

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 not criminal conviction against you. You must still appear in court and will receive your 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 previous criminal convictions. 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.

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ADMISSION OF GUILT FINES



WHAT YOU NEED TO KNOW

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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 ADMISSION 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 offense 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 their admission of guilt fines so 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.

IT IS ADVISABLE TO FIRST SPEAK TO AN ATTORNEY BEFORE YOU PAY AN ADMISSION OF GUILT FINE.

The case of Mr. Tong.

In recent years the court have dealt with a number of cases involving flawed admissions 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 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 procedure 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 he had a criminal record he was refused a Visa and could not travel outside of the country, he could also not qualify for an teaching positions. 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 your family member is arrested and given the opportunity 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 permits.
- 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.
- Chose to consult with an attorney or to have one assigned by the state if a substantial injustice will result due to the 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.

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 the accused must

- Be informed that he/she have been convicted by the court,
- The conviction will appear on the accused's criminal record,
- When paying the admission of guilt fine, he/she waives the right to:
 - Contest the matter in court,
 - Confront the accusers
 - Call witness, 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 you release from custody.