

Drugs in NSW: Myths and Realities

MYTH: I WON'T GET CHARGED IF I ONLY HAVE ENOUGH FOR PERSONAL USE

This is false. Certain drugs and plants – including MDMA, ketamine, ice, cannabis and GHB – are prohibited in NSW by the Drug Misuse and Trafficking Act 1985. Unlike some other jurisdictions, there is no hierarchy of prohibition such as Class A, Class B and Class C. All prohibited drugs are equally illegal.

Each prohibited drug has a specified amount which is considered a 'small quantity'. For example, for MDMA a 'small quantity' is 0.25g. If you are found with a small quantity or less of a prohibited drug, it is likely you will be charged with possession. The maximum penalty is two years' imprisonment, a fine of \$2200, or both. There is no 'safe' amount. There is no risk-free way to possess prohibited drugs.

MYTH: IT'S OKAY TO HOLD SOMEONE ELSE'S DRUGS

This is incorrect. You can be found guilty of possessing a prohibited drug if you:

1. Have a prohibited drug in your physical possession or control; and
2. Know you have possession or control of the prohibited drug

Even if you are given a drug to hold for a few moments, it is in your possession. It doesn't matter whether or not the drug 'belonged' to you.

MYTH: IT'S ILLEGAL TO POSSESS DRUGS, BUT NOT TO TAKE THEM

This is false. It is an offence to administer or to attempt to administer a prohibited drug to yourself. This means that you can be charged for the

act of swallowing, snorting, injecting, smoking, ingesting or otherwise consuming drugs, or for attempting to do so. It is also an offence to administer prohibited drugs to someone else, or to allow someone to administer drugs to you.

MYTH: BONGS AND PIPES ARE LEGAL

This is incorrect. It is an offence to possess any equipment for use in taking a prohibited drug, excluding syringes and needles.

WHAT ABOUT CANNABIS?

In NSW you can now take cannabis medicines in accordance with a prescription. However, it is illegal for persons taking cannabis medicines containing THC to drive.

It is unlawful to use cannabis or cannabis medicines in NSW unless it is:

1. Prescribed to you by a doctor;
2. A low dose medicine permitted to be sold in pharmacies.

The Cannabis Cautioning Scheme permits police to give formal police cautions to adult offenders detected for minor cannabis offences. In appropriate cases, police can choose to issue a caution rather than a charge. However, you can only be cautioned twice and cannot receive a caution if you have any prior convictions for drugs, violence or sexual assault. There is also no automatic entitlement to a caution – it is up to police discretion. Possession of cannabis risks a possession charge.

WHAT IF CANNABIS IS LEGAL IN MY HOME STATE OR COUNTRY?

If you are caught in possession of cannabis in NSW, the NSW law will apply. Cannabis is a prohibited drug under NSW law except for limited

medical uses.

MYTH: POLICE CAN ONLY SEARCH ME IF I CONSENT, OR IF I AM ARRESTED

This is false. Police can search you or your car without arrest if they have reasonable grounds to suspect that you have prohibited drugs.

'Reasonable grounds' can include the action of a police dog. Police can pat you down, ask you to remove your outer clothes and shoes, and look into your belongings and your clothes. They can also ask you to open your mouth and shake your hair. Police must provide the name and place of duty of the officer performing the search, and explain why they are searching you.

Police do not need your consent. In fact, refusing to comply with the search may be a criminal offence. If police have reasonable grounds to suspect that it is necessary and the circumstances are serious and urgent, they may perform a strip search. They must provide you with as much privacy as possible for the search.

MYTH: I'M NOT 'SUPPLYING' BY GIVING MY FRIENDS DRUGS THAT WE BOUGHT TOGETHER

Under NSW law, there is no requirement for money to change hands or for a person to profit for it to be 'supply' within the meaning of the law ('dealing'). The legal definition of supply is very broad. Supply includes selling or distribution, agreeing to sell or distribute, offering to sell or distribute, having in your possession for sale or distribution; or facilitating any of these things. For example, if police catch you passing the pills to one of your friends – there is a risk that you may be charged with actual supply of a prohibited drug.

If you have an amount greater than the small quantity amount on you, NSW law states that you are considered to have this amount for the purposes of supply or dealing (unless proved otherwise). You may be charged with supply accordingly.

DRIVING UNDER THE INFLUENCE OF A PROHIBITED DRUG

It is an offence to use or attempt to use a motor vehicle while under the influence of alcohol, a prohibited drug, or a prescription drug that impairs your driving. "Under the influence" means

that you were intoxicated or affected by the drug at the time you were driving. Penalties include substantial fines and imprisonment for up to 18 months.

It is a separate offence to drive or attempt to drive a vehicle with a 'prescribed illicit drug' present in your oral fluid, blood or urine. This means that you are not necessarily impaired by the drug at the time of driving, but the drug has been detected in your system. The four 'prescribed' (meaning 'specified') illicit drugs for this offence are THC (a chemical compound in cannabis and some cannabis medicines), methylamphetamine (speed or ice), cocaine and ecstasy. Traces of drugs can stay in your system a long time after you consume them.

It is also unlawful to drive with the presence of morphine in your blood or urine, unless you can prove that you used the morphine for medical reasons.

As of June 2021, it is a separate offence to drive with both an illegal level of alcohol and illicit drugs in your system. This means that police are likely to drug test drivers who are over the alcohol limit. Like the offence of driving with an illicit drug in your system, it does not matter whether you were impaired by the drug at the time of driving. This offence attracts harsher penalties, including an automatic licence suspension of 4 years for first-time offenders and a maximum of 2 years imprisonment.

This information is current to 10 January 2022 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on (02) 9332 1966