



# **Community Legal Information Association of Prince Edward Island, Inc.**

## **Drinking, Drugs & Driving**

### **Introduction**

The laws about driving while drinking or impaired can be confusing. This booklet will explain these laws to you. It will also tell you about what may happen to you if you are found guilty of an offence involving alcohol or drugs and a motor vehicle. This includes cars, motorcycles, boats, aircraft, ATVs, snowmobiles, ride-on lawnmowers and any other motorized vehicle.

### **The Legal Consequences**

If you drive while your blood alcohol level is over .08 or you are impaired, you can receive sentences under the *Criminal Code of Canada* and the *PEI Highway Traffic Act*.

You can:

- receive a 24-hour roadside suspension of your driver's license;
- receive an additional 90 day driving prohibition;
- be sentenced in criminal court to time in jail or a fine;
- lose your driver's license under the *PEI Highway Traffic Act*;
- be prohibited from operating a motor vehicle on any street, road, highway or any other public place in Canada;
- be required to take treatment programs for problems with drugs and alcohol;
- have your vehicle impounded and be responsible for towing and storage charges;
- have your car insurance rates increase;
- be required to complete a driver rehabilitation course to become eligible for your driver's license to be reinstated;

You will be required to install an ignition interlock device in your vehicle. You must pay for the installation, monthly monitoring and removal of the device.

If people are injured or killed, or their property damaged, as a result of your driving while drinking or impaired, you can be charged with further criminal offences. You can also be sued.

### **Application of these Laws**

People often do not understand the way these laws work. Many people do not realize that you can be charged with an offence if:

- your motor vehicle is moving or parked. All that needs to be shown is that you had "care" or "control" of the vehicle. Simply being in the driver's seat or around your car with the keys in your pocket or purse could mean that you had care or control.
- you are on public or private property. It is no defense to say you were on private property, like a parking lot, driveway, or your own backyard.
- you were in another type of vehicle. These laws apply to all kinds of motor vehicles, including aircraft, boats, motorcycles, snowmobiles, ride-on lawnmowers and others.
- your motor vehicle was not operational. You can be criminally responsible even if the vehicle is out of gas, the battery is dead, it has other mechanical failures, or it is stuck in snow or mud.

### **Possible Charges**

The *Criminal Code of Canada* contains several crimes involving impaired driving. The police can lay the following criminal charges:

1. driving while impaired by alcohol or drugs;
2. driving with blood alcohol content (BAC) over the limit of .08;
3. failing or refusing a breath testing instrument;
4. impaired driving causing bodily harm or death;
5. driving with a blood alcohol content (BAC) over the limit of .08 and causing bodily harm or death;
6. driving while prohibited or while disqualified.

More serious charges like dangerous driving causing death or bodily harm, or criminal negligence causing death or bodily harm, can also be laid.

## ***Impaired Driving***

It is an offence to drive, or have care or control of a motor vehicle, while you are impaired by alcohol or any other drug. Impairment is shown by physical symptoms such as slurred speech, bloodshot eyes, the smell of alcohol, unsteadiness on your feet or a lack of co-ordination. It may also be shown by your driving behaviour.

You can be charged even if you are only slightly impaired. You can even pass the breath testing instrument and still be charged with impaired driving if the previous symptoms are present.

The police can lay an impaired charge even if a breath testing instrument is not used. This charge can also be laid when you are impaired because of other things, such as over-the-counter drugs, prescription drugs or illegal substances. The police often lay an impaired driving charge along with the charge of driving over the BAC limit of .08.

## ***Driving over the limit***

It is a crime to drive or to have care or control of a motor vehicle while the level of alcohol in your blood is over the limit of .08. This is measured through tests of your breath using a breath testing instrument or by a blood test. These tests are described in more detail later in this booklet.

You cannot be forced to take a breath or blood test. You can refuse. However, refusal without a reasonable excuse is a crime with the same penalties as being impaired or over the limit of .08.

## ***Refusal***

If a police officer has reasonable grounds to make a demand, it is a crime to refuse a police officer's demand that you:

- perform physical coordination tests;
- blow a sample of breath into an approved screening device;
- blow samples of breath into a breath testing instrument;
- provide a blood sample;
- provide saliva or urine samples;
- submit to an evaluation by a Drug Recognition Expert.

A refusal can mean saying "no", or it can mean acting in a way that prevents the police from getting a sample, like running away or not making a genuine attempt to blow properly.

You do not have to take the breath testing instrument, other approved screening devices, or give a blood sample if you can show that you have a reasonable excuse for refusing. For instance, you may have a severe health problem which will not allow you to blow into the device. You will need medical evidence to prove that your condition would prevent you from doing what is asked.

### ***Impaired driving causing bodily harm or death***

### ***Driving with a blood alcohol content (BAC) over the limit of .08 and causing bodily harm or death***

These are both serious offences with heavy penalties. These charges can be laid if your impaired or over .08 driving causes death or bodily harm to others. Other charges can also be laid, such as manslaughter or criminal negligence. If you are charged with any of these offences, you could be facing a lengthy jail sentence.

### ***Driving while prohibited or while disqualified***

This charge can be laid if you operate a motor vehicle while you are disqualified to drive. If you are convicted of driving while impaired, over .08, or for refusal, you are disqualified to drive in the province and on every street, road, highway or other public place across Canada.

## **Impaired Driving for new Drivers**

PEI has a graduated licensing program for new drivers. This program is designed to keep new drivers safe by gradually giving them more driving freedom. During the first three stages of your graduated license, you must have no alcohol in your blood. There are other rules as well.

If you have a Stage 1 license (Instruction Permit), you must be accompanied by a fully licensed driver in the front seat who has less than .05 blood alcohol content.

If you have a Stage 2 license, you may not drive between the hours of 1:00 AM and 5:00 AM unless accompanied by a fully licensed driver with under .05 blood alcohol content, or unless you have been granted an exemption.

If you have a Stage 3 license, you still must have no alcohol in your blood when operating a motor vehicle.

Even after exiting the Graduated Licensing Program, new drivers can face a range of additional penalties, but these vary according to the specific circumstances. The details of an individual case are best discussed with the Highway Safety Division of the Department of Transportation and Infrastructure Renewal (902-368-5234).

## **Approved Screening Device, Breath Testing Instruments, Blood Tests and Drug Recognition Program**

### **Approved Screening Device**

The police may ask you to blow a breath sample into an approved screening device if you are operating a motor vehicle, or have care or control of it, and they reasonably suspect that you have drugs or alcohol in your body. This reasonable suspicion could be caused by:

- your manner of driving;
- your physical appearance or behaviour;
- the smell of alcohol on your breath;
- your responses to questions;
- a report the officer has received.

Approved screening devices are usually used at the side of the road to screen people for impaired driving.

The screening test has three readings - pass, fail, or warn.

1. if you blow a **pass**, you may legally go on your way.
2. if you blow **warn** or **fail**, you will be issued a 24-hour roadside driving suspension. If you are a new driver who has had a license for less than 2 years or if you are under 19 years old, there is an additional 90-day driving suspension that takes effect within 7 days after the offence.
3. if you blow a **fail** on the approved screening device, this will indicate that your BAC is over .08. Blowing a fail may give the police officer grounds to demand that you take a different test on a breath testing instrument. A police officer is not required to test with an approved screening device. If there are enough grounds, he or she may make an immediate demand that you provide samples for a breath testing instrument instead.

## **Breath Testing Instruments**

The police may demand that you provide a sample to a breath testing instrument if they believe on reasonable and probable grounds that within the last three hours:

- you were driving while impaired or with a blood alcohol content reading over .08;
- you had care or control of a vehicle while impaired or with a blood alcohol content reading over .08.

The police will usually ask you to go to the police station to take a breath testing instrument test. To have a proper test, you must blow into the instrument at least twice, with at least 15 minutes between samples. You cannot smoke or drink anything during that time. The instrument will give a reading of the level of alcohol in your blood for each test. If your BAC reading is over .08, you may be charged.

If you are charged, the police usually give you a paper copy of a "certificate of analysis by a qualified technician", showing the readings for each test. Keep this certificate in case you decide to contest the charge. The police will usually show their copy in court as evidence of the offence.

## **Blood Test**

If a breath sample cannot be taken for some reason (for example, if there is an injury to the driver's mouth), the police can ask for a blood sample.

The blood test must be done:

- in a proper medical setting;
- by or under the direction of a medical practitioner;
- only if it will not endanger your life or health.

If there was a collision in which someone was injured or killed while you were driving impaired, the police may get a warrant from a judge to order blood samples taken from you, even if you cannot give your permission at the time.

## **Drug Recognition Expert (DRE) Program**

Some police officers are drug recognition experts. Drug recognition experts are trained to recognize the effects of seven families of drugs. A DRE officer can test whether you are impaired by a drug or a combination of a drug and alcohol. They are also trained to take samples of bodily fluids to confirm the presence of drugs in your system.

If an officer has reasonable cause to believe a driver is impaired by a drug, he or she can take the driver to be evaluated by a certified drug recognition expert (DRE).

The DRE officer:

- does a vital signs exam, checking blood pressure, pulse and temperature;
- does a darkroom exam of pupil size and an examination of the nose and mouth;
- checks for muscle tone;
- checks for and examines injection sites;
- takes a statement from the suspect and conducts an interview;
- makes a decision regarding impairment and arranges for a sample of bodily fluid to be tested.

When bodily fluids are sent to the lab, the presence of a drug is not enough to lay a charge. The DRE officer's evaluation must show you were impaired by one or more drug categories. The findings must be supported by the lab results.

Drivers must participate in the DRE process and must provide requested samples if the officer demands it. Refusing to participate or provide samples is punishable in the same way as refusing to take a breath testing instrument test.

## **Your Rights**

You have rights given to you by the *Charter of Rights and Freedoms*. You have the right to talk to a lawyer before deciding whether to take the breath testing instrument test or to give a blood sample. The police officer must tell you about this right and about the legal aid duty counsel, and must make sure you understand this information. You must be given a chance to speak to a lawyer in private, usually on the phone. If you do not know a lawyer, look in the yellow pages of the telephone directory. Criminal Legal Aid - Charlottetown (902-368-6043) or Summerside (902-888-8219).

## **If You Are Charged**

The police must tell you if they lay charges and what the charges are. You have the right to remain silent and to talk to a lawyer before giving a verbal or written statement to the police. You also have the right to refuse to give a statement.

## ***Release***

If you are charged, you are usually released as long as you do not drive. You may be kept overnight if police believe you might drive or if you are too intoxicated to properly care for yourself.

You can be kept in custody if the police think you may not show up in court, may commit another crime, or if you cannot be identified. You will likely go before a judge or a Justice of the Peace within 24 hours to decide whether you should stay in jail until your trial. If you are released, you will be given a notice to appear in Provincial Court at a particular place, time and date.

## ***Help from a lawyer***

Although you do not need a lawyer to go to court, it is a good idea to talk to a lawyer. You may want to do so before deciding how to plead. If you intend to plead not guilty, a lawyer can help you by handling your trial. It is also best to have a lawyer's help if you feel your rights under the Charter have been violated.

If you do not know a lawyer, call the Lawyer Referral Service. This service gives you a short consultation with a lawyer for a small fee. The number is 902-892-0853 or 1-800-240-9798. If you cannot afford a lawyer, you may qualify for criminal legal aid. Legal aid provides a lawyer for people charged with a criminal offence who have low incomes. Call the Legal Aid office in Charlottetown (902-368-6043) or Summerside (902-888-8219) to see if you qualify.

## ***Court***

If you plead guilty in court, the Crown Attorney will then tell the judge the facts that led to your charge. If the judge finds that the evidence shows you committed the offence, he or she will accept your guilty plea. This means you will be sentenced. This usually happens immediately. However, if the judge orders a pre-sentence report, you will be sentenced on another day.

If you plead not guilty, a date is set for your trial. The trial usually takes place several weeks or months later. If the judge finds you not guilty at your trial, you are free to go. If you are found guilty at your trial, you are sentenced. Sentencing may take place at a later date.



## **Penalties**

There are penalties or consequences under both the provincial Highway Traffic Act and the Criminal Code of Canada. The Highway Traffic Act allows for the following:

- A 7-day roadside driving suspension of your license for blowing .05 up to .10 on an approved screening device or failing a Standard Field Sobriety Test, if impaired by drugs. A second offence within a two-year period for blowing .05 up to .10 on an approved screening device will result in an immediate 30-day roadside suspension. A third offence within two years will result in an immediate 90-day roadside suspension.
- A 24-hour roadside suspension of your license and an administrative driving prohibition of 90 days if you are a graduated driver of any age or are under 19 years of age and show any indication of alcohol, fail a Standard Field Sobriety Test for drugs, or refuse to give a sample.
- An administrative driving prohibition of 90 days if you are being charged under the Criminal Code of Canada for refusal, failing the breath testing instrument or are impaired by drugs. The 90 day prohibition is effective 7 days after your 24 hour roadside suspension.
- Cancellation of your license for one year if it is a first offence of impaired driving. This applies across Canada. Your license in PEI will be cancelled if you are convicted in another province, territory, or state and a notice is sent to PEI.
- A three year cancellation of your license for a second conviction within 10 years.
- A five year cancellation of your license for a third or subsequent conviction within 10 years.
- Impoundment of your vehicle for 30 days if you are driving while suspended and have been convicted of driving while suspended or prohibited under the Criminal Code of Canada in the past two years.
- Impoundment of your vehicle for 60 days for a second offense of driving while suspended or prohibited under the Criminal Code of Canada within two years and have been convicted of driving while suspended in the past two years.
- Impoundment of your vehicle for 6 months when charged with:
  - any offence under the Criminal Code of Canada involving a motor vehicle where there is death or serious injury, or
  - an offence under the Criminal Code of Canada for impaired driving and there has been a previous conviction in the past 10 years for death or serious injury, or

- an offence under the Criminal Code of Canada for impaired or prohibited driving and there have been 2 or more similar convictions under the Criminal Code of Canada in the past 10 years.

The *Criminal Code* lists a maximum sentence for each impaired driving offence. Your sentence will depend on the particular offence, on whether this is your first offence, on your personal circumstances and on other factors.

First-time offenders are almost always sentenced to some time in jail, payment of a large fine and payment of a Victims of Crime surcharge. As well, the criminal court judge will issue an order prohibiting you from driving for a period of time, usually one year. If you drive when you are prohibited by the court, you may be charged with the additional crime of driving while prohibited. This may extend the period of time before you can get your driver's license reinstated.

### *Criminal record*

Being convicted usually means you will have a criminal record. After a period of time without getting into trouble with the law again, you can apply for a pardon. For information on pardons, contact any probation office on PEI or the National Parole Board, Atlantic Region office: 1-800-265-8644 or CLIA.

### **Ignition Interlock Program**

The Ignition Interlock Program is mandatory if you have been convicted of impaired driving and want to have your driver's license reinstated.

The ignition interlock device is mandatory for a minimum of:

- one year for the first offence,
- two years for the second offence,
- five years for the third offence.

An additional year is added if a passenger under the age of 16 is in the vehicle at the time of the offence.

You must cover all the costs associated with installing, monitoring, and removing the device.

### *Early Reinstatement*

You can apply for early reinstatement of your driver's license. Under early reinstatement, you can only drive vehicles equipped with an ignition interlock device.

You must have completed the minimum driver license prohibition time and you also cannot have any other driver license suspensions in place. The minimum driver license prohibition times are:

- three months of the Court-ordered Driving Prohibition for a first offence;
- six months of the Court-ordered Driving Prohibition for a second offence;
- twelve months of the Court-ordered Driving Prohibition for a third offence.

A restricted driver's license only allows you to operate a vehicle equipped with an ignition interlock device. The device prevents you from starting the vehicle if it detects alcohol in your breath sample that is above a pre-set level. You must pay all the costs of having the device installed, monitored and removed. Call 1-866-658-6374 or go to [www.guardianinterlock.ca](http://www.guardianinterlock.ca) for up-to-date costs.

### *How it Works*

Before starting your vehicle you must blow into the device. If the recorded blood alcohol concentration (BAC) is above the set limit, the vehicle will not start. Once the vehicle is started, the interlock device asks for breath samples while you are driving or while the motor is running. If you don't provide a breath sample or if the BAC exceeds the limit, the device will issue a warning, and activate specific alarm systems, like your car alarm or horn, until the ignition is turned off.

The Highway Safety Division can order the device removed and cancel your license if you do not follow the program conditions.

### *Penalties for Not Complying With the Ignition Interlock Program*

If you are enrolled in the program and are convicted of driving without an ignition interlock device or of tampering with the device, you will be:

- penalized by losing twelve (12) demerit points (which results in a 3 month suspension);
- fined under the *Highway Traffic Act* and/or the *Criminal Code of Canada*;
- reported to the Registrar of Motor Vehicles. You could lose your driver's license for a further period of time and the mandatory term for the Ignition Interlock Program may be increased.

For more information call:

Transportation and Infrastructure Renewal

Highway Safety Division, Records Section

Tel: (902) 368-5210 – Charlottetown

Tel: (902) 432-2714 – Summerside

<http://www.gov.pe.ca/highwaysafety/>

## **Getting your License Back**

You do not automatically get your driver's license back at the end of your cancellation period. You must re-apply and pay a reinstatement fee. You must also meet the following requirements:

- You must install an Ignition Interlock Device (IID);
- If it was a first offence, the IID is mandatory for a minimum of one year. You must also complete the driver's rehabilitation course which is a five hour educational program on impaired driving and the effects of drugs and alcohol, put on by Highway Safety Division.
- For a second offence, the IID is mandatory for a minimum of two years. You must also have an interview with a driver improvement officer and complete a driver risk analysis. If you are considered "low-risk" or "medium-risk" for re-offending, you will be referred to the driver rehabilitation program. If you are considered "high-risk", you will be referred to Addiction Services for an assessment and treatment program recommendations. You must complete the recommended program before you can apply to have your license reinstated.
- If you have been convicted three or more times, the IID is mandatory for a minimum of five years. You must also have an assessment by an Addiction Services counsellor. If the counsellor says you have a problem with drugs or alcohol, you must successfully complete whatever treatment is recommended.

The Registrar of Motor Vehicles can refuse to give you back your driver's license if he or she does not think your driving problem has improved or if you are deemed to be "a risk".

## **Your Car Insurance**

An over .08 or impaired driving conviction affects your car insurance. If you have a collision while impaired or over .08, your insurance company may not pay for injuries to you or your passengers or for damage to your vehicle. It will usually pay for injuries or property damage to others.

Whether there was a collision or not, a conviction for over .08 or impaired driving means an increase in your car insurance premiums. The insurance company could refuse to insure you in the future. It is against the law to drive without insurance. The insurance consequences are the same for all over .08 or impaired driving offences. The insurance company will not treat you more lightly if you are convicted for refusal to take a breath testing instrument test.

## **You Could be Sued**

If you are convicted of driving while over .08, or for impaired driving, you can be sued for the damages suffered by others.

### ***If you have a collision***

You may be sued if you injure someone or cause property damage in a collision caused by your impaired driving or driving while over .08. If you are found responsible for the collision, the trial judge will order you to pay money as compensation to the injured people. If your insurance does not cover this amount, you will have to pay it yourself.

### ***For serving liquor***

If you serve alcohol to underage or intoxicated people who then injure themselves, they could sue you. If they drive after you serve liquor to them and have a collision, the other injured people could sue you too. This applies to businesses and to people serving liquor to guests in their own homes or at outdoor events.

## **Planning Ahead**

Impaired driving or drinking and driving are treated very seriously by the legal system. A conviction can affect your entire life. You can lose your license, go to jail, face increased insurance fees, be sued, among other penalties. You will also have a criminal record.

It is a good plan to always have a designated driver, cab fare, or a sober friend or family member to pick you up or drive you home. Your life and the lives of others in your car and in your community depend on it.

Community Legal Information Association of PEI, Inc. (CLIA) is a charitable organization that receives funding from the Department of Justice Canada, the PEI Department of Environment, Labour and Justice, the Law Foundation of PEI and other sources. CLIA provides Islanders with understandable and useful information about the law and the justice system in Prince Edward Island.

For more information, you can telephone CLIA at 902-892-0853 or 1-800-240-9798, visit our website at [www.cliapei.ca](http://www.cliapei.ca) or email us at [clia@cliapei.ca](mailto:clia@cliapei.ca) . We are also on Facebook and Youtube: [www.facebook.com/CLIAPEI](http://www.facebook.com/CLIAPEI) and [www.youtube.com/CLIAPEI](http://www.youtube.com/CLIAPEI)

Non-commercial reproduction of this document is encouraged. Charitable registration number: 118870757RR0001 ISBN 978-1-897436-56-1

August 2011; Revised January 2012, October 2013