

# Drinking, Drugs, and Driving



**Community Legal  
Information**  
Empowerment Through Knowledge

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# Introduction



This publication explains the laws about driving and alcohol/drug use on PEI. These laws apply to all kinds of vehicles. For example, cars, aircrafts, ships, motorcycles, snowmobiles, ride-on lawnmowers, and others.

This publication is for people who have already been charged with an offence, but it is useful information for anyone with a driver's license.

# About Us




Community Legal Information is a registered charity. We provide plain-language legal information and low-cost lawyer referrals.

## Community Legal Information

 [www.legalinfopei.ca](http://www.legalinfopei.ca)

 [info@legalinfopei.ca](mailto:info@legalinfopei.ca)

 902-892-0853



**The information in this publication is not legal advice and does not replace guidance from a lawyer.**

# Before You Are Charged

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## Tips for when police stop you:

- Stay calm.
- Do a drug or alcohol test if police ask you to.
- Do not sign a legal document unless you understand it and agree with it.
- Speak with a lawyer before answering a police officer's questions, unless you are in an accident. If you are in an accident, you must answer questions for an accident report.

## Tips for when you are arrested or detained:

Speak with a lawyer before answering questions. Police must let you have a confidential conversation with a lawyer. If you are at the police station, this is usually a phone conversation.

Ask police services to call PEI Legal Aid's 24/7 free emergency phone service. The phone number for this service is not public. All PEI police services have this number.

Police will call it for you if you:

- Do not have a lawyer, or
- Can't contact your lawyer, or
- Can't afford a lawyer.

## **If you think police are not respecting your rights:**

- Stay calm.
- See page 10 about police conduct. See page 11 about reporting misconduct.

# **The Law and Drinking, Drugs, and Driving**

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A **charge** is a police accusation that you committed an offence. An **offence** is a crime. The *Criminal Code of Canada* lists offences about driving and alcohol/drugs. Any offence listed in the *Criminal Code* is a criminal offence.



**Drivers under 22 and new drivers must not have any alcohol in their blood when they drive.**

# What is impaired driving?

**Impaired driving** means driving while your ability to drive is affected by drugs, alcohol, or both. Impaired driving is always an offence.

# What is impaired over the legal limit?

**Impaired over the legal limit** means consuming more than the legal limit of alcohol or any other drug within two hours of driving. Being impaired over the legal limit is a separate offence from impaired driving.

There are different legal limits for different substances. Police use a variety of tests to see if you are above a legal limit.

Some of the legal limits are:

- Alcohol: Blood-alcohol concentration of 80 milligrams or more per 100 milliliters of blood.
- Cannabis: More than 2 nanograms of THC per milliliter of blood.
- Combined alcohol and cannabis: 50 milligrams or more of alcohol per 100 milliliters of blood and 2.5 nanograms or more of THC per milliliter of blood.
- GHB: 5 milligrams or more per liter of blood.
- LSD, psilocybin, magic mushrooms, ketamine, PCP, cocaine, methamphetamine, or heroin: any detectable amount.

# Why did I get charged?

You may have been charged because you:

- Failed a drug or alcohol test.
- Drove impaired.
- Injured or killed someone because you drove impaired.

Police may charge you with an offence about drugs or alcohol even if:

- Your vehicle is parked. Police may charge you if you are in the driver's seat or around your vehicle with the keys in your pocket or bag.
- You are in your house, but police have reason to believe you were driving in the last two hours. For example, police have reason to believe you were involved in a car crash while under the influence.
- You are on private property. For example, a parking lot, driveway, or backyard.

# What if I refuse to do a drug or alcohol test?

You may be charged for refusing to follow a police demand. This is a criminal offence. A court will decide if you had a reasonable excuse for refusing. It is hard to show a reasonable excuse.

# What are the rules for drug or alcohol tests?

## Standardized Field Sobriety Test

A Standardized Field Sobriety Test is a physical coordination test that assesses a person's sobriety. For example, you may be asked to walk in a straight line or touch your nose.

A Standardized Field Sobriety Test may be done on the side of the road.

Police must have reason to ask you to do a Standardized Field Sobriety Test. For example, if you are agitated, have been driving erratically, or your speech patterns are abnormal.

## Roadside SoToxa Test

A **roadside SoToxa test** is a saliva test to check for cannabis impairment.

Police must have a reason to ask you to do a SoToxa test. For example, your speech is slow and slurred, your eyelids are droopy, and there is an odour of recently burned cannabis.

You do not have the right to talk to a lawyer before the test.

## **Roadside Breath Test**

A **roadside breath test** is a test to check for alcohol impairment. A roadside breath test is not a breathalyzer.

In some cases, police do not need a reason to ask you to do a roadside breath test.

You do not have the right to talk to a lawyer before the test.

## **Tests at a Police Station**

Police may demand that you do tests at the police station. Tests may include a breathalyzer test, a blood test, a saliva test, or a physical exam by a certified drug recognition examiner.

Police may also take you to a hospital for a blood sample. A blood sample must be taken by a medical practitioner.

You have the right to talk to a lawyer before deciding to take the breathalyzer test or give a blood sample. You must be given a chance to speak to a lawyer in private, usually on the phone.

Police must have a reason to ask you to do extra testing at the police station. For example, if you are agitated or your speech patterns are abnormal or if you failed a roadside test.

# Police Conduct

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## What are police allowed to do?

Police are allowed to:

- Stop your car to check that you are sober. Police do not need a reason to check that you are not impaired by alcohol or drugs.
- Look inside your vehicle.
- Use a flashlight at night to see inside your vehicle.

Police are allowed to search your vehicle if:

- You give them permission, or
- They have a search warrant, or
- Your vehicle may have evidence of an offence under the *Liquor Act*, or
- They have reason to believe your vehicle has evidence of a crime that could be removed or destroyed if they waited for a search warrant.

## What about my rights?

You have rights protected by the *Charter of Rights and Freedoms*. Police must respect these rights. If police do not respect your rights, get legal advice from a lawyer.

# What if I have a complaint about my experience with the police or RCMP?




You can make a complaint about an officer's conduct by contacting the local RCMP or police station where they work.

You can also make a complaint to the Office of the Police Commissioner of PEI or the Civilian Review and Complaints Commission for the RCMP.

The [Office of the Police Commissioner of PEI](#) reviews complaints about Charlottetown Police Services, Summerside Police Services, and Kensington Police Services. Complaints must be made within one year of the incident.

The [Civilian Review and Complaints Commission for the RCMP](#) (CRCC) reviews complaints about the on-duty conduct of RCMP members. Complaints must be made within one year of the incident.

## Office of the Police Commissioner of PEI




-  [www.policecommissioner.pe.ca/making-complaint](http://www.policecommissioner.pe.ca/making-complaint)
-  [office@policecommissioner.pe.ca](mailto:office@policecommissioner.pe.ca)
-  902-368-7200; 1-877-541-7204

## Civilian Review and Complaints Commission for the RCMP (CRCC)

-  [www.cccc-ccetp.gc.ca/en/make-complaint](http://www.cccc-ccetp.gc.ca/en/make-complaint)

The [Human Rights Commission](#) investigates complaints about discrimination based on grounds protected by the *Human Rights Act*. Protected grounds include colour, race, ethnic or national origin, age, gender expression or gender identity, sexual orientation, political belief, disability, religion, and more. You must file the complaint within one year of the incident.

### **PEI Human Rights Commission**

-  [www.peihumanrights.ca](http://www.peihumanrights.ca)
-  [contact@peihumanrights.ca](mailto:contact@peihumanrights.ca)
-  902-368-4180; 1-800-237-5031

## **After a Charge**

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### **What are the penalties for impaired driving or impaired driving over the legal limit?**

Under provincial legislation, police may immediately:

- Take away your vehicle.
- Suspend your driver's license.

In most cases, your license will stay suspended for 90 days.

If you are found guilty in court, you may be fined and/or imprisoned. Penalties vary depending on:

- The alcohol or drug concentration.
- If it is your first or a repeated offence.
- There are concerning circumstances. For example, if there were children in the vehicle.
- If you killed or injured another person.

## **What if I need to drive for work?**

If your license is suspended, you can't legally drive.

## **I was charged with driving under the influence. What now?**

After you are charged:

- Carefully read any tickets or papers the police gave you. Do not change them or make notes on them. Keep the tickets or papers in a safe place.
- Get legal advice from a lawyer as soon as possible. Bring any tickets or papers the police gave you.


# How can I get legal advice?

See if you are eligible for Legal Aid. Legal Aid provides free legal advice and representation to people who are eligible. Eligibility is based on income. Contact Legal Aid to see if you are eligible.

If you can afford it, it is a good idea to hire a lawyer. When you contact a lawyer, you can ask them how much it would cost them to take on your case. You can ask them to do a short consultation before you hire them. You can ask them for a payment plan, so you do not have to pay all the fees at once.


Use our Lawyer Referral Service (LRS). The LRS provides a short consultation with a lawyer for a small fee. The LRS is not an emergency service. It may take up to 30 days to have the consultation with the lawyer. This service may not be for you if you have a court date soon.

## Lawyer Referral Service

 902-892-0853

## PEI Criminal Legal Aid

 Charlottetown: 902-368-6043

 Summerside: 902-888-8219

## What questions should I ask a lawyer?

You can ask a lawyer anything. Usually, everything you discuss with a lawyer is confidential.

A few questions you may want to ask the lawyer are:

- How can you help me? What are you able to do as my lawyer?
- How much will it cost for you to defend me? Can you offer a payment plan?
- Is there any benefit to pleading guilty in this case?
- What are my chances of avoiding a conviction?
- Is there anything I can do to get a lesser sentence?

## Can I represent myself?

Yes, but it is not advised. Representing yourself in court is very difficult. It is much better to have a lawyer for this kind of case.

If you have to represent yourself, read our publications *Defending Yourself in Criminal Court* and *Criminal Trial Procedure*.

# After a Conviction

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A **conviction** is a court decision that a person is guilty of a criminal offence.

## Will I have a criminal record?

Yes. If you are convicted, you will have a criminal record. The number of years the conviction stays on your record depends on the situation. But it will likely be a long time.

## What is a record suspension?

A **record suspension** removes a person's criminal record from the Canadian Police Information Centre (CPIC) database and some local databases. A record suspension used to be called a pardon.

A record suspension does not:

- Erase a conviction. The conviction is still there, but it is set aside.
- Guarantee entry or visa privileges to another country.

# How do I apply for a record suspension?

You can apply for a record suspension after a period of time without another charge or conviction. Follow the guide to apply for a record suspension with the [Parole Board of Canada](#).

## Record Suspension Guide

**i** [www.canada.ca/en/parole-board/services/record-suspensions/step-1-get-your-criminal-record.html](http://www.canada.ca/en/parole-board/services/record-suspensions/step-1-get-your-criminal-record.html)

# How do I get my license back?

You do not automatically get your driver's license back at the end of the suspension period. You must re-apply and participate in the Ignition Interlock Program (IIP).

The IIP is mandatory for anyone with a drinking and driving conviction. You can only drive a vehicle with an ignition interlock device. You must blow into the device each time before starting your vehicle. If the recorded blood alcohol concentration (BAC) is above the limit, your vehicle will not start. The interlock device also monitors your BAC while you are driving. The length of the program depends on the conviction(s). You must pay fees as part of this program.

There may be more steps to getting your license back, depending on the conviction.

For more information, visit the [PEI Government's website](#).

### **Ignition Interlock Program**

**i** [www.princeedwardisland.ca/en/information/transportation-infrastructure-and-energy/ignition-interlock-program](http://www.princeedwardisland.ca/en/information/transportation-infrastructure-and-energy/ignition-interlock-program)

## **I do not have citizenship. Will I get a removal order?**

A **removal order** is a notice that you are legally required to leave the country. The Immigration and Refugee Board (IRB) or the Canadian Border Services Agency (CBSA) may give a removal order.

You may get a removal order if you are convicted of a serious crime.

A **serious crime** is a crime that is considered severe under the *Immigration and Refugee Protection Act*. Violent crimes and impaired driving are examples of serious crimes.

# Glossary

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## **Charge**

A police accusation that you committed an offence.

## **Conviction**

A court decision that a person is guilty of a criminal offence.

## **Impaired driving**

Driving while your ability to drive is affected by drugs, alcohol, or both.

## **Impaired over the legal limit**

Consuming more than the legal limit of alcohol or any other drug within two hours of driving.

## **Offence**

A crime.

## **Record suspension**

Removal of a person's criminal record from the Canadian Police Information Centre (CPIC) database and some local databases. A record suspension used to be called a pardon.

## **Removal order**

A notice that you are legally required to leave the country.

**Roadside breath test**

A test to check for alcohol impairment at the side of the road.

**Roadside SoToxa test**

A saliva test to check for cannabis impairment.

**Serious crime**

A crime that is considered severe under the *Immigration and Refugee Protection Act*. Violent crimes and impaired driving are examples of serious crimes.

**Standardized Field Sobriety Test**

A physical coordination test that assesses a person's sobriety.

# Support Services

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## Community Legal Information

-  [www.legalinfopei.ca](http://www.legalinfopei.ca)
-  [info@legalinfopei.ca](mailto:info@legalinfopei.ca)
-  902-892-0853




We provide legal information, publications, public speakers, and presentations. Our services are free and confidential. We also offer the Lawyer Referral Service, which provides short legal consultations for a small fee.

## PEI Criminal Legal Aid

-  Charlottetown: 902-368-6034
-  Summerside: 902-888-8219




Provides free legal representation and help for some criminal law issues. You must meet certain criteria to qualify for this service.

## John Howard Society

-  [www.johnhowardsocietypei.com](http://www.johnhowardsocietypei.com)
-  [johnhowardsocietypei@jhs.ca](mailto:johnhowardsocietypei@jhs.ca)
-  902-566-5425




Supports people who are at risk or involved with the criminal justice system. The Society can help with the transition from institutional to community living.

## Open Door Outreach

-  [www.opendoorpei.ca](http://www.opendoorpei.ca)
-  [office@opendoorpei.ca](mailto:office@opendoorpei.ca)
-  902-628-6826

Works with PEI women who are incarcerated and addicted. Services include personal mentoring, group programs, and assistance with post-release transitions into the community.

## PEI Provincial Court

-  Charlottetown: 902-368-6030
-  Summerside: 902-888-8190
-  Georgetown: 902-652-8990

# More Resources



Community Legal Information also offers the following publications:

- *[Defending Yourself in Criminal Court](#)*
- *[Criminal Trial Procedure](#)*
- *[Sentencing](#)*

All publications are free and can be found on our website at [www.legalinfopei.ca](http://www.legalinfopei.ca). Call **902-892-0853** or **1-800-240-9798** for print copies.



Community Legal Information is a registered charity that receives funding from Justice Canada, the Law Foundation of PEI, the Law Society of PEI, the PEI Department of Justice and Public Safety, and other sources. Community Legal Information provides understandable and useful information about the law and the justice system in Prince Edward Island.

For more information on other legal topics, visit [www.legalinfopei.ca](http://www.legalinfopei.ca), email us at [info@legalinfopei.ca](mailto:info@legalinfopei.ca), or call us at **902-892-0853** or **1-800-240-9798**. You can also find us on social media.

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