

# Cannabis and Drug Impaired Driving – *Just the Facts*

Did you know it has been illegal in Canada to drive while impaired by drugs since 1925?

**Remember** – PEI laws about drinking alcohol and driving are **the same** for driving when using cannabis. The provincial penalties for driving drunk and driving high are also the same. **Drive Sober!**

Now that cannabis is legal in Canada, the *Criminal Code of Canada* and the *PEI Highway Traffic Act* have been updated.

Important things to know about cannabis and driving a motor vehicle\*:

- It is illegal to use cannabis in a motor vehicle\*, **even if it is not moving or is unable to move**. This is true even if you are on private property.
- It is illegal for a passenger to use cannabis in your vehicle.
- There are extra penalties if you use cannabis in a vehicle when a person under 18 is present.
- If you have cannabis in your vehicle, it must be in a closed package and out of reach of anyone in the vehicle.

\* A motor vehicle includes **any** motorized vehicle, including cars, aircraft, ATVs, snowmobiles, ride-on lawnmowers, motor boats, etc. We will refer to motor vehicles as “vehicles”. If your home is a vehicle, such as a houseboat, a motor home, or a camper, and it is parked or moored in a secure spot, you can consume cannabis. If your home is in motion or unsecured, you cannot consume cannabis.

There are three new criminal driving offences\* based on **blood drug concentration (BDC)**. If a police officer believes a driver is impaired by cannabis, the driver may be tested for THC\* levels in their blood.

\* An offence is an action or inaction that is considered a crime in Canada.

\* Tetrahydrocannabinol (THC) is the psychoactive part of cannabis – it is the chemical that makes people feel high.

Within two (2) hours of driving, you could be charged if:

- You test positive for a low BDC (2 nanograms\* up to 5 nanograms of THC per ml of blood);
- You test positive for a higher BDC (5 nanograms or more of THC per ml of blood **or** any level of drugs like LSD, ketamine, cocaine, or methamphetamine);
- You test positive for a combination of a low blood alcohol concentration (50 mgs of alcohol per 100 ml of blood) and a low BDC (2.5 nanograms or more of THC per ml of blood) at the same time.

\*A nanogram (ng) is one billionth of a gram.

Any level of alcohol, cannabis, or other drugs can impact your ability to drive safely.

Exceptions for blood drug concentration **may** be made for people who do not appear to be impaired and who use cannabis for medical purposes under the supervision of a doctor or nurse practitioner. However, it is illegal to drive when you are impaired by a drug, even if you have a prescription.

# How will the police know if I am driving impaired?

If you are in a vehicle (whether it is moving, not moving, or unable to move) and a police officer has enough grounds to believe that you are impaired by drugs and/or alcohol, the officer will demand that you do an impaired driving test. If you say no, you can be charged with an offence with the same penalties as driving while impaired.

Police can test to see if you are impaired by drugs or alcohol in several ways:

- Standardized Field Sobriety Tests (SFST)
- Approved Screening Devices (ASD)
- Drug Recognition Experts (DRE)
- Blood tests

## Standardized Field Sobriety Test (SFST)

Standard Field Sobriety Tests are commonly done at roadside checks. An officer will ask you to do tests that assess your mental and physical capacity to drive. The tests may include:

1. **Eye test:** following an object with your eyes.
2. **Walk-and-Turn test:** walking, heel-to-toe, in a straight line and back again.
3. **One Leg Stand Test:** standing on one leg.

If you show signs of being impaired – such as red eyes, slowed reaction time or speech - the officer may demand a saliva sample to test for THC. If the test is positive or if they believe that you are impaired even if you pass the roadside tests, the officer can take you to the police station.

You may be recorded while you do the tests.

## Approved Screening Device (ASD)

Justice Canada chose the *Draeger Drug Test 5000* as the approved drug screening machine to test for cannabis intoxication. This machine can measure if you have used cannabis in the last **6 hours** by testing saliva for THC.

Police can demand a saliva sample up to two hours after you operate a vehicle.

If you test positive for 2 ngs or more of THC and you fail the standardized field sobriety test, you can be charged with impaired driving. If you test negative for THC, you can still be charged with impaired driving if you show signs of being impaired when driving. If you are under 22 or a graduated driver, you cannot have **any** drugs or alcohol in your system.

Did you know the saliva test also detects cocaine and methamphetamine?

## Drug Recognition Expert (DRE)

Some police officers are Drug Recognition Experts. They are trained to know the effects of drugs. They are also trained to take samples of bodily fluids, like urine or blood, to test for drugs.

The DRE officer will interview you at the police station. They will take your blood pressure and temperature. They will check your pulse, pupil dilation, and muscle tone. You will also be asked to do tests to assess your capacity to drive.

If the DRE officer believes you are impaired by a drug, the officer can demand a blood or urine sample to confirm your impairment. If you refuse to do the tests or to give samples, you will face the same consequences as an impaired driver who failed the tests.

## Blood Samples

The police may demand a blood sample to test for drugs and/or alcohol. Unless there are medical reasons why you cannot have blood taken, refusing to provide a blood sample will mean similar consequences to impaired driving.

On PEI, blood samples are collected by a medical professional, such as a nurse.

## Young People and Inexperienced Drivers

Young people **under 22** and individuals who are in the graduated drivers' program are not allowed to have **any level of alcohol or drugs in their blood stream when driving**. \* If an officer finds drugs or alcohol in your system, they will immediately take your license and you will not be allowed to drive for 90 days. Your vehicle will also be impounded for 30 days.

If you refuse to provide breath or saliva samples, or if you refuse to do the Standard Field Sobriety Test, you will be penalized in similar ways to failing the tests.

Young people under 18 found guilty of impaired driving will receive penalties guided by the *Youth Criminal Justice Act*.

Exceptions **may** be made for people who do not have symptoms of being impaired and who use cannabis for medical purposes under the supervision of a Doctor or Nurse Practitioner. However, it is illegal to drive when you are impaired by a drug, even if you have a prescription.

\* If you completed the graduated driver program and you turned 19 before the PEI *Highway Traffic Act* was updated (June 11, 2018 or earlier) the rules for adults will apply.

## What are the penalties for drug impaired driving?

With the legalization of cannabis, new offences and their penalties have been added to the *Criminal Code of Canada* and the PEI *Highway Traffic Act*. The *Criminal Code of Canada* outlines criminal acts in Canada, while the PEI *Highway Traffic Act* states rules and penalties specific to Prince Edward Island. These two sets of laws protect Canadians from impaired drivers.

All Canadians who drive while drunk or high face the same criminal charges. For drug-impaired driving, the *Criminal Code of Canada* states the following penalties:

Criminal Code of Canada OFFENCES	1 <sup>st</sup> Incident	2 <sup>nd</sup> Incident	3 <sup>rd</sup> Incident
<b>Low Blood Drug Concentration</b> (2ng up to 5ng of THC per ml of blood)	Maximum \$1,000 fine	Maximum \$1,000 fine	Maximum \$1,000 fine
<b>High Blood Drug Concentration</b> (5ng or more of THC per ml of blood or the presence of any other illegal drug)	Minimum \$1,000 fine	Minimum of 30 days in jail	Minimum of 120 days in jail

Criminal Code of Canada OFFENCES	1 <sup>st</sup> Incident	2 <sup>nd</sup> Incident	3 <sup>rd</sup> Incident
<b>Low Blood Drug Concentration and a Low Blood Alcohol Concentration</b> (50 mg of alcohol per 100 ml of blood, combined with a THC level greater than 2.5 ng per ml of blood)	Minimum \$1,000 fine	Minimum of 30 days in jail	Minimum of 120 days in jail

The *Criminal Code of Canada* says the maximum penalty for a less serious impaired driving charge, like driving with a **Low BDC**, is 18 months in jail. The maximum penalty for a more serious charge, like driving with a **High BDC**, is 5 years in jail.

The maximum sentence for impaired driving that injures another person is 14 years in prison. The maximum sentence for impaired driving that causes death is a life sentence in jail.

Each province and territory has laws about driving in addition to the *Criminal Code of Canada*. On PEI, this Act is called the *Highway Traffic Act*.

**You can be charged under the *Criminal Code of Canada* and face penalties under the *PEI Highway Traffic Act* at the same time.**

For a full list of impaired driving penalties on PEI, visit <https://www.princeedwardisland.ca/impaireddriving>. **Any penalties you would receive for driving drunk are the same for when you drive impaired.**

Some of the *PEI Highway Traffic Act* penalties include:

- 24-hour roadside suspension of your driver's license;
- cancellation of your driver's license;
- 90 day driving prohibition;
- 30 day impoundment of your vehicle (all associated fees paid by you);
- fines;
- jail time.

**Did you know PEI gives jail sentences in 91 per cent of impaired driving cases?** This is almost ten times higher than the national average.

## Conclusion

The safest choice is to drive sober. As well as the criminal and/or administrative penalties listed in this resource, an impaired driving conviction can result in increased insurance rates, fees for towing and impoundment of your vehicle, fees associated with the ignition interlock program, and, if another person or their property was hurt or damaged, a civil law suit.

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