

What the law says about...

Use

It is against the law for a person of any age to use a 'drug of dependence'. This includes heroin, marijuana, methylamphetamines and other drugs. Use includes smoking, inhaling fumes, injecting or swallowing a drug.

The police officer can charge you with 'use' if they see you using an illegal drug or you admit to using. **Do not admit to using until you get legal advice.** If you admit to injecting someone else with a drug, the police can charge you with 'introducing a drug into the body of another person'. If that person dies, you may be charged with a serious criminal offence.

Possession

It is against the law for a person of any age to possess a drug of dependence. Possession means having a drug on your body, your house or in a car that you own or are driving. Possession includes growing cannabis in or around your home. To prove a charge of possession, the police must show that you knew that the drug was there.

Use and possession of prescription drugs is okay if you have a prescription.

Trafficking

It is against the law for a person of any age to traffic a drug of dependence. Trafficking means selling a drug and is the same thing as dealing a drug. It can also include:

- buying drugs for someone else
- exchanging, agreeing to sell or offering drugs for sale
- giving someone drugs
- selling or offering to sell a person a harmless substance that they believe is a drug or telling the police that you did one of these things.

The 'traffickable quantity' varies:

- amphetamine, three grams
- cannabis, 250 grams or 10 plants
- cocaine, three grams
- ecstasy, three grams
- heroin, three grams
- methylamphetamine, three grams
- MDA, three grams.

These are diluted quantities. So, the drug plus any mixer. These quantities can change too if the law changes.

A fixed traffickable quantity does not mean it is okay to carry a smaller quantity. If you are caught with any amount of a drug of dependence, the police could use this as evidence.

Trafficking is very serious offence. **If the court finds you guilty of trafficking, penalties can be very harsh.** Even selling to a friend can be considered as trafficking.

Alcohol

Police can fine people aged 18 and over for 'offensive behaviour or alcohol-related conduct'.

This can include:

- damaging property on purpose where the damage is less than \$500
- indecent or obscene language
- failure by a drunk, violent or aggressive person to leave licensed premises when asked to do so.

Drug driving

It is against the law to take certain drugs and drive. The police can do road-side tests to see if you have recently taken drugs. The test involves saliva testing for THC (from cannabis), methylamphetamine (speed, ice or crystal meth) and ecstasy. The police can also test you back at the police station.

If you refuse a test, the court can fine you and will take away your licence for at least two years.

If you test positive to the drugs, you could lose your licence for up to a year. You may have to pay a fine or go to jail. The penalties will be more serious if someone was hurt.

Dealing with police

Name and address

A police officer can ask for your name and address if they reasonably believe:

- you have committed or are about to commit a crime
- you have knowledge of a crime.

Even if you do not agree with them, it is usually best to give the police officer your name and address. Ask for the police officer's name, rank, station and the offence they suspect you of.

You MUST give your name and address when asked and you are:

- driving a motor vehicle
- on public transport or public transport property
- in a hotel or licensed premises.

In these cases, it is an offence to refuse to give your name and address or to give false information.

Searches

Getting searched

Generally, a police officer needs a warrant to search you. They should tell you why they are searching you. However, a police officer does not need a warrant if they reasonably believe that they will find a drug of dependence on you, in your house or your car.

A police officer can also search you WITHOUT a warrant if they believe evidence (like drugs) will be destroyed if they do not do a search.

You can say no to the search but the police officer may still have the power to search you. Try to:

- stay calm and avoid conflict
- ask the police officer why they are searching you
- talk to a lawyer as soon as you can.

Different types of searches

Pat-down searches happen over the outside of your clothes. They do not have to happen in private. If you are in custody, police of the same sex do a pat-down search. A pat-down search is done to find evidence

Police officers can do strip searches if they reasonably believe they will find items that would not be found in a pat-down search. A police officer of the same sex must do the strip search. They should do it in a private place. It should not happen on the street or in a police car.

You do not have to show a police officer your arms but it may be simpler to do this and make a complaint or report later.

Police can search you without a warrant in certain 'designated' areas.

The police must publicise that they are going to do a search. The police do NOT have to do this if they are searching areas where they believe there will be a weapons-related offence and doing a search will stop this from happening. The areas can stay 'designated areas' for usually no more than 12 hours.

If you refuse to be searched, the police can charge you with refusal to be searched. If the police find illegal drugs on you, they can charge you with possession.

Arrest

Getting arrested

A police officer will arrest you when they suspect you have broken a law or if they have a warrant. You are in custody and you are not free to leave. You may be taken to a police station.

The police officer must let you phone a friend or relative AND a lawyer from a private space. A private space is somewhere the police officer cannot hear you speaking.

They do NOT have to let you phone a friend or relative if they believe that during this time:

- someone else involved in the crime might get away
- evidence may be lost or tampered with
- other people may be in danger.

Being kept in custody

The police must charge you as soon as possible. The police can only keep you in custody for a 'reasonable time'. This depends on how serious the offence is. It also depends on how long it takes to interview you.

If you believe you have been held in custody for too long you can:

- ask the police officer if they are going to charge you or release you
- ask to phone a lawyer (even if you have already)
- make a complaint later.

Being questioned

Before any questioning begins, the police officer must let you phone a lawyer from a private space.

Do not say anything until you have spoken with a lawyer. If you do not know a lawyer, ask the police officer to help you find one. They may know the numbers of local lawyers, or they can give you the Yellow Pages. Ring around until you find a lawyer who will give legal advice on the phone.

Under 18s and people with a mental impairment or an intellectual disability – The police officer must not question you unless your parent or a guardian is there. If this person cannot be there, the police officer must get someone else. For people under 18, the police must get an 'independent person'. For people with a mental impairment or an intellectual disability, the police must get an 'independent third person'.

Sometimes the police officer does not have to wait for someone to be with you. For example, if someone else involved in the crime might get away or a delay may cause danger to other people.

Do not answer any questions until you speak to a lawyer. Just say 'No comment' while you wait.

Medication

While you are in custody, you can see a doctor. Ask the police officer to organise this. You can also get your prescription medicine. This includes methadone and buprenorphine (bupe). Ask for this on record before the interview starts. You might need medicine or medical attention to get through the interview. If you get picked up on a Friday night or on the weekend it may be hard to get your medicine. Your pharmacist or doctor may not be at work.

You can make a complaint later if the police do not let you see or talk to a doctor, or get your medicine.

Having your things taken

If the police take anything from you while you are in custody, they need to give you a receipt for it and record what they took. They should return your things when they release you from custody. This is not the case if they keep your things as evidence.

Bail

Bail is a promise that you will leave custody and go to court to face the charges on another day. You may have to agree to bail conditions such as reporting to the police. A lawyer can help you negotiate your conditions.

It is your right to seek bail and have a decision made about this as soon as possible. A bail hearing will be held.

At the bail hearing, the police can say 'No' to you getting bail to make sure:

- you appear in court
- you do not do more crimes
- other people are safe.

You can argue against the police's reasons and tell the court why you should be released.

If you are given bail, you must follow any conditions until you go to court. If you do not show up at court, a warrant will be issued for your arrest. The police may charge you with failure to appear.

Fingerprints

In most situations you have to let the police officer take your fingerprints. The police must record that they did this, on tape or in writing.

The police officer must tell you:

- why they are taking your fingerprints
- the offence they believe you committed
- that the prints can be used in evidence against you.

If you refuse to co-operate, the police officer can use reasonable force to get your fingerprints. The police officer may touch you. If the police do not charge you within six months or the court finds you not guilty, the police must destroy your fingerprints.

Under 18s – If you are 15 to 17, the police officer must get a parent or independent person to be there when the police officer asks to take your fingerprints.

Photos

There are no laws to stop a police officer taking a photo of you in public. If this happens, try to get the name, rank and station of the police officer. You can make a report or a complaint later.

Identification parades

The police cannot force you to take part in an ID parade. You can refuse until you get legal advice.

drugs, the law & safer injecting

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