

# Index

## ACCOMPLICE LIABILITY

Offense, **1:26**

## ADDICTION

DDUI. **Drugs, Driving Under the Influence** (this index)  
Driving while addicted, **1:18**

## ADMINISTRATIVE LICENSE SUSPENSIONS

**Driver's Licenses** (this index)

## ADMINISTRATIVE REVIEW

Driver's license, **4:19**

## ADMISSIONS

Prior, prosecutorial refusal to accept admission, **6:13**

## ADVANCED ROADSIDE IMPAIRED DRIVING ENFORCEMENT

Generally, **11:8.1**

## AFFIDAVITS

Administrative per se hearing,  
testimony by affidavit, **4:6**  
Subpoena, affidavit in support (form),  
**App. 4.2**

## ALCOHOL TREATMENT

Residential treatment programs, **2:19**

## ALCOTEST

Drager Alcotest. **Breath Alcohol Tests** (this index)

## ALIENS

Sentencing, immigration consequences, **2:24**

## APPEAL AND REVIEW

Administrative per se hearing, **4:19**,  
**App. 4.4**  
Notices of appeal (forms), **App. B13**,  
**App. H**  
Proposed statement on appeal and  
request for preparation of

## APPEAL AND REVIEW—Cont'd

reporter's transcript, **App. B18**  
Statement on appeal, **App. B20**

## APPEARANCE

Federal court, **19:3**  
Personal appearance, defendant's  
waiver (form), **App. B2**

## ARRAIGNMENT

Generally, **5:6**

## ARREST

**Suppression of Evidence** (this  
index)

## ARRESTING OFFICER

Generally, **16:1 et seq.**  
Administrative per se hearing  
Cross-examination, **7:5**  
Initial examination, **4:5**  
California law enforcement transparency provisions, **7:2**  
Confirmatory bias, exposing, **16:8**  
Cross-examination  
Generally, **16:1 et seq.**  
Administrative per se hearings, **7:5**  
Confirmatory bias, exposing, **16:8**  
Executing plan, **16:5**  
Field sobriety tests, **16:16**  
Importance, **16:1**  
Independent recollection, exposing  
lack of, **16:6**  
Investigation by officer, attacking,  
below  
Predisposition, **16:8**  
Preparation, **16:3**  
Qualifications, training and experience, addressing, **16:7**  
Reasonable alternatives, suggesting, **16:9**  
Sobriety, emphasizing observations  
tending to support, **16:10**  
Strategy, **16:4**

## **ARRESTING OFFICER—Cont'd**

- Cross-examination—Cont'd
  - Techniques, **16:18**
- DMV subpoena, initial examination of arresting officer, **4:5, App. 4.2**
- Field sobriety tests
  - Alternative explanations, test performance, **16:15**
  - Cross-examination tactics, **16:16**
  - Investigation, phase three, **16:14**
- Humanizing event, **16:9**
- Independent recollection, exposing lack of, **16:6**
- Initial contact (IC), investigation phase two, **16:13**
- Intoxication, officer as expert, **16:2**
- Investigation by officer, attacking
  - Generally, **16:11**
  - Field sobriety tests, phase three, **16:14**
  - Initial contact (IC), phase two, **16:13**
  - Observations, interrogation and testing procedures, **16:11**
  - Vehicle in motion (VIM), phase one, **16:12**
- Observations, interrogation and testing procedures, **16:11**
- Predisposition, **16:8**
- Preliminary alcohol screening (PAS) devices, **16:17**
- Qualifications, training and experience, addressing, **16:7**
- Reasonable alternatives, suggesting, **16:9**
- Sobriety, emphasizing observations tending to support, **16:10**
- Vehicle in motion (VIM), investigation phase one, **16:12**

## **ATTEMPTED DRUNK DRIVING**

- Offense, **1:10**

## **ATTORNEYS**

- Access to counsel, denial, **8:35**
- Administrative per se hearing, retention of counsel, notice to DMV (form), **App. 4.1**
- Client interview, **5:1**

## **ATTORNEYS—Cont'd**

- Educating client, **5:3**
- Emergency response costs, advising client, **5:5**
- Evaluating case, **5:8**
- Incompetence of prior counsel, **6:6**
- Intake form, **App. 5.2**
- Legal services agreement (form), **App. 5.3**
- Midnight phone call, **5:2**
- New client call sheet (form), **App. 5.1**
- Retainer agreement, **5:4, App. 5.3**
- Substitution of counsel, sample letter, **App. B21**

## **BAIL**

- Motion to reduce (form), **App. B11**

## **BEST EVIDENCE RULE**

- Electronic transmissions, **4:16**

## **BIAS**

- Administrative per se hearing, challenging hearing officer, **4:9**
- Arresting officer, exposing confirmatory bias, **16:8**
- Peremptory challenge, CCP 170.6 motion (form), **App. 5.4**

## **BIBLIOGRAPHY**

- Generally, **App. I**

## **BIFURCATION OF TRIAL**

- Prior convictions, **6:12**

## **BLOOD ALCOHOL ANALYSIS**

- Generally, **11:1 et seq.**
- Arterial vs. venous blood draws, effect on accuracy, **11:15**
- Blood levels, definitions, **11:4**
- Calibration
  - Logs, usage and calibration, **App. G**

## **G**

- Single point calibration, **11:13**
- Variations, **11:12**
- Cognitive functioning impairment, **11:5**
- Defense expert, **17:6-17:8**
- Drug classifications and effects, **11:6**
- Drug impairment dilemma, **11:1**

## INDEX

### BLOOD ALCOHOL ANALYSIS

#### —Cont'd

- Errors in analysis, finding, **11:19**
- Hospital blood analysis, challenging, **11:17**
- Identity and integrity of specimen
  - Arterial vs. venous blood draws, **11:15**
  - Serum/plasma vs. whole blood, **11:14**
  - Sterilization effects, **11:16**
  - Variations in calibration, **11:12**
- Law enforcement DDUI training, **11:7, 11:8**
- Overview, **11:1**
- Pharmacology
  - Important pharmacologic terms, **11:3**
  - Pharmacologic classes, **11:2**
- Serum/plasma vs. whole blood, inaccuracy due to measuring, **11:14**
- Sterilization effects on integrity, **11:16**
- Traceability error, **11:18**

### BLOOD ALCOHOL CONCENTRATION (BAC)

- Generally, **9:1 et seq.**
- Absorption and elimination of alcohol, **9:2**
- Analysis of BAC, overview, **9:1**
- Average person fallacy, **9:8**
- Body fat, effects of, **9:12**
- Circadian rhythm, **9:13**
- Cross-examination techniques, **9:19**
- Defendant's testimony as to his own blood alcohol level, **17:10**
- Discovery
  - Generally, **9:17**
  - Discovery** (this index)
- Driving with 0.08% BAC
  - Generally, **1:19**
  - Administrative per se license suspension, **3:6**
- EBT device, DOT regulations, **App. 9.6**
- Estimating blood alcohol levels, **9:3**
- Food, cigarettes and alcohol metabolism, **9:14**

### BLOOD ALCOHOL CONCENTRATION (BAC)

#### —Cont'd

- Hematocrit, **9:11**
- Individual tolerance, **9:5**
- Internally produced alcohol, **9:16**
- Intoxilyzer 5000, manufacturer's statement of warranty, **9:19**
- Metabolism
  - Food and cigarettes, **9:14**
  - Racial differences, **9:10**
- Physiology
  - Generally, **9:2**
  - Sources of error, **9:7**
- Prosecution's evidence, challenging
  - Generally, **9:1 et seq.**
  - Absorption and elimination of alcohol, **9:2**
  - Analysis of BAC, overview, **9:1**
  - Average person fallacy, **9:8**
  - Body fat, effects of, **9:12**
  - Circadian rhythm, **9:13**
  - Cross-examination techniques, **9:19**
  - Discovery, **9:17**
  - Estimating blood alcohol levels, **9:3**
  - Food, cigarettes and alcohol metabolism, **9:14**
  - Hematocrit, **9:11**
  - Individual tolerance, **9:5**
  - Internally produced alcohol, **9:16**
  - Physiology, **9:2, 9:7**
  - Racial differences in alcohol metabolism, **9:10**
  - Retesting, **9:18**
  - Rising blood alcohol defense, **9:6**
  - Widmark factors, **9:4**
  - Women and alcohol, **9:9**
  - Zinc deficiency, **9:15**
- Racial differences in alcohol metabolism, **9:10**
- Retesting, **9:18**
- Rising blood alcohol defense, **9:6**
- Sample motion to suppress, **App. 8.3**
- Sentencing
  - Blood alcohol over 0.15%, **2:13**
  - Blood alcohol over 0.20%, **2:14**

**BLOOD ALCOHOL  
CONCENTRATION (BAC)**

**—Cont'd**

Widmark factors, **9:4**  
Women and alcohol, **9:9**  
Zinc deficiency, **9:15**

**BLOOD ALCOHOL EVIDENCE**

**Suppression of Evidence** (this index)

**BREATH ALCOHOL TESTS**

Generally, **10:1 et seq.**  
Absorptive phase, problems with testing during, **10:6**  
Air blank, effect on reliability of test, **10:15**  
Alco Test IV display, **App. 10.33**  
Alco-Sensor, **10:29, 10:33**  
Ambient air, breath specimen contamination, **10:14**  
Blood-breath partition ratio, **10:4**  
Body and breath temperature, effects on test reliability, **10:10**  
Breath machines used in California  
Generally, **10:21**  
Alco-Sensor, **10:29, 10:33**  
DataMaster, **10:23**  
Drager Alcotest, below  
Intoxilyzer 5000, below  
Intoximeter, **10:24**  
LifeLoc FC20, **10:34**  
Breathing pattern, effects on test reliability, **10:9**  
Calibration of simulator and test accuracy  
Generally, **10:16**  
Logs, usage and calibration, **App. G**  
Single point calibration, unscientific, **10:17**  
Checklists  
Generally, **App. 7.9**  
Precautionary checklist, **App. 7.10**  
Precautionary checklists, **10:9, 10:22, App. 10.27**  
Contamination of specimen with ambient air, **10:14**  
DataMaster, **10:23**

**BREATH ALCOHOL TESTS**

**—Cont'd**

Defense, important considerations in presenting, **10:3**  
Diabetic client, unreliability of testing, **10:12**  
Discovery  
**Discovery** (this index)  
Miscellaneous issues, **7:9**  
Sample breath informal discovery, **App. 7.2**  
Drager Alcotest  
Alcotest 7410  
generally, **10:26, 10:35**  
Alcotest 7510  
generally, **10:27, 10:35**  
precautionary checklist, **App. 10.27**  
written test, **App. 10.27**  
Alcotest 9510, **10:28, App. 10.28**  
Alcotest 7110 MK III, **10:9, 10:25**  
Contact information, **App. C, App. D**  
Error codes, **App. 10.28**  
Precautionary checklist, **10:9, App. 10.27**  
Errors  
Inherent errors, **10:18**  
Machine errors, **App. 10.7**  
GERD and acid reflux defense, presenting, **10:8**  
High protein diets, effects on testing reliability, **10:13**  
In limine motion to exclude estimate of BrAc without accounting for uncertainty (form), **App. K**  
Inherent error in breath testing, **10:18**  
Intoxilyzer 5000  
Generally, **10:22**  
Contact information, **App. E, App. F**  
Manufacturer's statement of warranty, **9:19**  
Precautionary checklist, Orange County Sheriff-Coroner Department, **10:22**  
Test card for recording results, **10:22**  
Intoximeter, **10:24**

## INDEX

### BREATH ALCOHOL TESTS

#### —Cont'd

- LifeLoc FC20, **10:34**
- Mouth alcohol and mouth alcohol detector, problems with, **10:7**
- New paradigm, **10:2**
- Nonspecific analysis, problems with, **10:5**
- Overview, **10:1**
- Precision and accuracy of testing, variables, **10:19**
- Preliminary alcohol screening (PAS)
  - CHP PAS procedures, **10:32**
  - Devices, **10:30**
  - Motions in limine, **App. 10.31**
  - Strategies for dealing with PAS evidence, **10:31**
- Purging, incomplete, effect on reliability of test, **10:15**
- Radio frequency interference (RFI) and reliability of testing, **10:20**
- Simulator calibration and test accuracy, **10:16**
- Single point calibration, unscientific, **10:17**
- Stress, physiological effects and reliability of testing, **10:11**
- Theory and reality, **10:2**
- Variables affecting precision and accuracy of testing, **10:19**

### BRIEFS

- Administrative per se hearing, **4:7**

### BUSINESS RECORDS

- Chemical test results, admissibility under public employee business records exception, **8:32**

### CALIBRATION

- Blood Alcohol Analysis** (this index)
- Breath Alcohol Tests** (this index)
- Discovery** (this index)

### CAPTION

- Sample form, **App. B1**

### CERTIFICATES AND CERTIFICATION

- Alcohol balance calibration certification, **App. 7.18**

### CERTIFICATES AND

#### CERTIFICATION—Cont'd

- Digital thermometer certificate of calibration, **App. 7.27**
- Mass certificate of calibration, **App. 7.26**
- Volumetric flask, certificate of calibration, **App. 7.28**

### CHAIN OF CUSTODY

- Report, **App. 7.13**
- Suppression of evidence, **8:38**

### CHECKLISTS

- Administrative per se hearing, **4:21**
- Breath test, **App. 7.9**
- Drug influence evaluation, **App. 13.1**
- Precautionary checklists
  - Discovery, **App. 7.10**
  - Drager Alcotest, **10:9, App. 10.27**
  - Intoxilyzer 5000, **10:22**

### CHECKPOINTS

- Sobriety checkpoints. **Suppression of Evidence** (this index)

### CHEMICAL TESTING

- Sentencing, refusal to submit, **2:10**

### CHILD ENDANGERMENT

- Sentencing, **2:12**

### CHROMATOGRAPHY

- Drug analysis, **14:3-14:8**

### CIRCADIAN RHYTHM

- Challenging prosecution's BAC evidence, **9:13**

### CLIENT

- Client interview, **5:1**
- Diabetic client, unreliability of breath testing, **10:12**
- Educating client, **5:3**
- Emergency response costs, advising client, **5:5**
- Intake form, **App. 5.2**
- Midnight phone call, **5:2**
- New client call sheet (form), **App. 5.1**

### CLOSING ARGUMENT

- Generally, **18:5**

**COMMUNITY SERVICE**

Sentencing, **2:18**

**CONTINUANCES**

Administrative per se hearing, **4:10**,  
**App. 4.3**

**CORPUS**

Generally, **1:11**

**CRASH DATA RECORDS**

Warrantless seizure, **8:42**

**CROSS-EXAMINATION**

**Arresting Officer** (this index)

BAC evidence, cross-examination  
techniques, **9:19**

Blood alcohol expert for defense,  
preparing for cross-examination,  
**17:8**

Defendant, preparing for cross-exam-  
ination, **17:12**

Sobriety witness, preparing for cross-  
examination, **17:4**

**DEFENSES**

Generally, **1:20**

Case law to consider, **11:10**

Defense witness. **Witnesses** (this  
index)

Duress, **1:23**

Entrapment, **1:24**

GERD and acid reflux defense, pre-  
senting, **10:8**

Insanity, **1:24**

Metrology, **12:1-12:4**

Mistake of fact, **1:22**

Necessity, **1:23**

Rising blood alcohol defense, **9:6**

**DEFINITIONS**

Driving, **1:12**

Drug blood levels, **13:3**

Pharmacological terms, **13:2**

Under the influence of alcohol, **1:15**

Vehicle, **1:13**

**DEMURRER**

Sample form, **App. B8**

**DESTRUCTION OF RECORDS**

Petition to seal and destroy records  
and for declaration of factual  
innocence (form), **App. B17**

**DETENTION**

**Suppression of Evidence** (this  
index)

**DIABETES**

Diabetic client, unreliability of breath  
testing, **10:12**

**DISCOVERY**

Generally, **7:1 et seq.**

Administrative per se hearing, **4:4**,  
**App. 4.1**

Average K factor report, **App. 7.16**

Avoiding recording events by law  
enforcement, **7:4**

Blood alcohol evidence, **7:6**

Blood/breath tests

Basic blood discovery request,  
sample, **App. K**

Calibration, below

Checklists, **App. 7.9, App. 7.10**

Discovery requests, **7:8, 7:10**,  
**9:17, App. K**

Extensive blood discovery request,  
sample, **App. K**

Miscellaneous breath and blood  
discovery issues, **7:9**

Moderate blood discovery request,  
sample, **App. K**

Sample blood discovery (DOJ),  
**App. 7.1**

Sample breath informal discovery,  
**App. 7.2**

Booking photo, defense ex parte  
motion for production, **App. B3**

Calibration

Alcohol balance calibration certifi-  
cation, **App. 7.18**

Digital thermometer certificate of  
calibration, **App. 7.27**

Diluter B Calibration report, **App.**  
**7.20**

Mass certificate of calibration,  
**App. 7.26**

Pipette calibration report, **App.**  
**7.23**

## INDEX

### DISCOVERY—Cont'd

#### Calibration—Cont'd

Volumetric dispenser calibration report, **App. 7.19**

Volumetric flask, certificate of calibration, **App. 7.28**

California law enforcement transparency provisions, **7:2**

Chain of custody report, **App. 7.13**

Checklists, **App. 7.9, App. 7.10**

Checkpoint discovery request, sample, **App. 7.4**

Chemical test discovery, **7:7**

Compelling discovery, sample motion, **App. K**

Court-ordered analysis, **7:12**

Cross-examination of arresting officer at DMV administrative per se hearings, **7:5**

Defense disclosures

Generally, **7:16**

Impeachment material, **7:17**

Destruction of recordings by law enforcement, **7:4**

Direct oxidation worksheet, **App. 7.21**

DOJ sample blood discovery, **App. 7.1**

Expert testimony, **7:12**

Failure to provide, remedies

Generally, **7:15**

Suppression of evidence, **8:40**

Federal court, **19:3**

Field evidence, **7:3**

Fluoride ion concentration kit, **App. 7.22**

Gas chromatograph maintenance log, **App. 7.14**

Informal discovery requests, samples  
Generally, **App. 7.3**

Breath, **App. 7.2**

Jurors, discovery of prosecution records, **15:3**

Laboratory examination report, **App. 7.12**

Law enforcement avoiding recording events or destroying recordings, **7:4**

### DISCOVERY—Cont'd

#### Maintenance logs

Gas chromatograph maintenance log, **App. 7.14**

Turbomatrix 110 Headspace maintenance log, **App. 7.15**

Meet and confer, **7:14, App. 7.6, App. 7.7**

Miscellaneous breath and blood discovery issues, **7:9**

Notification and compliance, **App. 7.11**

Preservation and production of sample, **7:11**

Prosecution request, opposition to (form), **App. B15**

Prosecutorial resistance, **7:13**

QA Action reports

Action 1, **App. 7.24**

Action 2, **App. 7.25**

Raw electronic data, motion to compel with points and authorities, **App. 7.8**

Sample breath discovery request, **7:10**

Sample breath informal discovery, **App. 7.2**

Summary report, **App. 7.17**

Turbomatrix 110 Headspace maintenance log, **App. 7.15**

### DISMISSAL

Destruction or loss of evidence, defense motion to dismiss, **App. B5**

Petition to withdraw plea or set aside verdict and to dismiss charges (form), **App. B16**

### DIVERSION

Military service, diversion for misdemeanor DUI, **2:29**

### DOCUMENTS

Administrative per se hearing, unsworn documents, **4:12**

### DOUBLE JEOPARDY

Generally, **1:21**

### DRAGER ALCOTEST

Breath Alcohol Tests (this index)



## **DRIVER'S LICENSES**

- Administrative per se hearing
  - Generally, **4:1 et seq.**
- Administrative review, **4:19, App. 4.4**
- Affidavit, testimony by, **4:6**
- Arresting officer
  - cross-examination, **7:5**
  - initial examination, **4:5**
- Best evidence rule, electronic transmissions, **4:16**
- Bias, challenging hearing officer, **4:9**
- Briefs, **4:7**
- Checklist, **4:21**
- Continuances, **4:10, App. 4.3**
- Counsel, retention of, notice to DMV (form), **App. 4.1**
- Discovery, **4:4, App. 4.1**
- Documents, unsworn, **4:12**
- Evidence rules, **4:11**
- Hearsay rule, **4:13, 4:14**
- Judicial review, **4:20**
- Licensee's case, **4:17**
- Mandate, petition for writ with points and authorities (form), **App. 4.5**
- Objections, **4:2**
- Official duty presumption, **4:15**
- Official records exception to hearsay rule, **4:14**
- Procedures, **4:8**
- Representation before DMV, **4:1**
- Request for APS hearing (form), **App. 4.1**
- Setting aside suspension, most common grounds, **4:18**
- Stay of suspension, requesting, **App. 4.1**
- Subpoena (DMV), **4:5, App. 4.2**
- Telephonic vs. in person hearings, **4:3**
- Unsworn documents, **4:12**
- Administrative per se suspension
  - Generally, **3:1 et seq.**
  - California driver convicted or suspended in another state, **3:3**

## **DRIVER'S LICENSES—Cont'd**

- Administrative per se suspension
  - Cont'd
  - Change of mind (cure), **3:10**
  - Criminal proceedings, effect on APS suspension, **3:5**
  - DMV, administrative suspension and, **3:1**
  - Drugs, driving under the influence, **3:4**
  - Out-of-state driver, **3:2**
  - PAS test, refusal to submit (under 21), **3:11**
  - Refusal suspension, **3:8, 3:9**
  - Under 21 drivers
    - PAS test, refusal to submit, **3:11**
    - zero tolerance (0.01%), **3:7**
  - 0.08% suspension, **3:6**
  - Administrative review, **4:19**
  - California driver convicted or suspended in another state, **3:3**
  - Criminal proceedings, effect on APS suspension, **3:5**
  - Hearings. Administrative per se hearing, above
  - Judicial review, administrative per se hearing, **4:20**
  - Out-of-state driver, administrative per se suspension, **3:2**
  - Refusal suspension, **3:8, 3:9**
  - Representation before DMV, **4:1**
  - Setting aside suspension, most common grounds, **4:18**
  - Telephonic vs. in person hearings, **4:3**
  - Under 21 drivers
    - Refusal to submit to PAS test, **3:11**
    - Zero tolerance (0.01%), **3:7**

## **DRUG RECOGNITION EXPERT**

- Generally, **11:8.2**

## **DRUGS, DRIVING UNDER THE INFLUENCE**

- Generally, **1:17, 13:1 et seq.**
- Administrative per se license suspension, **3:4**
- Advanced Roadside Impaired Driving Enforcement (ARIDE) protocol, understanding and



## INDEX

### DRUGS, DRIVING UNDER THE INFLUENCE—Cont'd

- challenging, **13:8**
- Case law to consider, **13:11**
- Checklist, drug influence evaluation, **App. 13.1**
- Classifications of drugs and effects, **11:6, 13:5**
- Cognitive functioning impairment, **13:4**
- Definitions, drug blood levels, **13:3**
- Driving while addicted, **1:18**
- Drug analysis
  - Generally, **14:1 et seq.**
  - Gas chromatography mass spectrometry (GC/MS)
    - generally, **14:3**
    - anatomy, **14:6**
    - drug confirmation limitations, **14:4**
    - how it works, **14:7**
    - problem areas, **14:8**
    - sample preparation, **14:5**
- Overview, **14:1**
- Presumptive testing for drugs, **14:2**
- Problem areas for GC/MS, **14:8**
- Drug recognition expert (DRE)
  - protocol
  - Checklist, **App. 13.1**
  - Drug recognition evaluation, **App. 13.3**
  - Drug symptom matrix, **App. 13.5**
  - Eye exam tools, **App. 13.2**
  - Limiting or excluding DRE testimony, **13:10**
  - Overview, **13:9**
  - Pupil size chart, **App. 13.4**
- Eye exam tools (DRE), **App. 13.2**
- Gas chromatography mass spectrometry (GC/MS). Drug analysis, above
- Law enforcement DDUI training, **13:6, 13:7**
- Matrix, drug symptoms, **App. 13.5**
- Medical conditions mimicking impairment, **13:12**
- Overview, drug impairment dilemma, **13:1**
- Pharmacological terms, **13:2**

### DRUGS, DRIVING UNDER THE INFLUENCE—Cont'd

- Presumptive testing for drugs, **14:2**
- Pupil size chart (DRE), **App. 13.4**

### DURESS

- Defense, **1:23**

### EBT DEVICE

- DOT regulations, **App. 9.6**

### EDUCATION PROGRAMS

- Drinking and driving, **2:21**

### ELECTRONIC DATA

- Raw electronic data, motion to compel with points and authorities, **App. 7.8**

### ELECTRONIC HOME DETENTION

- Generally, **2:20**

### ELECTRONIC TRANSMISSIONS

- Best evidence rule, **4:16**

### EMERGENCY RESPONSE COSTS

- Advising client, **5:5**
- Sentencing, **2:25**

### EMPLOYER AND EMPLOYEE

- Ignition interlock restriction, notice to employers, **2:22**

### ENTRAPMENT

- Defense, **1:24**

### EQUIPMENT

- Breath machines. **Breath Alcohol Tests** (this index)

### EVIDENCE

- Administrative per se hearing, rules of evidence, **4:11**
- Best evidence rule, electronic transmissions, **4:16**
- Destruction or loss, defense motion to dismiss, **App. B5**
- Foundation, lack of (Title 17), **8:39**
- Hearsay. **Hearsay Rule** (this index)
- PAS evidence, strategies for dealing with, **10:31**
- Suppression. **Suppression of Evidence** (this index)

**EXPERT TESTIMONY**

- Arresting officer as intoxication expert, **16:2**
- Blood alcohol expert for defense
  - Generally, **17:6**
  - Cross-examination, preparing expert, **17:8**
  - Direct examination, illustrative, **17:7**
- Discovery, **7:12**
- Drug recognition expert, **11:8.2**
- In chambers appointment of defense expert, motion (form), **App. B9**
- Limiting or excluding DRE testimony, **11:9**
- Police expert, **17:5**

**FACTUAL INNOCENCE**

- Petition to seal and destroy records and for declaration of factual innocence (form), **App. B17**

**FEDERAL COURT**

- Generally, **19:1 et seq.**
- Appearance, **19:3**
- Discovery, **19:3**
- Plea agreement, **19:5**
- Procedure for getting into, **19:2**
- Trial, **19:4**

**FEDERAL DUI**

- Sample federal information and violation notice, **App. J**

**FELONIES**

- CVC 23153 DUI with injury, misdemeanor or felony, **2:3**
- Injury alleged, **1:3**
- Prior DUI-related felony, drunk driving with, **2:5**
- Prior related felony, **1:5**
- Reducing felony to misdemeanor after probation granted, motion (form), **App. B12**
- Three or more priors within 10 years, **1:4**

**FIELD SOBRIETY TESTS**

- Arresting Officer** (this index)
- Suppression of Evidence** (this index)

**FOREIGN TRAVEL**

- Restrictions, **2:28**

**FORFEITURE**

- Vehicle impound/forfeiture, **2:23**

**FOUNDATION**

- Lack of foundation (Title 17), **8:39**

**GAS CHROMATOGRAPHY**

- Drug analysis, **14:3-14:8**

**GUILTY PLEA**

- Petition to withdraw plea or set aside verdict and to dismiss charges (form), **App. B16**

**HEARINGS**

- Administrative license suspensions.  
**Driver's Licenses** (this index)

**HEARSAY RULE**

- Chemical test results, admissibility under public employee business records exception, **8:32**
- DMV hearings, **4:13, 4:14**

**HIPPA**

- Hospital blood alcohol evidence and HIPPA, **8:36**

**HOME DETENTION**

- Electronic, **2:20**

**HORIZONTAL GAZE**

**NYSTAGMUS (HGN)**

- Suppression of evidence, **8:27**

**IGNITION INTERLOCK DEVICES (IID'S)**

- Generally, **2:22**
- Forms, **2:22**

**IMMIGRATION**

- Sentencing, immigration consequences, **2:24**

**IMPEACHMENT**

- Discovery, defendant not required to disclose impeachment material, **7:17**

**IMPOUND**

- Vehicle impound/forfeiture, **2:23**

## INDEX

### IN LIMINE MOTIONS

Defendant's BrAc, motion to exclude without accounting for uncertainty (form), **App. K**  
Preliminary alcohol screening (PAS), **App. 10.31**

### INEFFECTIVE ASSISTANCE OF COUNSEL

Incompetence of prior counsel, **6:6**

### INFERENCES

Permissive inference jury instruction, motion to exclude, **App. 18.1**

### INJURY

CVC 23153 DUI with injury, misdemeanor or felony, **2:3**

### INNOCENCE

Petition to seal and destroy records and for declaration of factual innocence (form), **App. B17**

### INSANITY

Defense, **1:25**

### INSTRUCTIONS

**Jury Instructions** (this index)

### INTERVIEWS

Client interview, **5:1**

### INTOXILYZER 5000

**Breath Alcohol Tests** (this index)

### INVESTIGATION

**Arresting Officer** (this index)

### JUDGES

Peremptory challenge, CCP 170.6 motion (form), **App. 5.4**

### JUDICIAL NOTICE

Request at trial (form), **App. B19**

### JUDICIAL REVIEW

Driver's license, **4:20**

### JURY INSTRUCTIONS

Generally, **18:1 et seq.**  
CalCrim instructions  
Generally, **18:2**  
Vs. CalJic instructions, **18:3**  
Importance, **18:1**

### JURY INSTRUCTIONS—Cont'd

Permissive inference jury instruction, motion to exclude, **App. 18.1**  
Pinpoint instructions, **18:4**  
Special instructions, **18:4**

### JURY SELECTION

Generally, **15:1**  
Legal considerations, **15:2**  
Prosecution records on jurors, discovery, **15:3**  
Voir dire, **15:4**

### JUVENILES

**Minors** (this index)

### LAW ENFORCEMENT OFFICERS

**Arresting Officer** (this index)

### LICENSES AND PERMITS

Driver's licenses. **Driver's Licenses** (this index)  
Professional licenses, effects of charges and conviction, **2:26**

### LINEUP

Notice of motion and motion for lineup (form), **App. B10**

### MACHINES

Breath machines. **Breath Alcohol Tests** (this index)

### MANDAMUS

Petition for writ of mandate with points and authorities (form), **App. 4.5**

### MANSLAUGHTER

Sentencing, **2:6**  
Vehicular manslaughter, **1:8**

### MEDICAL CONDITIONS

Mimicing impairment, **11:11**

### MEET AND CONFER

Discovery, **7:14, App. 7.6, App. 7.7**

### MENTAL ACUITY TESTS

Suppression of evidence, **8:26**

### METROLOGY IN DUI DEFENSE

Generally, **12:1-12:4**

**METROLOGY IN DUI DEFENSE  
—Cont’d**

Report of laboratory examination, **12:4**  
Uncertainty of measurement, **12:3, 12:4**

**MILITARY SERVICE**

Diversion for misdemeanor DUI, **2:29**

**MINORS**

Administrative per se license suspension  
PAS test, refusal to submit, **3:11**  
Zero tolerance (0.01%), **3:7**  
Priors, **6:7**  
Under 21 drivers with 0.05% blood alcohol, **1:6**

**MISDEMEANORS**

CVC 23152, misdemeanor DUI, **1:2**  
CVC 23153 DUI with injury, misdemeanor or felony, **2:3**  
Mental health condition, diversion for misdemeanor DUI, **2:30**  
Military service, diversion for misdemeanor DUI, **2:29**  
Reducing felony to misdemeanor after probation granted, motion (form), **App. B12**  
Sentencing, misdemeanor driving under the influence, **2:1**  
Waiver of personal appearance (PC 977) with supporting declarations (forms), **App. 5.5**

**MISTAKE**

Fact, mistake of, **1:22**

**MOTIONS**

Bail, motion to reduce (form), **App. B11**  
Booking photo, defense ex parte motion for production, **App. B3**  
Breath alcohol tests, in limine motions, **App. K, App. 10.31**  
Compelling discovery, sample motion, **App. K**  
Defense expert, motion for in chambers appointment (form), **App. B9**

**MOTIONS—Cont’d**

Destruction or loss of evidence, defense motion to dismiss, **App. B5**  
Felony, reducing to misdemeanor after probation granted, motion (form), **App. B12**  
Lineup, notice of motion and motion (form), **App. B10**  
Peremptory challenge, CCP 170.6 motion (form), **App. 5.4**  
Permissive inference jury instruction, motion to exclude, **App. 18.1**  
Raw electronic data, motion to compel with points and authorities, **App. 7.8**  
Sanctions, defense motion (form), **App. B4**  
Striking priors, sample motions (forms), **App. B7, App. 6.1**  
**Suppression of Evidence** (this index)  
Tape recordings, defense motion to preserve and copy, **App. B6**

**MURDER**

Sentencing, **2:6**

**NECESSITY**

Defense, **1:23**

**NO CONTEST PLEA**

Petition to withdraw plea or set aside verdict and to dismiss charges (form), **App. B16**

**NOTICE**

Administrative per se hearing, retention of counsel, notice to DMV (form), **App. 4.1**  
Appeal, notice of appeal (forms), **App. B13, App. H**  
Discovery, notification and compliance, **App. 7.11**  
General time waiver, notice of intent to withdraw (form), **App. B14**  
Ignition interlock restriction, notice to employers, **2:22**  
Lineup, notice of motion and motion (form), **App. B10**

## INDEX

### OFFENSE

- Generally, **1:1 et seq.**
- Accomplice liability, **1:26**
- Attempted drunk driving, **1:10**
- Corpus, **1:11**
- Drivers under 21 years with 0.05% blood-alcohol, **1:6**
- Felony offense
  - Injury alleged, **1:3**
  - Prior related felony, **1:5**
  - Three or more priors with ten years, **1:4**
- Legal defenses, **1:20**
- Murder, **1:9**
- Probation, new offense occurring while, **1:7**
- Vehicular manslaughter, **1:8**

### OPENING STATEMENT

- Generally, **15:5, 15:6**

### OPINION TESTIMONY

- Experts. **Expert Testimony** (this index)
- Lay opinion of intoxication, **17:2**

### OUT-OF-STATE DRIVER

- Administrative per se license suspension, **3:2**

### PEREMPTORY CHALLENGE

- CCP 170.6 motion with supporting declaration and proposed order (forms), **App. 5.4**

### PHOTOGRAPHS

- Booking photo, defense ex parte motion for production, **App. B3**
- Suppression of evidence, **8:41**

### PLEA AGREEMENTS

- Federal courts, **19:5**

### PLEA BARGAINING

- Considerations, **5:9**

### PRELIMINARY ALCOHOL SCREENING (PAS)

- Arresting officer, **16:17**
- CHP PAS procedures, **10:32**
- Devices
  - Generally, **8:28, 10:30**

### PRELIMINARY ALCOHOL

#### SCREENING (PAS)—Cont'd

- Devices—Cont'd
  - Field evidence, **16:17**
  - Uses and calibration logs, **App. G**
- Motions in limine, **App. 10.31**
- Refusal to submit
  - Administrative per se suspension, under 21 drivers, **3:11**
  - Suppression of evidence, **8:23**
- Strategies for dealing with PAS evidence, **10:31**
- Usage and calibration logs, **App. G**

### PRESUMPTIONS AND INFERENCES

- Administrative per se hearing, official duty presumption, **4:15**
- Blood alcohol presumption of intoxication, **1:16**
- Drugs, presumptive testing, **14:2**

### PRETRIAL RELEASE

- Generally, **5:7**

### PRIOR CONVICTIONS

- Generally, **6:1 et seq.**
- Admission of prior, prosecutorial refusal to accept, **6:13**
- Bifurcation of trial, **6:12**
- Constitutional challenge, **6:3**
- Factual proof, **6:2**
- Incompetence of prior counsel, **6:6**
- Juvenile prior, **6:7**
- Out-of-state priors
  - Generally, **6:8**
  - Sample points and authorities for challenging, **6:14**
- Prejudice, alleging, **6:11**
- Record, **6:10**
- Sentencing
  - Prior DUI-related felony, **2:5**
  - Prior or separate convictions, **2:9**
  - Three priors (four strikes), **2:4**
- Striking priors
  - Generally, **6:1**
  - Procedure, **6:9**
  - Sample motions (forms), **App. B7, App. 6.1**

**PRIOR CONVICTIONS—Cont'd**

- Three prior convictions, drunk driving with  
Sentencing, **2:4**
- Uncharged priors, **6:4**
- Uncounseled prior, **6:5**

**PROBABLE CAUSE**

- Suppression of Evidence** (this index)

**PROBATION**

- Generally, **2:27**
- Ignition interlock removal and modification to probation order, **2:22**
- New offense occurring while, **1:7**
- Punishment for violations, **2:27**
- Reducing felony to misdemeanor after probation granted, motion (form), **App. B12**

**PROFESSIONAL LICENSES**

- Effects of charges and conviction, **2:26**

**PROOF OF SERVICE**

- DMV subpoena (form), **App. 4.2**

**PROSECUTORS**

- Discovery, prosecutorial resistance, **7:13**
- Prior conviction, prosecutorial refusal to accept admission, **6:13**

**PUNISHMENT**

- Multiple punishment, **2:16**
- Probation violations, **2:27**
- Sentencing. **Sentencing** (this index)
- Trial, right to, punishment for exercising, **2:17**

**PUPIL REACTION**

- Suppression of evidence, **8:29**

**RADIO FREQUENCY INTERFERENCE (RFI)**

- Reliability of breath testing, **10:20**

**RECKLESS DRIVING**

- Sentencing, speeding and reckless, **2:11**

**RECORDS AND RECORDINGS**

- Crash data records, warrantless seizure, **8:42**
- Defense motion to preserve and copy tape recordings, **App. B6**
- Official records exception to hearsay rule, **4:14**
- Petition to seal and destroy records and for declaration of factual innocence (form), **App. B17**
- Suppression of evidence, **8:41**

**RETESTING**

- Blood alcohol concentration (BAC), **9:18**
- Order, **App. 7.5**

**ROADWORK**

- Sentencing, **2:18**

**SANCTIONS**

- Defense motion (form), **App. B4**

**SEALING RECORDS**

- Petition to seal and destroy records and for declaration of factual innocence (form), **App. B17**

**SELF-INCRIMINATION**

- Suppression of evidence, self-incrimination and refusal, **8:22**

**SENTENCING**

- Generally, **2:1 et seq.**
- Alcohol treatment programs, residential, **2:19**
- Blood alcohol over 0.15%, **2:13**
- Blood alcohol over 0.20%, **2:14**
- Chemical testing, refusal to submit, **2:10**
- Child endangerment, **2:12**
- Community service, **2:18**
- CVC 23153 DUI with injury, misdemeanor or felony, **2:3**
- DUI specific enhancements, **2:8**
- Education programs, drinking and driving, **2:21**
- Electronic home detention, **2:20**
- Emergency response costs, **2:25**
- Enhancements, **2:8**
- Foreign travel restrictions, **2:28**
- Four strikes, **2:4**

## INDEX

### SENTENCING—Cont'd

- Ignition interlock devices (IIDs), **2:22**
- Immigration consequences, **2:24**
- Issues, **2:15**
- Manslaughter, **2:6**
- Mental health condition, diversion for misdemeanor DUI, **2:30**
- Military service, diversion for misdemeanor DUI, **2:29**
- Misdemeanor driving under the influence, **2:1**
- Multiple punishment, **2:16**
- Multiple victims, **2:7**
- Murder, **2:6**
- Prior DUI-related felony, **2:5**
- Prior or separate convictions, **2:9**
- Probation and probation violations, **2:27**
- Professional licenses, effects of charges and conviction, **2:26**
- Roadwork, **2:18**
- Speeding and reckless, **2:11**
- Three priors (four strikes), **2:4**
- Trial, right to, punishment for exercising, **2:17**
- Vehicle impound/forfeiture, **2:23**
- Wet-reckless plea, **2:2**
- Work furlough, **2:18**

### SOBRIETY CHECKPOINTS

- Suppression of Evidence** (this index)

### SPEEDING

- Sentencing, speeding and reckless, **2:11**

### STATUTES

- Applicable statutes, **App. A**
- Common misdemeanor DUI CVC 23152, **1:2**

### STAY OF SUSPENSION

- Administrative per se hearing, requesting stay, **App. 4.1**

### STRIKING PRIORS

- Prior Convictions** (this index)

### SUBPOENAS

- DMV subpoena, initial examination of arresting officer, **4:5, App. 4.2**

### SUBSTITUTION OF COUNSEL

- Sample letter, **App. B21**

### SUPPRESSION OF EVIDENCE

- Generally, **8:1 et seq.**
- Access to counsel, denial of, **8:35**
- Admissibility of field sobriety tests, **8:24**
- Anonymous tip, probable cause based on, **8:12**
- Arrest
  - Actual occurrence of arrest, **8:11**
  - Blood alcohol test, admissibility dependent on lawful arrest, **8:10**
  - Detention and arrest, **8:3**
- Blood
  - Admissibility blood alcohol test dependent on lawful arrest, **8:10**
  - Blood alcohol evidence, **8:31**
  - Consent, taking of by, **8:15**
  - Denial of choice, blood requested, **8:34**
  - Draw pursuant to acceptable medical practices, **8:16**
  - Forceful seizure, **8:17**
  - Hospital blood alcohol evidence and HIPPA, **8:36**
  - Independent sample, denial of, **8:37**
  - Medical practices, draw pursuant to acceptable, **8:16**
  - Sample motion to suppress evidence of BAC, **App. 8.3**
  - Warrant, taking of by, **8:14**
- Breath requested, denial of choice, **8:33**
- Chain of custody, **8:38**
- Checkpoints. Sobriety checkpoints, below
- Chemical test results, admissibility under public employee business records exception, **8:32**
- Consent, taking of blood by, **8:15**



## SUPPRESSION OF EVIDENCE

### —Cont'd

- Corpus delicti, establishing independent of defendant's statements, **8:9**
- Counsel, denial of access, **8:35**
- Crash data records, warrantless seizure, **8:42**
- Detention and arrest
  - Generally, **8:3**
  - Prolonged detention, **8:5**
- Discovery, failure to provide, **8:40**
- Draw of blood pursuant to acceptable medical practices, **8:16**
- Electronic checkpoints, **8:20**
- Field sobriety tests
  - Admissibility, **8:24**
  - Refusal to take, **8:23**
  - Standardized tests, **8:25**
- Filing motion, procedures, **8:2**
- Forceful seizure of blood, **8:17**
- Foundation, lack of (Title 17), **8:39**
- Horizontal gaze nystagmus (HGN), **8:27**
- Hospital blood alcohol evidence and HIPPA, **8:36**
- Implied consent advisement, **8:13**
- Incriminating statements, **8:21**
- Independent sample, denial of, **8:37**
- Medical practices, drawing of blood pursuant to acceptable, **8:16**
- Mental acuity tests, **8:26**
- Motion to suppress
  - Procedures for filing, **8:2**
  - Sample motions, **App. 8.1-8.3**
- Photographs, **8:41**
- Police
  - Obstruction of witnesses, **8:30**
  - Stakeouts, **8:6**
- Preliminary alcohol screening (PAS)
  - Devices, **8:28, App. 8.2**
  - Refusal to take, **8:23**
- Presence of officer
  - Driving not occurring in, **8:7**
  - Exceptions to presence requirement, **8:8**
- Pretextual stops, **8:6**
- Pretrial suppression, **8:1**

## SUPPRESSION OF EVIDENCE

### —Cont'd

- Probable cause
  - Generally, **8:3**
  - Anonymous tip, **8:12**
  - Vehicle Code infractions, **8:4**
- Procedures for filing motion, **8:2**
- Prolonged detention, **8:5**
- Pupil reaction, **8:29**
- Reasonable suspicion, **8:3**
- Recordings, **8:41**
- Refusal to take field sobriety or PAS tests, **8:23**
- Self-incrimination and refusal, **8:22**
- Sobriety checkpoints
  - Generally, **8:18**
  - Electronic checkpoints, **8:20**
  - Evasion, **8:19**
- Stakeouts, **8:6**
- Statements, defendant's
  - Corpus delicti, establishing independent of statements, **8:9**
  - Incriminating statements, **8:21**
- Stops
  - Pretextual stops, **8:6**
  - Vehicle Code infractions as probable cause for stop, **8:4**
- Warrant, taking of blood by, **8:14**
- Witnesses, police obstruction, **8:30**

## SUSPENSION OF LICENSE

- Administrative suspension. **Driver's Licenses** (this index)

## TAPE RECORDINGS

- Defense motion to preserve and copy, **App. B6**

## TIME

- General time waiver, notice of intent to withdraw (form), **App. B14**

## TRANSCRIPTS

- Proposed statement on appeal and request for preparation of reporter's transcript, **App. B18**

## TRAVEL

- Foreign travel restrictions, **2:28**

## INDEX

### TRIAL

- Closing argument, **18:5**
- Cross-Examination** (this index)
- Federal court, **19:4**
- Instructions. **Jury Instructions** (this index)
- Judicial notice, request at trial (form), **App. B19**
- Jury selection, **15:1-15:4**
- Opening statement, **15:5, 15:6**
- Witnesses. **Witnesses** (this index)

### TRIAL, RIGHT TO

- Punishment for exercising, **2:17**

### UNDER THE INFLUENCE OF ALCOHOL

- Defined, **1:15**
- Statutory provision, **1:14**

### URINALYSIS

- Generally, **11:20**

### VEHICULAR MANSLAUGHTER

- Manslaughter** (this index)

### VERDICT

- Petition to withdraw plea or set aside verdict and to dismiss charges (form), **App. B16**

### VICTIMS

- Sentencing, multiple victims, **2:7**

### VOIR DIRE

- Jury selection, **15:4**

### WAIVER

- General time waiver, notice of intent to withdraw (form), **App. B14**
- Misdemeanor PC 977 waiver with supporting declarations (forms), **App. 5.5**
- Personal appearance, defendant's waiver (form), **App. B2**

### WITHDRAWAL OF PLEA

- Petition to withdraw plea or set aside verdict and to dismiss charges (form), **App. B16**

### WITNESSES

- Blood alcohol expert
  - Generally, **17:6**
  - Cross-examination, preparing expert, **17:8**
  - Direct examination, illustrative, **17:6**
- Defendant as witness
  - Generally, **17:9**
  - Blood alcohol level, defendant's testimony, **17:10**
  - Cross-examination, preparing defendant, **17:12**
  - Direct examination, illustrative, **17:11**
- Defense witness
  - Generally, **17:1 et seq.**
  - Blood alcohol expert, above
  - Defendant as witness, above
  - Lay opinion of intoxication, **17:2**
  - Police expert, **17:5**
  - Sobriety witness, below
- Lay opinion of intoxication, **17:2**
- Police obstruction, suppression of evidence, **8:30**
- Sobriety witness
  - Generally, **17:1**
  - Cross-examination, preparing witness, **17:4**
  - Direct examination, illustrative, **17:3**

### WORK FURLOUGH

- Sentencing, **2:18**

### WRITS

- Administrative per se hearing
  - Petition for writ of mandate with points and authorities (form), **App. 4.5**

