



# ADMISSION OF GUILT FINES

WHAT YOU NEED TO KNOW



YOUR ATTORNEY - YOUR TRUSTED ADVISOR

This brochure is aimed at explaining the consequences of paying an admission of guilt fine and to offer some practical and legal tips when people are arrested and given the option to pay such a fine.

## What are admissions of guilt fines?

The South African Police Service (SAPS) may give a person, who has been arrested on suspicion of a less serious crime, an option to pay an admission of guilt fine. Such a fine is part of our legal system and it allows a person to admit guilt for a less serious offence without having to appear in court. It prevents an unnecessary overload of the court system. It is meant to resolve less serious matters quickly where an accused person accepts responsibility for having committed a minor offence.

Many people have, however, paid the admission of guilt fine so that they can be released from police custody – not knowing what it means and how it will affect them. Unfortunately, there are consequences to paying an admission of guilt fine which may haunt a person for many years to come.

*It is advisable first to speak to an attorney before you pay an admission of guilt fine.*

### The case of Mr Tong

In recent years the courts have dealt with a number of cases involving flawed admission of guilt fines. The High Court: Western Cape Division reviewed the matter of Mr Tong who was arrested by the police on a charge of possession of dagga. On the day of his arrest, he was released from custody after his father paid an admission of guilt fine on his behalf. His father also signed documents to secure his release. Mr Tong was not offered legal representation and the police did not explain the court procedures to him. He thought that he was released on bail and would have to come back to court on a later date. He did not realise that his father had paid an admission of guilt fine on his behalf. He did not get any notice for a court date.

About three years later he was offered employment in South Korea to teach English. When he applied for a visa he found out that he had a criminal record. He was refused a visa and could not travel outside of the country. He could also not qualify for any teaching position. The admission of guilt fine had devastating consequences for Mr Tong. He asked the court to review his conviction which was later set aside by the High Court.

## Five things to keep in mind

If you or a family member is arrested and given the option to pay an admission of guilt fine – you should keep the following five points in mind:

### 1. You have rights, if arrested

Your rights include the right to

- remain silent,
- be told of your right to remain silent,
- be released from detention, if arrested for allegedly committing an offence, if the interests of justice permit,
- be told that you are not obligated to make any admission that can be used in evidence against you,
- be told of the reason for your detention,
- choose to consult with an attorney or to have one assigned by the State if a substantial injustice will result due to lack of legal representation, and
- communicate with and be visited by your spouse or partner, family, chosen religious counsellor and medical practitioner.

This brochure is not meant to explain all the rights a person has when arrested, but it is clear that you have the right to remain silent and cannot be forced to pay an admission of guilt fine.



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## 2. Speak to an attorney

It is advisable to speak to your attorney first before signing an admission of guilt fine. You should not pay an admission of guilt fine only to get out of jail quickly. This is a short-term decision that may have long-term consequences. In some cases, paying an admission of guilt fine may be a suitable option, but it should be paid after having received sound legal advice.

## 3. You must be told what it means

The police must properly warn you of the consequences of paying an admission of guilt fine. The courts have confirmed that an accused must

- be informed that he/she will be deemed to have been convicted by a court,
- the conviction will appear on the accused's criminal record,
- when paying the admission of guilt fine, he/she waives the rights to:
  - contest the matter in a court,
  - confront the accusers,
  - call witnesses, and
  - legal representation.

Please also remember that the police cannot require that you first pay the admission of guilt fine before they release you from custody. You should be given some time to consider whether or not you will pay the admission of guilt fine. This can happen after your release from custody.

## 4. Bail is different from an admission of guilt fine

Paying an admission of guilt fine is not the same as paying bail. Here are some of the differences between the two.

The admission of guilt fine results in you being deemed to have been convicted of an offence. The matter is accordingly finalised and you will have a criminal record. You will not get the money back that you have paid and you will not have to appear in court again.

The payment of bail means that the matter has not been finalised and you are still presumed innocent until proven guilty. Paying bail does not mean that you admit to an offence and there is no criminal conviction against you. You must still appear in court and will receive the bail money back if you comply with all the bail conditions.

## 5. Consider what it means for your future

Mr Tong could not get a visa to travel to another country and he did not qualify for a teaching job. Potential employers may want to know if you have a previous criminal conviction. This may either disqualify you or compromise your ability to get a job. The High Court: Gauteng Local Division has stated that: 'A criminal record is an impediment to opportunities such as employment, travel and many other areas of life.'

The payment of an admission of guilt fine may impact on your freedom of movement and your ability to choose a career.



**LAW SOCIETY**  
OF SOUTH AFRICA

Tel: (+27) 12 366 8800  
Fax: (+27) 12 362 0969  
[www.LSSA.org.za](http://www.LSSA.org.za)

P O Box 36626  
Menlo Park 0102  
Docex 82, Pretoria  
304 Brooks Street  
Menlo Park, Pretoria 0081

