

19. Common offences

19.1 Introduction

The purpose of this chapter is to assist you in dealing with common offences.

Each offence contains:

- a reference and description of the offence itself;
- the elements of the offence, which the prosecution is required to prove;
- a commentary, which provides useful information you will need to consider; and
- a maximum sentence you may pass if the defendant is found guilty.

19.2 Description

At the top of each offence there is a reference to where the offence is found in legislation and a description of what the offence is.

19.3 Elements

The elements section lists all the general elements needed to prove any offence, and the specific elements required for the particular offence.

The elements section is very helpful as it provides a guide or method for you to make sure the prosecution has proved all that is required before a person can be found guilty. You should take careful notice that all the elements are proved by the prosecution.

The elements contained in these offences are intended for use as a handy reference on the bench and they do not replace careful study of the legislation itself.

When you are hearing an offence which is not listed here, you will need to list your own elements before hearing the case. By checking the legislation and considering what has been done here, you will develop the ability to identify the elements of any offence yourself.

19.4 Commentary

Where appropriate, useful case law and other commentary has been added to guide you further. It contains information about the identification of the defendant, what the prosecution and the defence need to prove, and to what standard.

Generally, the defence does not need to prove anything. Occasionally, the legislation requires the defence to specifically prove something. Where possible, definitions have been provided.

19.5 Sentencing

The sentencing section describes the maximum sentence for each offence. You do not have to pass the maximum sentence—that is reserved for the most serious breaches of the particular offence. Imprisonment should be used only for the most serious breaches and where an alternative sentence is not appropriate.

See the chapter "[Sentencing](#)".

19.6 Common criminal offences

Crimes Act 2016 (CA)

- Causing serious harm, ss [71–73](#)
- Causing harm, ss [74](#) and [75](#)
- Causing harm to public official, s [76](#)
- Common assault, s [78](#)

Illicit Drugs Control Act 2004 (IDCA)

- Unlawful import or export of illicit drugs, ss [4](#) and [5](#)
- Unlawful possession, manufacture, cultivation and supply, s [6](#)
- Controlled chemicals and equipment, s [7](#)

Motor Traffic Act 2014 (MTA)

- Driving under the influence of alcohol, ss [69](#) and [81](#)

19.7 Traffic infringement notices

- [Motor Traffic \(Traffic Infringement Notices\) Regulations 2018](#)
- [Motor Traffic Act 2014](#)

| 19.8 Causing serious harm | |
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| Causing serious harm intentionally, recklessly, or negligently: ss 71-73 CA | <p>Any person is guilty of an offence who:</p> <ul style="list-style-type: none"> ➤ intentionally engages in conduct, ➤ where the conduct causes serious harm to another person, and ➤ the person intends to, or is reckless about, or is negligent about cause harm to that or any other person by the conduct. |
| Elements of causing serious harm | <p>Every element below must be proved by the prosecution beyond reasonable doubt.</p> <p>General</p> <ul style="list-style-type: none"> ➤ The person named in the charge is the same person who is appearing in court. ➤ A date or period of time when the causing serious harm is alleged to have taken place. ➤ A place where the causing serious harm was alleged to have been committed. <p>Specific</p> <ul style="list-style-type: none"> ➤ The defendant intentionally engaged in conduct. ➤ The conduct caused serious harm to another person. ➤ The defendant either intended to cause serious harm to that or any other person by the conduct, OR ➤ The defendant was reckless about causing serious harm to that or any other person by the conduct, OR ➤ The defendant was negligent about causing serious harm to that or any other person by the conduct. <p>Serious harm</p> <p>means harm (including the cumulative effect of any harm) whether or not treatment is, or could have been, available:</p> <ul style="list-style-type: none"> ➤ that endangers, or is likely to endanger, a person's life, or ➤ that is or is likely to be significant and longstanding. |
| Commentary | <p>Burden and standard of proof</p> <p>The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.</p> <p>Identification</p> <p>In court, the prosecution should identify the person charged by clearly pointing out that person in court.</p> |

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| | <p>The prosecution must provide evidence to prove that it was the defendant who intentionally engaged in the conduct.</p> <p>Context</p> <p>The context in which the causing of harm occurred is very important and you will need to give careful consideration to:</p> <ul style="list-style-type: none"> ➤ what the situation was, and ➤ where the causing of harm occurred. |
| Defences | <p>If the prosecution has proved the elements of the offence, beyond reasonable doubt, the defendant may still have a legal defence.</p> <p>The defendant has an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.</p> <p>The prosecution must then rebut this beyond reasonable doubt, eg: they must show that the act was not done in self-defence or defence of property or another person (as the case may be) and/or that the force used was unreasonable.</p> |
| Sentence | <p>The maximum sentence for intentionally causing serious harm is:</p> <ul style="list-style-type: none"> ➤ 20 years imprisonment if aggravating circumstances apply, ➤ 15 years imprisonment in any other case. <p>The maximum sentence for recklessly causing serious harm is:</p> <ul style="list-style-type: none"> ➤ 15 years imprisonment if aggravating circumstances apply, ➤ 12 years imprisonment in any other case. <p>The maximum sentence for negligently causing serious harm is:</p> <ul style="list-style-type: none"> ➤ 13 years imprisonment if aggravating circumstances apply, ➤ 10 years imprisonment in any other case. <p>Aggravating circumstances apply where the offence occurs in any of the following circumstances (s 79):</p> <ul style="list-style-type: none"> ➤ the defendant is, or pretends to be, armed with an offensive weapon, ➤ the defendant is in company with one or more other people, ➤ the defendant intends to commit another offence, or ➤ the defendant intends to avoid the lawful arrest or detention of a person. |

| 19.9 Causing harm | |
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| Causing harm intentionally or recklessly: ss 74-75 CA | <p>Any person is guilty of an offence who:</p> <ul style="list-style-type: none"> ➤ intentionally engages in conduct, ➤ where the conduct causes harm to another person without that person's consent, and ➤ the person intends to, or is reckless about, cause harm to that or any other person by the conduct. |
| Elements of causing harm | <p>Every element below must be proved by the prosecution beyond reasonable doubt.</p> <p>General</p> <ul style="list-style-type: none"> ➤ The person named in the charge is the same person who is appearing in court. ➤ A date or period of time when the causing harm is alleged to have taken place. ➤ A place where the causing harm was alleged to have been committed. <p>Specific</p> <ul style="list-style-type: none"> ➤ The defendant intentionally engaged in conduct. ➤ The conduct caused harm to another person. ➤ The other person did not consent ('consent' is defined in s 9 as the free and voluntary agreement by a person with the cognitive capacity to give that agreement). ➤ The defendant either intended to cause harm to that or any other person by the conduct OR ➤ The defendant was reckless about causing harm to that or any other person by the conduct. |
| Commentary | <p>Burden and standard of proof</p> <p>The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.</p> <p>Identification</p> <p>In court, the prosecution should identify the person charged by clearly pointing out that person in court.</p> <p>The prosecution must provide evidence to prove that it was the defendant who intentionally engaged in the conduct.</p> |

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| | <p>Context</p> <p>The context in which the causing of harm occurred is very important and you will need to give careful consideration to:</p> <ul style="list-style-type: none"> ➤ what the situation was, and ➤ where the causing of harm occurred. |
| Defences | <p>If the prosecution has proved the elements of the offence, beyond reasonable doubt, the defendant may still have a legal defence.</p> <p>The defendant has an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.</p> <p>The prosecution must then rebut this beyond reasonable doubt, eg: they must show that the act was not done in self-defence or defence of property or another person (as the case may be) and/or that the force used was unreasonable.</p> |
| Sentence | <p>The maximum sentence for intentionally causing harm is:</p> <ul style="list-style-type: none"> ➤ nine years imprisonment if aggravating circumstances apply, ➤ seven years imprisonment in any other case. <p>The maximum sentence for recklessly causing harm is:</p> <ul style="list-style-type: none"> ➤ seven years imprisonment if aggravating circumstances apply, ➤ five years imprisonment in any other case. <p>Aggravating circumstances apply where the offence occurs in any of the following circumstances (s 79):</p> <ul style="list-style-type: none"> ➤ the defendant is, or pretends to be, armed with an offensive weapon, ➤ the defendant is in company with one or more other people, ➤ the defendant intends to commit another offence, or ➤ the defendant intends to avoid the lawful arrest or detention of a person. |

| 19.10 Causing harm to public official | |
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| Causing harm intentionally or recklessly: ss 76 CA | <p>Any person is guilty of an offence who:</p> <ul style="list-style-type: none"> ➤ intentionally engages in conduct, ➤ where the conduct causes harm to another person without that person's consent, and ➤ the person intends to cause harm to that other person because the person believes the other person is a public official, and ➤ the person is in fact a public official. |
| Elements of causing harm | <p>Every element below must be proved by the prosecution beyond reasonable doubt.</p> <p>General</p> <ul style="list-style-type: none"> ➤ The person named in the charge is the same person who is appearing in court. ➤ A date or period of time when the causing harm is alleged to have taken place. ➤ A place where the causing harm was alleged to have been committed. <p>Specific</p> <ul style="list-style-type: none"> ➤ The defendant intentionally engaged in conduct. ➤ The conduct caused harm to another person. ➤ The other person did not consent ('consent' is defined in s 9 as the free and voluntary agreement by a person with the cognitive capacity to give that agreement). ➤ The defendant intended to cause harm to that other person by the conduct. ➤ The defendant believed the other person was a public official. ➤ And the other person was a public official. |
| Commentary | <p>Burden and standard of proof</p> <p>The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.</p> <p>Identification</p> <p>In court, the prosecution should identify the person charged by clearly pointing out that person in court. The prosecution must provide evidence to prove that it was the defendant who intentionally engaged in the conduct.</p> |

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| | <p>Context</p> <p>The context in which the causing of harm occurred is very important and you will need to give careful consideration to:</p> <ul style="list-style-type: none"> ➤ what the situation was, and ➤ where the causing of harm occurred. |
| Defences | <p>If the prosecution has proved the elements of the offence, beyond reasonable doubt, the defendant may still have a legal defence.</p> <p>The defendant has an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.</p> <p>The prosecution must then rebut this beyond reasonable doubt, eg: they must show that the act was not done in self-defence or defence of property or another person (as the case may be) and/or that the force used was unreasonable.</p> |
| Sentence | <p>The maximum sentence for intentionally causing harm to a public official is:</p> <ul style="list-style-type: none"> ➤ Ten years imprisonment if aggravating circumstances apply, ➤ Eight years imprisonment in any other case. <p>Aggravating circumstances apply where the offence occurs in any of the following circumstances (s 79):</p> <ul style="list-style-type: none"> ➤ the defendant is, or pretends to be, armed with an offensive weapon, ➤ the defendant is in company with one or more other people, ➤ the defendant intends to commit another offence, or ➤ the defendant intends to avoid the lawful arrest or detention of a person. |

| 19.11 Common assault | |
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| Common assault: ss 78 CA | <p>Any person is guilty of an offence who intentionally:</p> <ul style="list-style-type: none"> ➤ engages in conduct that results in a direct or indirect application of force to another person, or ➤ makes physical contact, directly or indirectly, with another person knowing that the person might reasonably object to the contact in the circumstances, whether or not the person was aware of the contact at the time, or ➤ makes a threat to another person of a direct or indirect application of force that: <p>AND</p> <ul style="list-style-type: none"> ➤ the other person does not consent, or consents because of a dishonest representation by the defendant, to the conduct, contact or threat. |
| Elements of common assault | <p>Every element below must be proved by the prosecution beyond reasonable doubt.</p> <p>General</p> <ul style="list-style-type: none"> ➤ The person named in the charge is the same person who is appearing in court. ➤ A date or period of time when the conduct is alleged to have taken place. ➤ A place where the conduct was alleged to have been committed. <p>Specific</p> <ul style="list-style-type: none"> ➤ The defendant intentionally engaged in conduct. ➤ The conduct caused harm to another person. ➤ The other person did not consent ('consent' is defined in s 9 as the free and voluntary agreement by a person with the cognitive capacity to give that agreement). ➤ The defendant intended to do that conduct. |
| Commentary | <p>Burden and standard of proof</p> <p>The prosecution must prove all the elements beyond reasonable doubt. If the defence establishes to your satisfaction that there is a reasonable doubt, then the prosecution has failed.</p> <p>Identification</p> <p>In court, the prosecution should identify the person charged by clearly pointing out that person in court.</p> |

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| | <p>The prosecution must provide evidence to prove that it was the defendant who intentionally engaged in the conduct.</p> <p>Context</p> <p>The context in which the common assault occurred is very important and you will need to give careful consideration to:</p> <ul style="list-style-type: none"> ➤ what the situation was, and ➤ where the causing of harm occurred. <p>Conduct that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or community life cannot amount to an offence under this section.</p> |
| Defences | <p>If the prosecution has proved the elements of the offence, beyond reasonable doubt, the defendant may still have a legal defence.</p> <p>The defendant has an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.</p> <p>The prosecution must then rebut this beyond reasonable doubt, eg: they must show that the act was not done in self-defence or defence of property or another person (as the case may be) and/or that the force used was unreasonable.</p> |
| Sentence | <p>The maximum sentence for common assault is:</p> <ul style="list-style-type: none"> ➤ two years imprisonment if aggravating circumstances apply, ➤ twelve months imprisonment in any other case. <p>Aggravating circumstances apply where the offence occurs in any of the following circumstances (s 79):</p> <ul style="list-style-type: none"> ➤ the defendant is, or pretends to be, armed with an offensive weapon, ➤ the defendant is in company with one or more other people, ➤ the defendant intends to commit another offence, or ➤ the defendant intends to avoid the lawful arrest or detention of a person. |

| 19.12 Unlawful import and export of illicit drugs | |
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| Unlawful import and export of illicit drugs: ss 4 and 5 Illicit Drugs Control Act 2004 (IDCA) | Any person is guilty of an offence who, without authority: <ul style="list-style-type: none"> ➤ imports an illicit drug into Nauru, or ➤ exports an illicit drug from Nauru. |
| Elements of unlawful import and export of illicit drugs | Every element below must be proved by the prosecution beyond reasonable doubt. <p>General</p> <ul style="list-style-type: none"> ➤ The person named in the charge is the same person who is appearing in court. ➤ A date or period of time when the conduct is alleged to have taken place. ➤ A place where the conduct was alleged to have been committed. <p>Specific</p> <ul style="list-style-type: none"> ➤ The defendant imported an illicit drug into Nauru, OR ➤ The defendant exported an illicit drug from Nauru. ➤ “Illicit drug” is any drug listed in Schedule 1. ➤ “Import” means to bring or cause to be brought, into Nauru and is a continuing process until any item reaches the intended recipient. ➤ “Export” means to take, or cause to be taken, out of Nauru. |
| Commentary | <p>Burden and standard of proof</p> <p>The prosecution must prove all the elements beyond reasonable doubt. The defendant has the burden of proving that he or she had the lawful authority to import or export the illicit drug.</p> <p>Identification</p> <p>In court, the prosecution should identify the person charged by clearly pointing out that person in court.</p> <p>The prosecution must provide evidence to prove that it was the defendant who intentionally engaged in the conduct.</p> |
| Defences | If the prosecution has proved the elements of the offence, beyond reasonable doubt, the defendant may still have a legal defence. |

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| | <p>The defendant has an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.</p> <p>The prosecution must then rebut this beyond reasonable doubt.</p> |
| Sentence | <p>The maximum sentence for importing or exporting illicit drugs is:</p> <ul style="list-style-type: none">➤ ten years imprisonment, and➤ a fine not exceeding \$50,000. |

| 19.13 Unlawful possession, manufacture, cultivation and supply of illicit drugs | |
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| <p>Unlawful possession, manufacture, cultivation and supply of any illicit drugs: s 6 IDCA</p> | <p>Any person is guilty of an offence who, without lawful authority:</p> <ul style="list-style-type: none"> ➤ acquires, sells, supplies, possesses, produces, manufactures, cultivates, uses or administers any illicit drug, or ➤ engages in any dealing with any other person for the transfer, transport, supply, use, manufacture, offer, sell, agree to sell, offer for sale or have possession for sale, import or export of any illicit drug. |
| <p>Elements of unlawful possession, manufacture, cultivation and supply of any illicit drugs</p> | <p>Every element below must be proved by the prosecution beyond reasonable doubt.</p> <p>General</p> <ul style="list-style-type: none"> ➤ The person named in the charge is the same person who is appearing in court. ➤ A date or period of time when the conduct is alleged to have taken place. ➤ A place where the conduct was alleged to have been committed. <p>Specific</p> <ul style="list-style-type: none"> ➤ The defendant acquired, sold, supplied, possessed, produced, manufactured, cultivated, used or administered any illicit drug, OR ➤ The defendant engaged in any dealing with another person for the transfer, transport, supply, use, manufacture, offer, sale, agreement to sell, offer for sale or have possession for sale, import or export of any illicit drug. ➤ "Illicit drug" is any drug listed in Schedule 1. ➤ "cultivate" includes planting, sowing, scattering the seed, growing, nurturing, tending or harvesting and also includes the separating of opium, coca leaves, cannabis and its extracts from the plants from which they are obtained. ➤ "manufacture" means to carry out any process by which an illicit drug or controlled chemical is produced, and includes extracting, refining, formulating, preparing, mixing, compounding, transforming it into another drug or chemical, making an illicit drug or controlled chemical into dosage form, and packing. ➤ "supply" includes distribute, give, sell and offer to supply. |

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| Commentary | <p>Burden and standard of proof</p> <p>The prosecution must prove all the elements beyond reasonable doubt.</p> <p>Identification</p> <p>In court, the prosecution should identify the person charged by clearly pointing out that person in court.</p> <p>The prosecution must provide evidence to prove that it was the defendant who intentionally engaged in the conduct.</p> |
| Defences | <p>If the prosecution has proved the elements of the offence, beyond reasonable doubt, the defendant may still have a legal defence.</p> <p>The defendant has an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.</p> <p>The prosecution must then rebut this beyond reasonable doubt.</p> |
| Sentence | <p>The maximum sentence for importing or exporting illicit drugs is:</p> <ul style="list-style-type: none"> ➤ ten years imprisonment, and ➤ a fine not exceeding \$50,000. |

| 19.14 Dealing with controlled chemicals and equipment | |
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| Dealing with controlled chemicals and equipment: s 6 IDCA | <p>Any person is guilty of an offence who, without lawful authority:</p> <ul style="list-style-type: none"> ➤ imports, exports, manufactures, possesses, or supplies any controlled chemical or controlled equipment, ➤ knowing, or being reckless as to whether, that chemical or equipment is to be used in, or for, the commission of an offence of the unlawful possession, manufacture, cultivation and supply of illicit drugs (under section 6). |
| Elements of dealing with controlled chemicals and equipment | <p>Every element below must be proved by the prosecution beyond reasonable doubt.</p> <p>General</p> <ul style="list-style-type: none"> ➤ The person named in the charge is the same person who is appearing in court. ➤ A date or period of time when the conduct is alleged to have taken place. ➤ A place where the conduct was alleged to have been committed. <p>Specific</p> <ul style="list-style-type: none"> ➤ The defendant imported, exported, manufactured, possessed, or supplied any controlled chemical or controlled equipment, ➤ either: <ul style="list-style-type: none"> • knowing that chemical or equipment is to be used in, or for, the commission of an offence of the unlawful possession, manufacture, cultivation and supply of illicit drugs (under section 6), OR • being reckless as to whether that chemical or equipment is to be used in, or for, the commission of an offence of the unlawful possession, manufacture, cultivation and supply of illicit drugs (under section 6). ➤ “controlled chemical” means controlled chemicals listed in Schedule 2. ➤ “controlled equipment” means the equipment listed in Schedule 3. ➤ “export” means to take, or cause to be taken, out of the Republic. ➤ “Illicit drug” is any drug listed in Schedule 1. |

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| | <ul style="list-style-type: none"> ➤ "import" means to bring or cause to be brought, into the Republic and is a continuing process until any item reaches the intended recipient. ➤ "manufacture" means to carry out any process by which an illicit drug or controlled chemical is produced, and includes extracting, refining, formulating, preparing, mixing, compounding, transforming it into another drug or chemical, making an illicit drug or controlled chemical into dosage form, and packing. ➤ "supply" includes distribute, give, sell and offer to supply. |
| Commentary | <p>Burden and standard of proof</p> <p>The prosecution must prove all the elements beyond reasonable doubt.</p> <p>Identification</p> <p>In court, the prosecution should identify the person charged by clearly pointing out that person in court.</p> <p>The prosecution must provide evidence to prove that it was the defendant who intentionally engaged in the conduct.</p> |
| Defences | <p>If the prosecution has proved the elements of the offence, beyond reasonable doubt, the defendant may still have a legal defence.</p> <p>The defendant has an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.</p> <p>The prosecution must then rebut this beyond reasonable doubt.</p> |
| Sentence | <p>The maximum sentence for dealing with controlled chemicals and equipment is:</p> <ul style="list-style-type: none"> ➤ Ten years imprisonment, and ➤ A fine not exceeding \$50,000. |

| 19.15 Driving under the influence of alcohol | |
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| Driving under the influence of alcohol: s 69 MTA | Any person commits an offence who is in charge of, or drives, a motor vehicle while the percentage of alcohol in his or her blood exceeds the prescribed limit. |
| Elements of driving under the influence of alcohol | <p>Every element below must be proved by the prosecution beyond reasonable doubt.</p> <p>General</p> <ul style="list-style-type: none"> ➤ The person named in the charge is the same person who is appearing in court. ➤ A date or period of time when the conduct is alleged to have taken place. ➤ A place where the conduct was alleged to have been committed. <p>Specific</p> <ul style="list-style-type: none"> ➤ The defendant was in charge of, or driving, a motor vehicle. ➤ The percentage of alcohol in the defendant's blood exceeded the prescribed limit. ➤ "The prescribed limit" means a percentage of 0.05 per cent of alcohol present in the blood, that is to say 50 milligrammes of alcohol in 100 millilitres of blood. |
| Commentary | <p>Burden and standard of proof</p> <p>The prosecution must prove all the elements beyond reasonable doubt.</p> <p>Identification</p> <p>In court, the prosecution should identify the person charged by clearly pointing out that person in court. The prosecution must provide evidence to prove that it was the defendant who intentionally engaged in the conduct.</p> <p>Medical examination</p> <p>A person arrested for this offence is entitled, upon request, to be examined by a medical practitioner nominated by him or her. Where any such request is made, the arresting officer should provide reasonable facilities for holding the examination.</p> |
| Defences | <p>If the prosecution has proved the elements of the offence, beyond reasonable doubt, the defendant may still have a legal defence.</p> <p>The defendant has an evidential burden of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.</p> |

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| | The prosecution must then rebut this beyond reasonable doubt. |
| Sentence | <p>Any person who is convicted of driving under the influence of alcohol is liable to:</p> <ul style="list-style-type: none"> ➤ for a first offence: <ul style="list-style-type: none"> • mandatory suspension of his or her driver’s licence for six months, and • a maximum fine of \$1,000, or • imprisonment for six months; ➤ for a second offence: <ul style="list-style-type: none"> • mandatory suspension of his or her driver’s licence for 12 months, or • a maximum fine of \$3,000, or • imprisonment for 12 months; and ➤ for a third offence: <ul style="list-style-type: none"> • mandatory suspension of his or her driver’s licence for five years, and • a maximum fine of \$10,000, or • imprisonment for three years. |