

DUI and “Impairment”

Legal Overview and Definitions



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“UNDER THE INFLUENCE”

Impairment Defined

A person is ***under the influence*** if:

- n As a result of **drinking alcohol** and / or **taking a drug**
- n **Mental or physical** abilities so **impaired...**
- n **Cannot drive** vehicle with **caution of sober person using ordinary care, under similar circumstances**

• CALCRIM 2110

PHYSICAL SYMPTOMS

What We Expect...





SA WEHA 01

WHAT IS A “DRUG”?

Vehicle Code § 312

- n Any **substance** or **combination** of substances (*other than alcohol*)
- n Could so affect the **nervous system, brain, or muscles**
- n As to **impair**, to an appreciable degree, **ability to drive** a vehicle in the way...
 - Ordinarily prudent and cautious person
 - Full possession of faculties, using reasonable care
 - Would drive similar vehicle under like conditions

DRUGS for DUI

“Any Substance or Combination...”



DIFFERENT SYMPTOMS



DRUGS

Doing nothing has never been so amazing.

TYPES OF DUI OFFENSES

- n **“GENERIC”**: Unlawful to drive a vehicle while **impaired** by alcohol and/or drug
- n **“PER SE”**: Unlawful to drive a vehicle with **certain level** of alcohol or drug in blood at time of driving
 - n Proof of impairment **NOT** required
 - n Determined by **chemical test**

CALIFORNIA: VC § 23152

Basic DUI Statute

n GENERIC

- (a): UI Alcohol

- (f): UI Drug

- (g): Combo

n *Alco + Drug*

- (c): Drug Addict

- (d): .04% or ↑

n *Commercial Veh.*

- (e): .04% or ↑

n *Passenger VFH*

- Eff. 7/1/18

n PER SE

- (b): .08% or ↑

“PRESUMPTIONS”

(Actually, Permissive Inferences)

n LEVELS

- **.08% or ↑**: *“May, but are not required to conclude, Def. was DUI”* (i.e., **impaired**)
- **.05% - <.08%**: *No Presumption*
- **<.05%**: *Presumed NOT UI, unless combo of drugs and alcohol*

n **NOTE**: These inferences affect proof of **impairment** (“**Generic**” alcohol DUI)

- Some jurisdictions (not CA) *apply similar presumptions/inferences to levels of certain drugs in blood* (e.g., **THC**) “**Presumptive Levels**”

IMPAIRED DRIVER

Excuses That Don't Work (legally)

- n Subject Has a **Prescription / Medical Recommendation (MJ)**
 - ***Not a defense!***

- n Subject was **Tired, Fatigued, etc. Which Contributed to Impairment**
 - ***Not a defense!***

- n **Drug** Ingested was **OTC** or In Unusual Form
 - ***Not a defense!***

11550 H&S vs. DUI Drugs

n **11550 “UNDER THE INFLUENCE”**

- *“Controlled substance has **appreciably affected** ... nervous system, brain, or muscles or has created... **detectable abnormal** mental or physical condition.”*

n **DUI “UNDER THE INFLUENCE”**

- *“Mental or physical abilities are **so impaired**... no longer **able to drive** ... with the caution of a sober person...”*

Thank You for Listening!

