

# The Shopfront

## YOUTH LEGAL CENTRE

### Driving – Information for Young People

#### Fact Sheet 6 – Drugs, Alcohol and Driving

#### **What are the prescribed alcohol concentration (PCA) limits for driving?**

When someone drives with a “prescribed concentration of alcohol” in their blood above the legal limit, they are committing an offence. There are 3 PCA limits:

- Zero: applies to all learner drivers, all P1 drivers, and all P2 drivers
- 0.02: applies to drivers of heavy vehicles, vehicles carrying dangerous goods, and taxi drivers or bus drivers
- 0.05: applies to all other drivers

#### **Random breath testing**

In NSW, police have the power to randomly stop drivers for an alcohol breath test. If you are found over the limit you will be arrested and taken to the police station where your alcohol levels will be tested again. If you fail this test, you will be charged. It is an offence to refuse a breath test in NSW and the penalties for doing so are often as severe as a drink driving offence.

#### **What about driving with drugs in your system?**

It is an offence to drive under the influence of alcohol or any other drug.

It is also now an offence to drive with a “prescribed illicit drug” (cannabis, speed or ecstasy) present in your saliva, blood or urine. It is also an offence to have cocaine or morphine (which can include heroin) in your blood or urine, unless you were using a morphine-based drug for medicinal reasons.

#### **Roadside drug testing**

Police in NSW now have the power to carry out roadside drug testing on any driver, rider or supervising licence holder in NSW. The “oral fluid” drug test will test for the presence of THC (active component in cannabis), Methylamphetamine (speed, ice, crystal meth) and MDMA (ecstasy). This will require the driver to lick the test pad of a device through the window of their vehicle.

If a positive sample is detected, you will be required to provide a second sample which will be run through another oral screening device. If a second positive test is found, a sample of your saliva will be taken and sent to a laboratory for confirmation. You will not be charged at this stage, although you will be prohibited from driving for 24 hours. It is an offence to refuse to submit to a roadside random drug test.

## What are the penalties for drink driving or driving with drugs in your system?

The penalty and disqualification will depend on the type of licence you hold and whether it is your first offence.

In most cases, you will have to pay a fine. In serious cases you could go to jail.

Driving offences involving alcohol and drugs also carry an automatic disqualification. This means that a person who is convicted of one of these offences will be disqualified from driving for the *automatic* period set out by the law, unless the court decides to make a different order.

Instead of imposing the automatic disqualification, the court may:

- reduce the disqualification to the minimum period set out by the law; or
- increase the disqualification period; or
- in special cases, the court may decide not to convict the offender at all, but to deal with the matter under section 10 of the *Crimes (Sentencing Procedure) Act* (or an equivalent law for juveniles). This means that there will be no penalty, no conviction and no disqualification.

## Alcohol Interlock Program

The alcohol interlock program is a partial alternative to licence disqualification for certain alcohol-related driving offences and can be ordered by the court for suitable applicants.

The alcohol interlock device is an electronic breath-alcohol analyser which can be wired into a vehicle's ignition system. The aim of this is to require the driver of the vehicle to test the alcohol in their breath every time they start the ignition, and their blood-alcohol level exceeds 0.02 the ignition will lock.

Once driving, the interlock device also requires retests at various intervals. If the driver fails one of these tests the car's horn will begin to sound and the lights will flash until the driver pulls over and turns the car off.

## Penalties and disqualifications

		Fine (max)	Prison term (max)	Disqualification (automatic)	Disqualification (minimum)
High range PCA (0.15 or higher)	First offence	\$3,300	18 months	3 years	12 months
	Second offence	\$5,500	2 years	2 years	2 years
Mid range PCA (0.08 – 0.15)	First offence	\$2,200	9 months	12 months	6 months
	Second offence	\$3,300	12 months	3 years	12 months
Low range PCA (0.05 -0.08)	First offence	\$1,100	-	6 months	3 months
	Second offence	\$2,200	-	12 months	6 months

		<b>Fine (max)</b>	<b>Prison term (max)</b>	<b>Disqualification (automatic)</b>	<b>Disqualification (minimum)</b>
Special range PCA (0.02 to less than .05)	First offence	\$1,100	-	6 months	3 months
	Second offence	\$2,200	-	12 months	6 months
Novice range PCA (0.00 – 0.02)  (Provisional or Learner driver)	First offence	\$1,100	-	6 months	3 months
	Second offence	\$2,200	-	12 months	6 months
Driving with illicit drug present in saliva, blood or urine	First offence	\$1,100	-	12 months	6 months
	Second offence	\$2,200	-	3 years	12 months
Driving under the influence of alcohol or another drug	First offence	\$2,200	9 months	12 months	6 months
	Second offence	\$3,300	12 months	3 years	12 months
Refusing or not stopping for a breath test		\$1,100	-	Court decision	Court decision
Refusing a breath analysis	First offence	\$ 3,300	-	3 years	6 months
	Second offence	\$5,500	18 months	5 years	12 months
Refusing a drug test	First offence	\$3,300	18 months	3 years	6 months
	Second offence	\$5,500	24 months	5 years	12 months

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### Updated May 2010

*The information in this fact sheet contains a basic summary of the law in New South Wales. It is not legal advice. This means that if you need legal advice, you should see a lawyer – do not rely on this information as a substitute for legal advice.*

For more information, visit us at [www.theshopfront.org](http://www.theshopfront.org) or contact us at:

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