



NEVADA LEGISLATURE COMMITTEE TO CONDUCT AN INTERIM STUDY OF ISSUES RELATING TO DRIVING UNDER THE INFLUENCE OF MARIJUANA

([Assembly Concurrent Resolution 7 \[2019\]](#))

SUMMARY MINUTES January 17, 2020

The first meeting of the Committee to Conduct an Interim Study of Issues Relating to Driving Under the Influence of Marijuana for the 2019–2020 Interim was held on Friday, January 17, 2020, at 1 p.m. in Room 4412, Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 3138, Legislative Building, 401 South Carson Street, Carson City, Nevada.

The agenda, minutes, meeting materials, and audio or video recording of the meeting are available on the Committee's [meeting page](#). The audio or video recording may also be found at <https://www.leg.state.nv.us/Granicus/>. Copies of the audio or video record can be obtained through the Publications Office of the Legislative Counsel Bureau (LCB) (publications@lcb.state.nv.us or 775/684-6835).

COMMITTEE MEMBERS PRESENT IN PRIMARY LOCATION:

Assemblyman Steve Yeager, Chair
Senator Yvanna D. Cancela, Vice Chair
Senator Dallas Harris
Assemblyman Edgar Flores
Assemblyman Gregory T. Hafen II

COMMITTEE MEMBER ABSENT:

Senator Scott T. Hammond (Excused)

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Diane C. Thornton, Principal Policy Analyst, Research Division
Lisa Gardner, Research Policy Assistant, Research Division
Asher A. Killian, Senior Principal Deputy Legislative Counsel, Legal Division
Samuel J. Quast, Deputy Legislative Counsel, Legal Division

Items taken out of sequence during the meeting have been placed in agenda order.

AGENDA ITEM I—OPENING REMARKS

Chair Yeager called the meeting to order. Committee members introduced themselves and noted their interest in working with the Committee.

Diane C. Thornton, previously identified, introduced Committee staff and provided a brief overview of the Committee, which was established pursuant to [Assembly Concurrent Resolution 7](#) (2019). She referenced an overview page that lists the Committee members, meeting dates, and required areas of study ([Agenda Item I](#)).

Chair Yeager expressed appreciation for Committee staff.

AGENDA ITEM II—PUBLIC COMMENT

Chair Yeager called for public comment.

The following individuals provided public comment regarding Nevada's laws pertaining to driving under the influence of marijuana (marijuana DUI):

Stephen McNeal, owner of a Nevada marijuana dispensary, spoke in opposition to blood testing standards for marijuana DUIs.

Michael D. Palhegyi, Operations Lieutenant, Elko Police Department, expressed an interest in working with the Committee to protect the public with meaningful penalties for impaired drivers. He suggested the Committee look closely at how Colorado is addressing the issue and also mentioned a study on the performance impairment of airline pilots after smoking marijuana (Jerome A. Yesavage, M.D., et al., "Carry-Over Effects of Marijuana Intoxication on Aircraft Pilot Performance: A Preliminary Report," *American Journal of Psychiatry*, Vol. 142 [11], November 1985).

Carina Robinson, Chief Compliance Officer, SSAC, LLC, requested consideration of the rights of the marijuana industry with the study. She submitted her written testimony for the record ([Agenda Item II A](#)).

Gerard Mager, Nevada resident, stated his 17-year old son was killed by a marijuana-impaired driver. He spoke in favor of maintaining blood testing standards for marijuana DUIs.

Daniel J. Coverley, Sheriff, Douglas County, spoke in favor of maintaining blood testing standards for marijuana DUIs. He submitted his written testimony for the record ([Agenda Item II B](#)).

Steve Sarich, President, Global Hemp Organization; and President, CannaBiogen Research, said the issue is very important to him, as he lost his fiancé to an impaired driver. He spoke in opposition to blood testing standards for marijuana DUIs.

Jake McCrea, Nevada resident, spoke in opposition to blood testing standards for marijuana DUIs.

Chris Thompson, Nevada resident, spoke in opposition to blood testing standards for marijuana DUIs.

Ralph Wenger, Nevada resident, and former owner-operator of a cannabis cultivation facility in Clark County, spoke in opposition to blood testing standards for marijuana DUIs.

Gerard Gonzalez, Nevada resident, spoke in opposition to blood testing standards for marijuana DUIs.

Madisen Saglibene, Executive Director, Nevada Chapter, National Organization for the Reform of Marijuana Laws (NORML), spoke in opposition to blood testing standards for marijuana DUIs. She submitted her written testimony ([Agenda Item II C](#)) and noted Paul Armentano, Deputy Director, NORML, submitted documents for the record ([Agenda Item II D-1](#)), ([Agenda Item II D-2](#)), and ([Agenda Item II D-3](#)).

Christina Ulman, Director of Development, Las Vegas and Nevada Chapters, NORML, spoke in opposition to blood testing standards for marijuana DUIs.

Eszter Farkas, representing the National Cannabis Risk Management Association, spoke in opposition to blood testing standards for marijuana DUIs.

Chair Yeager stated the Committee has been tasked with determining the most accurate, fair, and just way to capture marijuana impairment.

AGENDA ITEM III—OVERVIEW OF LEGISLATIVE HISTORY AND CURRENT LAW ONE DRIVING WHILE IMPAIRED

Diane C. Thornton, previously identified, gave a presentation on the legislative history of Nevada's marijuana per se law ([Agenda Item III-1](#)), which deems an individual to be impaired while driving when blood levels measure:

- 2 nanograms (ng) per milliliter (ml) of marijuana (Δ^9 -tetrahydrocannabinol [Δ^9 -THC]); or
- 5 ng/ml of marijuana metabolite (11-OH-tetrahydrocannabinol [11-hydroxy-THC]).

Ms. Thornton explained the original provisions of the law, which was established through [Senate Bill 481](#) (1999), included specific standards for both urine and blood testing; the law was revised through [Assembly Bill 135](#) (2017) to remove urine testing and include only psychoactive components of marijuana.

Ms. Thornton submitted a document containing links to select hearings on SB 481 (1999) ([Agenda Item III-2](#)).

Asher A. Killian, previously identified, introduced himself and Samuel J. Quast, previously identified.

Mr. Quast provided details on the current status of the law relating to driving or being in physical control of a vehicle while under the influence of alcohol or a prohibited substance, pursuant to [NRS 484C.110](#). He explained there are three theories of liability pertaining to driving under the influence: (1) impairment theory; (2) per se violations; and (3) for alcohol—DUI under the two-hour theory. Mr. Quast stated the penalties are codified in [NRS 484C.400 and 484C.410](#) and noted individuals approved to use medical marijuana are not exempt from prosecution. In closing, he discussed implied consent laws as set forth in [NRS 484C.160](#).

Discussion ensued regarding the legislative history and current status of the state's marijuana per se law. The following information was confirmed by staff:

- The per se law went into effect prior to the legalization of medical marijuana in 2001 and recreational marijuana in 2017; and
- A statutory time frame for drawing blood has not been established for marijuana testing.

There was a brief conversation regarding the percentage of people who are considered to be intoxicated by alcohol at the .08 level and whether a similar percentage could be established to determine the "right" level with respect to marijuana.

AGENDA ITEM IV—DISCUSSION OF A DEFENSE ATTORNEY'S PERSPECTIVE ON CURRENT IMPAIRED DRIVING LAWS IN NEVADA

John G. Watkins, Esq., Pariente Law Firm, P.C., shared his perspective on current impaired driving laws in Nevada. He said he has considerable experience as a defense attorney handling DUI cases and is opposed to the marijuana per se law because it convicts innocent people. Mr. Watkins discussed fundamental fairness, the Jessica Williams case, and referenced an article from the *Las Vegas Review-Journal* ([Agenda Item IV](#)). Mr. Watkins suggested removing per se levels and utilizing only impairment theory, as is done with other controlled substances.

Responding to questions from Chair Yeager, Mr. Watkins shared the following information:

- Judges do not impose a time limit on drawing blood for marijuana and marijuana metabolite, as there is no legal basis to do so.
- Marijuana DUIs are prosecuted with both impairment theory and per se theory. Although the defense is entitled to show evidence that the person was not impaired, per se levels trump any such evidence in court.
- In its verdict, the jury found that Jessica Williams was not impaired; however, she was convicted because her blood levels were above the per se limit.
- The law needs to be revised since marijuana is no longer a prohibited substance. The key is to convict only those who are impaired. Removing per se levels will not protect those who are guilty.
- The per se levels established in SB 481 came from studies conducted by the Substance Abuse and Mental Health Services Administration of the United States Department of Health and Human Services.

AGENDA ITEM V—OVERVIEW OF THE 2019 REPORT AND RECOMMENDATIONS FROM THE MICHIGAN IMPAIRED DRIVING SAFETY COMMISSION

Norbert E. Kaminski, Ph.D., Former Commissioner, Impaired Driving Safety Commission, Michigan State Police; Professor of Pharmacology and Toxicology, Michigan State University (MSU); Director, Center for Research on Ingredient Safety, MSU; and Director, Institute for Integrative Toxicology, MSU, gave a presentation on Michigan's Impaired Driving Safety Commission ([Agenda Item V-1](#)). He discussed the Commission's areas of study, conclusions, and recommendations.

Dr. Kaminski pointed out the Commission was charged with establishing a threshold of Δ^9 -THC bodily content for the State of Michigan; however, the Commission concluded there is no blood level value for Δ^9 -THC that can determine impairment. He said the Commission recommended using roadside sobriety testing to determine impairment and to provide additional training for law enforcement.

Dr. Kaminski discussed several studies and shared the following findings:

- Δ^9 -THC can be detected in the bloodstream for long periods of time after marijuana is consumed. Subsequent to inhaling marijuana, there is a rapid phase of excretion in the first few hours followed by a plateau period, during which time, Δ^9 -THC is sequestered by fat (lipid) and then slowly moves back into the bloodstream. Δ^9 -THC levels derived from ingesting marijuana take longer to peak in the bloodstream due to slow absorption by the gastrointestinal track, and levels are lower due to metabolic processes involving the liver.
- Heavy users who smoke marijuana have high levels of Δ^9 -THC that take a long time to eliminate from the bloodstream.
- Alcohol metabolizes and eliminates from the system differently than marijuana; ethanol levels peak and leave the system more rapidly.
- A study conducted by the National Highway Traffic Safety Administration, U.S. Department of Transportation—which controlled for alcohol, marijuana, and other substances—showed that alcohol is still the main cause of accidents.

In response to questions from the Committee, Dr. Kaminski shared the following information:

- Data concerning the excretion of Δ^9 -THC has been replicated in other laboratories; the data is widely accepted by the scientific community.
- In most cases, it takes several hours to draw blood. There is a huge decrease in the amount of Δ^9 -THC that is present within the first hour, and levels continue to drop; an individual who drives while impaired by marijuana could test at levels below the per se limit by the time blood is drawn.
- Chronic users build tolerance to the effects of marijuana; therefore, it takes more Δ^9 -THC to induce psychotropic effects in such individuals. Conversely, those with little experience with marijuana may be impaired with lower levels of Δ^9 -THC in their bloodstream.
- Another recommendation of the Commission pertained to the development of more sensitive field sobriety tests.

Chair Yeager encouraged people to review the Commission's final report, which is posted on the Committee's meeting page ([Agenda Item V-2](#)).

Dr. Kaminski's biography can also be viewed on the website ([Agenda Item V-3](#)).

AGENDA ITEM VI—NATIONAL OVERVIEW OF STATE LAWS ON CANNABIS IMPAIRED DRIVING

Darrin Grondel, Ph.D., Chair, Governors Highway Safety Association (GHSA), and Director, Washington Traffic Safety Commission, provided a national overview of state laws, data pertaining to marijuana impaired driving, and topics for the Committee's consideration ([Agenda Item VI-1](#)). He said marijuana per se limits are not supported by science and the numbers can distort how cases are prosecuted.

In response to questions from the Committee, Dr. Grondel shared the following information:

- Reports from the Fatality Analysis Reporting System (FARS) may include all substances from a toxicology report; however, FARS reports do not currently allow quantification to be included. Efforts are underway for measurements to be added to those reports.
- The number of nanograms detected in plasma or whole blood (used in the United States) is approximately one-half of that which is detected with serum (used in Europe).
- It is more reliable to focus on impairment than a chemical test.
- FARS data from 2014, which revealed 35.8 percent of all fatal marijuana driving cases involved speeding, reflected only marijuana use.
- FARS collision reports capture all factors, including distracted driving.
- Studies are underway to improve field sobriety tests for marijuana impairment.
- The Washington State Legislature is not reconsidering its per se limit of 5 ng/ml for Δ^9 -THC.

Dr. Grondel submitted his biography for the record ([Agenda Item VI-2](#)).

AGENDA ITEM VII—OVERVIEW OF NEVADA'S DEPARTMENT OF PUBLIC SAFETY'S OFFICE OF TRAFFIC SAFETY AND THE COLLECTION OF IMPAIRED DRIVING DATA

Amy Davey, Administrator and Highway Safety Coordinator, Office of Traffic Safety (OTC), Department of Public Safety, gave an overview of the OTC and shared data concerning: (1) substance involved fatalities in Nevada for 2017 and 2018; and (2) perceptions of risk by age ([Agenda Item VII-1](#)). She noted a more extensive key for the data on substance involved fatalities in 2017 and 2018 has been submitted ([Agenda Item VII-2](#)) along with a similar key for data from 2016 and 2017 ([Agenda Item VII-3](#)).

There was discussion concerning the report on substance involved fatalities in 2017 and 2018. Ms. Davey clarified the data reflects the presence of certain substances and does not determine causation or impairment. She confirmed the numbers shown for alcohol reflects levels detected at .08 percent and higher.

Ms. Davey noted various considerations and pointed out Nevada is one of only two states without a state toxicology lab; it also lacks an executive-level traffic safety or impaired driving committee authorized by statute ([Agenda Item VII-4](#)). She suggested establishing a commission similar to the Washington Traffic Safety Commission.

Chair Yeager pointed out the Committee has five bill drafts at its disposal. He expressed an interest in recommending an executive-level traffic safety commission and solicited additional input from Ms. Davey concerning the OTC's needs with data collection and standardization.

AGENDA ITEM VIII—DISCUSSION OF TESTING FOR CANNABIS AT THE FORENSIC LABORATORIES IN NEVADA

Michael P. Stypa, Forensic Laboratory Supervisor, Las Vegas Metropolitan Police Department Forensic Laboratory, and Diplomate, American Board of Forensic Toxicology, provided an overview of the Laboratory's activities related to marijuana testing. He discussed its testing protocols and statistics, the agencies and jurisdictions it serves, various studies, and efforts to establish an American National Standard for toxicological testing of marijuana.

Mr. Stypa remarked that impairment cannot be determined based solely on a quantitative result; it needs to be observed. He suggested that any adjustments to the per se levels be based on scientific studies in peer-reviewed literature. He stated that, based on current information, the Laboratory recommends maintaining per se levels at 2 ng/ml of Δ^9 -THC and 5 ng/ml of 11-hydroxy-THC.

In response to questions from the Committee, Mr. Stypa shared the following information:

- Approximately 14 percent of specimens tested at the Laboratory have between 1 and 2 ngs/ml of Δ^9 -THC;
- The Laboratory reports the results of all tests to the district attorney, regardless of levels detected; and
- The recommendation to maintain current per se levels is based on a European study, which he will submit to the Committee after the meeting.

Subsequent to the meeting, Mr. Stypa submitted a list of studies for the Committee's consideration ([Agenda Item VIII](#)).

Dan McDonald, Criminalist, Forensic Science Division, Washoe County Sheriff's Office, commented on the Division's activities with marijuana testing. He discussed its testing protocols and statistics; the counties and cities it serves; and funding considerations with its caseload, court appearances, and meeting requirements of [SB 23](#) (2019).

He recommended maintaining current per se levels and suggested providing additional funding to the Laboratory should legal requirements be changed.

In response to questions from Chair Yeager, Mr. McDonald stated the Division only tests for drugs or alcohol if requested by the officer in the paperwork or if requested at a later time by a prosecutor.

AGENDA ITEM IX—PUBLIC COMMENT

Chair Yeager called for public comment.

Robert Cohen, Owner, Cohen Medical Centers, spoke in opposition to Nevada's blood testing standards.

Carmen Jones, M.D., medicinal marijuana practitioner, suggested providing exemptions for medical marijuana patients in regard to Nevada's blood testing standards.

Stephen McNeal, previously identified, spoke in opposition to Nevada's blood testing standards.

Gerard Mager, previously identified, spoke in favor of maintaining Nevada's blood testing standards.

Illona Mager, Nevada resident, shared that she is the mother of the 17-year old who was killed by a marijuana-impaired driver. She discussed the importance of specialty court programs and training programs for law enforcement.

Tim Alioto, Nevada resident and medical marijuana patient, stated he is opposed to Nevada's blood testing standards.

Tim Lozott, representing Green Life Capital, spoke in opposition to Nevada's blood testing standards.

Ryan Vincent, medical marijuana patient, stated that those who receive marijuana DUIs are sent to classes pertaining to alcohol. He suggested classes be provided with greater relevance to the charge.

Madisen Saglibene, previously identified, said she is looking forward to hearing from law enforcement and suggested the Committee receive a presentation from Paul Armentano, previously identified, at a subsequent meeting.

Chair Yeager thanked all those who participated at the meeting and announced the next Committee meeting will be held on March 20, 2020, at 9 a.m.

AGENDA ITEM X—ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 5:06 p.m.

Respectfully submitted,

Lisa Gardner

Research Policy Assistant

Diane C. Thornton

Principal Policy Analyst

APPROVED BY:

Assemblyman Steve Yeager, Chair

Date: _____

MEETING MATERIALS

AGENDA ITEM	PRESENTER/ENTITY	DESCRIPTION
Agenda Item I	Diane C. Thornton, Principal Policy Analyst, Research Division, Legislative Counsel Bureau (LCB)	Committee Overview
Agenda Item II A	Carina Robinson, Chief Compliance Officer, SSAC, LLC	Written Testimony
Agenda Item II B	Daniel J. Coverley, Sheriff, Douglas County	Written Testimony
Agenda Item II C	Madisen Saglibene, Executive Director, Nevada Chapter, National Organization for the Reform of Marijuana Laws (NORML)	Written Testimony
Agenda Item II D-1	Paul Armentano, Deputy Director, NORML	Written Testimony
Agenda Item II D-2	Paul Armentano, Deputy Director, NORML	Personal Background Information
Agenda Item II D-3	Paul Armentano, Deputy Director, NORML	List of Studies
Agenda Item III-1	Diane C. Thornton, Principal Policy Analyst, Research Division, LCB	Presentation
Agenda Item III-2	Diane C. Thornton, Principal Policy Analyst, Research Division, LCB	Select Minutes
Agenda Item IV	John G. Watkins, Esq., Pariente Law Firm, P.C.	Article

AGENDA ITEM	PRESENTER/ENTITY	DESCRIPTION
<u>Agenda Item V-1</u>	Norbert E. Kaminski, Ph.D., Former Commissioner, Impaired Driving Safety Commission, Michigan State Police; Professor of Pharmacology and Toxicology, Michigan State University (MSU); Director, Center for Research on Ingredient Safety, MSU; and Director, Institute for Integrative Toxicology, MSU	Presentation
<u>Agenda Item V-2</u>	Norbert E. Kaminski, Ph.D., Former Commissioner, Impaired Driving Safety Commission, Michigan State Police; Professor of Pharmacology and Toxicology, MSU; Director, Center for Research on Ingredient Safety, MSU; and Director, Institute for Integrative Toxicology, MSU	Report
<u>Agenda Item V-3</u>	Diane C. Thornton, Principal Policy Analyst, Research Division, LCB	Biography
<u>Agenda Item VI-1</u>	Darrin Grondel, Ph.D., Chair, Governors Highway Safety Association, and Director, Washington Traffic Safety Commission	Presentation
<u>Agenda Item VI-2</u>	Darrin Grondel, Ph.D., Chair, Governors Highway Safety Association, and Director, Washington Traffic Safety Commission	Biography
<u>Agenda Item VII-1</u>	Amy Davey, Administrator and Highway Safety Coordinator, Office of Traffic Safety (OTC), Department of Public Safety (DPS)	Presentation
<u>Agenda Item VII-2</u>	Amy Davey, Administrator and Highway Safety Coordinator, OTD, DPS	Data on substance involved fatalities in 2017 and 2018

AGENDA ITEM	PRESENTER/ENTITY	DESCRIPTION
<u>Agenda Item VII-3</u>	Amy Davey, Administrator and Highway Safety Coordinator, OTC, DPS	Data on substance involved fatalities in 2016 and 2017
<u>Agenda Item VII-4</u>	Amy Davey, Administrator and Highway Safety Coordinator, OTC, DPS	List of Considerations
<u>Agenda Item VIII</u>	Michael P. Stypa, Forensic Laboratory Supervisor, Las Vegas Metropolitan Police Department Forensic Laboratory, and Diplomate, American Board of Forensic Toxicology	List of Studies

The Summary Minutes are supplied as an informational service. All meeting materials are on file in the Research Library of the Legislative Counsel Bureau, Carson City, Nevada. For copies, contact the Library at (775) 684-6827 or <https://www.leg.state.nv.us/Division/Research/Library/About/Contact/feedbackmail.cfm>.