVC

Any peace officer or designated employee may remove a vehicle when

- (1) the person driving (or in control) is arrested and
- (2) taken into custody.

4. Vehicle is stored for safekeeping

a. Circumstances Permitting Removal, § 22651(g) CVC

Any peace officer or designated employee may remove a vehicle when:

- (1) the vehicle is upon a highway or public land and

(2) the person in charge of the vehicle is incapacitated by physical injuries or illness

b. Removal From Private Property, § 22653(b) CVC

Any peace officer may remove a vehicle from private property when:

(1) the vehicle has been involved in, and left at the scene of, a traffic collision and

(2) no owner is available to grant permission to remove the vehicle.

NOTE: The vehicle may not be removed if the owner has been contacted and refused permission to remove it

5. Vehicle is stolen or embezzled

a. Circumstances Permitting Removal, § 22651(c) CVC

Any peace officer or designated employee may remove a vehicle when

(1) the vehicle is upon a highway or public land and

(2) it has been reported stolen.

b. Removal From Private Property, § 22653(a) CVC

Any peace officer may remove a vehicle from private property when the vehicle has been reported stolen or embezzled.

6. Vehicle is held for investigation

a. Impounding for Evidence: § 22655.5 CVC

A peace officer may remove a vehicle from the highway or from public or private property, if the peace officer has probable cause to believe:

(1) it was used in the commission of a public offense, or

(2) the vehicle is itself evidence which tends to show that a crime has been committed or that the vehicle contains evidence, which cannot be readily removed

7. Vehicle is involved in a "hit and run" collision

a. Impounding Vehicle for Investigation, § 22655(a) CVC

A peace officer may remove a vehicle when:

(1) found on a highway or on public property or on private property open to the general public, and

(2) the officer has reasonable cause to believe it was involved in a hit-and-run collision.

8. Vehicle is held because the driver is unlicensed

a. Circumstances Permitting Removal, § 22651(p) CVC
Any peace officer may remove a vehicle when

- (1) the vehicle is upon a highway or public land; and
- (2) the driver is issued a notice to appear for a violation of one of the following sections: 12500, 14601, 14601.1, 14601.2 or 14601.5 of the Vehicle Code; and
- (3) there is no passenger who has a valid driver's license and the authorization to operate the vehicle.

NOTE: If a custodial arrest is made on the driver, the authority for removal is 22651(h) CVC.

9. Vehicle registration date has been expired in excess of one year before the date found

a. Circumstances Permitting Removal, § 22651(o) CVC
Any peace officer or designated employee may remove a vehicle when

- (1) the vehicle is upon a highway, any public lands, or an offstreet parking facility and
- (2) the registration has been expired in excess of one year.

NOTE: If the vehicle is occupied, only a peace officer may remove it.

D. Given a CHP form 180 or appropriate local form, the student will complete an impound or storage report for one of the sections studied in performance objective 9.15.1

XXIV. POSSESSION OF ALCOHOL BEVERAGE IN A VEHICLE (PO 9.5.3)

A. Alcohol-related Vehicle Code Sections

NOTE: Alcoholic Beverage is defined in CVC § 109.

1. Drinking While Driving, § 23220 CVC

No person shall drink any alcoholic beverage while driving a motor vehicle upon any highway.

a. Elements:

- (1) Person driving a motor vehicle
- (2) Upon a highway
- (3) Drinking alcoholic beverage

2. Drinking in Motor Vehicle, § 23221 CVC

No person shall drink any alcoholic beverage while in a motor vehicle upon a highway.

a. Elements

- (1) Occupant in a motor vehicle.
- (2) Upon a highway.
- (3) Drinking alcoholic beverage.

3. Possession of Marijuana or Open Container While Driving, § 23222 CVC

a. 23222(a) CVC - No person shall have in his or her possession on his or her person, while driving a motor vehicle upon a highway, any bottle, can or other receptacle, containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.

(1) Elements

- (a) Driving a motor vehicle
- (b) Upon a highway
- (c) Possessing on his or her person any opened container of alcoholic beverage

NOTE: The words "on his or her person" for purposes of this section, are to be extended to area of immediate control.

b. 23222(b) CVC - Misdemeanor

- (1) Unlawful for a driver of a motor vehicle to possess less than one ounce of marijuana

4. Possession of Open Container in Motor Vehicle, § 23223

No person shall have in his or her possession on his or her person, while driving a motor vehicle upon a highway, any bottle, can, or other receptacle, containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed.

a. Elements

- (1) Driving a motor vehicle
- (2) Upon a highway
- (3) Possessing on his or her person any opened container of alcoholic beverage

NOTE: The words "on his or her person" for purposes of this section, are to be extended to area of immediate control. This section does not apply to a car which is parked in a public parking lot. (Lopez (1987) 197 Cal. App. 3d 93).

5. Possession of Alcohol in Vehicle: Person Under 21, § 23224

- a. 23224(a) CVC - No person under the age of 21 years shall knowingly **drive any motor vehicle carrying** any alcoholic beverage, unless the person is accompanied by a parent or legal guardian or is employed by an ABC licensee, and is driving the motor vehicle during regular hours and in the course of the person's employment.
- b. 23224(b) CVC - No **passenger** in any motor vehicle who is under the age of 21 years shall knowingly **possess** or have under that person's control any alcoholic beverage, unless the passenger is accompanied by a parent or legal guardian or is employed by an ABC licensee, and the possession or control is during regular hours and in the course of the passenger's employment".
 - (1) The exceptions granted in § 23229 CVC do not apply in this case.
 - (2) It would make no difference if the minor were in a vehicle operated by a common carrier or a publicly owned transit system.
 - (3) It is not an added requirement that the vehicle be on a highway.

6. Storage of Opened Container, § 23225 CVC

It is unlawful for the registered owner of any motor vehicle, or the driver if the registered owner is not then present in the vehicle, to keep in a motor vehicle,

when the vehicle is upon any highway, any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed, unless the container is kept in the trunk of the vehicle, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the vehicle is not equipped with a trunk. A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This section shall not apply to the living quarters of a housecar or camper.

a. Elements

- (1) Registered owner of any motor vehicle, or driver, if the registered owner is not present in the vehicle.
- (2) Upon a highway.
- (3) Keeps alcoholic beverages in the vehicle within easy or ready access to the occupants.

b. Application. Practical consideration would indicate that the rear of a station wagon farthest removed from the occupants would suffice for keeping within the legal requirements for no violation of the section.

7. Storage of Open Container in Passenger Compartment, § 23226 CVC
It is unlawful for any person to keep in the passenger compartment of a motor vehicle, when the vehicle is upon any highway, any bottle, can, or other receptacle containing any alcoholic beverage which has been opened, or a seal broken, or the contents of which have been partially removed. This section shall not apply to the living quarters of a housecar or camper.

8. Possession of alcoholic beverages: Exceptions, § 23229 CVC

- a. 23229(a) CVC - except as provided in section 23229.1, sections 23221 and 23223 shall not apply to passengers in any bus, taxicab or the living quarters of a housecar or camper nor shall Section 23225 apply to the driver or owner of a bus or taxicab.
- b. 23229(b) CVC - except as provided in section 23229.1, section 23225 does not apply to the driver or owner of a bus, taxicab, or limousine for hire.

9. Possession of Alcohol in Limousine: Passengers Under Age 21, § 23229.1 CVC

Sections 23223 and 23225 do apply to limousines for hire when the driver transports any passenger under age 21, although it is not a violation of 23225 to store alcoholic beverages in a locked utility compartment within the area occupied by the driver and passengers.

XXV. DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS (PO 9.5.2)

A. Definitions

1. "Under the Influence" (CALJIC 16.831)
A person is under the influence of an alcoholic beverage when as a result of drinking such alcoholic beverage, his physical or mental abilities are impaired to such a degree that he no longer has the ability to drive a vehicle with the caution characteristic of a sober person of ordinary prudence, under the same or similar circumstances.
2. Vehicle, § 670 CVC
A "vehicle" is a device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks.
3. Driver, § 305 CVC
 - a. Person who drives or is in actual physical control of a vehicle
 - b. even if the vehicle is being pushed or towed by others.
4. Driving
 - a. requires some actual movement, including movement with the engine off;
 - b. does not include movement necessary to movement to clear a traffic lane after an accident (Kelley (1937) 27 Cal.App.2d supp. 771).

B. Driving While Intoxicated: Presumption, § 23155 CVC

1. Less than 0.05% presumed not Under the Influence
2. 0.05% to 0.07% does not give rise to any presumption
3. 0.08% or more presumed - Under the Influence

NOTE: Define presumption as it refers to Burden of Proof

C. Driving Under the Influence of Alcohol or Drugs, § 23152 CVC - Misdemeanor

1. 23152(a) CVC - Unlawful to drive a vehicle (on public or private property) when under the influence of alcoholic beverage, drug, or a combination of alcohol and drugs
2. 23152(b) CVC - Unlawful to drive a vehicle (on public or private property) when blood alcohol level of 0.08% or more - the chemical test result is presumed to be the same as when driving if tested within three hours
3. 23152(c) CVC - Unlawful to drive a vehicle (on public or private property)
 - a. When addicted to the use of any drug

- b. Unless participating in a methadone maintenance program.
 - c. Impairment is not a requirement.
4. 23152(d) CVC - Unlawful to drive a vehicle (on public or private property) when
- a. the vehicle is a commercial motor vehicle as defined in 15210 CVC;
 - b. the owner has a class A, B or C license with endorsements; and
 - c. the driver's blood alcohol level is 0.04% or more.
- D. Driving Under the Influence of Alcohol or Drugs Causing Injury, § 23153 CVC - Felony
1. 23153(a) CVC - Unlawful to drive a vehicle (on public or private property) when
- a. under the influence of alcoholic beverage, drug, or a combination of alcohol and drugs;
 - b. the driver does any act forbidden by law or neglects any duty imposed by law which proximately causes bodily injury to any person other than the driver.
2. 23153(b) CVC - Unlawful to drive a vehicle (on public or private property) when
- a. blood alcohol level is 0.08% or more - the chemical test result is presumed to be the same as when driving if tested within three hours;
 - b. the driver does any act forbidden by law or neglects any duty imposed by law which proximately causes bodily injury to any person other than the driver.
3. 23153(c) CVC - In proving the person neglected any duty imposed by law in driving the vehicle, it is not necessary to prove that any specific section of this code was violated.
4. 23153(d) CVC - Unlawful to drive a vehicle (on public or private property) when
- a. driving a commercial motor vehicle;
 - b. blood alcohol level is 0.04% or more;
 - c. the driver does any act forbidden by law or neglects any duty imposed by law which proximately causes bodily injury to any person other than the driver.
- E. Penalty: Fourth or Subsequent Offense Within Seven Years, § 23175 CVC - Felony
- Conviction of a violation of section 23152 when the offense occurred within seven years of three or more separate violations of section 23103, as specified in section

23103.5 ["wet reckless"], or section 23152 or 23153 or any combination thereof, which resulted in convictions.

F. Alcohol: Minor Driver, § 23140 CVC - Infraction

1. 23140(a) CVC - Unlawful to drive a vehicle when
 - a. driver was under 18 years of age;
 - b. blood alcohol level is 0.05% or more.
2. 23140(b) CVC - A person may be found in violation if they were under the influence or affected by an alcoholic beverage, even if no chemical test was made. The trier of fact must find that the BAC was 0.05% or more based on other relevant evidence.
3. This section is charged in addition to §§ 23152 or 23153, if applicable.

NOTE: Juveniles can be taken into custody for an infraction pursuant the Welfare and Institutions Code §§ 602, 625. Check with local policy.

G. Related sections

1. Riding Bicycle Under Influence of Alcohol or Drugs, § 21200.5 CVC
 - a. Unlawful to ride a bicycle upon a highway while under the influence of alcohol and/or drugs
 - b. If the suspect requests a chemical test, it must be given (there is no requirement to offer a test)
 - c. Implied consent does not apply.

2. Arrest Without Warrant, § 40300.5 CVC

Notwithstanding any other provision of law, a peace officer may, without a warrant, arrest a person who is (1) involved in a traffic accident or (2) observed by the peace officer in or about a vehicle which is obstructing a roadway, when the officer has reasonable cause to believe that the person had been DUI.

NOTE: Running off the road, even though no damage results, is an accident for purposes of arresting DUI drivers. (Cowman (1978)86 Cal.App.3d 851)

3. Place of Arrest: Driving Under the Influence, § 40300.6 CVC

Section 40300.5 shall be liberally interpreted to further safe roads and the control of driving while under the influence of an alcoholic beverage or any drug in order to permit arrests to be made pursuant to that section within a reasonable time and distance away from the scene of a traffic accident.

H. DUI Detection

1. Detection is both the most difficult task in the DUI enforcement effort and the most important. If officers fail to detect DUI violators, they will avoid prosecution and more importantly, they will have the opportunity to injure or kill innocent members of society.
2. Detection is defined as:

The entire process of identifying and gathering evidence to determine whether or not a suspect should be arrested for a DUI violation.
3. This five step process is the key to a successful DUI arrest. The contact is broken down into four specific areas with each being considered in the fifth (decision-making) step.
 - a. The Driving - What draws your attention to the vehicle.
 - b. The Stop - How the driver reacted during the traffic stop.
 - c. The Pre-Test - Signs of impairment during initial personal contact.
 - d. The Test - Series of field sobriety tests (FST) also known as field coordination test (FCT)
 - e. The Decision - Based on the four previous phases, the officer decides if an arrest is warranted or not.

I. The Driving

1. A driver operating the vehicle in any manner which would raise a doubt as to the driver's sobriety or other abnormal condition
 - a. Should be stopped
 - b. Determine the cause for the unusual driving.
2. Examples of deviations from normal driving, for which the officer must be alert, are listed below:
 - a. Unreasonable speed where geographical characteristics or other circumstances would ordinarily compel a more moderate rate of travel.
 - b. Weaving from road edge to white line; sharp, jerky movements in correcting direction of travel, drifting within lane.
 - c. Driving in spurts, first slow and then fast, or vice versa.
 - d. Frequent lane changing, coupled with excessive speed.

- e. Improper passing without sufficient clearance or cutting in. Taking too long, or swerving too much in overtaking and passing; i.e., overcontrolling, almost striking an object or vehicle.
 - f. Overshooting or disregarding traffic signs or signals.
 - g. Approaching signs or signals unreasonably fast or slow, and stopping or attempting to stop with uneven motions.
 - h. Driving at night without lights; delay in turning them on after starting from a parked position.
 - i. Driving at night with parking lights.
 - j. Failure to dim lights when signaled by approaching traffic that the driver's lights are on bright.
 - k. Unnecessary or improper use of turn indicators.
 - l. Driving in lower gears without an apparent reason or repeatedly clashing gears.
 - m. Jerky starting or stopping, or stopping without cause in traffic lane.
 - n. Driving unreasonably slow. (More than 10 mph below posted limit).
 - o. Driving too close to curbs, straddling the center lines, or other lane markings. Driving on other than roadway.
 - p. Driving with windows rolled down in cold weather.
 - q. Turning with wide radius or abruptly or illegally.
3. Once a driver is suspected of being under the influence of intoxicants
- a. Make every reasonable effort to stop the driver immediately.
 - b. It is not necessary to obtain further observations on the subject's manner of driving.
 - c. To allow the suspect to proceed could result in an accident which is the enforcement officer's duty to prevent.
 - d. A defense point conceivably could be raised on the presumption that the officer was "not sure" and was required to make a prolonged observation before stopping the suspect.
4. Alternative methods of detection
- a. Although detection of DUI drivers is usually initiated through the officer's direct observation, they also come to officer's attention through

- (1) reports from other persons and
- (2) results of calls to accident scenes.

NOTE: Officers must mentally record, with accuracy, not only the normal actions which should be expected, but also the individual's abnormal or unusual actions.

J. The Stop

1. The gathering of evidence continues as the suspect is apprehended.
 - a. Record the driver's response to the red light alone or to the red light and siren as additional evidence.
 - b. Evidence collected will assist in proving or disproving, beyond a reasonable doubt, the element of "Under the Influence".
2. Some of the reactions observed during the apprehension are:
 - a. An unusually fast compliance to the red light and siren; a so-called "screeching halt", either on or off the roadway.
 - b. Slowness or hesitancy to comply.
 - c. Apparent ignorance of the attempts made to stop the vehicle.
 - d. An attempt to outrun the patrol vehicle.
 - e. Excessive use of arm signals as the vehicle is being stopped.
 - f. Unusual activity or moving by the occupants within the vehicle. There may be an attempted change of drivers while the vehicle is still in motion. (Should this occur and both drivers are found to be under the influence, both may be charged with driving while under the influence of alcohol.)
 - g. An attempt to dispose of bottles or cans of alcoholic beverages by dropping or throwing them from the vehicle before it comes to a complete stop, or hiding them in the vehicle.
 - h. Poor parking location when the motorist stops for the police unit.

K. The Pre-Test

1. The officer should always be alert for signs of the influence of alcohol even though the subject's driving may not have indicated the probability of such influence.
2. The following examples may be symptoms of the driver's true condition:
 - a. The odor of intoxicants on the breath.

- b. Attitudes reflecting alcohol influence.
 - (1) Signs of nervousness, cockiness, unusual cheerfulness, apparent hesitancy in complying with lawful orders or instructions
 - c. The appearance associated with the lack of sleep
 - d. Impaired motor skills
 - e. Poor enunciation, slurred speech
 - f. Apparent difficulty in understanding simple questions or instructions
 - g. Apparent difficulty in focusing eyes upon an object, or refusal to look directly at the officer
3. Remember that other circumstances may cause a person to show signs and symptoms of intoxication, such as:
- a. Injuries or diseases of the nervous system.
 - b. Diabetics in need of insulin.
 - c. Diabetics who have taken an overdose of insulin.
 - d. Serious kidney ailments.
 - e. Head injuries.
 - f. Fatigue
4. It is imperative that the possibilities of such conditions be explored to
- a. prevent the injustice to an innocent person being prosecuted;
 - b. assure that persons who are ill or injured may not suffer further aggravation by being incarcerated;
 - c. anticipate a possible defense, real or alleged, to the charge of intoxication.
5. While the presence, or alleged presence, of any of the above conditions does not obviate a further or more complete examination by the officer, the subject's condition may require immediate medical attention.
- a. If this is suspected, the officer should then delay any further examination and bring the subject before a doctor competent to distinguish between the alleged condition and alcoholic influence
 - b. If the condition is found to be only resulting from alcohol, the physician is then in a position to furnish expert testimony as to the degree of intoxication and to rebut any other condition alleged.

- c. If deemed necessary, the officer may then complete the examination.
- L. The Test - Field tests are covered with curriculum for Performance Objective 9.5.4.
- M. The Decision - The officer must consider the totality of the circumstances in deciding if there is probable cause to arrest the driver for DUI.

XXVI. DRIVING UNDER THE INFLUENCE (LEARNING ACTIVITY 13.28.01)

- A. Students are required to participate in a facilitated discussion relating to driving under the influence cases. At a minimum, the discussion should address
1. Observations which drew the officer's attention to the suspect vehicle (the driving)
 2. How the driver reacted to the traffic stop
 3. Any signs of impairment during initial personal contact (the pre-test)
 4. The administration of field sobriety tests (FST) or field coordination tests (FCT)
 5. Arrest actions
 6. Application of implied consent
 7. Physical evidence considerations
 8. Documentation and notetaking

XXVII. OFFICER DUTIES TO DUI SUSPECT (PO 9.5.1)

A. Implied Consent

1. Enacted in 1966, "implied consent" means that everyone driving in California is understood to agree to chemical testing of the alcohol or drug content of his or her blood, if arrested for driving under the influence. The legislative intent was to avoid confrontations with intoxicated persons over evidence collection procedures because of their lack of knowledge.
2. When a driver refuses or fails to complete the chemical test, the arresting officer's sworn statement is sent to the Department of Motor Vehicles to support an administrative license suspension process on a DMV form DS 367. This process is independent of the original criminal charges.
3. There are four main issues in an Implied Consent case
 - a. Reasonable cause - that the person was driving and was under the influence of alcohol and/or drugs
 - b. Lawful arrest - in violation of CVC §§ 23152 or 23153
 - c. Admonition
 - d. Refusal

NOTE: The reasonable cause and lawful arrest issues will be dealt with in performance objective 9.5.2

4. Admonition
 - a. Implied Consent for Chemical Testing, § 23157 CVC
Requires drivers arrested for §§ 23512 or 23153 to be told
 - (1) the consequences of refusing a chemical test;
 - (2) of their choice of either a blood, breath, or urine test, if available;
 - (3) there is no right of counsel in connection with the test;
 - (4) that if they are unable to complete one test, another one must be selected.
 - b. The best method for giving the chemical test admonition is to read it in full from the most recent edition of the DMV refusal form, DS 367.
 - c. Officers must make clear to the suspect that a refusal will result in a suspended or revoked driving privilege.
 - d. The constitution right to an attorney prior to interrogation under Miranda does not apply to the chemical test procedure.

- e. Failure to give the chemical test admonishment only precludes the administrative suspension or revocation of the suspect's driving privilege. It does not affect the criminal prosecution for DUI.
- f. There is no requirement for special explanations to out of state drivers or juveniles.

5. Refusal

a. A refusal is

- (1) any statement, act, or conduct by the driver which directly refuses or qualifies compliance;
- (2) any failure to satisfactorily complete the chosen test or its alternative;
- (3) any delay in offering to provide a sample.

NOTE: If the suspect engages in assaultive or obviously uncooperative verbal abuse, the complete admonishment will not be required for the conduct to be considered a "refusal" (Morphew (1982) Cal.App.3d 738).

One offer plus one refusal equals one suspension (Dunlap (1984) 156 Cal.App.3d 279)

b. There is a basic presumption they have given consent.

- (1) Qualified consent is a refusal to take the test provided by statute. Thus, consent conditioned upon the test being administered by or in presence of the motorist's own physician or in presence of counsel is a refusal. Similarly, consent conditioned on taking all three tests is a refusal.
- (2) Motorist's confusion as affecting a finding of refusal.
 - (a) The rule that the officer need only advise the motorist in the statutory language is subject to one important qualification.
 - 1) Where the accused manifests confusion or lack of understanding other than that derived from voluntary intoxication, which is or should be apparent to the peace officer, and such confusion or lack of understanding is "police initiated", there is an affirmative duty to clarify the situation for the arrestee.
 - 2) Further, as a practical matter, dialogue between peace officer and arrestee will probably arise due to questions or statements by the arrestee.

- (b) In either case, the officer should bear in mind the dual requirements of the possible administrative hearing and consciousness of guilt argument in a criminal case and should not say anything which in any way negates an absolute duty to submit to and complete one of the three tests at the time the request is made by the officer.
 - (c) The basic problem in the "clarification" area is thus to make the duty to take the test and the consequences of a refusal clear to an individual while exercising care that the attempted clarification does not itself create more ambiguities.
- c. Right to counsel - Case law concerning confusion generated by the Miranda warning has centered around the right to counsel.

- (1) This has been met by statute, and Vehicle Code Section 23157 now specifically provides that the subject be advised that he does not have the right to counsel before or during the chemical test.

NOTE: Instructor should cover admonition under 23157.5 CVC re: retention of sample.

- (2) The officer should advise the arrestee of CVC 23157 and obtain compliance prior to the Miranda Warning whenever possible to avoid confusing the arrestee.

NOTE: All statements made prior to the officer arriving at the decision to arrest are admissible.

- d. Time and change of mind as affecting a refusal.

- (1) Delay in submitting to the test has been held to be contrary to the policy of the statute.
- (2) With this basic policy in mind, the accused should not be told anything which might imply that a right to delay exists.
- (3) Specifically, the accused should not be told anything which implies that a change of mind is possible.
- (4) If the accused has refused a request to submit to a test and later changes their mind, the test may be administered if practical due to its evidentiary value.
- (5) Once the subject refuses a second time or is enroute to jail, a change of mind will not excuse the refusal, but take the sample volunteered.

NOTE: Check local policy.

- e. Persons who demand all three tests.

- (1) Consent conditioned on taking all three tests is a refusal.
 - (2) Where an accused agrees to take one of the three tests and declines to choose among the three tests, there is no refusal.
 - (a) In the latter case, the officer must then offer one of the tests to the arrestee.
 - (b) A refusal would only occur if the accused declined one of the tests offered without stating a valid reason for the refusal.
- f. Motorist's request to have own physician. There are two separate problems here. First, when the accused wishes the test to be performed, or witnessed by the accused's own physician, and second, when the accused requests that an additional test be done by his own physician.
- (1) At the initial test - as discussed earlier, an accused has no right to have the test witnessed or performed by his own physician.
 - (a) Making the test conditional on this constitutes a refusal.
 - (b) If such a request is made, the motorist should be advised that no such rights exists.
 - (c) The language is set forth in the admonition.
 - (d) Do not merely reread the admonition. Ask the accused what part of the admonition the accused does not understand and explain only that part in your own words.
 - (e) Avoid confusion.
 - (2) For an additional test - as to the second problem, while an officer has no duty to take the initiative and advise an accused of his right to an additional test by his physician, at his own expense, denial of the opportunity to take such a test is a denial of due process (CVC § 23158(b)).

NOTE: 23157.5 V.C. does not affect a second sample by arrestee's physician.

- (a) Therefore, where an accused makes a statement which can be construed as a request for an additional test, the accused should be advised as set forth in the admonition.
- (b) This is in two parts. To avoid confusion, the accused should be advised that he has no right to have his own doctor witness or perform the initial test.

- (c) Then the accused should be advised that he does have a right to obtain an additional test and an opportunity will be provided for him to obtain one.
 - (d) But the accused should be cautioned that this right does not excuse him from submitting to and completing one or more of the tests now.
- g. Failure to complete test as a refusal
- (1) Necessity for completion of test. Section 23157 CVC provides that a motorist must submit to and complete one or more of the three tests.
 - (a) If the accused is unable to complete the test chosen, the accused must submit to and complete one of the other two tests.
 - (b) Inability or failure to complete a test does not excuse a refusal.
 - (2) Advise the motorist as to the necessity to complete the testing. Section 23157 CVC provides that the motorist be advised of his duty to complete the test chosen and that, if the motorist is unable to complete the chosen test, the motorist must submit to and complete one of the two remaining tests.
 - (a) The admonition sets forth language to be used where the motorist is, or claims to be, unable to complete the test initially chosen.
 - (b) It should be noted that failure to advise of the availability of the other two tests will, in this situation, result in a finding that no refusal occurred.

NOTE: Forced withdrawals are considered a refusal. Check local policy.

6. Chemical tests

a. Urine test

- (1) Privacy. Vehicle Code Section 23158(e) provides that, "If the test given under Section 23157 is a chemical test of urine, the person tested shall be given such privacy in the taking of the urine specimen as will insure the accuracy of the specimen and, at the same time, maintain the dignity of the individual involved." In weighing the interest of "accuracy of the specimen" against that of "dignity of the individual" the court, without considering maximum or minimum limits of privacy, held in essence that an intrusion into an accused's privacy, not greater than that usually experienced in a public restroom, complies with the statute. Subjects providing a

sample should be observed by an officer of the same sex or follow specific agency policy.

- (2) Inability to complete the urine test has been raised with respect to the practice of requiring the accused to void his bladder and then taking a sample no less than 20 minutes later. Failure to produce this sample after the 20 minutes have elapsed is also considered a refusal.

NOTE: Check with local policy to see if initial void is also required to be kept.

b. Blood test

(1) Procedure

- (a) Medically qualified - 23158(a) CVC
- (b) Medically approved manner
- (c) At the request of a peace officer

(2) Exemptions

- (a) Hemophilia
- (b) Person afflicted with a heart condition and using an anti-coagulant under the direction of a licensed physician and surgeon.

NOTE: Common anticoagulants are heparin and coumadin.

c. Breath test

- (1) Operator must be certified.
- (2) Two valid tests

7. Chemical Test Admonition statement

NOTE: The frequency of law changes in this area in recent years mandate reading the admonition direct from the most current version of the Chemical Test Refusal form, DS 367.

- a. You are required by State law to submit to a chemical test to determine the alcoholic content of your blood.
- b. You have a choice of taking a blood, breath, or urine test.
- c. If you refuse to submit to, or fail to complete, a test, your driving privilege will be suspended for one year, or revoked for two or three years. A two-year revocation will result if the refusal occurred within seven years of a

separate violation of driving under the influence and/or such a charge reduced to reckless driving, or vehicular manslaughter which resulted in a conviction or an administrative determination that you refused testing or were driving with an excessive concentration of alcohol on a separate occasion. A three-year revocation will result if you had more than one of these violations or administrative determinations within the last seven years.

- d. Refusal or failure to complete a test may be used against you in court. Refusal or failure to complete a test will also result in a fine and imprisonment if this arrest results in a conviction of driving under the influence.
- e. You do not have the right to talk to an attorney or to have an attorney present before stating whether you will submit to a test, before deciding which test to take, or during the test.
- f. If you cannot, or state you cannot, complete the test you choose, you must submit to and complete a remaining test.

NOTE: This information may be summarized unless a refusal.

- 8. The Drug Admonition is given following a completed breath test when the arresting officer believes the driver is under the influence of drugs.

NOTE: The officer cannot limit the test to be given.

- a. The breath test you have just taken is designed to detect only the alcoholic content of your blood.
- b. Because I believe you are under the influence of drugs or a combination of drugs and alcohol, you are required by state law to submit to a blood or urine test to determine the drug content of your blood.
- c. If you refuse to submit to, or fail to complete a test, your driving privilege will be suspended for one year or revoked for two or three years. A two-year revocation will result if the refusal occurred within seven years of a separate violation of driving under the influence and/or such a charge reduced to reckless driving, or vehicular manslaughter which resulted in a conviction or an administrative determination that you refused testing or were driving with an excessive concentration of alcohol on a separate occasion. A three-year revocation will result if you had more than one of these violations or administrative determinations within the last seven years.
- d. You do not have the right to talk to an attorney or have an attorney present before stating whether you will submit to a test, before deciding which test to take, or during the test.
- e. If you cannot, or state you cannot, complete the test you choose, you must submit to and complete the remaining test.

9. Tests by physical compulsion

- a. Although the implied consent law was intended to avoid the confrontation of "forcibly" removing samples from obstreperous intoxicated persons, a bodily fluid or breath sample may be forcibly removed without his or her consent, provided it is done in a reasonable, medically approved manner (Hawkins (1972) 6 Cal.3d 757, Schmerber (1966) 384 U.S. 757, Hammer (1991) 932F.2d 842, Fiscalini (1991) 228 Cal.App.3d 1639).

10. Injured or unconscious driver

- a. CVC § 23157 provides that an unconscious (or dead) person has not withdrawn their consent for chemical testing, therefore, the test may be administered.
- b. Injured drivers taken to a hospital for medical treatment are limited to the type of tests available at that facility.

B. Service of Notice: Seizure of Driver's License: Temporary Driver's License, § 23158.5 CVC - Administrative Per Se (APS)

1. In 1990, California became the 28th state to implement an immediate driver license suspension law "Admin per se" (APS). This section requires DMV to suspend or revoke the driving privilege when driving with a BAC of .08% or more.
 - a. This may be determined by a breath test.
 - b. This may be based on the arresting officer's opinion if the driver took a blood or urine test.
2. Refusal of a chemical test upon arrest

NOTE: Does not apply if under the influence of drugs only

3. Upon arrest, the driver's license is immediately confiscated and an order of suspension or revocation served (DMV form DS 360).
 - a. Confiscate valid California driver's licenses only.

NOTE: This temporary license is valid only if the suspect's driving privilege is valid. However, according to DMV, you should give the driver the DS 360 form in **every** situation, even where the driver has no license in his possession, is licensed out-of-state, or has been previously suspended or revoked. DMV will notify the driver's home state of California's suspension/revocation action.

C. Notes for officers

1. Most officers don't know that the DMV Hearing Referee never sees Crime and Arrest Reports; that all they see when a suspect refuses a blood alcohol test is that single sheet of paper titled "Officer's Statement" (DMV form DS 367).

2. DMV continues to have some problem with "refusals" documented on the form DS 367, particularly with respect to the reasonable cause for the "stop."
 - a. Apparently, the simple word, "accident" is not adequate for the administrative hearing. Repeating the information from the arrest report on DS 367, especially the identity of the citizen or officer who advised that the vehicle was not being driven properly (and what they observed) would satisfy this deficiency. Of course, if the arresting officer finds the arrestee behind the wheel in his wrecked car at the scene of the accident, the officer should so indicate, "I found John or Jane Doe seatbelted in the driver's seat of a wrecked vehicle that was wrapped around a tree".
 - b. If you stopped the car, you had some reason for thinking the driver was under the influence. Spell out exactly what you saw. "Erratic" is not adequate to give the Referee a vivid picture of a "smashed drunk driver" careening from curb to curb at a terrifying speed, appearing to be a likely bloody accident desperately looking for someplace to happen.

XXVIII. CONDUCT A FIELD SOBRIETY TEST (PO 9.5.4)

A. Examination locations

1. Prior to the administration of any field sobriety test the officer should try to avoid potential trouble areas. Although **any** area can be a potential trouble zone, it is generally agreed that certain places rank high on the list as being imminently dangerous. Examples are:
 - a. In front of a tavern
 - b. In front of a person's residence, with a gathering of people including family
 - c. In an area which has a history of racial strife and rioting
 - d. Within sight of any large gathering of people
 - e. In an area too close to passing traffic
2. If such a situation should present itself:
 - a. The suspect should be removed from the scene as quickly as possible, and the examination should be conducted elsewhere.
 - b. If the suspect proves not to be under the influence of alcohol and/or drugs, he should be released. (849(b)(1) P.C.)

NOTE: Refer to local agency's policy.

B. Examination by officer - classroom demonstration

1. Introduction

- a. The officer should observe the suspect's coordination at the location of apprehension.
- b. The officer should supplement his general observations by noting the specific actions of the suspect, such as manner of getting out of vehicle, ability to walk, ability to stand, speech, odor of breath, tremor of hands, condition of hair, condition of eyes, color of face, marks or injuries, general appearance, and unusual acts. Keep in mind that symptoms of intoxication are not always the result of the consumption of alcohol.
- c. Specific questions are asked about the motorist's ability to perform the test. General coordination is measured by observing the ability to perform simple tests.

NOTE: Refer to local agency forms.

- d. It should be emphasized that the tests should not be so complicated or difficult that the average sober person could not perform them.
 - (1) Remember, jurors will probably attempt the tests in the jury room during deliberation of a case.
 - (2) Each coordination test should be explained and demonstrated to the subject in such a manner that the subject understands just what is expected.
- e. Coordination and balance tests should not be given if the violator is obviously under the influence when the attempt could compromise the violator's physical safety. However, be sure to describe those obvious signs of impairment in your report.

2. Coordination and balance tests/field coordination tests

The following tests are sample coordination and balance tests. They are tools used by the officer to help determine if the suspect is under the influence of intoxicants. Optimally, tests should be conducted in a well-lighted area upon a smooth and level surface. Common elements of the tests include: (a) divided attention (subject required to do two things at once); (b) easily understood instructions; (c) can readily be accomplished by the average person.

NOTE: Do not ask a suspect to perform a test which could result in the suspect's injury.

- a. Finger to nose
 - (1) Test is ability to coordinate movements to accomplish touching tip of nose with finger tips, retain balance, and follow simple directions.
- b. Modified position of attention
 - (1) Subject stands at attention, heels and toes together, eyes closed, head tilted back slightly. Test is ability to retain balance. Observe and record sway and/or loss of position.
- c. Heel/toe
 - (1) Subject is directed to walk in a straight line placing one foot before the other in a heel against toe position. Test is ability to retain balance, place heel against toe, hands at sides, and maintain a straight course.
- d. Walking a line.
 - (1) Subject is directed to walk a specified distance, turn and return. Test is ability to retain balance, maintain a straight course and turn smoothly.

- e. Standing on line.
 - (1) Subject is directed to stand in a heel-to-toe position. Test is ability to retain balance, while conversing with officer.
- f. Pronunciation.
 - (1) Subject repeats the alphabet. An inquiry should be made to ascertain the subject's educational level if he has difficulty with this test. Test is ability to repeat the alphabet as would a sober, normal person in a slow, concise manner. Speech difficulties may negate test.
- g. Dexterity.
 - (1) Have subject count fingers. The subject touches index finger to thumb and counts "one" aloud, then middle finger to thumb and counts "two" aloud, third finger and counts "three" aloud, and little finger and counts "four" aloud. The order is then reversed: 4, 3, 2, and 1, this sequence should be repeated 2 or 3 times. Test is ability to coordinate finger movements and speech. Note instability or weaving during test.
 - (2) Have subject pat back of right fingers into palm of left hand, then turn right hand over and pat front of fingers into palm. This test should be performed several times in a relatively rapid manner. Test is ability to coordinate hand movements.
- h. One leg stand. Subject holds one leg up and forward, foot a few inches off ground, keeping arms straight down along sides. Subject counts to 30, saying aloud, 1000, and 1, 1000 and 2, etc.
- i. Horizontal Gaze Nystagmus
 - (1) When administering the horizontal gaze nystagmus test, each eye is checked separately. In checking an eye, the officer looks closely for three different clues or indicators:
 - (a) Is the eye unable to smoothly pursue a smoothly moving object passing back and forth in the suspect's field of view?
 - (b) When the eye is held as far to the side as it can go, is the jerking distinct?
 - (c) Does the jerking begin before the eye moves to a 45 degree angle of gaze?

As a person's blood alcohol concentration increases, the more likely it becomes that these clues will appear.

NOTE: The student will practice the procedure on another student, first using a 12" to 15" protractor, then without the protractor. Do not use protractor nor measure angle of onset in field situations.

(2) Procedure

- (a) There must be enough light to see the reaction. Have subject remove glasses.
- (b) Provide an object for the subject to focus on, for example, the eraser at the end of a pencil or the top of a penlight. It should be held approximately 15 inches from subject's eyes. Moving the object 15 inches off center will approximate 45°.
- (c) Raise subject's eyes so that some white shows below the iris (color).
- (d) Sweep eyes either to the right or left and note if angle of onset is before 45°. Then bring eyes to center. Again sweep eyes to maximum deviation and note smoothness of pursuit and nystagmus at maximum deviation. Repeat process in other direction.

(3) Cautions

- (a) If angle of onset is not the same in each eye, check to see if pupil sizes are different (asymmetric). The nystagmus may be neural, subject may have a head injury. Get subject immediate medical treatment.
- (b) 50% of the population has end point nystagmus.
- (c) Approximately 4% of the population will have early onset which could be mistaken for intoxication.
- (d) Check for eye injuries. Does subject have an artificial eye? Do not have subject remove contacts, however, note their presence in report. You may not want to administer test as there is a risk that hard contacts may dislodge at extremes.

(4) Effect of Other Drugs

- (a) PCP will cause horizontal and vertical nystagmus.
- (b) Central Nervous System depressants such as barbiturates, methaqualone, and Chloral Hydrate cause horizontal nystagmus.

NOTE: Tranquilizers do not cause nystagmus.

- (c) Toluene (glue) causes horizontal and vertical nystagmus.

(d) Marijuana does not cause nystagmus.

3. Examination by physician when injury or illness suspected.

- a. Special examination can be made by qualified physicians.
- b. These generally include a general clinical examination to distinguish genuine illness from intoxication.
- c. The physician usually prepares a certificate stating the results of the various tests and certifying whether or not the person is under the influence of alcohol.
- d. The physician's opinion is based on his medical training and knowledge and the observed condition of the suspect and does not consider the officer's observation of the suspect's driving.
- e. The results of a physician's examination of a suspect, the laboratory analysis of blood, breath, urine and other body fluids are all means of determining the suspect's physical condition. They tend to corroborate the officer's charge.
- f. Prosecution should be founded upon as broad a base of evidence as is possible.
 - (1) It is recognized, however, for various reasons the suspect either may not or cannot supply information through physical testing by the officer.
 - (2) In these cases, it may be necessary to rely wholly on a physician's statement or chemical tests or both.

4. Refusal to cooperate

- a. What should be done if the subject refuses to cooperate in the performance of the various tests.
- b. It is impossible to demand or force anyone to complete a coordination test against their will.
- c. Note subject's lack of cooperation and testify to such fact at the time of the court trial.
- d. It should be noted, however, that the subject must understand the significance of the test and his refusal to take it.

C. Arrest Without Warrant 40300.5 (Procedural Section)

1. At collision scene

- a. Must be involved as a driver in an accident. Applies anywhere.

- b. Reasonable cause.
 - c. Driving under influence.
2. Vehicle found obstructing roadway
- a. Suspected driver found in or around vehicle
 - b. Vehicle obstructing roadway
 - c. Reasonable cause was DUI
3. Related section: 40300.6 CVC

XXIX. TRAFFIC DIRECTION HAND SIGNALS (PO 9.12.1)

A. Traffic direction

1. Simple/complex intersection(s) or highway(s) may require direction by more than one officer (with primary direction officer in charge).
2. Hand signals
 - a. "Stop" - To stop driver, two motions are used:
 - (1) Considering stopping distances, point with your arm extended and fingers and look straight at the driver.
 - (2) Watch the driver and hold this point until the driver sees the signal, or at least until the driver has had plenty of time to do so.
 - (3) Then raise your pointing hand (but not the whole arm) so that the palm is toward the driver.
 - (4) Hold this position until the vehicle stops.
 - (5) You have to stop traffic from both directions in all lanes to give traffic on the cross-street the right-of-way.
 - (6) Because you cannot look both ways at once, stop the traffic coming from one direction first, then the other.
 - (7) After the traffic has been halted with one hand, hold that hand in the stop position and turn to the other side and repeat the process.
 - (8) Don't lower either arm until cars coming from both directions are halted.
 - b. "Start" - To start traffic, place yourself so that one side is toward the traffic to be started.
 - (1) Point with your arm and finger toward the car wanted to start.
 - (2) Hold this position until you get the driver's attention.
 - (3) Then, with your palm up, swing your hand up and over your chin. Bend your arm only at the elbow.
 - (4) After traffic has been started from one side, drop that arm and start traffic from the other side in the same manner.
 - c. "Keep moving" - Continue to use the same signals for the slow and timid drivers.

- d. Right turn. Signals for a right turn movement are not usually required at an intersection.
- (1) When it is necessary, the arm you signal with will be determined by the car's direction.
 - (a) If the car approaches from the right, point toward the driver with your right arm.
 - (b) If the car approaches you from the left, point with your left arm.
 - (c) Give the driver time to see your gesture and then swing your arm to point in the direction the vehicle is to proceed.
 - (d) Keep pointing in that direction until the driver turns.
- e. Left turn. In directing a driver to make a left turn, you may first have to halt traffic in the lane or lanes through which the turning car is to cross.
- (1) If the car is approaching from your left, give the stop signal with your right arm to stop traffic in the lane through which the turning driver is to cross.
 - (a) Hold the stop signal with your right arm.
 - (b) Then give the turning gesture with the left arm.
 - (2) If the car approaches from the right.
 - (a) Turn around so to face in the direction the car is to go.
 - (b) Halt traffic with your right arm and give the turning gesture with your left arm.
 - (3) On a street with only one available lane in each direction.
 - (a) One driver, wishing to make a left turn, can delay many cars behind him unless you handle their movement properly.
 - (b) While the driver is waiting, signal the driver to move into the intersection so that the cars behind the driver can continue straight through or make right turns.
 - (c) Point a finger at the driver, motion the driver to move forward, and finally point to the place on the pavement where it is desired for the driver to stop.
 - (d) As soon as the vehicle begins to move, signal the cars behind it to move straight through or turn right.

- (e) Permit the left turn when there is a natural break in the opposing traffic or stop the opposing traffic and signal for the left turn.

3. The whistle

- a. The whistle is used in conjunction with hand signals to get the attention of drivers and pedestrians. It is used as follows:

- (1) One long blast with a stop hand signal
- (2) Two short blasts with the "start" hand signal
- (3) Several short blasts to get the attention of a driver or pedestrian who does not respond to a given signal

NOTE: Instructor should demonstrate these signals as they are noted in lecture.

- b. Be judicious in the use of the whistle. Whistle blasts directed to pedestrians usually need not be as shrill as those to command attention of motorists.

4. Voice

- a. The voice is sometimes used in directing traffic.

- (1) Arm gestures and the whistle are usually sufficient.
- (2) There are numerous reasons why verbal commands are not used.
 - (a) Verbal orders are not easy to give or understand and often lead to misinterpretations which are dangerous.
 - (b) An order which is shouted can antagonize an individual.
- (3) Occasionally a driver or pedestrian will not understand your arm signals.
 - (a) When this happens move reasonably closer to the person and politely and briefly explain the command.
 - (b) Don't shout or lose your temper, even though you may be provoked.

XXX. TRAFFIC DIRECTION USING A FLASHLIGHT (PO 9.12.3)

A. Flashlight (at night)

1. A flashlight can be used to halt traffic in an emergency.
2. To stop traffic, slowly swing the flashlight at arm's length across the path of the approaching vehicle.
3. The beam from the flashlight strikes the pavement as an elongated spot of moving light which is readily seen by the motorists.
4. Do not stand directly in front of the approaching vehicle.
5. Avoid blinding the motorist with the flashlight beam.

**XXXI. TRAFFIC CONTROL DEVICES (PO 9.12.4)
HIGHWAY FLARE LEARNING ACTIVITY (13.28.02)**

- A. Purpose of warning devices to warn, guide and direct traffic
- B. Warning device types
 - 1. Flare (fusee)
 - 2. Cones
 - 3. Barricades and signs
- C. Flare use applications
 - 1. Situations for use
 - a. Hazard expected to last sufficient time to warrant taking the time
 - b. Night time hazards on the shoulder or side of road
 - c. Obstruction in a traffic lane (night or day time)
 - 2. CAUTION: Improper use could add to the hazard
 - a. Do not use around flammable substance spills (gas, oil, etc.) or in hazardous environmental conditions (grass fields, high winds).
 - (1) Other environmental concerns (rain spattering, Botts dots)
 - b. Provide sufficient advance warning
 - (1) Average perception/reaction time [1.5 secs] for non-impaired drivers
 - (2) Total stopping distance = perception/reaction + braking distance
 - c. Do not channel vehicles into additional hazards
 - 3. Civil Liability - negligence
 - a. After voluntary assumption of a duty, one is liable if his failure to exercise due care increases the risk of harm, or if the harm is suffered because of the other's reliance upon the undertaking. [Westbrooks v. State of CA (Ventura S.O.) 173 Cal.App. 3rd 1203(1985)]
- D. Proper Lighting/Extinguishing
 - 1. Lighting
 - a. Remove cap to expose strike plate

- b. Hold at arms length
- c. Contact and hold flare against strike plate
- d. Turn face away from strike area
- e. STRIKE FLARE MOVING IT AWAY FROM YOUR BODY!

2. Extinguishing

- a. Pick up at non-burning end only if at least three inches remain
- b. Tap/scrape the side of the burning end against pavement until extinguished
- c. DO NOT THROW (nor kick) LIT FLARE!
- d. Let short flares (anytime the non-burning end feels warm to the touch), burn out. Do not step on to extinguish
- e. Properly dispose of all unburned ends. DO NOT LEAVE ON THE STREET

E. Lane Channelization

- 1. Give traffic advance notice
- 2. Give traffic a safe channel
- 3. Taper flare in accordance with Traffic Manual whenever possible
 - a. Speed of vehicles x Width of closure = Length of taper [S x W = L]
 - b. At speeds of less than 40 mph, $L = WS_2/60$ is acceptable
 - c. The maximum spacing between channelizing devices in a taper should be approximately equal in feet to the speed limit
 - d. Under emergency conditions, give as much warning as possible. Increase to these standards as soon as sufficient resources are available

Approach Speed (MPH)	Taper Length *	Number of Cones/flares for taper *	Cone/flare spacing along taper
25	125	6	25
30	180	7	30
35	245	8	35
40	320	9	40
45	540	13	45
50	600	13	50
55	1000	21	50

* Based on closing a single lane of 12 foot width or less

F. Demonstrate:

1. Lighting a flare
2. Extinguishing a flare
3. Stacking for extended time
4. Aiming burning end toward oncoming traffic
5. Use of tabs to prevent rolling

G. Cone Use

1. Cones may be used as a substitute for flares in daytime situations
2. Illuminated cones may be used as a substitute for flares in nighttime situations
3. See enclosed illustrations regarding flare patterns

H. Barricades and signs

1. Barricades and signs may be used for long-term situations

**PERFORMANCE OBJECTIVES FOR
LEARNING DOMAIN #28**

KNOWLEDGE TEST:

- 9.2.1 Given a Vehicle Code and a definition of one of the following terms, the student will identify the term that matches the definition.
- A. Alley (110 V.C.)
 - B. Street (590 V.C.)
 - C. Freeway (332 V.C.)
 - D. Roadway (530 V.C.)
 - E. Sidewalk (555 V.C.)
 - F. Crosswalk (275 V.C.)
 - G. Limit line (377 V.C.)
 - H. Intersection (365 V.C.)
 - I. Highway (360 V.C.)
 - J. Darkness (280 V.C.)
 - K. Vehicle (670 V.C.)
- 9.3.1 Given a Vehicle Code and a word picture depicting a possible registration violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 4000(a), 4159, 4454(a), 5200, 5201 and 5204(a))
- 9.3.2 Given a Vehicle Code and a word picture depicting a possible driver licensing violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 12500, 12951, 14601, 14601.1, 14601.2 and 14603)
- 9.4.1 Given a Vehicle Code and a word picture depicting a possible unsafe vehicle or a vehicle not safely loaded, or the unlawful operation after notice by a peace officer, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 24002 and 24004)
- 9.4.2 Given a Vehicle Code and a word picture depicting a possible hit and run accident, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number and crime classification. (Vehicle Code Sections 20000, 20001(a), and 20002(a))
- 9.4.3 Given a Vehicle Code and a word picture depicting a possible violation of official traffic control signals and devices, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 21460, 21460.5(a) and 21461(a))
- 9.4.4 Given a Vehicle Code and a word picture depicting a possible vehicle failure to yield the right-of-way violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 21800 through 21804)

- 9.4.5 Given a Vehicle Code and a word picture depicting a possible failure to yield to an emergency vehicle, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Section 21806)
- 9.4.6 Given a Vehicle Code and a word picture depicting a possible turning violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 22100, 22100.5, 22101-22105, 22107-22108)
- 9.4.7 Given a Vehicle Code and a word picture depicting a possible speed violation, the student will identify if a violation has occurred, and if it has occurred, identify it by its common name or section number. (Vehicle Code Sections 21654, 22349, 22350 and 22400)
- 9.4.9 Given a Vehicle Code and a word picture depicting a possible vehicle passing a stopped school bus which has its red lights flashing, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Section 22454)
- 9.4.10 Given a Vehicle Code and a word picture depicting a possible required stop violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 22450)
- 9.4.11 Given a Vehicle Code and a word picture depicting a possible vehicle equipment violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 24400, 24603 and 27150)
- 9.4.12 Given a Vehicle Code and a word picture depicting a possible following too close violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Section 21703)
- 9.4.13 Given a Vehicle Code and a word picture depicting a possible public offense, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 23103, 23109 and 23110)
- 9.4.14 Given a Vehicle Code and a word picture depicting a possible overtaking, passing or unsafe lane change violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 21650, 21651, 21658(a) 21752, and 21755)
- 9.4.15 Given a Vehicle Code and a word picture depicting a possible failure to obey the lawful orders of a peace officer or flare and/or cone pattern violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 2800, 2800.1, 2800.2, 2800.3 and 2818)
- 9.4.16 Given a Vehicle Code and a word picture depicting a possible personal safety equipment violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 23116, 27315, and 27360)

- 9.4.17 Given a Vehicle Code and a word picture depicting a possible red signal light violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Section 21453 and 21457)
- 9.4.18 Given a Vehicle Code and a word picture depicting a possible pedestrian violation, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 21950, 21951, and 21954)
- 9.5.1 Given a word picture depicting a person driving under the influence of alcohol, drugs or combination thereof, the student will identify a course of action consistent with the following responsibilities of an officer making an arrest for driving under the influence: (Vehicle Code Sections 23157 and 23158.5(a)(b))
- A. The officer must inform the driver of the choice between a blood, breath, or urine test
 - B. The officer must inform the driver of the penalties for failure to submit to a chemical test
 - C. The officer must inform the driver of not being entitled to an attorney before or during the chemical test
 - D. The officer must inform the driver that the driver must submit to a secondary test of blood or urine if drugs are suspected
 - E. The officer may order a chemical test on a driver who is deceased, unconscious or otherwise incapable of refusing a test
 - F. The officer shall serve a notice of suspension personally on the arrested person as appropriate of the person's privilege to operate a motor vehicle (Admin Per Se)
- 9.5.2 Given a Vehicle Code and a word picture depicting a driver who is possibly under the influence of alcohol, drugs, or a combination thereof, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number and crime classification. (Vehicle Code Sections 23140, 23152, 23153, and 23175)
- 9.5.3 Given a Vehicle Code and a word picture depicting the possible consumption and/or possession of alcoholic beverages in a motor vehicle, the student will identify if a violation has occurred, and if it has occurred, will identify it by its common name or section number. (Vehicle Code Sections 23220 through 23226, 23229 and 23229.1)
- 9.15.1 Given a Vehicle Code and a word picture depicting a situation where an officer may have the authority to remove a vehicle, the student will identify, if the authority exists, and if it exists, will identify the Vehicle Code Section which authorizes the removal.

These sections are as follows:

- A. Vehicle is abandoned (Vehicle Code Section 22669(a))
- B. Vehicle is a traffic hazard (Vehicle Code Section 22651(b))
- C. Incident to an arrest (Vehicle Code Section 22651(h))
- D. Vehicle is stored for safekeeping (Vehicle Code Section 22651(g))
- E. Vehicle is stolen, recovered, and not released in field (Vehicle Code Sections 22651(c) and 22653(a))

- F. Vehicle is held for investigation (Vehicle Code Section 22655.5)
- G. Vehicle is involved in hit and run (Vehicle Code Sections 22655 and 22653(b))
- H. Vehicle is held because the driver is unlicensed (Vehicle Code Section 22651(p))
- I. Vehicle is held because the vehicle is not registered (Vehicle Code Section 22651(o))

9.16.1 Given a Vehicle Code and a word picture depicting a possible arrest situation, the student will identify whether or not a mandatory or an optional appearance is required according to the provisions of the Vehicle Code. (Vehicle Code Sections 40301, 40302 and 40303)

EXERCISES:

9.12.1 The student will demonstrate the following recognized traffic hand signals for a driver to:

- A. Stop
- B. Turn right
- C. Turn left
- D. Start
- E. Keep moving

9.12.2 (Deleted 3-1-93)

9.12.3 The student will demonstrate an acceptable method for using the flashlight to direct traffic in the hours of darkness.

9.12.4 Given an audio-visual presentation, transparency picture, handout, or exercises depicting an accident scene, the student will mark where to place particular types of traffic control devices that will best protect persons and property with regard to the presence of flammable materials and traffic flow.

9.15.2 Given a practical exercise, the student will prepare a storage or impound report.

9.5.4 The student will administer a field sobriety examination.

SUPPORTING MATERIAL

AND

REFERENCES

This section is set up as reference information for use by training institutions. These materials can be used for instruction, remediation, additional reading, viewing, or for planning local blocks of instruction. This list is not an endorsement of any author, publisher, producer, or presentation. Each training institution should establish its own list of reference materials.

**TOPICAL LIST OF SUPPORTING MATERIALS AND
REFERENCES INCLUDED IN THIS SECTION**

Sample Forms:

Verbal Notice
Notice of Priority Re-examination of Driver
Administrative Per Se Order of Suspension/Revocation
Officer's Statement
Supplement to Officer's Statement
Pictorial Description of Highway Components



A Public Service Agency

VERBAL NOTICE BY PEACE OFFICER, DMV OR COURT EMPLOYEE

310

(SEE OVER FOR INSTRUCTIONS)

1. NAME			2. DRIVER LICENSE NUMBER		
3. ADDRESS			IF NEW ADDRESS PLEASE CHECK HERE <input type="checkbox"/>		
CITY	STATE	ZIP CODE	4. DATE OF BIRTH (MO., DAY, YR.) / /		
5. ACTION TAKEN		6. EFFECTIVE DATE		7. VEHICLE CODE AUTHORITY SECTION	
<input type="checkbox"/> Suspended	<input type="checkbox"/> Revoked	MO.	DAY	YR.	
<input type="checkbox"/> Suspended	<input type="checkbox"/> Revoked	/	/	/	
<input type="checkbox"/> Suspended	<input type="checkbox"/> Revoked	/	/	/	
<input type="checkbox"/> Suspended	<input type="checkbox"/> Revoked	/	/	/	

The above named person was advised by:

8. SIGNED			TITLE OR BADGE NO.		
X					
AGENCY			DATE		
CITY	STATE	ZIP CODE			

that the above action was taken against his/her driving privilege under the authority of the Section of the California Vehicle Code indicated. That person understands that driving a motor vehicle is not permitted until official notification of reinstatement is received from the Department of Motor Vehicles.

9. SIGNATURE OF PERSON SERVED:

X

IMPORTANT:

Please obtain any suspended or revoked driver license and forward to the Department of Motor Vehicles pursuant to the authority set forth in Sections 4460 and 13550, California Vehicle Code.

10. WAS UNEXPIRED LICENSE CONFISCATED?

- Yes, please enclose the license
- No, please explain: _____

Mail to: Department of Motor Vehicles
P. O. BOX 942890
Sacramento, CA 94290-0001

11.

FOR OPEN COURT USE ONLY

DOCKET NO.	SECTION VIOLATED
WITNESS	
DATE	COURT CODE

**INSTRUCTIONS FOR COMPLETING DL-310
(Verbal Notice Form)**

STEP	PROCEDURE								
1.	Enter complete first, middle and last name (list additional names in Section #10).								
2.	<table border="1"> <thead> <tr> <th data-bbox="313 384 657 426">IF license is . . .</th> <th data-bbox="657 384 1260 426">THEN enter . . .</th> </tr> </thead> <tbody> <tr> <td data-bbox="313 426 657 468">from California</td> <td data-bbox="657 426 1260 468">number</td> </tr> <tr> <td data-bbox="313 468 657 510">from out-of-state</td> <td data-bbox="657 468 1260 510">number and name of state</td> </tr> <tr> <td data-bbox="313 510 657 552">not available</td> <td data-bbox="657 510 1260 552">"X" prefix file number or none</td> </tr> </tbody> </table>	IF license is . . .	THEN enter . . .	from California	number	from out-of-state	number and name of state	not available	"X" prefix file number or none
IF license is . . .	THEN enter . . .								
from California	number								
from out-of-state	number and name of state								
not available	"X" prefix file number or none								
3.	List current mailing address. If P. O. Box, also list current residence address in Section #10. If new address, please check box.								
4.	Enter month, day and year.								
5.*	Check appropriate box. If more than three, complete second form and staple together.								
6.*	Write in the date that the suspension or revocation became (or will become) effective.								
7.*	List authority section that is the basis for the action.								
8.	Please sign and complete this information. Your testimony may be needed in the future. Be sure to include the date the driver was advised of the suspension or revocation.								
9.	Have the person sign the form or write an explanation (e.g., "refused to sign"). The service is still valid without signature.								
10.	Check appropriate box (if yes, enclose the license with the form). Write a brief explanation if the license is not being sent in with the form (e.g., license lost, etc.).								
11.	Judges and court personnel only complete these boxes when giving verbal service of a suspension or revocation resulting from the case being adjudicated (this form is NOT used for a court suspension).								

*Information needed to complete items 5, 6 and 7 can be found in the Department History of Actions section of the driver record (if suspension or revocation is already in effect).



A Public Service Agency

NOTICE OF PRIORITY RE-EXAMINATION OF DRIVER

Requesting Agency : _____

Street Address : _____

City, Zip Code : _____

DATE	TIME	DAY OF WEEK

NAME (FIRST, MIDDLE, LAST) _____

MAILING ADDRESS _____ CITY _____ ZIP _____

VEHICLE LICENSE _____ STATE _____

DRIVER'S LICENSE NO.	STATE	CLASS	BIRTH DATE	
SEX	HAIR	EYES	HEIGHT	WEIGHT

LOCATION OF INCIDENT _____

NOTICE TO APPEAR NO. (Attach copy of citation)	CODE VIOLATION
ACCIDENT/ARREST NO.	CITY _____ COUNTY _____

SUMMARY: Describe actions of the driver which led you to believe a re-examination is needed — describe any impairment.

(Continued on reverse)

NOTICE OF REEXAMINATION: You will need to appear for reexamination based on the provisions of Sections 12818 and 12819 of the Vehicle Code. **SEE OVER FOR IMPORTANT INFORMATION.**

Driver Signature: **X**

OFFICER	I.D. NUMBER

Do you wish to be notified of results? Yes No

DS 427 (NEW 9/91)

Pink - DMV
 Canary - Driver
 White - Law Enforcement

IMPORTANT INFORMATION FOR DRIVER:

If you do not appear within five (5) work days, your driving privilege will be suspended until you satisfactorily complete a reexamination. Immediately telephone one of the DMV Driver Safety Offices listed below for an appointment as soon as possible to assure being seen before this suspension goes into effect. At the time of your appointment, bring this form and be prepared to take a written, vision, and driving test. You must show evidence of financial responsibility for the vehicle before taking a drive test. If you fail to qualify for a driver license following your appointment, you must have a licensed driver available to drive your car.

**DEPARTMENT OF MOTOR VEHICLES
DRIVER SAFETY OFFICES**

LOCATION	TELEPHONE	ADDRESS
<input type="checkbox"/> Bakersfield	(805) 395-2844	3120 "F" Street, 93301
<input type="checkbox"/> Concord	(510) 686-0738	1855 Gateway Blvd., Ste 330, 94520
<input type="checkbox"/> Eureka	(707) 445-6491	2921 "E" Street, Ste B, 95501
<input type="checkbox"/> Fresno	(209) 488-4292	1551 E. Shaw, Ste 128, 93710
<input type="checkbox"/> Inglewood	(310) 412-6412	621 N. La Brea Avenue, 90302
<input type="checkbox"/> Long Beach	(310) 426-9321	3754 Long Beach Blvd., 90807
<input type="checkbox"/> Los Angeles	(213) 744-7579	3615 S. Hope Street, Rm 110, 90007
<input type="checkbox"/> Montebello	(213) 724-4000	424 N. Wilcox Avenue, 90640
<input type="checkbox"/> Oakland	(510) 464-0896	5300 Claremont Avenue, 2nd Flr, 94618
<input type="checkbox"/> Oxnard	(805) 488-0863	4050 S. Saviers Road, 93033
<input type="checkbox"/> Redding	(916) 225-2110	2135 Akard Avenue, 96001 (P.O. Box 1090, 96099)
<input type="checkbox"/> Sacramento	(916) 657-6490	2570 24th Street, Rm 202, 95818 (P.O. Box 162050, 95816)
<input type="checkbox"/> San Bernardino	(714) 824-0241	2086 S. "E" Street, Ste 100, 92408
<input type="checkbox"/> San Diego	(619) 237-7248	3960 Normal Street, 2nd Flr, 92103
<input type="checkbox"/> San Francisco	(415) 557-1170	1377 Fell Street, 2nd Flr, 94117
<input type="checkbox"/> San Jose	(408) 277-1314	111 West Alma Avenue, 95110
<input type="checkbox"/> Santa Ana	(714) 558-4334	1330 E. First Street, 2nd Flr, 92701
<input type="checkbox"/> Santa Rosa	(707) 576-2401	2570 Corby Avenue, 95407
<input type="checkbox"/> Seaside	(408) 649-2945	1180 Canyon Del Rey, 93955
<input type="checkbox"/> Stockton	(209) 948-7692	4330 N. Pershing Avenue, Ste B-2, 95207
<input type="checkbox"/> Van Nuys	(818) 901-5467	7400 Van Nuys Blvd., Ste 201, 91405
<input type="checkbox"/> West Covina	(818) 960-3066	800 S. Glendora Avenue, 91790
<input type="checkbox"/> Yuba City	(916) 741-4281	1570 Poole Blvd., 95993



ADMINISTRATIVE PER SE
ORDER OF SUSPENSION/REVOICATION
TEMPORARY LICENSE ENDORSEMENT

LAW ENFORCEMENT CASE OR CITATION NO.
ARREST DATE

Driver must be given copy of this order if completed by officer.

If you have any questions regarding this matter, please call the Department of Motor Vehicles at (916) 657-0214.

Driver's Name _____ D.L. No. _____ State _____

Driver's Physical Description: Sex: _____ DOB: _____ Hair: _____ Eyes: _____ Ht.: _____ Wt.: _____

You are hereby notified that your privilege to operate a motor vehicle will be suspended or revoked effective 30 days from the arrest date shown above.

This action is taken under authority of Section 13353 or 13353.2 of the Vehicle Code (VC) because you were arrested for driving under the influence of alcohol or drugs and you:

- Refused to submit to, or failed to complete, the chemical test of the alcoholic and/or drug content of your blood.
OR
- Completed a **breath** test with a blood alcohol concentration of .08 percent or greater.
OR
- Completed a **urine** or **blood** test and the officer believes that the results will show your blood alcohol concentration to be .08 percent or greater.

NOTE: If the results show that your blood alcohol concentration is less than .08 percent, this suspension will be set aside before it goes into effect and your driver license will be returned to you.

TEMPORARY LICENSE ENDORSEMENT

This document must be carried with you and shall serve as your temporary California Driver's License. It is subject to the same class(es) and all restrictions as on your permanent license. **This temporary license does not provide you with any driving privileges if you do not have a California Driver's License or your license is expired, suspended, revoked, cancelled or denied.** It expires at midnight 30 days from the arrest date shown on this document.

Driver license: Suspended Revoked Not in possession

Driver license surrendered to officer: Yes No

Signature of Issuing Officer _____ Issue date of this notice _____

Officer's Name (please print) _____ Agency _____ I.D. No. _____

DRIVER INFORMATION

An administrative review will automatically be conducted. You will be notified in writing only if the suspension/revocation is set aside.

Before a driver license can be issued or returned to you, a \$100 reissue fee must be paid to the Department of Motor Vehicles (Section 14905 VC) and you must file proof of financial responsibility by a California Insurance Proof Certificate (SR-22), \$35,000 cash deposit or surety bond, or self insurer certificate (Section 16430 VC). You must maintain proof of financial responsibility for three years. **Completion of a drinking driver program is required if convicted of a violation of Section 23152 or 23153 VC.**

If you drive while your driving privilege is suspended or revoked, you may be arrested and, if convicted, jailed and/or fined.

HEARINGS

You may request a **hearing** to show that the suspension or revocation is not justified. Hearings are conducted only to determine questions of fact as described on the reverse. Your need for a license cannot be considered at a hearing. If you want a hearing or have questions regarding this matter, contact the Department of Motor Vehicles at the telephone number shown at the top of this form. **YOUR HEARING REQUEST MUST BE MADE WITHIN 30 DAYS OF RECEIPT OF THIS NOTICE.** No stay will be granted unless you request a hearing within 10 days of receipt of this notice and the department cannot provide a hearing within that time.

Before the hearing you may see or obtain copies of the department's evidence. If you want the information released to someone else, give them signed permission.

REFUSAL TO SUBMIT TO OR FAILURE TO COMPLETE CHEMICAL TEST

(VEHICLE CODE SECTION 13353)

The term of the driving privilege suspension for REFUSAL OR FAILURE TO COMPLETE THE CHEMICAL TEST IS **ONE YEAR FOR THE FIRST OFFENSE.** A **TWO YEAR** REVOCATION WILL RESULT IF THIS REFUSAL OR FAILURE TO COMPLETE THE CHEMICAL TEST OCCURRED WITHIN SEVEN YEARS OF A SEPARATE VIOLATION of driving under the influence and including such charge reduced to reckless driving or vehicular manslaughter which resulted in a conviction or administrative determination. A **THREE YEAR** REVOCATION WILL RESULT IF YOU HAD MORE THAN ONE OF THESE VIOLATIONS OR ADMINISTRATIVE DETERMINATIONS WITHIN SEVEN YEARS.

CHEMICAL TEST RESULTS SHOW BAC .08% OR MORE

(Vehicle Code Sections 13353.2 and 13353.3)

A first offense of driving with a blood alcohol concentration (BAC) of .08 percent or more results in a 4 month suspension. A second or subsequent offense within 7 years of a DUI or a reduced to reckless driving conviction, or vehicular manslaughter, or previous administrative determination that you refused a chemical test or were driving with excessive BAC, results in a 1 year suspension.

DRINKING DRIVER PROGRAM RESTRICTED LICENSE

FOR FIRST OFFENDERS ONLY WITH BAC .08% OR MORE

(Vehicle Code Section 13353.7)

If you enroll in an approved and licensed Drinking Driver Program (DDP) as described in Section 23161(b) VC, your driving privilege will be suspended for 30 days. Following the 30-day suspension and upon presenting to DMV your Verification of Enrollment, DS 626, obtained from the program, you may apply to the department for a 60-day restricted license "limited to travel to and from activities required in the alcohol treatment program." Before receiving any DDP restriction, you must pay a \$100 reissue fee, file and maintain proof of financial responsibility. On or after 60 days after the effective date of the restricted license, and upon notification of successful completion of the program, the department may issue an unrestricted driver's license. Completion of a treatment program is required if convicted of a violation of Section 23152 or 23153 VC.

If you do not apply for a restricted license upon successful completion of the DDP, you may request your suspension end early. However, in this case, the suspension may not be ended in less than 90 days.

If you enroll and fail to participate or do not complete the DDP, the department will immediately revoke your restricted license and reimpose the suspension for up to 4 months from the day your suspension began.

COURSE OF EMPLOYMENT RESTRICTED LICENSE

FOR FIRST OFFENDER COMMERCIAL DRIVERS ONLY WITH BAC .08% OR MORE

(Vehicle Code Section 13353.6)

If you have a valid unexpired commercial driver license, as defined in Section 15210 VC, and you were **NOT** operating a commercial vehicle at the time of your arrest, your driving privilege will be suspended for 30 days. Following the 30-day suspension, you may apply to the department for a license "restricted to operating a motor vehicle only to and from and in the course of employment." The term of restriction will be for no less than 5 months (150 days) after the 30-day suspension ends. Before receiving a course of employment restriction you must pay a \$100 reissue fee. You may also enroll in the DDP as shown above.

DEPARTMENT OF MOTOR VEHICLES ADMINISTRATIVE PER SE HEARINGS

You may appear at the hearing in person to present oral testimony and other evidence, or you may file the information you would like to present in written form. Testimony is taken under oath or affirmation, and the proceedings are recorded. You may be represented by legal counsel, or you may appear on your own behalf. Failure to appear or be represented at this hearing is a waiver of your right to a hearing. The arresting officer(s) will not be subpoenaed in this matter. The department reserves the right to continue this matter if it is later determined that the arresting officer(s) testimony is needed. **HOWEVER**, if you wish to question the arresting officer(s), you have the right to have subpoenas issued on your behalf. You may subpoena any other witness you feel may help your case, and you have the right to cross-examine any opposing witness. Subpoenas will be issued by the hearing officer upon request prior to the hearing. You are responsible for service of your subpoena(s) and any witness fees required by law.

After a hearing, the hearing officer or board shall make findings and render a decision. The decision will be reviewed upon your request. You have the right to seek a court review of the decision following the hearing provided you do so within 30 days from the date on the bottom of your Administrative Per Se Notice of Findings and Decision.

HEARING ISSUES: REFUSAL TO SUBMIT TO OR FAILURE TO COMPLETE TEST

Hearing issues will be whether: (1) the peace officer had reasonable cause to believe you had been driving a motor vehicle in violation of Section 23152 or 23153 VC; (2) you were placed under lawful arrest; (3) you were told that if you refused to submit to a test or failed to complete a test, your driving privilege would be suspended for one year, or revoked for two or three years; (4) you refused to submit to, or failed to complete, a chemical test after being requested to do so by a peace officer.

HEARING ISSUES: CHEMICAL TEST RESULTS BAC .08% OR MORE

Hearing issues will be whether: (1) the peace officer had reasonable cause to believe you had been driving a motor vehicle in violation of Section 23152 or 23153 VC; (2) you were placed under lawful arrest; (3) you were driving a motor vehicle when you had .08 percent or more, by weight, of alcohol in your blood.



OFFICER'S STATEMENT
SECTIONS 13353.2 AND 13353 VEHICLE CODE

BAC .08 REFUSAL (Complete reverse)

FOR DMV USE ONLY
X -
LAW ENFORCEMENT AGENCY CASE NUMBER
DRIVER LICENSE NUMBER STATE

FORWARD THIS FORM TO YOUR LOCAL DRIVER SAFETY OFFICE WITHIN 5 BUSINESS DAYS.
(Complete in black ink.)

NAME (LAST, FIRST, M.I.)
DOB
MAILING ADDRESS STATE ZIP CODE
RIGHT THUMB PRINT

NOTE: PLEASE COMPLETE PHYSICAL DESCRIPTION OF DRIVER:

Sex: Age: Hair: Eyes: Ht.: Wt.:

Vehicle License Number

Violation occurred in a vehicle requiring a commercial driver license (Section 15210 VC).

On DATE at TIME AM/PM in LOCATION CA, the above named driver was

observed driving by this officer the observer shown below
in or about a vehicle blocking a roadway under Section 40300.5 VC involved in an accident.

I had reasonable cause to believe the driver was driving a motor vehicle while under the influence. The driver was arrested on DATE at TIME AM/PM for violation of Section 23152 or 23153 VC.

PROBABLE CAUSE for stop or contact. Please describe in detail the facts and circumstances that led to the stop or contact:

Objective symptoms of intoxication Bloodshot/watery eyes Odor of alcoholic beverage Unsteady gait Slurred speech
Other

OTHER OBSERVER/WITNESS. If driving was observed, driver was arrested, or the accident was witnessed by another officer or person, please explain:

Table with 3 columns: NAME/ID NUMBER, ADDRESS/AGENCY, TELEPHONE NO.
Other Officer
Citizen/Witness

.08 BAC SUSPENSION (13353.2 VC)

(Blood and urine test results must be submitted within 15 days.)

Driver submitted to and completed a chemical test(s) of: Blood Breath (see below) Urine.

TEST 1 DATE at TIME AM/PM TEST 2 DATE at TIME AM/PM

BREATH TEST RESULTS

Breath test results were: BAC Test 1 Test 2 (Attach a copy of the results)

BREATH TEST MACHINE OPERATOR'S CERTIFICATION

I certify under penalty of perjury, that the above breath test sample results were obtained in the regular course of my duties. I further certify that I am qualified to operate this equipment and that the test was administered pursuant to the requirements of Title 17 of the California Code of Regulations.

Executed at CA on

Name of Operator (Please Print) ID

Signature X Agency/Div.

FORWARD THE FOLLOWING DOCUMENTS WITH THIS FORM: Order of Suspension or Revocation (issued: Yes No)
Driver license attached—if not attached, explain

NAME OF OFFICER (PLEASE PRINT) BADGE/ID NO.
AGENCY AREA PHONE NO.

Executed at CITY COUNTY STATE ON DATE

I certify, under penalty of perjury, that the information on both sides of this form is true and correct.

Signature of Officer X

Reverse side of form must be completed for Chemical Test Refusal.

Admin Per Se, Department of Motor Vehicles, Sacramento, CA Telephone No. (916) 657-7730

A Public Service Agency

CHEMICAL TEST REFUSAL
(SECTION 13353 VEHICLE CODE)

CHEMICAL TEST ADMONITION (23157 V.C.)

I admonished the driver on _____ at _____ AM/PM in _____ CA.
DATE TIME LOCATION

1. You are required by state law to submit to a chemical test to determine the alcoholic content of your blood.
2. You have the choice of taking a blood, breath, or urine test.
WHEN APPLICABLE: Since you need medical treatment, your choice is limited to _____ **TEST(S) NAME**. These tests are only available at _____ **FACILITY**.
3. If you refuse to submit to, or fail to complete a test, your driving privilege will be suspended for one year or revoked for two or three years. A two year revocation will result if the refusal occurred within seven years of a separate violation of driving under the influence and/or such a charge reduced to reckless driving, or vehicular manslaughter which resulted in a conviction or an administrative determination that you refused testing or were driving with an excessive concentration of alcohol on a separate occasion. A three year revocation will result if you had more than one of these violations or administrative determinations within the last seven years.
4. Refusal or failure to complete a test may be used against you in court. Refusal or failure to complete a test will also result in a fine and imprisonment if this arrest results in a conviction of driving under the influence.
5. You do not have the right to talk to an attorney or have an attorney present before stating whether you will submit to a test, before deciding which test to take, or during the test.
6. If you cannot, or state you cannot, complete the test you choose, you must submit to and complete a remaining test.

If the above Chemical Test Admonition was read to arrestee by another officer, please show:

Name _____ I.D. No. _____ Telephone No. () _____

Admonition was given in Spanish Other Language (Specify) _____

Response to: Will you take a breath test? _____

Urine test? _____

Blood test? _____

The driver refused to submit to or failed to complete any such test. The refusal or failure was indicated by the following statements or actions: _____

DRUG ADMONITION SUPPLEMENT

Complete the following when the breath test has been completed and you believe the driver is under the influence of drugs. The driver MUST be given a choice of the blood or urine test even if the officer knows the drug will not show up in the test chosen. The officer CANNOT limit the test to be given.

I believe the driver to have been driving under the influence of a drug and/or an alcoholic beverage. In addition to the test results and information listed on the front, my belief is based on the following facts: _____

DRUG ADMONITION: Blood and Urine Only

1. The breath test you have just taken is designed to detect only the alcoholic content of your blood.
2. Because I believe you are under the influence of drugs or a combination of drugs and alcohol, you are required by state law to submit to a blood or urine test to determine the drug content of your blood.
3. If you refuse to submit to, or fail to complete a test, your driving privilege will be suspended for one year or revoked for two or three years. A two year revocation will result if the refusal occurred within seven years of a separate violation of driving under the influence and/or such a charge reduced to reckless driving, or vehicular manslaughter which resulted in a conviction or an administrative determination that you refused testing or were driving with an excessive concentration of alcohol on a separate occasion. A three year revocation will result if you had more than one of these violations or administrative determinations within the last seven years.
4. Refusal or failure to complete a test may be used against you in court. Refusal or failure to complete a test will also result in a fine and imprisonment if this arrest results in a conviction of driving under the influence.
5. You do not have the right to talk to an attorney or have an attorney present before stating whether you will submit to a test, before deciding which test to take, or during the test.
6. If you cannot, or state you cannot, complete the test you choose, you must submit to and complete the remaining test.

Response to: Will you take a blood test? _____

Urine test? _____

The driver refused to submit to or failed to complete any such test. The refusal or failure was indicated by the following statements or actions: _____

If the Drug Admonition above was read to the arrestee after the driver submitted to a breath test by another officer, please show:

Name _____ I.D. No. _____ Telephone No. () _____



A Public Service Agency

SUPPLEMENT TO OFFICER'S STATEMENT
BLOOD/URINE TEST RESULTS

LAW ENFORCEMENT AGENCY CASE NUMBER
DRIVER LICENSE NUMBER STATE
CLASS OF LICENSE

CHEMICAL TEST REQUEST
LAW ENFORCEMENT USE ONLY

DRIVER'S NAME (LAST, FIRST, M.I.)
DATE OF BIRTH DRIVER LICENSE NUMBER
DATE OF ARREST TIME TEST SAMPLE TAKEN
AM/PM Section 23152 VC Section 23153 VC

TEST REQUESTED: [] URINE TEST [] BLOOD TEST

OFFICER'S SIGNATURE
OFFICER'S NAME (PLEASE PRINT) TITLE BADGE/ID NUMBER
AGENCY AREA AGENCY CODE NUMBER TELEPHONE NUMBER

CHEMICAL TEST RESULTS
LABORATORY USE ONLY

LABORATORY NAME LAB. LICENSE NUMBER LAB. RECEIPT NUMBER
SAN DIEGO POLICE DEPT. CRIME LAB. 92049
DATE ANALYZED ANALYZED BY (PLEASE PRINT)

RESULTS: [] URINE TEST _____ % BAC [] BLOOD TEST _____ % BAC

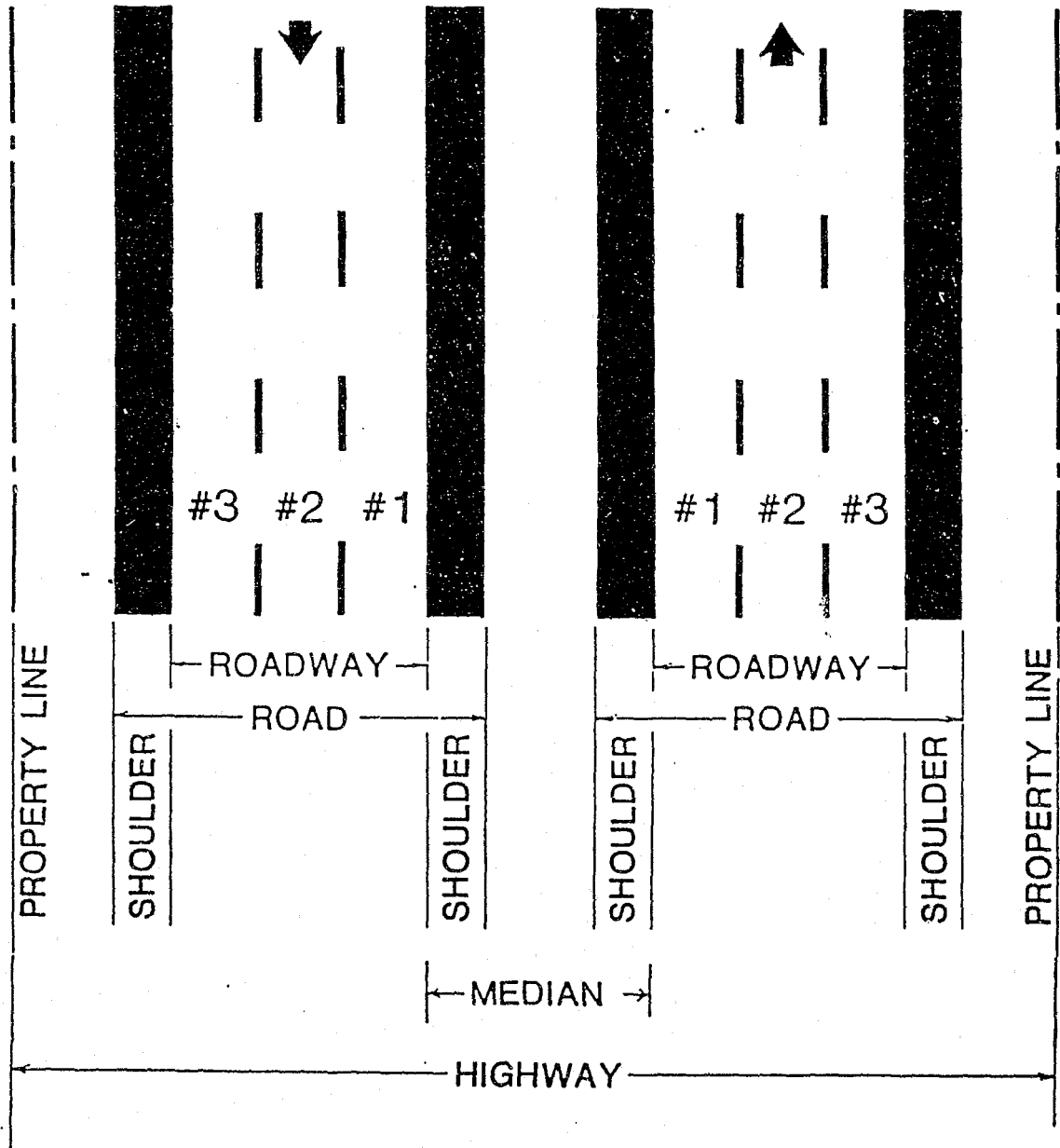
I certify, under penalty of perjury, under the laws of the State of California, that the attached blood/urine analysis was performed during the regular course of my duties, and is a true and correct copy thereof. I further certify that I am a licensed [] forensic alcohol supervisor [] forensic alcohol analyst qualified to perform these analyses pursuant to Title 17 of the California Code of Regulations, and that the equipment used in arriving at the attached results was in proper working order at the time this analysis was performed.

EXECUTED AT (CITY, COUNTY, STATE) ON (DATE)
SAN DIEGO, SAN DIEGO, CA
SIGNATURE TITLE AGENCY
X F.A.A. S.D.P.D.

DEPARTMENT OF MOTOR VEHICLES TELEPHONE NUMBER (800) 765-3333

White—DMV Copy Canary—Agency Copy Pink—File Copy

PICTORIAL DESCRIPTION
OF HIGHWAY COMPONENTS



ADDITIONAL REFERENCES

California Vehicle Code.

California Peace Officer's Legal Sourcebook, published by the California Department of Justice.

Department of Transportation, Emergency Response Guide, Federal Department of Transportation.

Qwik-Code Publications, Box 538, San Juan Capistrano, CA 92693 (714) 496-0240

David A. Casteel and Steven D. Moss Basic Collision Analysis and Scene Documentation
1st. ed. Vol1 (San Diego: Moss Publication, 1982)

SDPD "DUI Detection and Arrest Procedures" PD-1054-TR