

Neighbourhood Support New Zealand



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Neighbourhood Support Fact Sheet

Drink Driving - rights on being detained or arrested

Section 23 of the **New Zealand Bill of Rights Act 1990** sets out some basic legal rights that a person can expect when being "detained" by the Police or other government agency. Being "detained" has a broader meaning than the stricter notion of being "arrested". A police officer must advise a person that they are being arrested for a specific criminal offence, before the person is legally under arrest. Up until this point, there is generally no obligation to accompany a police officer or answer any questions apart from giving a name, address and details about a driver's identity where the person being questioned is a passenger in a motor vehicle.

Where a police officer indicates that a person is not under arrest but will be arrested if they fail to accompany the officer, they are effectively "detained" for the purposes of the Bill of Rights (**Bill of Rights Act 1990**). This situation might occur at the roadside if, for example, a driver has failed a breath alcohol test. At this stage the person is required to accompany the police officer to the Police station if requested to do so. They are technically not under arrest, but are being "detained" under Section 59 or the **Land Transport Act 1998**. A refusal to accompany a police officer, even momentarily, amounts to a criminal offence for which the driver can be arrested. This offence has serious consequences and the driver could face a fine of up to \$4,500 and disqualification from driving.

The first "right" that a detained person has is to be told why they are being detained. Secondly, they will be told they have a right to "consult and instruct a lawyer without delay". If the detained person does not already have a lawyer, the Police are obliged to provide them with a telephone and a list of lawyers to contact. These lawyers have all agreed to be on the Police list and will provide initial legal advice free of charge.

Lawyers usually advise drinking drivers to co-operate fully with the Police, as a refusal to provide a breath sample or a blood sample after being requested to do so, is a serious traffic offence and the person is automatically subject to the same penalties as if they had provided a positive sample. Where an evidential breath test results in an excess of 400 micrograms of alcohol, the driver must be advised of their right to undergo a blood test. If taken, the subsequent blood test must exceed 80 milligrams of alcohol per 100 millilitres of blood before a conviction for drink driving can be obtained (note - lesser amounts apply to persons under 20 years of age). Even if the breath test shows a person is not over the legal limit, a police officer can still prohibit them from driving for a period of up to 12 hours. If however they are charged with an excess alcohol offence, they will generally be released on bail to appear at a future Court date. Where a person is kept in custody they have a right to appear before a judge "as soon as possible".

Any detained person must be advised of their right to remain silent. After being advised of this right, anything they do say may be taken down and used in evidence against them in any subsequent Court case.

[New Zealand legislation](#) can be located at this address under Statutes.