

# Drugs, driving and you

What to do when pleading guilty to  
drug-related driving charges in the Local Court.



**Legal Aid**  
NEW SOUTH WALES



## Have you been charged with a drug-related driving offence?

There are things you should know.

The two most common drug-related driving charges are:

- 'Driving under the influence of a drug'. This offence focuses on actual impairment. It requires proof that the driver was affected by drugs to some degree.
- 'Driving with an illicit drug present in oral fluid, blood or urine'. This offence focuses on the presence of a drug in the driver's system. It applies regardless of the level of drug detected, so that a driver can commit the offence even when they are no longer affected by the drug.

There are also a number of offences relating to the refusal to submit to testing. These offences carry harsh penalties.

Police conducting random roadside testing of drivers for drugs has become common practice in NSW.

Testing is done by way of a saliva swab using drug-screening equipment. If this initial test is positive, the driver must undertake a second swab at a mobile drug bus or a police station. The second sample is sent to a laboratory for analysis.

It is important to be aware that drugs can be detectable in your system for a significant period of time after drug use. How long drugs stay in your system can depend on

the type of drug, how much you have taken, how frequently you use the drug, and other factors that can vary between individuals.

## How can Legal Aid NSW help?

You can get free advice about your matter before it goes to court, including about whether to plead guilty or not guilty, by making an appointment to see a criminal lawyer at Legal Aid NSW. Visit **www.legalaid.nsw.gov.au** to find your closest office and contact information.

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Legal Aid representation is only available for traffic offences if there is a real possibility of a gaol penalty, or there are exceptional circumstances.

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A means test also applies. If this is the first time you have been charged with a drug-related driving offence, it is unlikely you will get a gaol sentence. If in doubt, speak to Legal Aid NSW by either visiting one of our offices or speaking to the duty solicitor at court on the day you first appear in relation to the offence.

For information about applying for a grant of legal aid visit our website at **www.legalaid.nsw.gov.au/get-legal-help/applying-for-legal-aid**

## How should you prepare for court?

Get references and prepare a letter to the magistrate or written notes of what you will say.

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It may be helpful to get written references from people who can talk about your good character.

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These references should be addressed to the magistrate and refer to the current charges. Ask for our information card *Character References* (or access it online).

The court will consider a number of factors in deciding the appropriate penalty and disqualification. These include:

- Whether you believed you were under the influence of a drug when you drove
- Any particular reason as to why you drove
- Whether you were detected by a random test or as a result of erratic or dangerous driving
- The length of the journey/intended journey
- The number of people put at risk by the driving (passengers, members of the public etc)
- Any collision that occurred
- Any significant effect that licence disqualification may have on you, your employment or other people who rely on you (children, sick relative, etc)

- Alternative transport options (or lack thereof) if you are disqualified from driving
- How long you have held a licence and what your overall traffic record is like
- Whether you are a regular drug user and if so, whether some kind of treatment or counselling is appropriate
- Your likelihood of re-offending

Either prepare a short letter in your own words to give to the magistrate, or prepare written notes for when you address the court.

Include any explanation that relates to the factors set out above. In particular, address:

- Any special reasons why you were driving
- Some explanation as to why you were driving with drugs in your system
- An assurance that you understand the risks of driving after consuming drugs, and if you can, an assurance that this behaviour will not be repeated
- Whether you need a licence for work. Make sure you have a letter from your employer to say what will happen to your job if you are disqualified from driving for a long time
- Whether you have other reasons for needing a licence, for example a disabled child or health problems. Make sure you have evidence, for example a doctor's certificate or report from another treating health practitioner to support this

- What your financial situation is like, including your weekly income and expenses (which can assist the court in working out any fine to be imposed)

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You should be aware that disqualification periods are mandatory.

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They can only be avoided if the magistrate decides to deal with your matter under s10 of the Crimes (Sentencing Procedure) Act 1999 (NSW). This is where a magistrate finds an offence proven but uses their discretion to not record a conviction.

### **What should you do at court?**

You should not drive to court in case you lose your licence. Bring your licence with you unless the police have already taken it, as the court may require you to surrender it.

When you get to court, find the court officer and tell them that you are unrepresented and that you are pleading guilty.

### **Check the police facts sheet and certificate**

The prosecutor will have a facts sheet which says why you were arrested and describes what happened from the police point of view. It may also refer to what the police say you told them about the type and quantity of drug you used. Make sure you read the facts sheet. If you disagree with what the police say happened, you may tell the magistrate when it is your turn to speak.

The prosecutor should also show you a copy of your criminal record and a copy of your driving history. Read these documents to make sure they are accurate.

The prosecutor will hand the magistrate a copy of the facts sheet, your criminal record and traffic history. You should inform the magistrate if there is incorrect information on your criminal record or traffic history.

The prosecutor will also hand up certificates relating to the correct handling and testing of the sample and as to the presence of a specified prescribed illicit drug.

### **Inside the courtroom**

Sit in court and wait for your name to be called. It can be helpful to listen to other people presenting guilty pleas to give you a better idea of how to present yours. When you are called, enter a plea of guilty and either hand your letter to the court officer or read from prepared notes.

Give the court officer any written material such as references, a letter from your employer, a letter or report from your doctor or any other supporting documents.

You may also wish to consider completing a *Traffic Offender Program*. Generally, if you attend the program and complete the coursework, the penalty applied will be reduced. If you want to do the program, ask the magistrate to refer you and adjourn your case so you have time to complete the program. Local Court registries can provide information about these courses, including

# The penalties

## Offences

## Penalties

<i>Provision of Road Transport Act 2013</i>		1st offences					2nd and subsequent offences						
		Max. fine	Max. gaol	Automatic disqualification	Minimum disqualification	Max. fine	Max. gaol	Automatic disqualification	Minimum disqualification	Max. fine	Max. gaol	Automatic disqualification	Minimum disqualification
s.112(1)(a)	Driving under the influence of alcohol or other drug	\$2,200	9 mths	12 mths	6 mths	\$3,300	12 mths	3 years	6 mths	\$3,300	12 mths	3 years	12 mths
s.111	Drive with illicit drug in oral fluid, blood or urine	\$1,100	Nil	6 mths	3 mths	\$2,200	Nil	12 mths	6 mths	\$2,200	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	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	6 mths	\$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	6 mths	\$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	12 mths	\$5,500	2 years	5 years	2 years



where they run and how long they take – it is helpful to get this information before you mention your matter in court.

If your licence was suspended and taken away on the spot by the police, ask the magistrate to take into account the time you have already been suspended when determining the length of your disqualification.

### **MERIT – Magistrates’ Early Referral Into Treatment**

Local Courts have a special program called the Magistrates’ Early Referral Into Treatment Program (MERIT). It offers adult defendants with drug problems the opportunity to work towards rehabilitation, on a voluntary basis.

The program takes about 12 weeks to complete. If you want to do the program, ask the magistrate to refer you to MERIT and adjourn your case so you have time to be assessed for eligibility and then to complete the program if you are eligible.

A report will be provided to the court about your progress on the program. If you make positive progress the magistrate will look favourably at this when it comes to sentencing you.

### **What could happen to you?**

In almost all 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 table on page 8.

## **After the court's decision: what do you do?**

If there is something you don't understand about the court's decision, ask the magistrate to explain. Remember to do the following:

### **Do not drive while disqualified**

If you have been disqualified from driving for a period of time, you must hand in your licence. The maximum penalty for driving while disqualified is 18 months' gaol and/or a \$3,300 fine (or 2 years' gaol and a \$5,500 fine if it is a second or subsequent offence). There is also an automatic minimum disqualification period for an additional 12 months (or two years if it is a second or subsequent offence) when you are convicted for driving while disqualified.

### **Re-apply for your licence**

Once the disqualification period is over, you have to re-apply for your licence as you will not get it back automatically. You will be a cancelled driver until you reapply for your licence (it is an offence to drive whilst cancelled).

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If you think you will have trouble paying your fine within 28 days, speak to court staff before you leave about making a 'time to pay' arrangement.

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If you do not pay the fine within the time set, State Debt Recovery (SDR) can impose a range of penalties against you.

For more information call the SDR on **1300 655 805** or **visit [www.sdرو.gov.au](http://www.sdرو.gov.au)**

If you will have trouble paying your fine you may be eligible to apply for a Work and Development Order. These orders enable you to work off fines by doing unpaid work, education and training, counselling or other rehabilitation or medical or mental health treatment and more. For more information see Legal Aid's free publications about Work and Development Orders.

## Can you appeal?

You can appeal to the District Court if you are not satisfied with the magistrate's decision. You should seek legal advice before lodging any appeal. The appeal must be lodged within 28 days and there is a fee payable. It is possible to apply for fee relief if you are a low income earner. For more information about how to appeal, ask for Legal Aid NSW's brochure *Appealing to the District Court* (or access it online).

This information is intended as a general guide to the law. It should not be relied on as legal advice and it is recommended that you talk to a lawyer about your particular situation.

At the time of updating, the information shown is correct but may be subject to change. If you need more help, contact LawAccess on **1300 888 529**.

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## Languages

This brochure is available in Arabic, Dari/Farsi and Chinese.

## Do you need an interpreter?



If you need help to talk to us in your language, call the Translating and Interpreting Service (TIS) on **131 450** (9am–5pm).

## Do you find it hard to hear or speak?



If you find it hard to hear or speak:

- call us through the National Relay Service on 133 677 or [www.relayservice.gov.au](http://www.relayservice.gov.au) or
- call LawAccess NSW on 1300 889 529

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