



K41 Driving Under the Influence of Drugs (DUID) “Per Se” Laws: Practical Application and the Inclusion of Inactive Metabolites

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After attending this presentation, attendees will better understand the application of DUID “per se” laws in Nevada and the strategies used to prosecute cases when only inactive metabolites are reported.

This presentation will impact the forensic science community by discussing the practical application of DUID “per se” laws. The evaluation of casework experience over an extended period of time may also be useful for states considering DUID legislation.

Driving under the influence of alcohol “per se” laws have existed in the United States for more than a century and they remain a condition in order for states to receive federal highway tax funding. Although no federal requirement currently exists regarding drugs and driving, 22 of the 50 states have passed some form of zero tolerance or “per se” DUID legislation.¹ After strong lobbying by victim advocates, DUID “per se” laws were added to the Nevada Revised Statutes (NRS) in 1999.² This legislation equates to a prohibited substances law in which a person cannot legally operate a motor vehicle when they have a prohibited substance in their blood or urine above a defined threshold. Prohibited substances listed in the NRS are Schedule I or II drugs and metabolites for which a person does not have a valid prescription.

In Nevada, DUID cases are typically pursued in one of two manners. The first approach requires the prosecution to demonstrate that an individual was operating a motor vehicle while under the influence of a controlled substance. Results from standardized field sobriety tests performed during a traffic stop can be coupled with a supporting toxicology report to prove impairment. The second approach requires the prosecution to demonstrate that a person was operating a motor vehicle with a prohibited substance in their system as defined by “per se” legislation. Blood or urine taken from a person cited for DUID is analyzed and the results of the chemical test are admitted as evidence. Because of the challenges with proving the impairment of a suspected drugged driver, the second approach is often utilized.

A landmark case occurred in 2000 when a motorist drove into the median on Interstate 15 and ran into a group of teenagers working along the roadside as part of a juvenile rehabilitation program (*Williams v. State*, 2002).³ Six teenagers lost their lives on that tragic afternoon. Although the jury was not convinced that the driver of the vehicle was impaired, the driver was found guilty of having prohibitive substances in her system and was sentenced to prison. Nevada DUID “per se” laws continue to be used in the prosecution of drugged drivers to this day. The types of cases range from the routine DUID case with no accident or injury to high-profile incidents involving substantial bodily harm, including death.



There has been much discussion regarding Nevada DUID “per se” legislation. The list of urine drug levels, the difficulty relating blood drug concentration to impairment, the pharmacokinetic variances between different individuals, and the inclusion of inactive metabolites are all talking points that hold merit. Arguments supporting the law include the frequency of finding physiologically active compounds in a person’s system when the case involves rapidly metabolized drugs, such as cocaine and marijuana. For DUID blood cases analyzed by the Las Vegas Metropolitan Police Department from 2006 through 2015, Cocaine (COC) was reported 20.2% of the time when Benzoylcegonine (BZE) was present ($n=1,692$; mean COC concentration=102.6ng/mL, COC range: 50ng/mL-3,000ng/mL; mean BZE concentration=704.4ng/mL, BZE range: 50ng/mL-6,400ng/mL) and Δ^9 -Tetrahydrocannabinol (THC) was reported in 77.0% of cases when 11-nor-9-carboxy-THC (THCA) was present ($n=7,757$; mean THC concentration=8.9ng/mL, THC range: 2.0ng/mL-141.9ng/mL; mean THCA concentration=64.3ng/mL, THCA range: 5.0ng/mL-837.6ng/mL).

DUID “per se” laws are a valuable resource for prosecutors in Nevada. From a legal perspective, having a defined threshold for prohibited substances represents a clear standard of permissive inference; however, it is important to point out that the prosecution of DUID cases is not the only concern. This legislation has further-reaching effects as it facilitates the goal of making the roadways in Nevada a safer place. Moreover, the application of DUID “per se” laws helps victims and families gain closure after a disastrous event.

Reference(s):

1. Hedlund, James. *Drug Impaired Driving: A Guide For What States Can Do*. (2015). Retrieved from the Governors Highway Safety Association Website: <http://www.ghsa.org/html/publications/2015drugged.html> (accessed May 17th, 2016). Nev. Rev. Stat. § 484C.110.
2. *Williams v. State*, 118 Nev. 536, 50 P.3d 1116 (2002).

DUID, Forensic Toxicology, Per Se