



Type of law:
CRIMINAL LAW

A 2019 Alberta Guide to the Law

Impaired Driving



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IMPAIRED DRIVING



WHAT COUNTS AS "IMPAIRED"?

You can be impaired by using either alcohol or drugs. This includes prescription drugs and any other chemical agent that may cause impairment

WHAT IF I REFUSE TO BLOW?

Refusing to blow into a roadside screening device is a criminal offence and you will be charged with "refusal to blow". You will receive the same penalty as if you did give the sample and were found to be impaired.



WHEN CAN I CONTACT A LAWYER?

The right to contact a lawyer is suspended for the roadside screening test. However, you do have the right to speak with a lawyer before taking the breathalyser test.

PENALTIES



MANDATORY LICENSE SUSPENSION

FEDERAL SUSPENSION:

1st offence = 1-3 years
2nd offence = 2-10 years
Subsequent offences = minimum 3 years

PROVINCIAL SUSPENSION:

1st offence = 1 year
2nd offence (within 10 years) = 3 years
Subsequent offences (within 10 years) = 5 years



IGNITION INTERLOCK

The program is **MANDATORY IF** you were convicted of refusing to provide a breath sample or an impaired driving offence in Alberta

COSTS

Installation fee = \$145
Removal fee = \$50
Monthly Rental fee = \$95
Application fee = \$63+
"Planning Ahead" course = \$315
"Impact" course = \$925



OTHER PENALTIES

You may also receive a fine and/or jail time.



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IMPAIRED DRIVING, OVER 79, AND REFUSAL TO BLOW OR PROVIDE A BLOOD SAMPLE

What is the law?

There are four main alcohol-impaired driving related offences:

1. Impaired driving within two hours of operating a “conveyance”
2. “Over 79” within two hours of operating a “conveyance”
3. Immediate Roadside Suspension, and
4. Refusal or failure to blow or provide a blood sample.

1. **Impaired Driving:** It is an offence to be impaired within two hours of ceasing to:

- drive or have care or control of a motor vehicle;
- navigate, assist in the navigation of, or have care or control of a vessel or aircraft;
- in respect of railway equipment, to participate in the direct control of its motion, or have care or control of it as a member of the equipment’s crew, as a person who acts in lieu of a member of the equipment’s crew by remote control, or otherwise.
- A conveyance means a motor vehicle, a vessel, an aircraft or railway equipment.

2. **“Over 79”:** It is an offence for a person have a blood alcohol level equal to or exceeding 79 milligrams of alcohol in 100 millilitres of blood (79 mg%) within 2 hours of ceasing to operate a conveyance.

3. **Immediate Roadside Suspension Prohibition:** it is a provincial offence to operate a motor vehicle with blood alcohol level between 50 mg% and 79.9 mg%.

4. **Refusal or failure to blow or provide a blood sample:** it is an offence to refuse to blow or give a blood sample without a reasonable excuse when there is a lawful demand for you to do so.

What is meant by “impaired”?

Using either alcohol or drugs can impair your ability to drive. “Drugs” is given a broad but reasonable meaning. This means that drugs include both prescription and non-prescription drugs, and any other chemical agent that may cause impairment.



Courts are likely to consider glassy or bloodshot eyes, unsteady walk, slurred speech, irregular driving pattern, or a smell of alcohol on the breath as common physical signs of impairment. While these are the most common signs of impairment, there may be many others.

Any combination of drugs and alcohol can constitute impairment. The legal test for conviction is whether your ability to operate a vehicle is impaired to “any degree”.

it is a less serious offence to have between **2 nanograms (ng) and 5 ng of THC per ml of blood**. It is a more serious offence to have **5 ng of THC or more per ml of blood**.

What is meant by “care and control”?

A person may be in care and control of a motor vehicle if the person has the ability to set the vehicle in motion, or where there is a risk that the person could put the vehicle in motion either on purpose or by accident.



If someone is found in the driver’s seat of a motor vehicle, care and control is presumed unless it can be shown that he or she did not occupy that seat for the purpose of setting the vehicle in motion. Even if the person is not driving or not in the driver’s seat (ex: sitting in the passenger’s seat), that person may still be found to be in care and control, if it is proven that he or she was using the motor vehicle in such a way that it may be set in motion. So, there is a danger of being found guilty even if a person is just sleeping in a motor vehicle.



Will a person be arrested if suspected of committing any one of these offences?

Yes, if an officer has reasonable grounds to suspect that a person has alcohol or a drug in their body and that person has, within the preceding three hours, operated a conveyance, the officer can demand the person perform a physical coordination test, provide a breath sample, or provide a sample of a bodily substance as required, and to accompany a peace officer for any of the aforementioned purposes.

What is a roadside screening device?

A roadside screening device is a portable instrument that is kept in many police cars. The device gives an informal measurement of a person’s blood alcohol level. It is not against the law to fail a roadside screening device test but failing this test will give the officer reasonable and probable grounds to further detain the person and demand a formal breath or blood sample as soon as possible.

A person who refuses a roadside screening device test may be charged with “refusal to blow”.

When lawfully stopped, if an officer has a roadside screening device at hand, they may require the person who is operating a motor vehicle to immediately provide a breath sample even if they have no reasonable suspicion that alcohol is present within the suspect.

What is the approved instrument or breathalyser test?

The approved instrument is often referred to as the “breathalyser.” A “breathalyser” is a machine that measures someone’s blood alcohol level. Anyone operating a motor vehicle who is lawfully stopped by police can be required to provide a breath sample.

The demand and breath samples must be made and taken immediately or as soon as practicable once an officer has reasonable and probable grounds for arrest. The test is generally done either at the police station or at a mobile testing station.

A person will be required to provide at least two samples of breath by blowing into the mouthpiece of a breathalyser machine. More samples than two can be demanded as it is up to the breathalyzer technician to determine what is a suitable sample. The samples must be taken at least 15 minutes apart.

If the test indicates that a person’s blood alcohol content exceeds the new legal limit of 79 milligrams of alcohol in one hundred millilitres of blood (79 mg%), the breathalyser technician will complete a Certificate of Qualified Technician. If someone is charged with being “over 79”, a copy of this certificate will be given to him or her. It is this certificate that is generally allowed as evidence at trial to prove that the blood alcohol level was over the legal limit.

The test results shown on the certificate are presumed to be the actual blood alcohol level and will be accepted at trial unless you can provide evidence that shows that the test results were not accurate due to a malfunctioning or improperly operated machine together with proof that your blood alcohol level did not exceed 79 mg%. Alternatively, in the event you consumed alcohol after operating your vehicle, you may rebut the allegation by calling evidence that, while the test results themselves were accurate, you were under the limit at the time of actual operation and it was your post driving consumption that put you over at the time of testing.

Refusing or failing to provide "an adequate" breath sample is itself a criminal offence.

When can an officer demand a blood sample?

If an officer has reasonable grounds to believe that, because of any physical condition, a person may be incapable of providing a breath sample, or it would be impractical to get a breath sample, he or she may demand that a blood sample be taken. These samples will then be used to determine the level of alcohol in the blood. If a blood sample shows a blood alcohol level above the legal limit, a person will be given a Certificate of Analysis and will be charged with an “over 79” offence.



These samples of blood can only be taken by, or under the direction of, a qualified medical practitioner who is sure that taking the samples will not endanger the person's life or health.

A person must be able to give informed consent to the taking of the blood samples (he or she must have enough information about how it works and be able to agree to give samples). If someone is unable to give informed consent due to a mental or physical condition, such as injuries from a car accident, a police officer may be able to get a judge to give her permission to take the samples. These samples will be taken under the supervision of a qualified medical practitioner.

If you refuse a demand for a blood sample, you can be charged with failure to comply with a demand if you do not have a reasonable excuse.

How can I be charged with a refusal to blow or give blood samples?

If someone refuses to comply with a valid demand for a roadside screening test, a breathalyser test, or a blood sample, he or she can be charged with refusal under section 320.15 (1) of the *Criminal Code*. Having a "reasonable excuse" is a defence to this charge.

Generally, a "reasonable excuse" is anything which makes compliance either extremely difficult or puts the person's health substantially at risk.

If convicted of refusal to blow or give a blood sample, you will receive similar penalties and driving prohibition/suspensions as if you did give a sample and were found to be "over 79".

Can a person be convicted of both impaired and "over 79"?

No. While a person can be tried and found guilty of both, the rule against double punishment means that there would be an automatic judicial stay on one.

Can a person be convicted of both refusal to blow and impaired?

Yes. A person can be convicted of both refusal to blow AND impaired driving if the evidence proves they are guilty of both. The legal consequences of being convicted of refusal are the same as for impaired driving or driving "over 79".

A PERSON'S RIGHT TO CONTACT A LAWYER

When does a person have the right to contact a lawyer?

A person does NOT have the right to contact a lawyer before taking the roadside screening test. The right is suspended for the roadside demand.



A person does have the right to speak to a lawyer before providing a breath sample into a “breathalyser” or “intoxilyzer” conducted either at roadside mobile testing stations or at a police station.

What must the police do to help a person to contact a lawyer?

When they arrest or detain someone, the police must inform the person of the right to contact a lawyer and provide information about Legal Aid and duty counsel. The information must be complete and the police must explain how to reach these services which provide free and immediate legal advice. Even if a person cannot afford to hire a lawyer, he or she still has the right to speak to a lawyer for free before taking any tests.

The police must give a reasonable chance and a reasonable amount of time to contact a lawyer. Normally, this means that the police will put a person in a room or roadside van alone with a telephone, a phone book, and a legal aid or duty counsel list. These lists provide the names of several lawyers who a person can speak with immediately, 24 hours a day, and free of charge.

What if a person’s right to contact a lawyer has been denied?

If this right has been denied, the evidence of the breath or blood samples may not be allowed as evidence at trial because of the violation of *Charter* rights. But evidence obtained before arrest or detention may still be enough to convict a person of impaired driving.

PENALTIES FOR IMPAIRED RELATED OFFENCES



Impaired driving, impaired driving causing bodily harm, and “over 79” are all “hybrid offences”, meaning that the Crown may proceed by summary conviction or by indictment. In deciding how to proceed, the Crown will consider any past related criminal record the accused may have as well as the circumstances of the offence. Each time someone re-offends, the Crown will likely seek a more serious penalty. Prior to pleadings, the prosecutor will inform the accused of how the Crown will be proceeding.

Impaired driving causing death is an indictable offence.

In Alberta, for a first refusal conviction, the minimum punishment is a fine of \$2000 along with a one-year driving prohibition. For a first impaired offence, the minimum punishment depends on the blood alcohol level (see “Changes to Minimum and Maximum Penalties” on page 11).

Additionally, the judge may sentence the person to imprisonment, even for a first offence. For a summary conviction, the imprisonment term is up to 18 months. For an indictable offence, the imprisonment term is up to 10 years. For impaired driving causing death, the imprisonment term is up to life imprisonment.

If I am given a jail sentence, do I have any other options?

If a jail term is given of 90 days or less, it may be possible to be served on an intermittent basis. This means serving the sentence on weekends or on another appropriate periodic basis during the week. In deciding whether or not to allow this, the judge will take into account the circumstances of the offender, including work, children, or school schedules.

LICENCE SUSPENSIONS

There are three types of licence suspensions given in Alberta upon charge and/or conviction.



Federal driving prohibitions

When imposing a penalty for an impaired driving, “over 79”, or refusal charge, the judge must impose a federal driving prohibition. For a first offence, it will be between 1 and 3 years. For a second conviction, the prohibition will be between 2 and 10 years. For each conviction after the second conviction, a person’s licence will be suspended for at least 3 years. The suspension can be longer than 3 years if the impaired driver caused bodily injury or death to another person. In some cases the offender may be allowed to operate a motor vehicle if it is equipped with an alcohol ignition interlock device.



Provincial driving suspensions

In addition to the federal prohibition, there is also a provincial suspension. A person found guilty of an impaired, “over 79”, or refusal charge, will be disqualified from holding a driver’s licence. For a first offence, disqualification is for 1 year. If convicted of another impaired related charge within 10 years, the new provincial disqualification will be for 3 years. If found guilty of 2 offences within 10 years, provincial disqualification will be for a period of 5 years.

The provincial driving disqualification and the federal prohibition run concurrently. For example, if someone receives a federal prohibition of 1 year and a provincial disqualification for a period of 3 years, both will start immediately from the time the person is found guilty. In 1 year, the federal prohibition will end, but 2 years will remain on the provincial disqualification.

Automatic licence suspension when charged

The *Traffic Safety Act* allows the provincial government to automatically suspend a person’s licence if the person blows over “.05” into the roadside screening device or refuses to blow.

The officer will require the accused to surrender his or her driver's licence immediately at the side of the road.

- For a first offence, the automatic suspension is for 3 days and a 3-day vehicle seizure.
- For a second offence, 15-day suspension and 7 day seizure.
- Each offence thereafter, 30-day suspension and 7 day seizure.

Alberta Administrative Licence Suspension

As of April 9, 2018 all drivers who are reasonably believed to be criminally impaired by either alcohol, drugs, or refusal to provide a breath or fluid sample will have the following sanctions imposed on them:

- Immediate 90-day licence suspension;
- Immediate 3-day vehicle seizure for first offence, or 7-day seizure for subsequent offences;
- Mandatory remedial education;

This suspension is in addition to all penalties resulting from criminal charges.

THE IGNITION INTERLOCK PROGRAM



What is the Ignition Interlock Program?

The program allows people who have lost their driver's licence through a conviction for impaired driving or an "over 79" conviction, to regain conditional, and eventually full driving privileges upon completion of the program. Certain restrictions apply and specific eligibility criteria exist. The Alberta Transportation Safety Board administers the program.

When is it mandatory?

The program is mandatory for all drivers convicted of an "impaired driving", "over 79", or "refusal" who wish to regain their driving privileges. The program is mandatory for 1 to 5 years, depending on whether the person is a repeat offender or not.

Can I get an exemption from doing the Mandatory Ignition Interlock Program?

It is very difficult to get an exemption from the program.

You may be granted an exemption if it is not feasible to comply with the program. A valid reason would be that it is not medically possible for you to complete the ignition interlock program and a

doctor verifies that this is the case. Financial or occupational hardship are expressly excluded as possible grounds for an exemption.

To apply for an exemption, you must send an exemption letter that includes your driver's licence number or Motor Vehicle Identification Number (MVID), full name, address, telephone number, date of birth, and reason(s) why it is not feasible to comply with the requirement for an ignition interlock device. Exemptions will only be granted when you have completed all other reinstatement conditions other than the Ignition Interlock Program and road test.

Alberta Administrative Licence Suspension Ignition Interlock Program

Individuals serving an Alberta Administrative Licence Suspension must also complete the Alberta Administrative Licence Suspension Ignition Interlock Program for 1 year following a 90-day driving suspension. If they choose not to do the interlock program, then they will be suspended from driving for the entire year.

How does the program work?

An alcohol-sensing device is attached to the ignition of a vehicle. A person must blow into the device before starting his or her vehicle and/or while driving the vehicle. The person will be prevented from driving the vehicle if the device detects a pre-set level of alcohol on the driver's breath.

All program activity is recorded and monitored by the Transportation Safety Board. A driver who gets a "fail" or "warning" by the device, or who uses or handles the device inappropriately may have to appear before the Board. The Board may decide that the driver is not allowed to participate in the Ignition Interlock Program anymore, or that the driver needs to be enrolled in the program for a longer period of time.

The Board expects ZERO warnings or fails while the applicant is on the Ignition Interlock Program.

Criteria for the Ignition Interlock Program

- The Ignition Interlock Program is for section 320.14 and 320.15 convictions.
 - Persons convicted of impaired driving **causing bodily harm or death** are NOT eligible.
- The driver must be a resident of Alberta and be eligible for a Restricted Driver's Licence.
 - Even if the driver is not a resident, it may be possible for the driver to participate in the program → contact Driver Fitness and Monitoring at 780-427-8230.
- The driver must have already paid all overdue motor vehicle fines and served all other non-alcohol related suspensions (such as driving while a licence is suspended)

- If the driver is a **first-time offender**, he or she must take the “Planning Ahead” course before applying for the Ignition Interlock Program
- If the driver is a **repeat offender**, he or she must take the “Impact” course before applying

To be approved for exit from the program, the driver may not have any readings of “warning” or “fail” in the last 3 months of the program. After the suspension period ends, the individual must apply to have the Interlock device removed.

Program Costs

The cost of the Ignition Interlock Program is:

- An installation fee of \$145 (plus \$100 for heavy trucks/specialty vehicle) and a removal fee of \$50;
- A \$95/month rental fee;
- Application fee of \$63 and Registry Agent fee; and
- \$315 for the “Planning Ahead” course or \$925 for the “IMPACT” course



DRUG-IMPAIRED DRIVING OFFENCES

To correspond with the legalization of cannabis, the Government of Canada has introduced a series of changes to the *Criminal Code*.

The legislation creates three new drug-impaired driving related offences. All three look at whether an individual has a prohibited concentration of drugs in their system within two hours of driving.

The offences are:

- Between 2-5 nanograms (ng) of THC per millilitre of blood: This offence is for summary conviction and has a maximum \$1,000.00 fine.
- More than 5 ng of THC per millilitre of blood; Any detectable level of LSD, psilocybin, psilocin, ketamine, PCP, cocaine, methamphetamine, 6-mam; 5mg/L of GHB: If any of these quantities are in a person’s blood they face an offence punishable by either summary conviction or indictment.
 - First offences have a mandatory minimum \$1,000.00 fine.
 - Second offences have a mandatory minimum 30 days imprisonment.
 - Third and subsequent offences have a mandatory minimum 120 days imprisonment.
- Concurrently having more than 50 mg of alcohol per 100 ml of blood AND 2.5 ng of THC per ml of blood. This offence can be for either summary conviction or indictment.
 - First offences have a mandatory minimum \$1,000.00 fine.
 - Second offences have a mandatory minimum 30 days imprisonment.



III. Third and subsequent offences have a mandatory minimum 120 days imprisonment.

The maximum punishment for drug-impaired driving that does not cause bodily harm or death is 18 months imprisonment for summary offences and 5 years imprisonment for indictable offences.

The maximum punishment for drug-impaired driving that causes bodily harm will be 10 years by indictable offence.

Finally, the maximum punishment for drug-impaired driving that causes death will be life imprisonment.

Drug Testing

If police have reasonable suspicion someone has drugs in their body, they may demand an oral fluid sample to test for drug presence at the roadside. Oral fluid drug screeners can detect THC (the main component in marijuana), cocaine and methamphetamine in saliva. Reasonable suspicion is based on visible, physical facts and can include red eyes; muscle tremors; agitation; and unusual speech patterns.

Then if the officer has reasonable grounds to believe an offence was committed, for instance grounds can include a positive oral fluid test combined with other observed factors, they may require either a drug recognition and evaluation (DRE), or blood sample. DREs have a DRE trained officer identify the type of drug that is impairing the individual, to which they can testify in court.

Mandatory Alcohol Screenings

Arguably the most important change is the introduction of mandatory alcohol screenings. While police officers no longer need reasonable suspicion that the driver has alcohol in their body, they do still need the authority to have stopped the driver in the first place. Mandatory alcohol screening can only be used if you, as the driver, are in care and control of the vehicle, have been lawfully stopped, and if the police officer has the approved screening device at hand. Drivers who refuse to provide a breath sample can be charged with failure to blow.



Changes to Minimum and Maximum Penalties

There have been significant changes to how the penalty system is designed. Previously, the minimum penalty for any first-time offender who blew over 80 mg of alcohol in 100 ml of blood was \$1,000.00. The current system determines the minimum fine for first offences based on the blood alcohol level. From 80-119 mg the minimum fine is \$1,000.00. From 120-159 mg the

minimum fine is \$1,500.00. And for 160 mg and greater the minimum fine is \$2,000.00. For first offenders who refuse to blow the minimum fine is now \$2,000.00.

The mandatory minimum prison sentences for repeat offenders has not changed.

The maximum sentences have also changed. For offenders who did not cause bodily harm or death the maximum sentence has changed from 18 months on summary conviction to 2 years less a day. For indictment the maximum sentence has changed from 5 years to 10 years, which now allows for dangerous offender applications to be pursued.

For offences causing bodily harm, the new legislation allows the charge to be pursued by either summary conviction or indictment, rather than just indictment as under the previous system. This change recognizes that in some cases injuries are minor and proceeding under summary conviction would be the better option.

Finally, the maximum fine for dangerous driving causing death has been changed from 14 years imprisonment to life imprisonment.

Provincial Interlock Programs

The new legislation has also shortened how long individuals must wait before entering a provincial interlock program to end their driving prohibition. There is no longer a required 3 month waiting period for a first offence, although a judge has discretion to still require one. For a second offence the waiting period is 3 months, and all subsequent offences the waiting period is 6 months.

WHERE CAN I GET HELP OR MORE INFORMATION?



For information on the **Planning Ahead and Impact Courses** see the AMA website:

<http://www.ama.ab.ca/community-and-ama/alberta-impaired-drivers-program>

Alberta Transportation Safety Board (North Office) Main Floor, Twin Atria Building 4999 98 Avenue Edmonton, AB T6B 2X3	Contact: Ph: 780-427-7178 Fax: 780-422-9739
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For more information about driving offences, licence suspension, hearings, and appeals.

Elizabeth Fry Society of Edmonton 10523 100 Avenue NW Edmonton, AB T5J 0A8	Contact: Toll free: 1-866-421-1175 Web: www.efryedmonton.ab.ca
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The Elizabeth Fry Society of Edmonton is aimed providing at-risk women and girls with various programs and services. Programs include the Aboriginal Women's Program, Criminal Court Program, Employment Services Program, Financial Literacy Program, Legal Clinics, Imprisonment Programs, and youth programming. Services include smudging, laundry facilities, and drop-in workshops.

Lawyer Referral Service	Contact: Toll free: 1-800-661-1095
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When you call, you will speak to an operator and you will describe the nature of your problem to them. The operator will then provide you with the contact information for up to three lawyers who may be able to assist you. When contacting these referred lawyers, make sure to let them know that you were given their information by the Lawyer Referral Service. The first half hour of your conversation with a referred lawyer will be free and you can discuss your situation and explore options. **Note:** This free half hour is more for consultation and brief advice and is not intended for the lawyer to provide free work.

Legal Aid Society of Alberta Revillon Building Suite 600 – 10320 102 Avenue Edmonton, AB T5J 4A1	Contact: Toll free: 1-866-845-3425 Youth Criminal Defence Office: 780-422-8383 Web: www.legalaid.ab.ca
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The Legal Aid Society of Alberta functions to assist low-income Albertans with certain types of legal matters. Assistance is provided through information, referrals, advice, and/or representation, depending on what your matter is and which eligibility guidelines you meet.

Native Counselling Services of Alberta (NCSA) 10975 124 Street NW Edmonton, AB T5M 0H9	Contact: Ph: 780-451-4002
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NCSA provides numerous programs working to support and strengthen Aboriginal individuals and families. These programs include support in court, assistance with child/family service matters, housing and support for at-risk youth, and Aboriginal healing lodges. They do not provide therapy or counselling.

Student Legal Services – Criminal Law Project #203, 9924 106 Street NW Edmonton, AB T5K 1C7	Contact: Ph: 780-492-8244 Admin: 780-425-3356 Fax: 780-420-0065
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The Criminal Law Project looks to assist adults who have been charged with an offence but are unable to afford a lawyer or qualify for Legal Aid Alberta. A law student will volunteer their time to provide free legal assistance where they can act as an agent for you while acting under the supervision of advising lawyers.