

Drugs, driving and you



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What to do if:

- You have received a penalty notice and 3 month licence suspension for a drug related driving offence, or
- You are pleading guilty in the Local Court to a drug related driving offence.

Things you should know

Drugs can be detected in your system for a long time after you use them. How long they stay in your system can depend on the type of drug, how much you took, how often you use it, and other personal factors.

In NSW, police often conduct mobile drug testing (MDT) on drivers. They use a saliva swab and drug-screening equipment. If this first test is positive, you will need to do a second swab at a mobile drug bus or a police station. The second sample is sent to a laboratory for analysis. If this second sample tests positive for drugs, depending on the levels of the drug found, you may either be charged with:

- 'Driving under the influence of a drug'. You must be affected by the drug to be charged with this offence; or
- 'Driving with an illicit drug present in oral fluid, blood or urine'. For this offence the drug only needs to be detected in your system. You can commit this offence even if you are no longer affected by the drug.

These are the most common drug-related driving offences – if you have a different offence, or a combined offence you should speak to a lawyer.



Combined drug and alcohol offences

NSW Police can drug test drivers who are under the influence of alcohol. If you are over the alcohol limit and also test positive for drugs, you may be charged with a combined drug/alcohol offence. The penalties for the combined offences are much higher. For further information about the penalties, see the penalty tables in this brochure.

For more information on drink driving see the Legal Aid NSW brochure [Drink driving charges and you.](#)

If you are given a fine by police for 'Driving with an illicit drug present in your system'

If your offence is 'Driving with an illicit drug present in your system' and this is your first alcohol or other drug related driving offence in the past 5 years – instead of receiving a notice to attend court, the police can give you a penalty notice. This will mean that you do not have to go to court.

If you admit the offence, you should pay the fine, or make arrangements to pay before the due date. Once the fine is paid, or the time for payment under a penalty reminder notice has lapsed, Roads and Maritime Services will suspend your licence for 3 months. You should receive a notice in the mail telling you when the suspension starts.

Can I appeal the suspension of my driver licence?

You can lodge an appeal against your suspension at the Local Court. **You must lodge the appeal within 28 days** of receiving notice of your licence suspension. There may be a fee for this appeal. If you are on a Centrelink payment or experiencing financial hardship, ask if this fee can be waived.



The court will not decide your appeal straight away. The appeal will be listed before a magistrate, usually at least 28 days after you have lodged the appeal. The court must be satisfied that there are exceptional circumstances before it can lift or vary your suspension.

If you are thinking of lodging an appeal, it is a good idea to get legal advice about whether your circumstances are exceptional and what to prepare to support your appeal.

I received a fine, but I want to take the matter to court

You do have the option to ask for your matter to be heard by a court. The penalty notice gives you information on how to do this. First you will receive the penalty notice, then if you do not pay the fine, you will receive a penalty reminder notice. You should elect to challenge the fine in court before the due date on the reminder notice.

You should get legal advice before asking to have your matter dealt with by the court. If you elect to go to court, once the Court Attendance Notice is issued you cannot change your mind. The Court Attendance Notice can be issued very quickly – sometimes within 24 hours of the application.

If you think you want to have your matter dealt with by the court, you need to consider:

- **The amount of your fine and the period of your suspension.** The court can increase the fine amount and length of time you are unable to drive. The court can also record a conviction for the offence.

- **The effect of a conviction and licence disqualification.** If the court convicts you of the driving offence, your licence will be disqualified. This means you must re-apply and be issued with a driver licence before you can drive again. The suspension issued by the police does not require you to make an application to get your licence back.

How to prepare for court

Get character references

Written references from people who can talk about your good character may help your case. They should be addressed to the magistrate, and the people writing them should say they know about the charges you are in court for.

For more information see the Legal Aid NSW brochure called [Character References](#).

Write down what you want to say to the court

Write a letter to the magistrate, or make notes of what you will say in court. The court will consider what you say when it decides what penalty to give you.

You should consider these things:

- If you believed you were under the influence of a drug when you drove.
- If you were stopped by a random test or because you were driving erratically or dangerously.
- How long you had been driving for (or intended to drive for) when you were stopped.
- How many people (passengers, members of the public) were put at risk by your driving.
- If there was an accident.

- If not having a licence will affect your employment or other people who rely on you (for example, children, sick relative).
- If you don't have other transport you can use.
- How long you had a licence and what your overall driving record is like.
- If you are a regular drug user and it would be appropriate for you to get some kind of treatment or counselling for your drug use.

You should also explain:

- Any special reason you were driving.
- Why you were driving with drugs in your system.
- That you understand the risks of driving after using drugs, and if you can, that you will not repeat this behaviour.
- If you need a licence for work—get a letter from your employer to say what will happen to your job if you are disqualified from driving for a long time.
- What your weekly income and expenses are (this will help the court work out any fine it gives you).



What should I do at court?

- You should not drive to court in case you lose your licence. Take your licence with you (unless the police have already taken it) because the court may tell you to hand it in.
- When you get to court, find the court officer and tell them that you are unrepresented and that you are pleading guilty. You can usually find them inside or just outside your courtroom.
- If you want legal advice, find the Legal Aid NSW duty lawyer at court or ask the court to adjourn your case so you can get legal aid advice. You should see the duty lawyer if you think you could go to gaol.
- Listen to what other people say to the magistrate while you wait for your name to be called. It can be helpful to sit in the courtroom and listen to other people presenting guilty pleas to give you a better idea of how to present yours.
- The prosecutor will have a fact sheet which says why you were arrested and what the police say happened. Make sure you read it. If you disagree with what the police say happened, you should get legal advice before you plead guilty.
- The police prosecutor should also show you a copy of your previous criminal record if you have one. If you do not have a criminal record, the prosecutor might still have your bail history. If the prosecutor has your bail history you should ask to see it. You should also ask the prosecutor to show you a copy of your driving record. Read these documents carefully to make sure they really are yours. If you think there is wrong information on your criminal, bail or driving record, tell the magistrate when it is your turn to speak.

- The prosecutor will also hand the magistrate documents about the correct handling and testing of the sample and the presence of an illicit drug.
- Speak to the magistrate when your name is called. Say you are pleading guilty and either hand your letter to the magistrate or read from the notes you've made.
- Give the court any written references and documents that you have to support your case.
- Think about doing a Traffic Offender Program. If you attend the program and complete the coursework your penalty may be reduced. If you want to do the program, ask the magistrate to adjourn your case so you have time to complete it. You can ask court staff about where you can find a Traffic Offender Program near you.

The MERIT program

Local Courts have a special program called the Magistrates Early Referral Into Treatment Program (MERIT). Adult defendants with drug problems can volunteer to work towards rehabilitation.

The program takes about 12 weeks to complete. You can ask the magistrate to refer you to the MERIT program and adjourn your case so they can assess if you are suitable to take part in it. If you are, your case will be adjourned so you have time to complete the program.

The court will get a report about your progress. If you make positive progress on the program this will help you when the court sentences you.

Penalties

Table 1: Drug related driving offences

Offences		Penalties										
		1st offences					2nd and subsequent offences					
		Maximum fine	Maximum gaol	Automatic disqualification	Minimum disqualification	Maximum fine	Maximum gaol	Automatic disqualification	Maximum fine	Maximum gaol	Automatic disqualification	Minimum disqualification
Provision of Road Transport Act 01												
s.112(1)(a)	Driving under the influence of alcohol or other drug	\$3,300	18 mths	3 years	12 mths	\$5,500	2 years	5 years	\$5,500	2 years	5 years	2 years
s.111	Drive with illicit drug in oral fluid, blood or urine	\$2,200	Nil	6 mths	3 mths	\$3,300	Nil	12 mths	\$3,300	Nil	12 mths	6 mths
Schedule 3 Cl. 16(1)(c) or 16(1)(d)	Refuse to submit to oral fluid or sobriety test	\$1,100	Nil	At the discretion of the Court.	At the discretion of the Court.	\$1,100	Nil	At the discretion of the Court.	\$1,100	Nil	At the discretion of the Court.	At the discretion of the Court.
Schedule 3 Cl. 17(1)(a) or 17(1)(b)	Refuse to submit to taking of blood or oral fluid sample	\$3,300	Nil	3 years	6 mths	\$5,500	18 mths	5 years	\$5,500	18 mths	5 years	12 mths
Schedule 3 Cl. 17(1)(c)	Refuse to submit urine sample	\$3,300	18 mths	3 years	6 mths	\$5,500	2 years	5 years	\$5,500	2 years	5 years	12 mths
Schedule 3 Cl. 17(2)	Prevent taking of blood sample	\$3,300	18 mths	3 years	12 mths	\$5,500	2 years	5 years	\$5,500	2 years	5 years	2 years

Penalties

Table 2: Combined drink drug driving – 1st offence

Penalties	1st offence Mid-range + illicit drug presence	1st offence High-range + illicit drug presence
Immediate licence suspension	Yes	Yes
Max court fine	\$3300 (30 penalty units)	\$5500 (50 penalty units)
Max prison term	18 months	24 months
Min disqualification	12 months	18 months
Max disqualification	Unlimited	Unlimited
Auto disqualification	2 years	4 years
Min interlock period	12 months	2 years
Vehicle sanctions	No	Yes

Table 3: Combined – 2nd and subsequent offences

Penalties	Low, novice or special range + illicit drug presence	Mid-range + illicit drug presence	High-range + illicit drug presence
Immediate licence suspension	Yes	Yes	Yes
Max court fine	\$5500 (50 penalty units)	\$6600 (60 penalty units)	\$11000 (100 penalty units)
Max prison term	18 months	2 years	2 years
Min disqualification	18 months	2 years	3 years
Max disqualification	Unlimited	Unlimited	Unlimited
Auto disqualification	2 years	4 years	6 years
Min interlock period	12 months	2 years	4 years
Vehicle sanctions	Yes	Yes	Yes

Notes on the combined offences penalty tables

- *Interlock periods are consistent with the current interlock periods for drink driving offences.*
- *Vehicle sanctions are currently applicable to repeat mid and high range PCA offenders.*
- *Vehicle sanctions may apply for a mid range combined first offence if the driver has been convicted of an alcohol related major offence in the last five years.*



What could happen to me?

In most cases you will lose your licence for some time unless the court decides not to record a conviction against you. The penalties for some of the main drug related driving offences are set out in the tables on pages 12 – 13.

What should I do after the court's decision?

If there is something you don't understand about the court's decision, ask the magistrate to explain. If you aren't able to ask the magistrate, ask the court staff to explain when you go to the Registry.

■ Don't drive while disqualified

If you have been disqualified from driving, you must hand in your licence. If you drive you can go to gaol for up to 6 months or be fined \$3,300 fine (or both). If it is not your first offence, you could go to gaol for up to 12 months and be fined \$5,500.

You will also be disqualified from driving for at least 3 months (or 6 months if this is not your first offence) when you are convicted for driving while disqualified.

Police can take away your vehicle for 6 months if you drive while disqualified three or more times in a 5-year period. Some people can apply to the Local Court to ask for their existing disqualification periods to be removed from their driver licence after 2 or 4 years without a driving offence. To find out if you can do this, see the Legal Aid NSW brochure [Are you disqualified from driving?](#)

You should get legal advice before you apply. You won't be able to apply if you have an uncompleted interlock order.

■ Re-apply for your licence

When your disqualification period is over, you must re-apply for your licence. You will not get it back automatically.

If you drive before you do this you could be charged with 'Driving while cancelled'. Contact Roads and Maritime Services (RMS) on **13 22 13** or visit www.rms.nsw.gov.au to find out how to get a new licence.



■ Pay your fine

If the court gives you a fine and you think you will have trouble paying it in the 28 days you have to pay it, speak to court staff at the registry before you leave about making a 'time to pay' arrangement.

If you don't pay the fine in the time you are told to pay it, Revenue NSW can take other action against you. If you need help to manage your fines debt, contact Revenue NSW on **1300 655 805** or www.revenue.nsw.gov.au

You may be able to get a Work and Development Order (WDO) which allows you to clear up to \$1,000 a month off your fines through approved activities or treatment programs. For more information visit www.legalaid.nsw.gov.au/wdo



Can I appeal the court's decision?

You can appeal to the District Court if you are not happy with the magistrate's decision, but you should get legal advice before you do this. You have 28 days from the date of the magistrate's decision to appeal.

You will also have to pay a fee. If you are on a Centrelink benefit or experiencing financial hardship—ask if the fee can be waived.

For more information about how to appeal, see the Legal Aid NSW brochure [*Appealing to the District Court*](#).

Also, if you had good reason for not being in court when the magistrate made the decision, you can apply to have the decision reviewed.

Where can I get legal help?

LawAccess NSW

A telephone helpline that gives free legal information, referrals to other services and legal advice in some cases. Call **1300 888 529** or visit www.lawaccess.nsw.gov.au

Legal Aid NSW

You can get free legal advice, and in some cases, representation in court from Legal Aid NSW. To find your closest office call **1300 888 529** or visit <https://www.legalaid.nsw.gov.au/contact-us>

Legal Aid NSW will only represent you in some cases. We look at:

- what you earn and what assets you own, and
- if there is a real possibility that you could go to gaol, or
- if there are 'exceptional circumstances'. (You can find out what this means by looking at 1.13 of our Guidelines—see Policy Online at www.legalaid.nsw.gov.au)

Note: If this is the first time you have been charged with a drug-related offence it is not likely you will go to gaol.

Aboriginal Legal Service (ALS)

If you are Aboriginal or Torres Strait Islander you can also contact the ALS for free legal advice. To find your closest ALS office call **1800 765 767** or visit www.alsnswact.org.au

This publication is a general guide to the law. You should not rely on it as legal advice, and we recommend that you talk to a lawyer about your situation.

The information is correct at the time of printing. However it may change. For more information contact LawAccess NSW on **1300 888 529**.

This publication is available in Arabic, Chinese (Sim) and Vietnamese.



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If you find it hard to hear or speak, call the National Relay Service (NRS) on **133 677** and ask for LawAccess NSW or visit www.relayservice.gov.au

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