

Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI

Date Revised: December/2019

Course Goal: To provide the students with basic knowledge necessary to detect and apprehend drivers whose behavior indicates that they may be driving under the influence of alcohol and/or drugs.

Session Goal: Student will have developed the skills and abilities to successfully recognize common vehicle code violations involving the possession and under the influence alcoholic beverages. Student will also recognize driving patterns that might indicate a driver may be under the influence of alcohol and/ or drugs. The Student will be able to recognize evidence, and possible indicators of impairment. The students will learn how to properly administer the three standardized field sobriety tests and recognize clues of possible driver impairment.

Learning Objectives:

- Recognize the elements and common names for violations involving the possession of alcoholic beverages in a motor vehicle. **[28.V.A]**
- Explain the meaning of the phrase “under the influence” **[28.V.B]**
- Recognize the elements and common names for violations involving driving under the Influence (DUI). **[28.V.C]**
- Recognize driving that might indicate a driver of a vehicle may be under the influence of alcohol and/or drugs. **[28.V.D]**
- Recognize the indications of driving under the influence of alcohol or drugs a peace officer may observe upon making contact with a driver. **[28.V.E]**
- Discuss medical conditions that may cause a person to appear under the influence. **[28.V.F]**
- Recognize appropriate peace officer actions if a subject refuse to cooperate in performing a Field Sobriety Test (FST). **[28.V.G]**
- Demonstrate FSTs that may be used to determine impairment, to include; Horizontal Gaze Nystagmus (HGN), One-Leg Stand (OLS), walk & Turn (WAT). **[28.V.H][28.V.H.1,2,3]**
- Discuss the primary elements included in the statutory admonition read to drivers who refuse to submit to a chemical sobriety test. **[28.V.I]**
- The student will participate in a learning activity that will reinforce the student’s understanding of definitions, laws, and procedures related to DUI arrests. Given one or more video re-enactments depicting alcohol or drug impairment, or an equivalent number of simulations, scenarios, or role play exercises provided by the presenter. The student will participate in a learning activity that requires the student to conduct a FST. **[28.VII.A,1,2,3,4,5][28.VII.D, D1,D2,D3][28.VII.E, E,1E,2,E,3,a,b,c,d,e, E4]**

Session Time: 2 Hours

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

Resources:

- Class room with tables, whiteboard, and dry erase markers.
- Laptop with media software developed for this Session.
- [LD28](#) vehicle Code Book.
- S.F.S.T Handout sheet
- DUI face sheet and arrest report exemplar handout.

Session Summary: In this session, the instructor will lead a facilitated discussion, power point learning activities, and practical application exercises.

Outline	Instructor Notes
<p>I. DUI Video</p> <p>II. Driving Under the Influence.</p> <p>A. Peace Officer Responsibility.</p> <ol style="list-style-type: none"> 1. The National Highway Traffic Safety Administration estimates that approximately half of all fatal traffic collisions involve the use of alcohol and/or drugs. 2. A peace officer has the responsibility to stop any driver operating a vehicle in a manner that raises a doubt to the driver's sobriety, and ascertain the cause of the erratic driving, or other abnormal conditions. 3. Once the peace officer has detained the driver, reasonable suspicion of driving under the influence may develop into probable cause to arrest as a result of questioning the driver, closer observation, and administering field sobriety tests. <p>B. Possession of alcoholic beverage.</p> <ol style="list-style-type: none"> 1. Definition: An alcoholic beverage is any liquid or solid material intended to be ingested by any person, which contains ethanol, also known as ethyl alcohol, 	<p>ASK: What do you think you might have?</p> <ul style="list-style-type: none"> • Possible DUI. • Possible medical emergency. <p>ASK: What signs did you observed that led you to believe that the driver was possibly DUI?</p> <p>ASK: Has anyone in the class ever been victims of DUI incident? Someone you know?</p> <p>Lecture: NHTSA Estimated that half of all traffic accident fatalities involve the use of alcohol or drugs.</p> <p>ASK: As law enforcement officers what is our responsibility when we observe something like what we saw in the video?</p> <p>Lecture: DUI Arrests</p>

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>drinking alcohol, or alcohol, including but not limited to alcoholic beverages.</p> <p>2. Drinking while driving.</p> <p>a. Even if alcohol consumption has not reached the level that constitutes driving under the influence. An individual may still be guilty of drinking while driving.</p> <p>1) 23220(a)CVC: States no person shall drink any alcoholic beverage while driving a motor vehicle upon any highway or other lands open and accessible to the public as described in Vehicle Code Section 23220(b).</p> <p>2) It is also an infraction to drink any alcoholic beverage while in a motor vehicle that is upon a highway.(Parked)</p> <p>3) 23221(a)CVC: Prohibits the driver.</p> <p>4) 23221(b)CVC: Prohibits the passenger.</p> <p>b. This section does not apply to the passenger in any bus, taxicab, or limousine for hire or the living quarters of a house car or camper. (Vehicle Code Section 23229(a))</p> <p>3. Possession of open container.</p> <p>a. 23223(a)CVC: Possession of open container. <i>No driver or passenger shall have in that person's possession in a motor vehicle upon any highway or lands any receptacle containing</i></p>	<p>Refer: Back to Laws off arrest LD15 Reasonable suspicion of driving under the influence may develop into probable cause to arrest as a result of:</p> <ul style="list-style-type: none">• Questioning the driver,• Closer observation, and• Administering field sobriety tests. <p>[28.V.A] Lecture: Definition of an alcoholic beverage.</p>
--	---

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>any alcoholic beverage that has:</p> <ol style="list-style-type: none">1) Been opened.2) Had a seal broken.3) Had the contents partially removed. <p>b. 23223(b)CVC: It is also an infraction for <i>any passenger</i> to have <u><i>in that person's possession</i></u> an open container of alcohol in a motor vehicle.</p> <p>4. Exceptions.</p> <ol style="list-style-type: none">a. 23229(a)CVC: This section does not apply to the passenger in any bus, taxicab, or limousine for hire or the living quarters of a house car or camper.b. 23223CVC: Does not apply to any open container of alcohol in a vehicle which is parked in a public parking lot possessed by passengers in for-hire vehicles, such as limousines, buses, or taxicabs (<i>Except for individuals under 21 years</i>). <p>5. Possession of open container while driving.</p> <ol style="list-style-type: none">a. 23222(a)CVC: No person shall have on that person's possession while driving a motor vehicle upon a highway or lands as described in 23220(b) any receptacle containing any alcoholic beverage. Which has been opened had the seal broken had the contents partially removed.b. 23222(b)CVC: States that it is also unlawful for a driver to possess marijuana while driving a motor vehicle. Possession of	<p>Lecture: Possession of open container.</p> <p><i>“Any” any receptacle containing any alcoholic beverage including those people who claim are recyclables.</i></p> <p>Lecture: Open container exceptions</p> <p>Lecture: Possession of <u>open container while driving</u> and below related sections.</p>
---	---

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>less than one ounce is an infraction.</p> <p>c. Unless the driver demands to be taken before a magistrate, the driver shall be released on a written promise to appear in court upon satisfactory evidence of identity and shall not be subjected to booking.</p> <p>6. Possession of alcohol by persons under 21 years.</p> <p>a. 23224(a) and (b)CVC: Persons under 21 years Possession of alcohol. No person under the age of 21 years shall knowingly drive any motor vehicle anywhere carrying any alcoholic beverage.</p> <p>b. 23224(b)CVC: Applies to all passengers under the age of 21.</p> <p>c. 23224CVC: provides exemptions to this requirement for underage persons who are:</p> <ol style="list-style-type: none"> 1) Accompanied by a parent or legal guardian. 2) Employed by an ABC licensee. 3) Driving the motor vehicle during regular hours in the course of the underage person's employment. <p>d. Individuals under 21 years are not allowed to possess alcohol even when riding in a rented limousine. 23229.1CVC: Makes it unlawful to:</p> <ol style="list-style-type: none"> 1) Possess or store. 2) Opened containers of alcohol. 3) In limousines for hire. 4) When the driver transports 	<p>23222(b)CVC: Possession of marijuana while driving.</p> <ul style="list-style-type: none"> • Less than one ounce is an infraction. • Driver shall be released on a written promise to appear in court. • Unless the driver demands to be taken before a magistrate. <p>Lecture: Possession under 21 Years old and related sections.</p>
---	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>any passenger under the age of 21.</p> <p>e. <i>It is not a violation if the alcohol is stored in a locked utility compartment.</i></p> <p>7. Storage of opened container.</p> <p>a. 23225(a)(1)CVC: It is unlawful for the registered owner (or driver if the registered owner is not present in the vehicle) of any motor vehicle upon a highway or public lands to keep any bottle, can, or other receptacle containing any alcoholic beverage that has been opened, or had the seal removed, or had the contents partially removed in the vehicle.</p> <p>b. This section does not apply to the driver or owner of a bus, taxicab, living quarters of a house car, camper, or limousine for hire. (Vehicle Code Section 23229(b)).</p> <p>8. Storage of open containers by passengers.</p> <p>a. 23226(a)CVC: it is unlawful for any driver to keep in the passenger compartment of any motor vehicle upon a highway or public lands any bottle, can, or other receptacle containing any alcoholic beverage that has been opened had the seal removed had the contents partially removed.</p> <p>b. 23226(b)CVC: It is a violation for any passenger to possess an open container of alcohol in the passenger area of a motor</p>	<p>Lecture: Storage of opened container in vehicle and related sections.</p>
--	---

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>presume the person is or is not under the influence of alcohol based on other competent evidence.</p> <p>c. 0.08% or more: Presume the person is under the influence of alcohol.</p> <p>3. 23152(a)CVC: DUI.</p> <p>a. It is unlawful for a person who is under the influence of any alcoholic beverage to drive a vehicle.</p> <p>b. This violation can take place either on public or private property.</p> <p>4. 23152(b)CVC: It is unlawful for any person who has 0.08% or more, by weight, of alcohol in that person's blood to drive a vehicle. If it can be shown by chemical tests performed within three hours that the driver's blood alcohol level is 0.08% or more, it can be presumed that the driver's blood was at least that level when the incident occurred.<i>(Misdemeanor)</i></p> <p>5. 23152(c)CVC: It is unlawful for any person who is addicted to the use of any drug to drive a vehicle.</p> <p>a. The person does not have to be "under the influence" at the time.</p> <p>b. A person who is participating in an approved methadone maintenance treatment program is exempt from this restriction.</p> <p>6. 23152(d)CVC: It is unlawful for any person who has 0.04% or more, by weight, in that person's blood to drive a commercial motor vehicle.</p>	<p>[28.V.C] Lecture: The elements and common names for violations of DUI</p> <p>ASK: Can a person having 0.05 to 0.79 be arrested for D.U.I.?</p> <ul style="list-style-type: none"> • YES. (<i>Under the influence: Is when the person's physical and mental abilities are impaired to a degree that the person no longer has the ability to drive</i>) • Officer just has to show that whatever amount of alcohol level the person may be has impaired their ability to safely operate the vehicle. <p>Lecture: Felony DUI and related sections</p>
---	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p><i>(Misdemeanor)</i></p> <ol style="list-style-type: none">7. 23152(e)CVC: It is unlawful for any person who is under the influence of any drug to drive a commercial vehicle.8. 23152(f)CVC: It is unlawful for any person who is under the combined influence of any alcoholic beverage and drug to drive a commercial vehicle.9. Felony DUI.<ol style="list-style-type: none">a. 23153(a)CVC: Felony dui. It is unlawful for a person while under the influence of an alcoholic beverage to drive a vehicle and while driving perform any act in driving the vehicle that is forbidden by law, or neglect any duty imposed by law which proximately causes bodily injury to any person other than the driver.b. 23153(b)CVC: If it can be shown by chemical tests performed within three hours that the driver's blood alcohol level is 0.08% or more, it can be presumed that the driver's blood was at least that level when the incident causing the bodily injury occurred.10. Drivers under 21 years.<ol style="list-style-type: none">a. 23140(a)CVC: States that it is an infraction for anyone under 21 years of age to drive a vehicle when that person's blood alcohol level is 0.05% or more.b. A person may be in violation of this statute if the person is	<p>Lecture: Drivers under 21 years.</p>
---	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>under the influence or affected by an alcoholic beverage, even if no chemical test was made. A person under 21 years of age has no right to refuse.</p> <p>c. A blood alcohol level of 0.05% or more may be based on other relevant evidence, such as:</p> <ol style="list-style-type: none"> 1) Objective symptoms. 2) Field sobriety test. 3) Preliminary alcohol screening test (PAS). <p>11. Bicycles.</p> <p>a. 21200.5CVC: Riding under the influence. It is unlawful to ride a bicycle upon a highway while under the influence of alcohol and/or drugs.</p> <p>b. If the suspect requests a chemical test, it must be given; though there is no requirement to offer a test. (Vehicle Code Section 23612).</p> <p>D. DUI Detection.</p> <ol style="list-style-type: none"> 1. Detection is the most important, yet the most difficult, task in the enforcement of laws related to driving under the influence (DUI). If peace officers fail to detect DUI violators, those drivers will avoid prosecution, and, more importantly, could injure or kill innocent people. 2. Detection is the process of identifying and gathering evidence to determine whether or not a suspect should be arrested for a DUI violation. 3. Vehicle Observation: Initial action(s) of the driver of a vehicle that draw(s) the attention of a 	<p>ASK: Who has seen DUI driver out on the streets?</p> <p>ASK: What were some of the indicators you observed that lead you to believe it may be a possible DUI Driver?</p> <p>ASK: Recognizing indicators of a possible DUI driver helps officers in what way?</p> <ul style="list-style-type: none"> • Provides officers with reasonable suspicion to detain the driver/ vehicle. • Indicators are part of the officer's evidence. <p>[28.V.D] Lecture: Indications of DUI</p>
---	---

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>peace officer.</p> <ol style="list-style-type: none">a. Weaving.b. Swerving.c. Drifting.d. Turning with wide radius.e. Turning abruptly or illegally.f. Striking or almost striking an object or another vehicle.g. Driving into opposing or crossing traffic.h. Speed, slow, sudden stops, accelerating or decelerating rapidly then braking erratically.i. Straddling center or lane marker, driving on the shoulder, tires on center of lane marker.j. Appearance lack facial muscles, drooping eyes.k. Slowly responding to traffic signals.l. Signaling inconsistent with driving actions. <p>4. Driver's actions while the vehicle pullover is being executed.</p> <ol style="list-style-type: none">a. Once a driver is suspected of being under the influence of alcohol or drugs, peace officers should make every reasonable effort to stop the driver as soon as practical.b. To allow the driver to proceed could result in a collision which is a peace officer's duty to prevent. A defense point could be raised on the presumption that the peace officer was "not sure" and had to make a prolonged observation before stopping the suspect.c. The peace officer should	<p>Lecture: Vehicle Pullover: Observing driver's actions.</p> <ul style="list-style-type: none">• Once a driver is suspected of being under the influence officers should stop the veh as soon as practical. Allowing the driver to continue driving may result in a collision which is a peace officer's duty to prevent.• The peace officer should continue to make observations and gather evidence as the driver is being pulled over. <p>[28.V.E] Lecture: Indications of DUI upon making contact with driver</p> <p>Note: Remind the class that when initiating a traffic stop on a possible DUI driver we never compromise our safety during the approach or deviate from the tactical approach they were taught during traffic stop event by their tactics instructor.</p>
--	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<ul style="list-style-type: none"> b. Eyes. <ul style="list-style-type: none"> 1) Apparent difficulty focusing eyes upon an object. 2) Refusal to look directly at the peace officer. c. Speech. <ul style="list-style-type: none"> 1) Odor of intoxicants on the breath. 2) Poor enunciation, slurred speech. d. Attitude. <ul style="list-style-type: none"> 1) Signs of nervousness, cockiness. 2) Unusual cheerfulness or friendliness. 3) Apparent hesitancy in complying with lawful orders or instructions. 4) Appearing agitated, other inappropriate behavior. e. Actions. <ul style="list-style-type: none"> 1) Impaired motor skills. 2) Difficulty in understanding simple questions or instructions. 3) Manner of getting out of the car. 4) Tremor of hands, poor hand coordination. 6. Medical conditions. <ul style="list-style-type: none"> a. Certain physical and medical conditions can cause an individual to act in a manner that could initially lead a peace officer to suspect the use of alcohol or drugs. b. Such conditions can include: <ul style="list-style-type: none"> 1) Fatigue, diabetes. 2) Previous traumatic head injury. 3) Cerebral palsy, stroke. 	<p>cause an individual to act in a manner that could initially lead a peace officer to suspect the use of alcohol or drugs.</p> <p style="text-align: center;">[28.VII.D, D1,D2,D3]</p>
---	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>and/or drugs.</p> <p>F. Before any field sobriety test can be administered, peace officers must select an appropriate site for conducting the tests. Although any site can be potentially hazardous, certain locations can pose a greater threat to peace officer safety and the safety of the individual being tested. When possible, the location should:</p> <ol style="list-style-type: none">1. Have a smooth level, and dry surface.2. Adequate lighting.3. Be out of traffic. <p>G. Potentially hazardous locations include.</p> <ol style="list-style-type: none">1. In front of a tavern.2. In front of a person's residence, with a gathering of people including family.3. In an area which has a history of racial strife and rioting.4. Within sight of any large gathering of people.5. In an area too close to passing traffic, etc. <p>H. If such a situation exists, the individual should be removed from the scene as quickly as possible and the examination conducted elsewhere, if legally permissible. In a potentially volatile situation, the tests may need to be conducted at a safer location.</p> <p>I. It is recommended that a peace officer ask the driver a series of questions prior to administering the sobriety test. These questions provide needed information and establish whether the driver has physical impairments that may affect the test results.</p> <ol style="list-style-type: none">1. Any illness or injuries?	
--	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<ol style="list-style-type: none">2. Any problems with your vehicle?3. Do you have any physical impairment?4. When did you last eat?5. When did you last sleep? For how long?6. Where are you coming from? Going to?7. What have you had to drink? How much?8. Where did you drink?9. When did you start drinking? When did you stop?10. Do you feel the effects of the drinks?11. Are you under the care of a doctor or dentist?12. What, if any, medications are you taking?13. If there's been a collision:<ol style="list-style-type: none">a. - Did you bump your head?b. - Were you drinking?c. - Did you drink after the collision? <p>J. Refusal to cooperate.</p> <ol style="list-style-type: none">1. While it is impossible to demand or force a driver to complete one or more field sobriety tests against his or her will, peace officers should:<ol style="list-style-type: none">a. Make sure the driver understands the significance of participating in the test.b. Note the driver's lack of cooperation in writing.c. Testify to such fact at the time of the court trial.2. Miranda.<ol style="list-style-type: none">a. Peace officers are not required to administer a Miranda warning during a field investigation prior to an arrest.	<p>[28.V.G] Lecture: Refusal to perform SFST</p>
--	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>Prior to an arrest, the driver’s right to remain silent under the Fifth Amendment does not apply.</p> <p>b. Peace officers can ask the driver questions such as: “How much have you had to drink?”</p> <p>K. Safety.</p> <ol style="list-style-type: none"> 1. The tests should not be so difficult or complicated that the average sober driver could not perform them. A peace officer should never ask a driver to perform a test which could result in the driver’s injury. 2. Each test should be explained and demonstrated to the driver so that the driver understands what is expected. Peace officers should always consider peace officer safety tactics when demonstrating FSTs while in close proximity to the driver. 3. Tests should not be given if the driver is obviously under the influence when the attempt could compromise the driver’s physical safety. However, the peace officer should describe those obvious signs of impairment in the report. <p>L. Objective observations.</p> <ol style="list-style-type: none"> 1. Evaluation of the driver being tested is based on the peace officer’s objective observations. 2. Tests are used to objectively evaluate the driver’s level of impairment. <p>M. S.F.S.T. (Standardize Field Sobriety Tests) Field tests.</p> <ol style="list-style-type: none"> 1. Horizontal Gaze Nystagmus (HGN). 2. Walk and Turn (WAT). 3. One Leg Stand (OLS). 	<p>Facilitate: Learning activity#1 Play: Video clip “DUI Driver” to the class. (The clip depicts a possible DUI driver exhibiting abnormal driving behavior) [28.VII.A.1,2,3,4,5] [28.VII.D.1,2,3] Note: When video is finished, have a facilitated discussion debriefing video.</p>
--	---

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<ul style="list-style-type: none">4. Romberg Balance.5. Finger to Nose.N. Studies have confirmed the considerable accuracy at detecting impairment when the component battery of the HGN, WAT, and OLS tests are administered and evaluated in a standardized manner.O. Arrest Decision: Based on the results of the four previous phases, the peace officer decides if an arrest is warranted.P. The decision to make an arrest for DUI should be based on the totality of the observations, information gathered, and evidence collected during the earlier phases of the DUI detection process.Q. Chemical Sobriety Tests.<ul style="list-style-type: none">1. A sample of the driver's breath, blood, or urine, taken soon after the act of driving, is the best scientific evidence of being under the influence. Such tests can serve to support and supplement the officer's observations as well.2. Implied consent.<ul style="list-style-type: none">a. Any person who drives a motor vehicle is understood to have already agreed, at the time the license was issued, to submit to chemical testing for alcohol/drug levels. (Vehicle Code Section 23612).b. The peace officer does not have to seek any further consent from the person at the time of the arrest.3. Chemical sobriety tests.<ul style="list-style-type: none">a. Chemical sobriety tests are incidental to arrest. They can be	
---	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>administered when the arresting peace officer has reasonable cause (i.e., probable cause) to believe the person was driving an automobile in violation of:</p> <ol style="list-style-type: none">1) Alcohol - individuals under the age of 21 (Vehicle Code Section 23140).2) Driving under the influence of alcohol and/or drugs (Vehicle Code Sections 23152).3) Driving under the influence of alcohol and/or drugs causing injury (Vehicle Code Section 23153). <p>4. Types of tests.</p> <ol style="list-style-type: none">a. A person lawfully arrested for driving under the influence has the choice of providing a blood sample or a breath sample for testing purposes.b. A urine test may be offered when the breath and blood tests are not available.c. Breath tests do not measure for drugs. A person who chooses to submit to a breath test may also be required to submit to a blood test if the peace officer has reasonable cause to believe that the person was driving under the influence of drugs or a combination of alcohol and drugs. When the driver is afflicted with hemophilia or is using an anticoagulant under the direction of a physician, the driver shall submit to and complete a urine test Vehicle	
---	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p style="text-align: center;">Code Section 23612(b) and 23612(c).</p> <p>5. Timing.</p> <ul style="list-style-type: none">a. The amount of alcohol or drugs in the blood begins to diminish soon after drinking or ingestion stops. Delay in testing could lead to a result that is lower than the true alcohol/drug level at the time of driving.b. For this reason, chemical sobriety tests must be taken as soon as possible, preferably within three hours, from the time of the incident. <p>6. Failure to complete a test.</p> <ul style="list-style-type: none">a. If the driver is unable to complete the chosen test, the driver must submit to and complete the other test. Inability or failure to complete a test is considered a refusal. (Vehicle Code Section 23612).b. If a driver is or claims to be unable to complete the chosen test, the peace officer should advise the person:<ul style="list-style-type: none">1) That there is a duty to submit to and complete the chosen test.2) If unable to complete the test.3) The driver must submit to and complete the other test. <p>7. Refusal.</p> <ul style="list-style-type: none">a. A refusal to take a chemical sobriety test can be any:<ul style="list-style-type: none">1) Statement, act, or conduct by the driver which:2) Directly refuses.	
---	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<ul style="list-style-type: none">3) Imposing conditions prior to submitting qualifies as refuses.4) Makes compliance unreasonably difficult or impossible.b. Failure to satisfactorily complete the chosen test or its alternative delay in offering to provide a sample.8. Chemical test admonition.<ul style="list-style-type: none">a. If a driver refuses to submit to a chemical test, that driver must be advised of certain information regarding the consequences of refusing.b. The only method for giving this admonition is to read the complete statutory admonition directly from the back side of the current DMV DS-367 form. No additional language or admonitions are necessary.9. Admonition content elements.<ul style="list-style-type: none">a. Refusal to submit or failure to complete a chemical test will result in a fine and mandatory imprisonment if convicted, suspension or revocation of driving privileges for a period of one to three years.b. The driver has a choice of either a breath or blood test.c. Any refusal to submit or failure to complete a chemical test may be used as evidence against the driver.d. The driver does not have a right to counsel in connection with submitting to a chemical test.e. If a driver is unable to complete	<p>[28.V.I] Lecture: Primary elements in the statutory admonition read to driver who refuses to cooperate in performing chemical sobriety test</p>
--	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p style="text-align: center;">one test, that person must then submit to the remaining test.</p> <p>10. A peace officer may elect to record the admonition, as well as the driver's response, on audio or videotape.</p> <p>R. License suspension.</p> <p>1. If, after a lawful arrest and the standard admonition, a driver refuses to submit to and promptly complete a chemical test, the driver's license will be suspended.</p> <p>2. The arresting peace officer has no obligation to make a second offer or to accommodate a driver if that person subsequently changes his or her mind.</p> <p>S. Incapable or unconscious driver.</p> <p>1. A person who is unconscious or otherwise in a condition that renders them incapable of refusal is deemed not to have withdrawn their consent and a test or tests may be administered whether or not the person is told that their failure to submit to, or the non-completion of, the test or tests will result in the suspension or revocation of their privilege to operate a motor vehicle.</p> <p>2. A person who is dead is deemed not to have withdrawn their consent and a test or tests may be administered at the direction of a peace officer. (Vehicle Code 23612(a)(5))</p> <p>T. Driver confusion.</p> <p>1. A driver may show signs of confusion or lack of understanding that is not due to being under the influence, but is caused by the</p>	
---	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>language used in the admonition. When this occurs, the peace officer has the duty to clarify the situation for the driver. The peace officer should emphasize that a suspension of the driver's license for refusal is not just a possibility, but is mandatory.</p> <ol style="list-style-type: none">2. If the peace officer fails to eliminate the person's confusion, there may be a legitimate basis for the refusal and the driver's license may not be suspended. <p>U. Right to counsel.</p> <ol style="list-style-type: none">1. The Miranda warning includes the advice that once arrested, the driver has the right to counsel before answering any questions or making any statements. Since a chemical test does not fall into either of these categories, the right to counsel does not apply.2. The driver does not have the right to have an attorney present before stating whether to submit to a test when deciding which test to take during the administration of the test.3. The driver does have a right to have a medically qualified person of that driver's own choice to administer a second blood test. However, the peace officer is not required to advise the driver of this right. (Vehicle Code Section 23158(b))4. During the initial test, the person has no right to have the test witnessed or performed by a personal physician. Making the test conditional on this request	
--	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>constitutes a refusal to submit to a chemical test.</p> <p>5. The peace officer should also explain that such tests are at the person's own expense, and an opportunity will be provided to obtain one within a reasonable amount of time.</p> <p>V. Administration requirements.</p> <p>1. A certified operator must administer the test the person must be observed 15 minutes prior to the test two valid samples must be within 0.02% or a third sample is required.</p> <p>2. The blood sample must be taken by a licensed physician, nurse, clinical laboratory technician. The sample must be collected in a medically approved manner.</p> <p>3. the person is required to urinate twice for blood alcohol content first, the person must void the bladder to remove previously accumulated urine which would not reflect the present blood alcohol level the second sample must be taken no less than 20 minutes later; failure to produce this sample is considered a refusal.</p> <p>W. Reasonable privacy.</p> <p>1. When a peace officer requests a urine sample, the person should be given privacy in the taking of the urine specimen that will ensure the accuracy of the specimen and, at the same time, maintain the dignity of the person involved.</p> <p>2. The courts have held that an intrusion into a person's privacy, not greater than that usually</p>	
--	--

**Los Angeles Police Department
LD28 Traffic Enforcement
EV10 Quality of Life
S4 DUI**

<p>experienced in a public restroom, complies with the statute.</p> <p>X. Seizure of license.</p> <ol style="list-style-type: none">1. The Department of Motor Vehicles has the authority to suspend or revoke the driving privilege of any person found to be driving with a blood alcohol content of 0.08% or more.2. Driving privileges may be suspended, if the driver refuses to submit to, or fails to complete, a chemical test to determine a blood alcohol concentration level. Takes a breath test which shows an immediate blood alcohol concentration level of 0.08% or more. Takes a blood or urine test, and the peace officer has reason to believe the results will show a blood alcohol concentration level of 0.08% or more.3. Peace officers may not seize out-of-state licenses. Instead they should complete the DS-367 form, give a copy to the driver, and DMV will notify the driver's home state.4. Persons who are under 21 years will have their licenses suspended when driving with a blood alcohol concentration level of 0.01% or more.	<p>[28.VII.E.1,2,3a,b,c,d,e,4] Facilitate: Learning Aactivity #2</p>
---	--