

# **BASIC RIGHTS**

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1). **Rights of the individual when arrested or confronted by an officer in a routine roadblock or check:**

In order to understand what your rights are we need to understand the rights and powers of the police or traffic officer. For the purposes of this discussion we will refer to an officer as being both a police officer as well as a traffic officer.

The powers bestowed on an officer are generally contained in the Criminal Procedure Act 51 of 1977, the Implementation of the National Road Traffic Act 93 of 1996 and Road Traffic Ordinances.

In terms of Section 3 I of the Implementation of the National Road Traffic Act 93 of 1996 an officer is empowered to stop, search, inspect or test your vehicle so as to ensure that all the provisions of the act are complied with. By the officer ensuring that the provisions of the act are complied with he will naturally be entitled to stop you for suspected speeding or for suspected drunken driving, the two offences with which we will be dealing with.

Drunken Driving is dealt with in terms of Section 65 of the Act (93 of 1996). Subsection 8 and 9 of the aforementioned Section empower the officer to take blood and breath samples in the investigation of a suspected case of drunken driving. The Act makes it an offence to refuse to give a breath test or blood sample if requested to do so by the officer. What this means is that you can refuse and on refusing you will be charged and possibly convicted for contravening that particular provision.

There is however a grey area in that Section 37 of the Criminal Procedure Act empowers the officer to use the necessary force to obtain a blood sample. So although the conditions in the Implementation of the National Road Traffic Act may allow you the choice to refuse a blood sample, the Criminal Procedure Act makes such refusal unlawful and empowers the use of the necessary force by the officer. As can be seen the two Acts need to be synchronised to avoid this contradiction.

Remember that the officer need not use your personal doctor to do the blood test however; you may request that he be present. It is important to note that Section 37 of the Criminal Procedure Act is not unconstitutional.

The offence of speeding is also controlled by the Implementation of the National Road Traffic Act and Road Traffic Ordinances. It is important to note that when suspected of speeding one can be charged for Reckless and / or negligent driving in terms of Section 63 of Act 93 of 1996. The circumstances of each case will have to be assessed in order to determine

whether or not the suspect will be charged for Reckless and/or Negligent driving.

Once you have been stopped and approached by an officer it is very important that he or she identify himself or herself as an officer. You are entitled to request the officer's full names, unit and service identification number.

Once the preliminary investigations have been done and should it be clear that you will be arrested, the officer must make it clear what the charges are and you must be warned according to Judges Rules. The law requires the notification of the offence and Judges Rules be given as soon as is reasonably possible in the circumstances.

The officer is entitled to handcuff you and place you in the police motor vehicle. They are not entitled to place suspects of the opposite sex in the same vehicle however, they are entitled to place suspects together with other suspects arrested for other offences.

It is very unlikely for the officer to place an accused together in the vehicle with a dangerous or potentially dangerous suspect and this is also the practice in detaining the suspects in police cells. The sexes are kept separate and the serious offenders kept separate from those less serious or classed as petty offenders.

You are entitled to bail immediately and this right exists as at the time of arrest. The common practice in drunken driving cases is to detain the suspect for 4 hours and then release them on R500 bail.

2). **Requirements for the prosecution of drunken driving and the standard of the equipment used:**

Driving while under the influence of intoxicating liquor, or drug having a narcotic effect is an offence governed by Section 65(1)(a) and (b) of Act 93 of 1996. Driving a motor vehicle with an excessive amount of alcohol in your blood or breath is controlled by Section 65(2)(a) and (b). These are two separate offences and the latter is the less serious.

The fact that neither a blood nor a breath sample can be obtained does not preclude a prosecution on a charge of driving under the influence, if other evidence is available. A competent and knowledgeable officer on drunken driving cases, if available as a witness, may secure a conviction on his or her evidence.

The following are a few requirements that are important to secure prosecution when using breath-testing machines or apparatus:

1. The operator of a particular testing machine must have passed an operator's course and must be issued with a certificate.
2. The operator must keep in his/her possession a copy of this certificate or a certified copy.
3. The machines must be of a type and model tested and certified in terms of SABS 1793 by an accredited laboratory.
4. The machines must be calibrated at least every six months and a certificate issued. This certificate or a certified copy thereof should be available on site.
5. A fresh mouthpiece must be inserted in the presence of the subject to be tested, into the base whilst still covered by its protective covering. This must only be removed when the subject is ready to blow.
6. The breath sample may not be taken within 15 minutes of the consumption of alcohol. If there is doubt to the time the subject is to wait 15 minutes and then be tested. All times are to be recorded.

In the case of *S V Snyman 2001(1) SACR 354 (NPD)* the court ruled that the guideline documents, which incorporate the abovementioned, must be followed in order for the prosecution to be successful.

After the officer has decided to test you for drunken driving and should he not use the breathalyser method, he will resort to having blood drawn. In terms of Section 65(3) of Act 93 of 1996 the blood specimen must be taken within 2 hours after the alleged contravention.

In respect of taking a specimen of breath, Section 65(6) of Act 93 of 1996 stipulates that this test is also to be taken within two hours of the commission of the alleged offence.

It is thus important to take note of the time of your arrest and all other important factors however difficult it may be in the circumstances.

3. **Requirements for the prosecution of a speeding offence and the standard of the equipment used:**
  - A. Some of the requirements here are the same as those in point two above. Nevertheless they too are to be complied with in order for the State to secure a successful prosecution.

- I) The operator must have attended a general course on speed measurement.
- II) The operator must be in possession of an operator's certificate.
- III) Every six months the speed measuring equipment and distance measuring equipment is to be tested and calibrated by an approved laboratory. All distance checking markers for validation of speed measuring equipment shall also be tested every six months.
- IV) No speed measurement may be implemented within 300 meters of the commencement of the speed limit zone except with the permission from the Director of Public Prosecutors.

B. The following are a few factors / requirements that need to be adhered to in respect of certain instruments:

I) RADAR EQUIPMENT

- Site selection must be done during daytime for day and night-time operation.
- There shall be no large, stationary, or metal objects (e.g. patrol vehicle, bus shelter) within a radius of 50 meters in front of the radar SME.
- A valid calibration certificate.
- The type approval certificate to SABS 1795-2,(applicable to equipment acquired after 31 July 1998);and
- The operator's certificate.
- Speed measurements with radar may only be taken when a radar antenna is mounted on a tripod.

ii) LASER EQUIPMENT

- If any of the tests prove inaccurate the instrument must not be used.
- The operator must have a clear uninterrupted view of the road and the vehicle measured for the duration of the measurement.

- Ensure that you have a clear and uninterrupted view of the whole vehicle measured and that no measurements are locked beyond 400 meters.
- The driver shall be afforded the opportunity to view the speed-reading when stopped.
- iii) DISTANCE-OVER-TIME MEASURING EQUIPMENT (FIXED DISTANCE/VARIABLE TIME)
  - The sensor lines of the SME may only be installed on an even and hard road surface.
  - The operator must have a clear view of the sensor lines.
  - A valid calibration certificate must be available.
  - The type approval certificate to SABS 1795-3, (applicant to equipment acquired after 31 July 1998)
  - The operator's certificate must be available.
  - A valid calibration certificate of the distance measuring equipment must be available at the site at all times.
  - The distance between the sensor lines may not be less than the distance specified by the manufacturer.
  - The SME is tested at the start and end of each speed measurement shift, using the internal test feature.
  - The condition of the sensor lines must be checked, and the distance between the sensor lines must be measured.
  - Should two or more vehicles be in the measurement area between the sensor lines at the same time, the measurement is to be ignored.
- iv) DATA CAPTURING AND RECORDING DEVICES FOR SPEED MEASUREMENTS (EQUIPMENT SUCH AS WET FILM CAMERAS, VIDEO CAMERAS AND DIGITAL CAMERA)
  - The photograph/image shall at least record the following:
    - date of offence
    - time of offence

- the speed measured
  - where sensor lines are installed, a view of the whole width of the traffic lane(s) covered by the sensor lines; and
  - where any other sensors e.g. laser or radar are used, an image of the area with an angle of view sufficient to ensure that the speeding vehicle is clearly identified in relation to the measuring position and other vehicles which may be nearby.
- An information sign with regard to speed prosecution by camera must be displayed as required by the Director of Public Prosecutions, if the offender is not immediately stopped and informed of the offence.
  - The licensed owner must be sent a written notice in terms of section 341 of the Criminal Procedure Act, No. 51 of 1977, of the speed offence within 30 calendar days.
  - If a notice is issued in accordance with section 341 of the Criminal Procedure Act, No. 51 of 1977, with regard to a prosecution, it must be succeeded by a summons in terms of section 54 of the Criminal Procedure Act, No. 51 of 1977, unless a surrender value has been paid or the public prosecutor withdraws the case on merit.
  - If requested, a copy of the relevant photograph/image must be supplied free of charge to the alleged offender or licensed owner of the vehicle.
  - A copy of:
    - a valid calibration certificate
    - a type approval certificate to SABS 1795: Part 5 (Applicable to devices acquired after.....2002)
    - an operator's certificate must be available at the site at all times.

The above is merely a brief outline of the subject and as is clear it can be involved and technical at times. So equipped with this limited knowledge in the subject our advise when in the unfortunate position of being questioned by an officer or being arrested is the following:

1. Always be polite, the officer is merely doing his job.
2. Call your attorney as soon as possible.
3. Be as observant as you can to all the important times:-
  - i) Time of arrest;
  - ii) Time your blood was drawn;
  - iii) Time your breath was tested;
  - iv) Time of your detention.
4. Be as observant as you can to the following information:-
  - i) The name of your arresting officer;
  - ii) The offence for which you were arrested;
  - iii) Whether or not you were warned in terms of the Judges Rules;
  - iv) If you enquired about bail, whom you spoke to and what the response was;
  - v) If you can remember the requirements listed above try observe as to whether or not they were adhered to.

Remember that your attorney is there to do his or her job as well and he or she will challenge all the technical aspects of the arrest and equipment used at the appropriate time.

Be co-operative and remain calm.

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