

# Drugs and driving

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## Drugs and driving

### CHANGES TO THE LAW FROM 28 JUNE 2021

A new law took effect on 28 June 2021 introducing new offences with harsher penalties if a driver is detected with an illegal level of alcohol as well as illicit drugs present in their system.

[See penalties](#)

Research shows that the combined use of illicit drugs and alcohol increases the risk of a fatal crash by 23 times.

The new offence is designed to deter this high risk behaviour and targets those with the highest road safety risk and repeat offenders. This includes drivers who are detected with:

- a middle or high range blood alcohol concentration combined with illicit drug presence, or
- low, novice or special-range blood alcohol concentration combined with illicit drug presence, if the driver has been convicted of a combined offence within the previous five years.

Tougher penalties will apply for a combined offence, compared to those currently available for separate drink and illicit drug driving offences.

Penalties include increased fine levels and increased minimum disqualification periods.

Alcohol interlocks will be mandatory for people convicted of a combined drink and drug driving offence. Vehicle sanctions may also apply.

[Find more information](#)

## FURTHER READING

- [Drugs, driving and you](#) - Legal Aid NSW
- [Drink driving charges and you](#) - Legal Aid NSW
- [Law Handbook - Chapter 21 Drug Offences](#) - Find Legal Answers
- [Law Handbook - Chapter 20 Driving and Traffic Law](#) - Find Legal Answers

Effects of drugs and driving

- [How illegal drugs effect your driving](#) - Centre for Road Safety, Transport NSW
- [Prescription drugs and driving](#) - Centre for Road Safety, Transport for NSW
- [Driving safety and medicines](#) - NSW Health

The law

- [Blood alcohol limits](#) - Centre for Road Safety, Transport NSW

Roadside testing

- [Drugs and driving](#) - Centre for Road Safety, Transport NSW

It is against the law to drive under the influence of alcohol or any illicit drug.

Mobile drug testing is used in NSW. Police can administer an oral drug test to any driver. [Cannabis](#), [ecstasy](#), [cocaine](#) and [methamphetamines](#) can be detected through roadside testing. A person who tests positive is prohibited from driving for 24 hours. The sample is sent to a laboratory for more precise analysis, and if the presence of an illegal drug is confirmed the driver may be charged.

A person can also be arrested and taken to a hospital for a blood and urine test if a police officer has a reasonable suspicion that they are driving under the influence of drugs.

### **Random driver drug testing**

It is an offence under the *Road Transport Act 2013* (NSW) to drive with THC (the psychoactive ingredient of cannabis), cocaine, methamphetamine or ecstasy 'present' in the driver's saliva, blood or urine (although only saliva is usually tested).

The police are allowed to conduct random roadside testing of drivers to test for the presence of these drugs. The roadside tests involve a saliva test using drug screening equipment. If the initial saliva test indicates positive, then the driver must undertake a second saliva swab at a mobile drug bus or police station.

The second sample is sent to the laboratory for analysis, whether it is positive or negative. But if the second swab shows positive, the police issue the driver with a direction not to drive for 24 hours. If the laboratory analysis confirms the presence of THC, cocaine, methamphetamine or ecstasy, the driver is issued with a court attendance notice for the offence. It is the analysis by the laboratory, not the roadside test results, which the police rely on as evidence in court.

It is also an offence to drive with morphine present, but this substance will not be detected by saliva swab.

### Offences and penalties related to driving under the influence of alcohol and drugs in NSW.

#### **Driving under the influence**

It is an offence under the *NSW Road Transport Act 2013* to drive 'under the influence' of a drug or alcohol. Proof of this offence requires proof beyond reasonable doubt that the driver was intoxicated to some degree by the drug or alcohol.

Since the introduction of breathalysers and random breath testing for alcohol, drink driving offences are now much more commonly charged as driving with the relevant 'prescribed concentration of alcohol' under the *Road Transport Act 2013* (NSW). This in effect bypasses any need to prove intoxication—the presence of a particular concentration of alcohol in a person's system is sufficient evidence for the offence to be proved.

### Offences and penalties related to driving under the influence of alcohol and drugs in NSW.

Under the *Crimes Act 1900* (NSW) a person convicted of driving under the influence of a drug and causing death is liable for a maximum penalty of 10 years' jail (or 14 years if there are circumstances of aggravation such as speeding).

#### **Drug testing**

If the police reasonably suspect that a person is driving under the influence of a drug, they have the power to take them to a hospital for a blood or urine test for the presence of drugs, under the supervision of a doctor.

It is an offence to refuse to submit to a blood test or a urine test in these circumstances. It is likewise an offence to wilfully alter the amount of drug in your blood or urine before having the test, unless it is more than two hours since you were driving.

*The information on this page was originally published in The Quick Guide to Drugs and Alcohol. It has been updated to reflect changes to the law.*