

DRUG DRIVING AND THE LAW



Legal Services
Commission
OF SOUTH AUSTRALIA



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If you drive, or attempt to drive, a motor vehicle while a prescribed drug is present in your system, you will be guilty of an offence. Roadside drug screening (saliva) tests can detect THC (cannabis), Methylamphetamine (speed, ice or crystal meth) and MDMA (ecstasy).

Unlike drink driving, there is no minimum amount of drug that has to be present in your system for you to be guilty of an offence. Many drugs can remain in your system for hours or even days after they have been taken.

DRUG TESTING

Any uniformed police officer can require a driver to undergo a random roadside drug screening (saliva) test, so long as an alcotest or breath analysis test has first been conducted. If the saliva test indicates a positive reading for the presence of drugs, an oral fluid sample will be taken and sent for laboratory testing. If the presence of drugs is confirmed by laboratory testing, you will be charged with driving with a 'prescribed drug in oral fluid or blood' or driving under the influence (DUI). Before you can be fined or charged, the presence of the drug must be confirmed by the laboratory analysis. This process can take several weeks.

WHAT ABOUT OTHER DRUGS?

Drug screening testing is only currently used for the detection of THC, methylamphetamine and MDMA. However, drivers impaired by other drugs (whether prescription or illicit) may be charged with driving under the influence of drugs.

CAN I KEEP DRIVING AFTER I TEST POSITIVE IN A DRUG TEST?

If you test positive for THC, methylamphetamine or MDMA, you will be advised by police not to drive until the drug is no longer detectable in your system. For THC this will usually be up to 4 hours and for methylamphetamine and MDMA 24 hours.

If a police officer thinks you are unfit to drive due to your drug consumption they can require you to surrender your keys and can immobilise your vehicle. It is an offence to go against this direction. Ask the police for help to arrange alternative transport if necessary. If you attempt to drive away, you may be arrested.

CAN I REFUSE A DRUG TEST?

If you have already submitted to an alcotest or breath analysis, the police may also require you to submit to a drug test. It is an offence to refuse, or to fail to comply with, a request for a drug screening test, oral fluid analysis or blood test. The penalties that apply if you refuse to cooperate are more serious than those for a first offence of drug driving itself.

CAN I BE BLOOD TESTED?

Anyone over 10 years of age who is admitted to hospital for treatment following a road accident must be blood tested. The blood test must be done as soon as possible after you are admitted to hospital and within eight hours of the motor vehicle accident. The sample is sent to the police for analysis. If you were the driver and the result indicates that you had a prescribed drug present in your blood then you will be charged. If you refuse a blood test without good medical reason you can be fined \$500, with more serious penalties, including disqualification if you were the driver of the vehicle.

DRIVING UNDER THE INFLUENCE

If you drive, or attempt to drive, a vehicle while so much under the influence of a drug as to be incapable of exercising effective control of the vehicle, you will be guilty of an offence. For the purposes of this offence, you are deemed to be incapable of exercising effective control of a vehicle if your physical or mental capabilities are appreciably impaired. Police may use their observations to show that you could not exercise effective control. A test showing the presence of a drug in your system may form part of this evidence but it is not essential. This offence is separate to Drug Driving and you cannot be convicted of both in relation to the same incident.

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DRUG DRIVING WITH CHILD PRESENT IN VEHICLE

If you drive, or attempt to drive, a motor vehicle while a prescribed drug is in your system and a child aged under 16 is present in the vehicle, you will be guilty of an offence. Similarly, if you drive a vehicle while so much under the influence of a drug as to be incapable of exercising effective control of the vehicle, and a child aged under 16 is present in the vehicle, you will be guilty of an offence.

Aside from the penalties that apply, if you are guilty of offences where a child aged under 16 is present in the vehicle, you will also be required to undertake a drug dependency assessment before re-applying for your licence at the end of the disqualification period.

PENALTIES

If you are convicted of a drug driving offence the court must impose at least the minimum disqualification period, but can impose a longer period. A fine and demerit points will also apply. The following penalties are for first offences only:

Offence	Disqualification (minimum)	Fine	Demerit Points
Drug Driving	3 months*	\$600 (expiation fee); or \$900 - \$1300	4
Drug driving with child present	3 months*	\$600 (expiation fee); or \$900 - \$1300	4
Refuse drug test	12 months	\$900 - \$1300	6
Refuse blood test	12 months	\$1100 - \$1600	6

*The police normally issue an expiation notice for these offences. Even if the expiation notice is paid, a 3 month licence disqualification applies. If the case goes to court, the court must impose a minimum disqualification of 6 months.

Higher penalties apply if you have previous convictions for drug driving. Probationary, provisional and learner drivers face penalties for a breach of licence conditions in addition to the drug driving penalties.

DRUG DEPENDENCY ASSESSMENT

If you are convicted of a drug driving offence where a child aged under 16 was also present in the vehicle, OR you have other previous convictions for prescribed drug driving offences committed within the past 5 years, you will be required to show you are not dependent on drugs before your licence is reissued. This will involve undergoing a drug dependency assessment to determine whether you are dependant on drugs. You are required to pay for the cost of the assessment and any treatment program.

ON-THE-SPOT DISQUALIFICATIONS

Police will usually issue an on-the-spot disqualification for the offences of refuse drug screening or oral analysis test, or refuse blood test. This disqualification will usually be for the minimum period for the charge you are likely to face. A summons will be sent at a later date for you to appear in court to determine the actual penalty, including the length of disqualification and fine. The court will take the period since the on-the-spot disqualification into account when you are sentenced.

For a first offence of drug driving or drug driving while child aged under 16 is present in the vehicle, you will usually receive an expiation notice after the forensic laboratory results have confirmed the presence of drugs in your system. For these offences, if the expiation notice is paid then no summons will be sent to you and you do not have to go to court, but you will still be required to serve the 3 month licence disqualification. You should receive a separate notification of the licence disqualification after the expiation notice has been paid, and you will be required to acknowledge receipt of that notification and pay an administration fee.

CAN I KEEP MY LICENCE?

If you are guilty of a drug driving offence then the court has very limited powers to reduce the penalties below the minimum, including the period of disqualification. Personal hardship or loss of employment are not grounds to keep your licence. You cannot get a restricted licence or a licence just for work purposes – the disqualification is total. A court may reduce a disqualification period in limited circumstances where the offence is considered trifling. It is recommended you seek legal advice before making any trifling application in court.

AFTER DISQUALIFICATION

When you are disqualified from driving, your licence is cancelled. This means that when you have served your full disqualification period, you must apply to renew your licence before driving again. If you drive during your disqualification period, you may be charged with driving while disqualified. This criminal offence is taken very seriously by the courts and can attract a term of imprisonment. Seek legal advice if you have been charged with this offence.

If you resume driving after your disqualification period ends but before renewing your licence, you will be guilty of an offence. The penalty for this offence depends on the seriousness of the drug driving charge you were disqualified for in the first place. If your disqualification was for DUI, refuse drug screening, oral analysis or drug test, or drug driving offences where a child aged under 16 was also present in the vehicle, the penalty can be as high as a fine of \$5000, imprisonment for 1 year and further licence disqualification for 3 years.

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Following disqualification, you must hold a probationary licence for at least 12 months. As a probationary licence holder you must carry your licence at all times while driving. Breach of the conditions or incursion of 2 or more demerit points can result in further disqualification.

DEMERIT POINT DISQUALIFICATION

If you are guilty of a drug driving offence, you will incur demerit points as part of the penalty. Depending on the number of demerit points you had prior to the drug driving offence, you may have to serve another disqualification period because you have incurred too many points. If you are on a full licence and incur 12 or more demerit points you will receive a notice from the Registrar of Motor Vehicles disqualifying you for at least 3 months. With this disqualification, you can elect to abide by a 'good behaviour' condition which enables you to retain your licence; however, if this is breached you will need to serve double the original disqualification.

WHAT IF I HAD AN ACCIDENT?

If you have an accident while under the influence of drugs you may also face other traffic offences. These can range from driving without due care to causing death or harm by dangerous driving. In addition, your insurance policy may be affected if it can be shown that you were under the influence at the time of the accident. If someone is injured due to your negligent driving when you are under the influence, your insurer may sue you to recover compensation paid to third parties. Even if you are injured and the accident was mostly the fault of another driver, your compensation may be reduced. As issues with insurance and liability can be complicated it is best to seek legal advice.

DO I NEED A LAWYER?

If you are pleading guilty to a drug driving offence you can represent yourself if you choose. Even if you are representing yourself you should seek legal advice before going to court. Legal aid will only be granted if there is a likelihood of imprisonment and this is not usually the case for drink driving charges. You may be eligible for legal aid if you have been charged with DUI and have prior convictions, if you have been charged with driving while disqualified, or if your case is particularly serious.

If you are representing yourself, you will need to tell the court about what happened at the time of the offence, such as why you drove whilst you were under the influence of drugs, what you will do to ensure that you do not use drugs and drive again, and some details about your personal circumstances, such as your work, family and financial situation.

Contact the Legal Help Line on 1300 366 424 or make an appointment for free legal advice at the Legal Services Commission.