



# Rise of Machines: How AI and Autonomous Cars are Changing Personal Injury Law in Nevada

BY JORDAN EGLET, ESQ.

**In today's evolving transportation landscape, the age-old question, "Were you injured in a car accident?" takes on new dimensions. When an autonomous vehicle is involved, how do we determine liability? Who should be held accountable for damages and injuries sustained?**

Self-driving cars, also known as autonomous vehicles, are poised to redefine our understanding of transportation. Whether you like it or not, autonomous vehicles, once considered abstract futuristic concepts, are now an unquestionable reality venturing onto the highways of Nevada. Yet, as with all profound technological leaps, these autonomous vehicles introduce new legal issues that courts and practitioners must navigate.

Autonomous vehicles present not just a technological marvel but a fundamental shift in our legal perspective. While 29 states have laws regarding autonomous vehicles, Nevada was one of the first states to enact laws and regulations in this domain, setting a precedent for others to follow. The Nevada Revised Statutes (NRS),

specifically NRS 482A, play a pivotal role in this narrative. This statute serves as Nevada's formal acknowledgment of the self-driving revolution. NRS 482A allows the testing and deployment of autonomous vehicles so long as the manufacturer agrees to follow the rules of the road while operating a vehicle. If they do not, those injured by those failures will be able to hold the manufacturer accountable for the harm they caused.

Specifically, NRS 482A encompasses provisions such as the authorization for testing and operating autonomous vehicles within the state. It mandates that a person be seated in the driver's position unless the vehicle satisfies explicit standards. It also mandates that companies that want to test autonomous vehicles on

Nevada highways must submit proof of insurance in the amount of \$5 million to the Nevada Department of Motor Vehicles (DMV) or make a cash deposit or other acceptable form of security with the DMV in the amount of \$5 million. Furthermore, it lays out safety and equipment standards, and even delves into issuing specialized driver's license endorsements for autonomous vehicle operators.

## Understanding Autonomous Vehicles: A Classification

Before diving into the crux of liability, understanding the classifications of self-driving vehicles is essential:

- Level 0 consists of vehicles entirely dependent on human control.
- Level 1 introduces basic automation, like adaptive cruise control.
- Level 2 sees vehicles managing both steering and acceleration, albeit under human supervision.
- Level 3 vehicles manage almost all driving tasks under certain conditions but require human intervention when those conditions are not met.
- Level 4 vehicles can execute all driving tasks in specific conditions without human intervention.
- Level 5, the apex of automation, requires no human intervention whatsoever.

These standards were developed by the Society of Automotive Engineers (SAE), an international professional organization that develops standards for various aspects of automotive engineering. One of the significant contributions of SAE is the development of standardized definitions for levels of driving automation, which are outlined in the J3016 document.<sup>1</sup> SAE J3016 is a standard that defines six levels of driving automation, ranging from Level 0 (no automation) to Level 5 (full automation). The Nevada Legislature adopted these standards in NRS 482A.

## Legal Implications and Liability

Advancements in technology often bring forth new legal challenges. Despite the guidance offered by NRS 482A, it is largely silent concerning liability. Consequently, we must draw upon conventional legal doctrines to ascertain responsibility for injuries stemming from these products. Determining liability in the case of self-driving cars becomes complex when human drivers must exercise discretion and take over the vehicle. But if software is defective, does the blame fall on the car's manufacturer, the software developer, or perhaps the owner who neglected a software update?

When considering autonomous vehicles, two primary legal concepts come into play: negligence and strict product liability. Generally, negligence requires proving that a defendant owed a duty of care to the plaintiff, breached that duty, and as a result, the plaintiff suffered damages.<sup>2</sup> In the context of autonomous vehicles, this situation could involve a range of scenarios, such as a programming error or coding error, failure to update or maintain software, inadequate training, or inadequate response to unforeseen situations.

Product liability, on the other hand, involves the legal responsibility of manufacturers, distributors, and sellers for any harm caused by their products. In the context of autonomous vehicles, this situation could involve instances where a defect in the design or manufacture of the autonomous system directly results in an accident. Additionally, if the vehicle fails to warn an individual that they may have to take control of the vehicle, that may also constitute a product defect. Other potential defects may include, without limitation, a failure

to exercise ordinary care to design, test, and monitor the vehicle to ensure that it was not defective; the failure to provide information to the National Highway Traffic Safety Administration (NHTSA) and warnings to customers after discovery of a defect; a failure to recall, retrofit, and issue warnings after discovery of a defect; or a failure to report certain types of accidents involving self-driving cars to the Nevada Department of Motor Vehicles.<sup>3</sup>

However, under Nevada law, a self-driving vehicle manufacturer is not liable if a third party makes unauthorized modifications to the autonomous system, resulting in harm. This exemption applies unless the original design or system configuration inherently contained the issue.<sup>4,5</sup>

NRS 482A, though forward-thinking, presents implications across the different levels of autonomous vehicles. Given their substantial reliance on human intervention, vehicles at Levels 0 to 2 find themselves relatively unaffected. However, what may surprise some, Tesla's Autopilot falls into Level 2, but will someday be capable of Level 4 through software updates.

Interestingly, on April 21, 2023, in California state court, a jury delivered a victory to Tesla on its Autopilot feature, rejecting claims that it failed in a crash involving the partially automated driving software.<sup>6</sup> The lawsuit alleged defects in Autopilot and the airbag after the Tesla Model S swerved into a curb. The jury ruled in favor of Tesla, stating that the driver was using Autopilot on city streets despite warnings against such usage. The jury's verdict highlighted that the software is not a self-piloted system, placing driver distraction as the cause of the accident. This outcome reinforces the idea that Tesla's driver-assistant systems, known as Autopilot or Full Self-



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Driving, are features that require driver readiness to take control at any moment.

Level 3 vehicles, which can seamlessly navigate certain conditions, might occasionally land in regulatory grey areas. Picture, for instance, a Level 3 car driving through Las Vegas streets on a calm morning, managing traffic adeptly. Yet, when confronted with an unanticipated event like a parade, it requires the human driver's control. Any

lapse in the driver's response could result in liability questions.

As of January 26, 2023, Mercedes-Benz announced that it received approval to introduce Level 3 automated driving vehicles to the streets of Nevada.<sup>7</sup> This achievement, known as the Drive Pilot System, has gained approval for speeds of up to 40 mph, marking a significant advancement on the state's roads.

Level 4 vehicles, competent in specific scenarios without human input, would likely seek permissions or certifications validating their reliability. Consider a Level 4 car maneuvering downtown Las Vegas impeccably during the day but necessitating human aid at nighttime or during a desert storm.

Currently, there are two examples of a Level 4 vehicle. The first is Waymo, which is Google's autonomous vehicle operating in Phoenix, Los Angeles, and San Francisco.<sup>8</sup> The second is Cruise

also operating out of the Bay Area as well as Austin, Texas, which recently experienced a meltdown when the vehicles lost connectivity due to bandwidth issues stemming from a local music festival, Outside Lands.<sup>9</sup> This outage caused the Cruise vehicles to block intersections. Fortunately, no one was harmed as a result of these issues. Nonetheless, occurrences like these might become more ubiquitous as autonomous vehicles become more widespread and the utilization of driverless technology becomes more common.

Finally, Level 5 vehicles, entirely independent by design, could prompt more intricate legislative discussions, seeking alignment or exemption from the existing frameworks.

Currently, there are no examples of Level 5 vehicles commercially available.

## *The Road Ahead: Challenges and Opportunities*

For states like Nevada, legal frameworks are set to undergo continual refinements. As Level 4 and 5 vehicles become commonplace, regulations will be

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refined over time in Nevada and nationwide. Of course, there is always the chance that federal regulations will preempt the patchwork of legislation across the U.S.

Until then, lawyers must navigate the complex interplay of state-specific regulations and prepare for potential federal oversight of this space to provide accurate counsel to clients in the rapidly evolving field of autonomous vehicles.



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**ENDNOTES:**

1. See, SAE J3016 automated-driving taxonomy, available at <https://www.sae.org/news/2019/01/sae-updates-j3016-automated-driving-graphic>.
2. *Sadler v. PacifiCare of Nev., Inc.*, 130 Nev. 990 (2014).
3. See, NRS 482A.095.
4. See, NRS 482A.090.
5. See e.g., Comma.ai's open-source semi-automated driving system "Openpilot" allows users to modify their existing vehicles with improved computing power, sensors, and continuously-updated driver assistance features that aim to enhance safety through sophisticated control superior to original manufacturer systems.
6. Abhirup Roy, Dan Levine and Hyunjoo Jin, "Tesla wins bellwether trial over Autopilot car crash," (April 22, 2023) available at <https://www.reuters.com/legal/us-jury-set-decide-test-case-tesla-autopilot-crash-2023-04-21/>.
7. "Mercedes-Benz world's first automotive company to certify SAE Level 3 system for U.S. market," (January 26, 2023) available at <https://media.mbusa.com/releases/mercedes-benz-worlds-first-automotive-company-to-certify-sae-level-3-system-for-us-market>
8. <https://waymo.com/waymo-one/>
9. Jordan Valinsky, "Complete meltdown: Driverless cars in San Francisco stall causing a traffic jam," (August 14, 2023) available at <https://www.cnn.com/2023/08/14/business/driverless-cars-san-francisco-cruise/index.html>; and <https://gmauthority.com/blog/2023/09/complaints-regarding-gms-cruise-avs-increasing-in-austin/>.



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