

Toxicology Bureau Fact Sheet: INFORMATION FOR ATTORNEYS



The Toxicology Bureau of the Scientific Laboratory Division (SLD) performs toxicological investigations on a wide variety of criminal and forensic cases.

This Fact Sheet provides an overview to some important SLD policies and guidelines that relate to DWI, subpoena handling, and court testimony.

SUBPOENA HANDLING AND COURTROOM TESTIMONY

- Subpoenas from prosecuting or defense attorneys can be faxed to our office at (505) 383-9088.
- Subpoenas can also be emailed to dohtoxsubpoena@doh.nm.gov
- SLD requests a 2 week notice for in-person court appearances.
- All subpoenas for alcohol and/or drug-impaired driving cases should be sent to the Bureau Chief: "Dr. Kleinman or designee".
- If expert testimony is required, call (505) 383-9109 to determine who is available to take the case/discuss possible opinions of impairment.
- The witness will not appear unless informed to do so by the attorney. Communication is key. Confirmation of the appearance on the day of the trial is helpful.
- SLD is responsible for more than 1500 cases per year and receives more than 1000 subpoenas. Frequently, witnesses have multiple subpoenas on the same day in different parts of the state. Preference is given to the first subpoena for the witness on a specific day.
- Always discuss the case with the toxicologist before the trial. This is particularly important if expert testimony is needed. You should not hear the opinion of the toxicologist for the first time when they are on the stand.
- If a pretrial interview is requested by either attorney, provide three dates and times to the witness at SLD. This will expedite the process and help SLD meet the needs of the attorney. Call or fax a request to schedule.
- Pretrial interviews are conducted telephonically, via videoconference, or in person at SLD. It is onerous to accommodate travel for PTI's.
- If court is cancelled or case delayed, *immediately* call SLD:
 - Breath Alcohol: (505) 383-9102
 - Blood Alcohol: (505) 383-9101
 - Drug Impairment: (505) 383-9109

DRIVING UNDER THE INFLUENCE OF DRUGS (DUID)

- Drug testing takes *at least* 4 weeks, depending on the number of drugs present and the complexity of the case. Drug testing in polysubstance casework can take 10 weeks or more.
- If a trial date is set and the Toxicology Report has not yet been received, contact the Drug Confirmation Section immediately.
- Drug testing is routinely performed if the BAC is less than 0.08 g/100 mL. Drug testing may be performed if the BAC is 0.08 or above upon special request.
- Do not assume that the toxicologist will provide an opinion of impairment. Drug impairment is complex and depends on many factors. Always consult with the toxicologist. This will help determine how to proceed with the case.
- To obtain an opinion on a DUID case, contact Drug Confirmation at (505) 383-9109. We will review the request and follow up. The attorney should be prepared to answer the following: What was the reason for the stop? How was the person driving? Was there a crash? If so, what are the details? Were there injuries? Were medications administered during treatment? Were SFSTs performed? Performance on SFSTs: OLS, WAT, HGN? Was there a DRE evaluation? What did the officer observe? Unusual behaviors, signs, or symptoms?
- Fax police reports or DRE reports to SLD @ (505) 383-9088.
- The attorney issuing the subpoena should conduct a brief pretrial conference with the toxicologist to go over the important questions and maximize the effectiveness of the witness testimony.

USEFUL TELEPHONE NUMBERS

- For routine questions regarding the status of a drug case, contact the Drug Confirmation Section at (505) 383-9109.
- For routine questions regarding an alcohol case, contact the Drug Screening Section at (505) 383-9101.
- For routine questions regarding breath alcohol cases or certification issues, contact the Breath Alcohol Section at (505) 383-9102.

**For more information contact:
Dr. Samuel Kleinman
Scientific Laboratory Division
Tel: (505) 383-9086**