



How to Represent Yourself on a Drink Driving Charge in NSW

1. Introduction

Many people who are charged with a drink driving offence decide not to contest the charge because they cannot afford a lawyer or do not have a winning defence. This eBook is designed to help those people decide whether they should represent themselves on a drink driving charge in New South Wales. It also discusses strategies for minimizing punishment.

This eBook answers common questions about drink driving charges and defences in NSW. It does not provide legal advice. You can only get legal advice from a lawyer. In addition, this brief eBook cannot provide a detailed analysis of every conceivable issue that might arise or defence that might be available in a drink driving prosecution. Again, if you want to know how the law applies to the specific facts of your case, you should consult a lawyer.

2. What is drink driving?

“Drink driving” refers to a number of different offences that might be charged in NSW. The phrase drink driving is meant to emphasize that some of those offences require proof of a specific blood alcohol concentration rather than proof of intoxication.

A. Major offences (other than PCA offences)

A major offence is a very offence, some of which involve drinking and driving. Major offences include predatory driving, reckless driving, furious driving, negligent driving that produces an injury, and eluding the police. Since the consequences of being convicted of these criminal accusations can be serious, you should talk to a lawyer about the charge before deciding how to proceed.

Driving with a prescribed concentration of alcohol (PCA) that exceeds the limit established for a particular class of driver is classified as a major offence under the Road Transport Act 2013, but the penalties are not as severe as those associated with most of the crimes mentioned above. Offences involving driving after drinking that did not cause injury or property damage and did not place anyone in imminent danger are the cases in which people accused of the offence are most likely to represent themselves.

B. PCA offences

A prescribed concentration of alcohol (PCA) refers to the percentage of blood alcohol that is measured in a blood or breath test. For all drivers, it is illegal to drive with a blood alcohol concentration (BAC) of 0.05 or above. For learner and provisional drivers, it is illegal to drive with a BAC above zero.

Section 110 of the Road Transport Act creates five categories of PCA offences. Different penalties apply to each category.

- **High range PCA.** Driving with a BAC of 0.15 or higher can be punished by a fine and imprisonment, as well as by a licence disqualification. The maximum sentence is 18 months (2 years for a second or subsequent offence).
- **Middle range PCA.** Driving with a BAC of at least 0.08 but less than 0.15 can be punished by a fine and imprisonment, as well as by a licence disqualification. The maximum sentence is 9 months (1 year for a second or subsequent offence).
- **Low range PCA.** Driving with a BAC of at least 0.05 but less than 0.08 can be punished by a fine and by a licence disqualification.
- **Special range PCA.** Most unlicensed drivers are in violation if they drive with a BAC of at least 0.02 but less than 0.05. The special range also applies to bus and taxi drivers, drivers of certain heavy vehicles, and drivers transporting dangerous goods. They can be punished by a fine and by a licence disqualification.
- **Novice range PCA.** Holders of provisional and learner licences are in violation if they drive with a BAC above 0.00. They can be punished by a fine and by a licence disqualification. Higher penalties apply if their BAC was in a higher range.

Driving includes attempting to put a vehicle in motion if you are sitting in the driver's seat.

C. Driving under the influence

If the police are unable to charge you with a PCA offence because they were unable to obtain a BAC test result, they can still charge you with driving under the influence. This is most likely to happen in drug driving cases when no blood test was taken or when circumstances prevent any chemical test from being taken. The prosecution usually relies on evidence of bad driving (such as weaving) coupled with signs of intoxication, including the odor of alcoholic beverages, slurred speech, poor balance, and glassy eyes to prove guilt. The penalties for middle range PCA apply to driving under the influence.

D. Refusal offences

A roadside breath test can be requested by an officer who has stopped your vehicle. It is an offence, punishable by a fine, to refuse that test. If you are arrested for a drink driving offence, you can be asked to submit to a breath analysis at a police station or testing facility. Refusing a breath analysis is a major offence that can be punished by a fine and/or imprisonment.

3. What plea should I enter?

If you think you cannot contest the charge and win, it might be to your advantage to plead guilty. If you take a case to trial with no defence, the judge might be unhappy that you wasted the court's time. You have the right to a trial and you should not be penalized for exercising that right, but most judges will give you a break when imposing a penalty if you accept responsibility for your conduct by pleading guilty.

If your defense is "I only had two beers," consider pleading guilty. Judges hear that every day. They are more inclined to believe the test result than the testimony of someone who was drinking.

On the other hand, if you have a legitimate defence to the charge, you might want to take your case to trial. If you are charged with low range, special range, or novice range PCA, you might be facing a longer licence disqualification or a higher fine if you are convicted, but you will not be risking a longer sentence by contesting the charge.

4. What defences can I raise?

Possible defences that might have merit include the following.

- **Defences based on mistaken identity.** If someone else was driving and the officer mistook you for the driver, you may have a defence.
- **Defences based on location of driving.** If you were driving on a private road or on private property, you may have a defence.
- **Defences based on impossible test results.** If you know for a fact that you did not consume any alcohol within 12 hours of being tested and have witnesses to prove it, you may have a defence.
- **Defences based on defects in the testing device.** Although these defences are difficult to establish in the absence of expertise, it is possible to challenge test results in PCA cases based on the failure to maintain, calibrate, or test the devices on a prescribed schedule.
- **Defences based on administration of tests.** All breath testing devices come with instructions supplied by the manufacturer. If the person administering the test did not follow the instructions, the test result might be invalid, providing a defence of a PCA charge.
- **Defences based on blood tests.** The police can only administer a blood test if they asked you to perform field sobriety tests and you either refused or failed the tests. If you took the tests and did well, or if the police neglected to perform field sobriety tests, you may have a defence.
- **Defences based on testing delay.** Breath tests are presumed valid if they are conducted within two hours after you stopped driving. If the tests were delayed beyond that two hour window, you may have a defence.
- **Defences based on the absence of a test result.** If you are charged with driving under the influence because there is no test result showing a prohibited BAC, and if you have an explanation unrelated to alcohol or drug consumption for your bad driving (such as distraction or weariness), you may have a defence.
- **Defences based on tests after you arrived at home.** If you made it home without being stopped by (or eluding) the police, they have no power to administer a test. If the police came to your home and administered a breath test, or arrested you so that a breath or blood test could be administered elsewhere, you may have a defence.

- **Defences based on drinking after driving.** If you consumed alcohol after you stopped driving but before you were tested, the test may not reflect your BAC at the time of driving. That circumstance may provide you with a defence.
- **Defences to absolute sobriety charges.** If you have a novice or provisional licence and are charged with having a BAC of more than zero but less than 0.02, special defences apply to your case. They include the consumption of alcohol as part of a religious observance or as an ingredient in medicine or food.
- **Defences to refusal charges.** If you tried to take a breath test but were unable to do so because of a medical condition such as asthma, you may have a defence to a refusal charge.

5. Do I need a lawyer?

If you want to benefit from any of the defences discussed above, you will have a better chance if you retain the services of a lawyer who has experience raising those defences. The lawyer can advise you whether they apply to your case and you can then decide whether you want to hire the lawyer.

It also makes sense to use a lawyer if there is a significant risk of a gaol sentence in your case. That risk is greater if you are charged with a high range PCA offence, a repeat offence, an offence that resulted in injury or property damage (even if you are the injured person), or if your driving clearly endangered other people.

6. Mitigating your punishment

Judges generally reserve harsh sentences for the worst offenders. Those include repeat offenders and drivers who had a very high BAC. If you have a history of drink driving or a BAC above 0.15, you should think seriously about being represented by an attorney.

Judges are more inclined to give lenient punishments to drivers who take responsibility for their actions, who show remorse, and who convince the judge that they have learned a lesson and will not commit the offence again. If you decide to plead guilty, you should be prepared to do several things to persuade the court that you should not receive a harsh penalty.

- **Plead guilty early in the process.** The sooner you take responsibility by admitting your guilt, the more convincing will be your claim to have learned your lesson.
- **Provide character references.** The judge does not have time to read letters from everyone you know, but provide three or four short letters attesting to your good character. Letters are particularly effective if they come from people who have stature in the community, including local politicians, pastors, and community leaders.
- **Acknowledge your mistake.** Do not make excuses. Do not tell the judge your sad life story. People who think they had a good reason for drink driving are likely to do it again. Just tell the judge you made a serious error in judgment and that you realize you should never have gotten behind the wheel of your car. On the other hand, if the circumstances (such as celebrating the birth of a baby) are unlikely to be repeated, it is fair to make that known to the court.

- **Express remorse.** Tell the judge that you are sorry for taking up the court's time and the time of the police and other officials involved in the case. Tell the judge you feel shame and regret and are embarrassed and disappointed with yourself.
- **If you were stopped at a sobriety checkpoint, make that known to the court.** It is fair to remind the judge that you were not pulled over for unsafe driving.
- **If your BAC reading was under 0.12, make that known to the court.** It is fair to remind the judge that your BAC was not at the upper end of the mid-range, where penalties generally become more severe. At the same time, remember to tell the judge that while you did not feel impaired, you understand that you should not have gotten behind the wheel of your car after drinking anything.
- **If you depend on driving for your work or to meet the needs of your family, explain why.** This could affect the length of any licence disqualification the judge imposes.
- **Give the judge a plan for avoiding future offences.** If this is a first offence, your plan could simply be a promise never to drive after consuming even a drop of alcohol. If this is a second or subsequent offence, the judge will be impressed if you have entered an alcohol treatment program or attended counseling. Be sure to bring proof of your attendance for the judge to review.