

Legal Services Commission
OF SOUTH AUSTRALIA

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.
Contact the Legal Helpline 1300 366 424 (TTY 8463 3691)
www.lsc.sa.gov.au www.lawhandbook.sa.gov.au

DRINK DRIVING AND THE LAW

There are two different drink driving offences: *driving over the limit*, that is, exceeding the prescribed concentration of alcohol (PCA) and *driving under the influence* (DUI). PCA means that you were breath tested and recorded a blood alcohol level higher than the legal limit. DUI is more serious and means that you were so intoxicated that you could not control the vehicle. Exceed PCA is the most common offence.

DRIVING 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' (PCA) in your blood. It makes no difference that you did not feel drunk at the time, that you didn't drink very much or your driving was not effected in any way. The law is strict as to the amount of alcohol that can be present in a person's blood when driving. For full licence holders, the maximum allowable blood alcohol level is .05. For learner, provisional or probationary drivers, *any* alcohol in their blood is a breach of their licence conditions. If the level of alcohol exceeds .05, they also face charges of exceeding the prescribed concentration of alcohol.

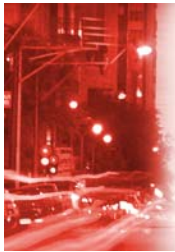
DRIVING UNDER THE INFLUENCE (DUI)

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. The police may use their observations to show that the driver could not exercise effective control, such as slurred speech, swaying when standing, and a strong smell of alcohol on the driver's breath. A blood alcohol reading may form part of this evidence but is not essential. This offence is separate to exceed PCA and a driver may be charged with both offences, especially in the event of an accident. However, a driver cannot be convicted of both offences in relation to the same incident.

PENALTIES

If a person is convicted of a drink driving offence the court must impose the minimum disqualification period (but can impose more) and a fine. Licence demerit points will also apply. A magistrate has the power to gaol a driver for serious or repeated DUI offences but this is not common. The following penalties are for first offences.

Offence	Disqualification (minimum)	Fine	Demerit Points
PCA .05 - .079	3 months*	\$532 expiation fee (on-the-spot fine) or \$1100 - \$1600	4
PCA .08 - .149	6 months	\$900 – 1300	5
PCA .15 or over	12 months	\$1100 - \$1600	6
DUI	12 months	\$1100 - \$1600	6
Refuse breath test	12 months	\$1100 - \$1600	6
Refuse blood test	12 months	\$1100 - \$1600	6
Drug driving	3 months*	\$532 expiation fee (on-the-spot fine) or \$1100 - \$1600	4
Refuse drug test	12 months	\$900 - \$1300	6



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***The police normally issue an on-the-spot fine for these offences. If the fine is paid, no licence disqualification applies. If the case goes to court, a court must impose a disqualification of 3 months for driving with a blood alcohol concentration (BAC) of .05 – .079 or driving with cannabis or amphetamines present in saliva.**

Note that these are the penalties for first offences only. Higher penalties apply for drivers who have previous convictions for drink driving. If you have a reading towards the higher end of the blood alcohol reading bracket then you can expect a penalty higher than the minimum. 'P' plate and learner drivers face penalties for a breach of licence conditions in addition to the drink driving penalties. If you were convicted of another drink driving (or drug) offence within three years from the date of the current offence the court will order that you be assessed to determine if you suffer from alcoholism or drug addiction. If you are found to be suffering from an addiction, then the court will disqualify you until further order. They will also say what the minimum amount of time you must serve is before you can apply to get your licence back. To get your licence back you will need to make an application to court and attend a further assessment, which shows that you no longer suffer from an addiction. For more information about your options and likely penalties, seek legal advice.

ON-THE-SPOT DISQUALIFICATIONS

The police will give an 'on-the-spot' disqualification for the offences of DUI, exceed PCA (.08 or greater), refuse breath test or refuse blood test. This disqualification will usually be for the minimum period for the charge you are likely to face, which will be either 6 or 12 months. For example, if your blood alcohol reading was between .08 - .149, the usual disqualification period for a first offence is six months. 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 of the on-the-spot disqualification into account when you are sentenced.

APPEALING ON-THE-SPOT DISQUALIFICATIONS

You can apply to the court to have the suspension lifted or reduced but the grounds on which you can apply are strictly limited. You can only apply to have your suspension lifted if you can show that there is a reasonable prospect that you would be found not guilty of the offence. Personal hardship or loss of employment are not grounds for an appeal against this type of disqualification. You cannot get a restricted licence or a licence just for work purposes; the disqualification is total.

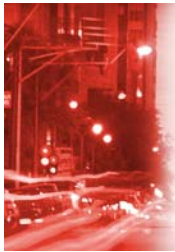
Reducing a period of suspension is only available in the following circumstances:

- : if you can convince the court that the offence was 'trifling' (this means that the offence is not a typical offence – get legal advice if the circumstances of your drink driving charge are unusual)
- : if you can convince the court that you are guilty of a lower category offence than you have been charged with – for example, there is sufficient evidence to suggest that you are guilty of PCA between .08-.149 and not over .15.

DO I NEED A LAWYER?

If you are pleading guilty to a drink driving offence you can represent yourself if you choose. Even if you are representing yourself you should seek legal advice before going to court. Contact the Legal Help Line on 1300 366 424 or make an appointment for free legal advice at the Legal Services Commission. Legal aid will only be granted if there is a likelihood of going to gaol 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, 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 intoxicated, what you will do to ensure that you do not drink and drive again, and some details about your personal circumstances, such as your work, family and financial situation.



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If you intend to plead not guilty it is very important to get legal advice about your chances of success.

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. There are only very limited circumstances when you can claim that you were unable to provide a breath sample. For example, if you intend to plead not guilty on the basis that you had a medical condition that prevented you from being able to provide a breath sample, you will need to have had a blood test done instead. You will also need to provide to the court a medical report that says you were unable to blow because of your medical condition.

WHEN CAN I BE BREATH TESTED?

You can be breath tested at any time you are on the road. Most testing takes place at a random breath testing station but all police vehicles are now equipped to do 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.

If an alcotest shows that the prescribed concentration of alcohol may be present, the driver is 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, they will be charged and issued with an on the spot suspension. Later (sometimes many months later) they will receive a summons 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.

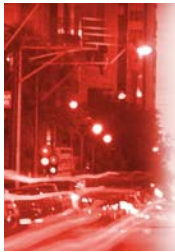
BLOOD TESTS

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.

However, 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 sent 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.



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CAN I CHALLENGE THE RESULTS OF A BREATH TEST?

It is possible to challenge the results of a breath test but you should seek legal advice before doing so. You must be able to demonstrate a **substantial** difference between the breath test results the police obtained and those obtained as a result of the blood test. A blood test will show a lower reading than that provided by an earlier breath analysis because blood alcohol is naturally eliminated over time. If you wish to challenge the results in court you will require further testing to establish your alcohol elimination rate and a medical expert who can give evidence in support of your case.

BLOOD TESTING AFTER AN ACCIDENT

If a person (over 14 years old) 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 \$500 fine if he or she refuses a blood test. More serious penalties apply to drivers.

CAN I KEEP MY LICENCE?

No, a court cannot reduce a licence disqualification below the minimum period unless there are exceptional circumstances and the offence is considered to be trifling. If you think this may apply to you, you should seek legal advice. It is not possible for a driver to keep a licence for special purposes such as work. Depending on the number of demerit points you had prior to the drink driving offence, you may have to serve another disqualification period.

If you are on a full licence and incur more than 12 demerit points you will receive a notice from the Registrar of Motor Vehicles disqualifying you for at least 3 months. 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 HAPPENS IF I DRIVE WHILE DISQUALIFIED?

It is important that you do not for any reason drive while you are disqualified. This is a criminal offence and is taken very seriously by the courts and can attract an immediate gaol sentence. Seek legal advice if you have been charged with this offence.

ALCOHOL INTERLOCK SCHEME

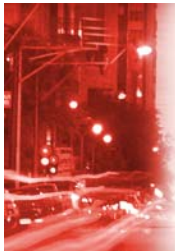
Drivers who commit a serious drink drive offence must have an alcohol interlock device fitted to their vehicle for a time equal to their disqualification. The mandatory interlock scheme applies to second offence exceed PCA (.08 or greater), exceed PCA above 0.15, refuse breath test and refuse blood test offences. The mandatory alcohol interlock scheme applies after the disqualification period has been served.

The cost of fitting of the alcohol interlock device will be the responsibility of the driver but a concession scheme is available to eligible concession card holders. Drivers under the mandatory interlock scheme are restricted to driving a nominated vehicle fitted with a functioning alcohol interlock device.

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. If you held a provisional licence you will return to the licence prior to the one you were holding. For example, if you were the holder of a P2 licence, you will return to a P1 licence.





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WHAT IF I HAVE AN ACCIDENT?

If you have an accident while over the legal blood alcohol limit 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, most insurance policies do not provide cover if a driver was under the influence of drugs or alcohol at the time of an accident. If your reading is over .15 and someone is injured due to your negligent driving, the Motor Accident Commission may sue you to recover payments made under the compulsory third party scheme. If you are injured, your compensation will be reduced if you are over the limit, even if the accident was mostly the fault of another driver.

DRUGS AND DRIVING

Drug saliva tests can detect cannabis and amphetamines such as speed or methamphetamines. Where a roadside test is positive police 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 must be confirmed by laboratory testing. The saliva test is mandatory and there are penalties for drivers who refuse to cooperate.

To order copies of this free fact sheet visit
www.lsc.sa.gov.au or telephone 8463 3528.
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