



Legal Services Commission
OF SOUTH AUSTRALIA

9 DRINK DRIVING AND THE LAW

This information is general and not a substitute for legal advice. The Legal Services Commission provides free advice for most legal problems.

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DRINK DRIVING AND THE LAW

Road crash statistics show that alcohol is a major factor in the number of people killed or injured on our roads. Even a small amount of alcohol can affect your ability to drive, and the more you drink, the more your driving will become. However, the effect of alcohol varies greatly from person to person and factors such as weight, age, sex, medication and whether you have eaten can also affect your blood alcohol level.

As a general guide for staying under 0.05 men should have no more than two standard drinks in the first hour and one standard drink each hour after that. Women should have no more than one standard drink an hour.

The only way of reducing your blood alcohol level is to give your body time to rid itself of the alcohol. It takes about an hour for your body to break down the alcohol from one standard drink. After a night of heavy drinking you may still be over the legal limit the next morning. It could be many hours before the alcohol has left your body and it is safe for you to drive.

In the interests of road safety, the penalties for drink driving offences are very severe.

DRINK DRIVING OFFENCES OVER THE LIMIT (EXCEED PCA)

It is an offence to drive, or attempt to drive, a motor vehicle while there is more than the 'prescribed concentration of alcohol' or (PCA) in the person's blood. For most drivers the prescribed concentration of alcohol is a blood alcohol level of 0.05.

If a learner, provisional or probationary driver has any alcohol in their blood, they will be charged with breaching their licence conditions. If their level of alcohol exceeds 0.05, they also face charges of exceeding the prescribed concentration of alcohol.

DRIVING UNDER THE INFLUENCE (DUI)

A person who drives, or attempts to drive, a vehicle while so much under the influence of alcohol or a drug as to be incapable of exercising effective control of the vehicle is guilty of an offence. For the purposes of this offence, a person is deemed to be incapable of exercising effective control of a vehicle if any physical or mental faculty is lost or appreciably impaired. This offence is separate to exceed PCA and a driver may be charged with both offences, especially in the event of an accident.

REFUSING TO SUBMIT TO A BREATH TEST

It is an offence to refuse or to fail to submit to an alcotest or breath test when directed by a police officer.



BREATH TESTING

The police have broad powers to stop and 'breath test' a driver who:

- is driving, or has driven, a motor vehicle; or
- is attempting, or has attempted, to put a motor vehicle in motion; or
- is acting, or has acted, as a qualified supervising driver for the holder of a learners permit (L) or provisional licence (P).

The test must be conducted within 2 hours of driving or attempting to drive. When police exercise their random testing powers they must be in uniform and use a marked police vehicle, or a vehicle displaying a flashing light or sounding an alarm. Police may also stop and test any driver of a motor vehicle that approaches a breath testing station.

If an alcotest shows that the prescribed concentration of alcohol may be present, the driver can be required to blow into a breath analysis machine. The result indicated by the breath analysis is presumed to have been the person's blood alcohol level for the two hours immediately before the test. If the breath analysis shows that the driver was over the limit, he or she will be charged and summonsed to appear in court. A breath analysis result may only be challenged in limited circumstances, such as if it is found to be inaccurate or the proper procedure was not followed.

ON THE SPOT DISQUALIFICATION

Since 1st December 2005, any loss of licence for the offences of exceed PCA (0.08 or greater), refuse breath test or refuse blood test will be on the spot and until a court orders the end of the disqualification. An application to the court to have the suspension lifted or reduced in the meantime must show that there is a reasonable prospect that the driver would be acquitted of the offence.

BLOOD TESTS

Where a breath analysis indicates the driver is over the limit, the police must advise the driver of their right to have a blood test. If a driver chooses to exercise this right the police will provide a blood testing kit. The kit contains a statement of the person's right to have a blood test together with instructions to both the person and a doctor on the blood sampling procedures. Drivers must make their own arrangements to have the blood sample taken although, if outside the metropolitan area and it appears to the police that the person will be unable to travel to a place to have a blood sample taken, the police must provide transport to a suitable place for the blood sample to be taken. If outside the metropolitan area the blood test may be taken by a registered nurse. The doctor (or nurse) must divide the sample into halves, giving one sample to the person and forwarding a second sample to the police. The police sample will be analysed and the results will be forwarded to the driver, who can have the other sample tested independently. If this is intended, it is important that the sample be kept in a cool place and analysed as soon as reasonably practicable. Legal advice should be sought if the blood test result is significantly different to the breath analysis.

BLOOD TESTING AFTER AN ACCIDENT

If a person aged 14 years or more is admitted to hospital following a road accident, a doctor must take a blood sample. The blood test must be done as soon as possible after the person is admitted to hospital and within eight hours of the motor vehicle accident. The sample is sent to the police for analysis. If the result indicates that the driver had exceeded the blood alcohol limit, charges will be laid. It is an offence to refuse a blood test without a good medical reason. A person who is not the driver of a motor vehicle involved in an accident faces a \$300 fine if he or she refuses a blood test. More serious penalties apply to drivers.



PENALTIES

If a person is convicted of a drink driving offence the court must impose a minimum disqualification period where it applies, in addition to demerit points will a fine. Licence also apply.

Offence Points	Disqualification (minimum)	Fine	Demerit
.05 - .079	*	\$147 on-the-spot Or up to \$700 fine	3
.08 - .149	6 months	\$500 - \$900	5
.15 or over	12 months	\$700 - \$1200	6
Driving under the influence	12 months	\$700 - \$1200	6
Refuse breath test	12 months	\$700 - \$1200	6
Refuse blood test	12 months	\$700 - \$1200	6
Drug driving#		\$300 on-the-spot or \$500 - \$900 fine	3
Refuse drug test	6 months	\$500 - \$900	3

Note that these are the penalties for first offences only. Higher penalties apply for drivers who have been convicted of a drink driving offence within the last five years. People who have committed an offence more than five years earlier are usually given a penalty within a first offence category, but can expect the court to take the previous offence into account by giving the driver a higher penalty within that range. 'P' plate and learner drivers face penalties for a breach of licence conditions in addition to the drink driving penalties.

For more information about your options and likely penalties for your drink driving case seek legal advice.

* If you commit an offence of driving with a blood alcohol concentration (BAC) of 0.05 – 0.079 and it is your first drink drive offence, the police will normally issue an expiation notice. Drivers with a BAC between 0.05 and 0.079 who have a previous conviction for drink driving will be prosecuted and face disqualification for at least 3 months.

Drug driving laws are due to commence in mid 2006.

CAN I KEEP MY LICENCE?

No, a court cannot reduce a licence disqualification below the minimum period unless there are exceptional circumstances, nor can the court allow a driver to keep a licence for special purposes such as work.

ALCOHOL INTERLOCK SCHEME

People disqualified for a drink driving offence for a period of 6 months or more may apply to have an alcohol interlock device fitted on their car. A person will only become eligible to participate in this scheme after they have served half of their disqualification period. All costs for fitting and monitoring the device are the responsibility of the applicant. Offenders who have been assessed as alcohol dependent are not permitted to participate in the scheme.

AFTER DISQUALIFICATION

Regardless of whether a person serves the full disqualification period or resumes driving using an alcohol interlock device, they must hold a probationary licence for at least 12 months.

DRUG AND ALCOHOL ASSESSMENT

In addition to these penalties, a person convicted for a second or subsequent time within three years of a drink driving offence must, before being sentenced, be referred to an assessment clinic to determine whether they suffer from alcoholism or addiction to a drug. The assessment clinic reports to the court on its examination of the person. If a court is satisfied that a person suffers from alcoholism or drug addiction, that person must be disqualified from holding or obtaining a driver's licence until further order.

INSURANCE

Most insurance policies do not provide cover if a driver was under the influence of drugs or alcohol at the time of an accident.

DRUGS AND DRIVING

New laws for the drug testing of drivers will commence in mid 2006. A drug saliva test will detect THC (cannabis) and methamphetamines such as speed. Where a roadside test is positive police will have the power to conduct either a further saliva test or a blood test. Drivers may face charges of driving under the influence or a new offence of driving with a prescribed drug in oral fluid or blood. Before charges can be laid the presence of drugs will have to be confirmed by laboratory testing. The saliva test will be mandatory with penalties for drivers who refuse to cooperate.



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