



F21 What Does “Under the Influence” Mean in Driving Under the Influence (DUI) Drug Cases?

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After attending this presentation, attendees will understand the similarities and differences in the definition of “Under the Influence” in DUI alcohol and DUI drug cases and the additional difficulties in proving “Under the Influence” in DUI drug cases.

This presentation will impact the forensic science community by directing future research in order to overcome present limitations in proving “Under the Influence” in DUI drug cases.

DUI alcohol cases are commonly charged on both per se (over the Blood Alcohol Concentration (BAC) limit) and common law driving while “Under the Influence” theories. Because of the issues involved in establishing science-based equivalent per se limits for drugs, many states only prosecute DUI drug cases under the common law theory. This raises questions regarding to what extent is the alcohol model a basis for understanding what quanta of impairment from drugs is necessary to breach the law, and how the presence or absence of that amount of impairment is proven.

In DUI alcohol cases, there have been several large case-controlled studies that have provided crash-risk-odds ratios for alcohol, which clearly demonstrate the concentration-dependent increase in crash risk from alcohol. This provides an objective basis for setting not only the per se limits based on when the crash-risk-odds ratio increases to a level not tolerated by society, but then setting the quanta of impairment as being equivalent to that which is present at the proscribed BAC. The difficulty with DUI drug cases is that the concentration-dependent crash-risk-odds ratio have not been or cannot be established for the myriad of drugs that may potentially impair driving.

With many drugs or medications, the driver may be less impaired while being treated for his or her medical condition than the person would be without the medication. The mere presence of a medication in the person’s blood stream, even when present in therapeutic quantities, is not proof of illegal impairment. Furthermore, there may be some level of effect of the medication which is still consistent with safe driving. The impairing effects of the drug may not occur at the same time or in the same magnitude as the desired effect for which the medication is taken, nor has it been established through research that the presence of physiological side effects of taking medication or drugs (such as pulse rate, blood pressure, pupillary reactions to light, etc.) or performance on field sobriety tests correlate with drug-impaired driving ability. Also, in many DUI drug cases, the traffic stop is predicated on regulatory or equipment violations that do not demonstrate impaired driving. Therefore, with alcohol, crash-risk-odds ratios provide an objective basis for establishing that the requisite amount of driving impairment is present based on an objective measure of BAC and can be extrapolated to the types of behaviors that are present in people intoxicated to that level. Impairment from other substances presents a much more difficult interpretation of how to objectively demonstrate that a driver is too affected by the medication to drive safely.

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