



June 2014



DRUGS, THE LAW & SAFER INJECTING



 **Victoria
Legal Aid**
Lawyers And
Legal Services

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Please ring us on 9269 0234 and ask for Publications so we can talk with you about what you need.

Produced by Victoria Legal Aid

Victoria Legal Aid
350 Queen Street
Melbourne 3000

For help with legal problems, call Legal Help on 1300 792 387

For business queries, call 9269 0234

www.legalaid.vic.gov.au

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Acknowledgement: Victorian Department of Health

Disclaimer: The material in this publication is a general guide only. It is not legal advice. If you need to, please get legal advice about your own particular situation.

Changes to the law

The law changes all the time. To check for changes you can:

- call the Victoria Legal Aid Legal Help phone-line on 1300 792 387
- visit Victoria Legal Aid's website at www.legalaid.vic.gov.au
- contact a community legal centre. Call the Federation of Community Legal Centres on 9652 1500 to find your nearest community legal centre.

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About this booklet

What this booklet covers

This booklet is a general guide to help you understand the law when it comes to drugs and dealing with the police. The booklet also includes information about safer injecting and what to do if someone overdoses.

For more information about police powers, you can also read our booklet *Police powers: your rights in Victoria* or visit our website www.legalaid.vic.gov.au.

Getting more help

This booklet gives general information, not legal advice. We have put the contact details of helpful organisations in the 'Where to get help' section on page 23.

Legal words

To help you, we have explained some words in 'What do these words mean?' below. These words are also highlighted in **bold** the first time they appear in each section.

What do these words mean?

charge – the offence that the police say you have committed

defence – a legal reason why you are not guilty of the offence you have been charged with

evidence – information (documents or material) used in court to prove something

offence – when you have broken the law, you are said to have committed an offence

penalty – a punishment for breaking the law

Victoria Legal Aid

We are a state-wide organisation that helps people with their legal problems. We focus on helping and protecting the rights of socially and economically disadvantaged Victorians.

We have lawyers in offices in most major metropolitan and country regions. We also fund private lawyers to provide legal services to the public.

We can help you with your legal problems about criminal matters, family breakdown, family violence, child support, immigration, social security, mental health and debt.

Call our Legal Help phone-line to find out how we can help you on 1300 792 387.

priors – your criminal record

reasonable – police can only do something, such as using force, if it is reasonable. That is, not excessive or too much for the circumstances

sentence – if you plead guilty or the magistrate finds you guilty, they will then sentence you according to the offence you committed. You may get a penalty and a conviction

Use

Charges

The police can **charge** you with use of an illegal drug if:

- they see you using an illegal drug
- you admit to using.

Use includes smoking, inhaling fumes, injecting or swallowing a drug.

Illegal drugs include heroin, marijuana and methylamphetamines (like ice). Use of prescription drugs like methadone, steroids or Valium is okay if you have a prescription in your name. The prescription must be up to date.

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**.

A police officer may want to check your arm for marks as **evidence** of using drugs. 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.

Do not admit to using. Say '**No comment**' until you speak to a lawyer.

Synthetic drugs

Synthetic drugs produce the effects of illegal drugs while being chemically different from them.

The law changed recently to include some synthetic drugs as illegal drugs. And the law will change again soon to classify newer synthetic drugs as illegal drugs.

Just because synthetic drugs are sold in a shop does not mean they are legal.

Syringes

It is legal in Victoria to possess new or used syringes.

Try not to carry drugs on you when you are carrying syringes.

Ambulance workers and overdoses

An ambulance worker cares most about making sure you are safe. They may call the police if someone dies or if the ambulance worker feels threatened. Also, the police may turn up anyway. The police officer could charge you with use of an illegal drug.

If you are with someone who has overdosed, you can tell the ambulance worker what drug that person took. Do not say anything else to the ambulance worker. The police could take a statement from them. The police could use this as evidence against you.

Defences

Talk to a lawyer about possible **defences** in court. However, you have to admit to use in order to get drug diversion.

Penalties

If a court finds you guilty, you can be convicted and **sentenced** to imprisonment for up to a year. However, for using cannabis the maximum **penalty** is a fine.

In each case, the penalty will depend on:

- the surrounding circumstances, and
- whether you have priors.

If you have not been in trouble before, the police or the magistrate might offer you drug diversion. To get drug diversion, you have to admit to using. In the drug diversion program, you will have to get some form of drug treatment.

For more about drug diversion, [see](#) page 17.

Possession

Charges

The police can charge you with possession of an illegal drug if you have an illegal drug on your body, in your house or in a car that you own or are driving.

Possession includes growing cannabis in or around your home.

Possession of prescription drugs like methadone, steroids or Valium is okay if you have a prescription in your name.

The prescription must be up to date.

Do not admit to possession. Say **'No comment'** until you speak to a lawyer.

Testing

If the police charge you with possession but you do not agree that you had an illegal drug, the police can get the drug 'spot tested' or fully analysed.

A spot test checks whether any amount of the illegal drug is in the seized item. This is a quick test. The police officer who charged you does this test.

A full analysis involves the item being sent to the Victoria Police Forensic Service Centre. They analyse the entire quantity. This test is done by a scientist. It can take many months to get a result.

Defences

At court, you may have a defence if you did not know that the drug was in your possession. For example, your housemate left a stash of gear under their bed and you did not know about this.

You may also have a defence if the police seized a substance but it may not be an illegal drug.

If you think you have a defence or that you did not do anything wrong, do not say anything to the police.

Penalties

If the court finds you guilty, you can be convicted and sentenced to imprisonment for up to five years. However, for possessing cannabis, the maximum penalty is a fine.

In each case, the penalty will depend on:

- the surrounding circumstances, and
- whether you have priors.

If you have not been in trouble before, the police or the magistrate might offer you drug diversion. In the drug diversion program, you will have to get some form of drug treatment.

For more about drug diversion, [see](#) page 17.

Trafficking

Charges

The police can charge you with trafficking an illegal drug if you are:

- selling or dealing the drug (this includes selling to a friend)
- buying the drugs for someone else
- exchanging or agreeing to sell the drugs, or providing the drugs for sale
- selling or offering to sell a person a harmless substance that they believe is an illegal drug.

Giving someone an illegal drug for free is not trafficking.

If you tell the police that you have done any of the above things, the police can charge you even if there is no other evidence of trafficking.

Say **'No comment'** until you speak to a lawyer.

Quantities

The trafficable quantities are:

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

These are diluted quantities that include the drug plus any mixer.

These quantities can change too if the law changes.

If you have less than a trafficable quantity, the police could choose to charge you with possession or charge you with trafficking if you have that illegal drug because you were selling it.

Bail

If you are charged with trafficking drugs, it can be harder to get bail than with other criminal charges. You have to 'show cause'.

This means:

- you do not have an automatic right to bail, and
- you must prove that there is a good reason why you should be let out on bail.

Testing

If the police charge you with trafficking but you do not agree that you had it, the police can get the item tested. See the section on testing in the 'Possession' section on page 4.

Defence

If you agree that you possessed an illegal drug, but you disagree that you trafficked it, the police need evidence to support their charge of trafficking, such as:

- the weight of the drug
- the fact that you had equipment used for measuring, cutting and distributing drugs
- the fact that you had large amounts of money on you and you were unable to explain how you got this, or
- relevant contacts and phone-calls or text messages on your phone.

Penalties

Trafficking is a very serious offence. If the court finds you guilty of trafficking, penalties can be very harsh. You can go to jail for trafficking drugs, even if it is your first offence.

Your penalty will depend on:

- the surrounding circumstances including the amount of drugs
- whether you have trafficked before and how many times, and the reasons why it happened this time. For example, you are dependent on drugs and need the money to keep using
- any priors you may have, especially if they are also drug-related.

Being hassled

Around the Needle and Syringe Program

Try not to carry drugs with you when you are visiting a Needle and Syringe Program (NSP). Police officers can arrest a person in or near an NSP if the police officer has reasonable belief that the person has committed an offence. But the police cannot go after someone just because that person is going to or has been to an NSP.

The relationship the NSP has with the local police station can vary depending on what area you are in.

If the police are hassling you for coming in and out of an NSP, report it to the NSP worker.

In public places

The police can direct you to move on from a public place if they suspect on reasonable grounds that you are:

- breaching the peace (or are likely to do so)
- blocking a business or another person or traffic
- endangering the safety of another person (or are likely to do so)
- doing something that makes another person afraid that you might be violent
- likely to cause injury or damage to property
- buying or selling an illegal drug.

Police may decide that you have to stay away from the public place for up to 24 hours. If you refuse to move on or stay away, police can issue an on-the-spot fine or arrest you.

From 1 September 2014, police could get you banned from a public place for up to 12 months. If you enter a banned place, you could be jailed for up to two years.

Complaints

You have a right to complain if you think a police officer treated you unfairly.

Make your complaint to Victoria Police Professional Standards Command (PSC). PSC is a part of Victoria Police. Call 1300 363 101. You can also complain directly to the officer-in-charge at the station if you feel comfortable doing so.

If you have been hurt by a police officer, see a doctor as soon as you can. Take photos of any bruises or injuries. It is very important you get this evidence. Photos from a personal camera might not be good enough. Ask your GP about specialist doctors who can take proper photos.

A police officer may have done something illegal or unethical, such as confiscate money or drugs from you without giving you a receipt. You can complain about this ESD. They may investigate. If your complaint is not investigated, or you are not happy with the investigation outcome, you may want to make a complaint to the Independent Broadbased Anti-Corruption Commission (IBAC). IBAC does not work for Victoria Police.

If you do not want to give your name, you can still report a police officer. At the time of your interaction with the police officer, you can ask for the police officer's name, rank and station.

Get advice from a lawyer about making a complaint. Call Victoria Legal Aid on 1300 792 387 or the Federation of Community Legal Centres on 9652 1500.

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.

You have the right to 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

Warrants

Generally, a police officer needs a warrant to search you. They should tell you why they are searching you.

A police officer can search you without a warrant if they:

- reasonably believe that they will find an illegal drug on you, in your house or your car
- believe evidence (like drugs) will be destroyed if they do not do a search.

Strip searches

This is when the police officer removes and searches all of your clothing. An officer will usually do a strip search when they are looking for something they could not find in a pat-down search.

A police officer can only do a strip search in a private place, usually at a police station.

A police officer must make sure you have someone with you if:

- you are under 18 – a parent, guardian or independent person must be with you
- you have a cognitive disability or a mental illness – an Independent Third Person must be with you.

The police do not have to do this if there are urgent or serious circumstances that mean they cannot get one of these people to be with you.

An independent person is someone who can help a young person under 18 deal with and talk to the police. An Independent Third Person is someone who can help a person deal with and talk to the police if the person has a cognitive disability or mental illness.

Searching your phone

The police officer may want to search your phone. They may want to see if you have known dealers in your contacts or to see what sort of phone-calls or texts you have been making and getting. They do not need a warrant if they reasonably believe you are in possession of an illegal drug.

What the police find on your phone could be used as evidence that you have committed a drug offence.

It may be best that you go along with a request to search your phone. Otherwise the police could charge you with 'hindering a police officer'.

The police can seize your phone as evidence. They do not need a warrant to seize your phone in relation to selling or using drugs.

You can say no to a 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.

Arrest

Getting arrested

A police officer can arrest you when:

- they suspect you have broken a law, or
- they have a warrant.

If you are arrested you are in custody and are not free to leave. You may be taken to a police station.

Letting someone know you have been arrested

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 they can. 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 interviewed

The police may interview you as a suspect about the drug offence they have arrested you for. The police will record the interview.

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

Do not say anything to the police 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 – The police officer must not interview you unless your parent or a guardian is there. If this person cannot be there, the police officer must get an independent person to be in the room.

For people with a mental impairment or an intellectual disability – the police must get an Independent Third Person to be with you in an interview.

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

If you are on prescribed medication and you are due to have your usual dose at the time of the interview, you should ask to have your medication before the interview starts. However, 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.

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).

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.

The police will usually keep things that they seized as part of their investigation. For example, evidence from your house or car. After your case ends, the police should return your things. They will not do this if the police are applying to the court for the property not to be returned to you at all.

If the police seized an item that you need back before your case is over, you can apply to the court to have that property returned.

If the police seized your things but they have not charged you, you can also apply to the court to have that property returned.

There are no time limits for how long the police can keep your property. The court will need to consider what is reasonable in all the circumstances.

Identification

Fingerprints

Most times 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, guardian or independent person to be there when the police officer asks to take your fingerprints. If you are 10 to 14, the police officer must get a parent or guardian to be with you when asking for your fingerprints. You and the parent or guardian must agree to the fingerprints before the police officer takes them.

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.

There are also no laws to stop you from taking a photo of a police officer. However, the police officer may say that you taking photos of them is getting in their way. They might ask you to stop and say that you are 'hindering' them in their duties. Hindering police is an offence.

Identification parades

The police cannot force you to take part in an ID parade. Say no until you get legal advice.

Bail

About bail

Bail is a promise that you will leave police custody but that on another day you will go to court to face the charges.

You may have to agree to bail conditions such as reporting to the police. A lawyer can help you negotiate fair conditions. For example, an unfair bail condition would be that you are not allowed to come into a suburb where your pharmacy is.

Getting bail

It is your right to seek bail and have a decision made about this as soon as possible.

The police can release you on bail. If the police do not do this, you can ask for a bail justice or magistrate to grant you bail. The police would need to bring you to a bail hearing before a bail justice or a magistrate.

At the bail hearing, the police can say why they do not want you to get bail. For example, the police may believe that you will not come to court or that other people will be unsafe.

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 the police to arrest you. Also, the police may charge you with failure to appear.

Drug diversion

About the drug diversion program

Being in the program is a way for you to keep your matter out of the court system. It is usually for people who have no court record for drug offences.

In this program, you may need to do things like get some form of drug treatment.

If you stick to the program, the police will not charge you and you will not have a criminal record for a use or possession drug offence. If you do not stick to the program, the police will charge you and you will go to court.

Getting into drug diversion

You have to admit that you used or possessed drugs.

It is up to the police officer to offer you a drug diversion.

They are more likely to do this if you have been co-operative and if you do not have a lot of previous charges for drugs or other crimes.

You can ask the police officer for drug diversion at the beginning of the police interview. Ask your lawyer about this. They can advise you whether you should admit to the offence.

If the police do not offer you drug diversion, you can still talk to a lawyer about this. You might be able to get drug diversion through the court.

Parole

Parole lets a prisoner live back in the community while serving out the end period of their sentence. There are strict conditions you have to follow on parole. Not everyone gets parole.

Applying for parole

You can apply for parole when the non-parole period of your prison sentence ends. Whether you get a non-parole period depends on how long your sentence for the drug offence is:

- under 12 months: no non-parole period is set (that is, you must serve your whole sentence in prison)
- 12 months to two years: you might get a non-parole period, it is up to the court to decide. If you do not get a non-parole period, you must serve your whole sentence in prison
- more than two years: the court must set a non-parole period.

A minimum parole period is six months. For example, if your sentence is five years, you would serve four and a half years in prison and serve six months on parole.

Parole hearings

You apply for parole to the parole board (adult or youth). The board holds parole hearings to hear what you have to say and decide if they will release you on parole.

You do not have the right to have a lawyer represent you at a parole hearing.

You are not able to appeal against the board's decision. You can ask the board to reconsider their decision if you feel that they have not taken into account all of the circumstances.

Parole conditions

You will have parole conditions. This could involve things such as reporting to a police station.

If you do not follow the conditions of your parole, your parole can be cancelled. The police will issue a warrant for your arrest and imprisonment. You do not go to court, you go straight back to jail. Your term of imprisonment can be up to the full length of the original parole period. It does not matter if you were nearly finished serving your parole when you breached your parole conditions.

Committing new offences

If you commit offences while on parole, for some offences you may be sentenced to a term of imprisonment. If this happens, then you would serve that sentence is served 'cumulatively' (on top of) the parole sentence.

Protective Services Officers (PSOs)

PSOs are like police officers but work at places like train stations and the areas around public transport stations. They have similar powers to police officers.

They can:

- ask for your name and address
- do searches
- tell you to leave the area
- arrest people at train stations or the areas around train stations for public transport and other offences.

PSOs are allowed to use reasonable force when doing their job.

If a PSO wants to talk with you, stay calm and go along with it. Make a complaint later if you get mistreated.

Reducing health harm

Alert: do they NOT respond when you say their name, rub the middle of their chest hard?

Breathing: is their breathing heavy, slow or shallow? Are they making gurgling or snoring sounds?

Circulation: are their lips or skin blue or pale?

If YES to any these CALL '000' IMMEDIATELY.

Calling an ambulance does not mean the police show up. Your phone can call 000 even with no credit or mobile coverage.

Ask for ambulance and tell them someone has collapsed and needs urgent medical attention.

Stay calm and answer all the operator's questions.

If the person **is** breathing, put the person in the 'recovery position'.

Follow the picture on the right ▶

If they are **not breathing** or stop breathing, you will need to start 'rescue breathing'.

To start this, make sure there is nothing blocking their airway. Clear their mouth with your finger if there is.

Roll them onto their back.

Put your hand on their chin, tilt their head back and pinch their nose closed.

Follow the picture on the right ▶

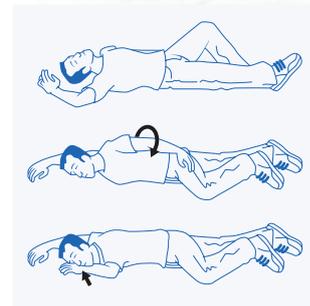
Put your mouth fully over theirs to make a seal.

Breathe two (2) slow breaths into their mouth (their chest needs to rise as you breathe into their mouth, look out the corner of your eye to check).

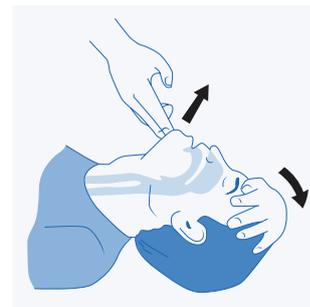
Turn your head to the side and take a fresh breath in yourself.

Keep breathing into their mouth once (1) every five (5) seconds, taking a fresh breath for yourself in between.

Stay with the person, DON'T leave the person on their own.



Source: Harm Reduction Coalition New York



Source: American Heart Association

Using Naloxone ‘narcain’ in response to an overdose

Naloxone or ‘narcain’ is used to reverse an opioid overdose.

You can get it with a prescription and people can be trained in how to use it.

Naloxone only lasts for **30 to 90 minutes**. A person can go back into overdose when it wears off.

Tell the ambulance officers if you have used naloxone on the person.

Reducing the risk of overdose

- Mixing heroin or other opioids with benzodiazepines (benzos) or alcohol **increases** your chance of overdosing. It’s not only what you used today, think about what you used yesterday as well.
- Don’t use alone.
- It is safer to start with a small dose particularly if you haven’t used in a while and your tolerance is lower.

Reducing injecting related harm

- Injecting pills or gel caps can cause serious vein damage, always use a wheel filter.
- To avoid infection, always use new equipment, wash your hands and use an alcohol swab to clean the injecting site. Be ‘blood aware’.
- Rotating your injecting sites reduces the risk of vein damage and allows time for your veins to heal.

Where to get help

Victoria Legal Aid

Legal Help

For free information about the law and how we can help you, call Legal Help on 1300 792 387

Monday to Friday, between 8.45 am and 5.15 pm

More information

www.legalaid.vic.gov.au

Do you need help calling us?



Interpreter

Translating and Interpreting Service

Tel: 131 450



NATIONAL
RELAY
SERVICE

National Relay Service

TTY users: Call 133 677

Speak and Listen users: Call 1300 555 727

Internet relay users: See www.relayservice.gov.au

Drug Info

Information on drugs and alcohol

Tel: 1300 858 584

www.druginfo.adf.org.au

DirectLine

24/7 counselling, information and treatment referral.

Tel: 1800 888 236

Harm Reduction Victoria

Peer-based illicit drug user organisation providing peer education and training including naloxone training.

Tel: 9329 1500

www.hrvic.org.au

Lifeline

Crisis support, suicide prevention

Tel: 131 114

Office of the Public Advocate

Tel: 24-hour service 9603 9500, 1300 305 612 (TTY) or 1300 309 337
(all callers)

Victorian Needle and Syringe Program

Clean injecting equipment, safe disposal, education and safe sex products.
Search 'NSP Victoria' on the internet for your closest NSP service or
phone 1300 365 482.

Youth Referral and Independent Persons Program

Tel: 9340 3777

Useful Victoria Legal Aid resources

To order publications

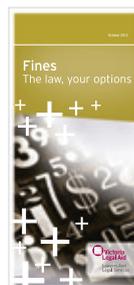
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Police powers: your rights in Victoria



Fines: the law, your options

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