

Police powers of arrest

Under no circumstances should you resist or refuse arrest, as this introduces another set of police rights in terms of **Sec. 39 of the Criminal Procedure Act**.

Do however bear in mind that the police have the power to arrest – without a warrant – any driver who:

- They believe is unfit to drive, for whatever reason, especially if alcohol or drug use/abuse is suspected*
- Is, or has been seen or caught driving dangerously, recklessly or negligently
- Is knowingly and deliberately obstructing the roadway, or obstructing the police in the execution of their assigned duties
- Is driving while not authorised to do so, for example, while his or her licence has been cancelled or has expired
- Is suspected of having committed a crime, or of being in the process of committing a crime, or is aiding someone in the performance of a crime.

*The blood alcohol limit is 0,05 gram per 100 millilitres. For professional drivers: 0,02 gram per 100 millilitres. The breath alcohol limit is 0.24 milligram/1 000 millilitres of breath, and 10mg per 1 000ml for professional drivers.



The limit, for an average woman (60-65kg) is usually 1 glass of wine or 2 beers over a two hour period and for the average 70-75kg man the limit is 2 glasses of wine or 2 beers. Hard spirits affect this limit in a different degree and often take effect much sooner. Please note that this information is to be used as a guide and is not based on hard scientific evidence.

Options to consider if you have been drinking:

- For every one drink consumed, wait one hour for the effect to wear off
- Let a sober friend drive you home or call a taxi
- Arrange for someone to stay sober and drive the rest of the party home
- Sleep over
- Ask a sober friend to walk you home.

(Source transport.dot.gov.za)



This document is a guideline for you to follow at your discretion and must in no way be construed as legal advice.

While every effort has been made to confirm the validity of the information supplied in this document, the authors and the CPF cannot be held liable for the contents hereof and give no guarantees that the information herein will ensure a particular outcome.

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BE AWARE
of your rights!

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Be aware of these points when confronted by real or alleged police officers

Note that under South African Law uniformed South African Police Service members (SAPS) have the same powers as uniformed traffic officers (JMPD) or other Metropolitan police forces.*

*The word *police* used in the body of this document refers to both of the above.



Roadblocks

If stopped at a roadblock you have the right to:

- Ask for the person's police certificate of appointment which includes his picture, name, rank, force number and where stationed: **Section 334 (2) (a) of the Criminal Procedure Act 51 of 1977**
- If these details are not given, you can ask to see the roadblock commander or most senior officer on the scene
- If you have any doubt about the authenticity of the roadblock, you can ask to be taken to the closest police station
- If the roadblock is legal, you have the right

to ask what its purpose is. Even so, the person is not compelled to tell you if the reason is classified. The number of vehicles being stopped may indicate the status of the roadblock

- You have the right to be treated with respect at all times and have the further right to get the details of any officer who has treated you unjustly
- You must co-operate with all reasonable instructions, but you can question your position should you feel that a violation of your constitutional rights or your rights under the **Criminal Procedure Act, 51 of 1977** is occurring
- You must at all times treat any officer with respect and the dignity attached to his rank and office, although you may be firm in upholding your legal rights
- You must identify yourself as the driver of the vehicle and supply proof of your driving licence.



Your constitutional rights if detained or arrested

The following are your legal rights in terms of the **Constitution of the RSA, Act 108 of 1996.**

Section 35 thereof deals with the rights of arrested, detained and accused persons:

- You have the right to remain silent: **Sec.35(1)(a)**



- To be informed promptly of
 - The right to remain silent: **Sec. 35(1)(b)(i)**
 - The consequences of not remaining silent: **Sec. (35)(1)(b)(ii)**
- You cannot be forced to make a confession or admission that can be used in evidence against you: **Sec. (35)(c)**
- To be brought before a court as soon as reasonably possible, but this must not be later than:
 - 48 hours after the arrest **Sec. 35(1)(d)(i)**
- Be informed of the reason for your continued detention: **Sec. 35(1)(e), Sec. 35(2)(a)**
- To be released subject to reasonable conditions: **Sec. 35(1)(f)**
- To choose and to consult with a lawyer of your choice and to be informed of this right: **Sec. 35(2)(b)**
- To have a lawyer appointed to defend you by the state if you cannot afford a lawyer and to be informed of this right: **Sec. 35(2)(c).**

The above are your most important rights at this stage. Be prepared by learning these basic citizen's rights. Should a confrontation occur, you will exude confidence and legal awareness and should not constantly refer to this document during the incident.



Unpaid traffic fines

If at the roadblock it is alleged that you have outstanding or unpaid fines, the police have the right to detain you if they can show you a legitimate warrant of arrest or a valid copy.

If the police cannot show you a legitimate warrant or copy, you have the right not to be arrested. If the police persist with the arrest without a warrant, **you have the right to immediately call your lawyer.**



If the police ask you to pay outstanding fine(s) and you do not have the money available, you might be detained until the fines are paid, *if a warrant was issued*. **In these circumstances it's best to contact your lawyer.**

We suggest that you keep the receipts of paid fines in your car, so that you can immediately produce proof should a dispute arise about non-payment of fines and your possible arrest.

Key note: Ensure that you have your lawyer's cellphone number listed in your own cellphone.

Bribery

Note that under no circumstances must you attempt to illicit a bribe, or you must immediately distance yourself from the suggested bribe. The consequences of bribing a police officer, or attempting to do so, far outweigh those of the fine itself.

This act amounts to attempting to defeat the ends of justice, which holds a separate legal sanction and for which you can be prosecuted.

Practically speaking, by paying a bribe, you are just perpetuating a demand for corruption.