

Impaired Driving Guide		Inspection and Enforcement New Brunswick	1.1.7
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1. Reason for the Stop:

IENB Officers must be able to clearly articulate the reason for the stop. With the exception of those Peace Officers assigned to the RCMP Tactical Traffic Enforcement Unit, if the stop is **NOT** in relation to your mandated duties, you should not be stopping the vehicle unless there is an imminent public safety concern (i.e., excessive speed, erratic driving, etc.). It is important to remember that it is not your principal role to be enforcing laws outside your primary mandate; however, when you are faced with circumstances whereby action is necessary, you should do so to prevent the continuation of a dangerous situation.

Remember:

- A. All IENB Officers have been appointed a Special Constable under Section 14.1(1) of the New Brunswick Police Act, and impaired driving is one of the prescribed offences under the *Criminal Code of Canada (CCC)* mentioned in the appointments.
- B. As per the appointment, IENB Officers are “Peace Officers” when on duty and have the authority under Section 495 of the *CCC* to make an arrest.
- C. Upon approaching the driver, initiate the active offer, advise them of the reason for the stop, and investigate.
- D. Upon an arrest for Impaired/Refusal, IENB Officers must provide the Rights to Counsel Notice and Caution as soon as practical.
- E. Make detailed and accurate notes of your observations, officer(s) involvement/actions, and conversations, including times, suspect’s responses (record their words), etc.**

2. Definitions:

A. Reasonable Grounds to Suspect:

A set of circumstances believed to be true that would lead a normal prudent person to a certain finding with more than a mere suspicion, but less than reasonable grounds to believe. Examples of reasonable grounds to suspect in relation to a driver with alcohol in their body would include admission of alcohol consumption, odor of alcohol on breath, odor of cannabis, etc.

B. Reasonable Grounds to Believe:

A set of circumstances believed to be true that would lead a normal prudent person to a certain finding with more than a mere suspicion and more than reasonable grounds to suspect. Examples of reasonable grounds to believe in relation to an impaired driver would include a combination of driving evidence, odor of alcoholic beverage on breath, admission of consuming an alcoholic beverage, incoherent speech, slurred speech, pale face, flushed face, watery eyes, bloodshot eyes, belching, fumbling, unsteady, poor balance, etc.

C. Grounds To Hold for Court, Section 515(10) of the CCC:

The detention of an accused in custody is justified only on one or more of the following grounds:

- i. To ensure their attendance in Court;
- ii. To protect the safety of the public; or
- iii. To maintain the confidence in the administration of justice.

3. Mandatory Alcohol Screening Demand, Section 320.27(2) of the CCC

- A. Peace Officers may make a Demand for Breath test – Mandatory Alcohol Screening to the Operator of a Motor Vehicle. This is for alcohol only and no suspicion is required. The officer must have the Alcohol Screening Device (ASD) on hand and the test is to be done immediately. If driver **fails** on the ASD you now have reasonable grounds to believe the driver is impaired, proceed to Section 4 of this guide - Contact Police Agency.
- B. If the driver, without reasonable excuse, **fails or refuses to comply with the demand** (Ensure you note details if refusal by way of actions including number of times attempts made and seize mouthpiece) they have committed an offence and may be arrested and charged for refusal. If a records query determines the driver has **not** satisfied the **Grounds to Hold for Court**, they may be served the appropriate notices and documents and released at the scene. If a records query determines the driver has satisfied the **Grounds to Hold for Court**, they may be held at the nearest detention facility for a Court appearance within 24 hours. (Charge file must be prepared for Crown approval the subsequent day).
- C. If the driver registers a warn or other readings, please refer to the link at end of guide: Impaired Readings and Sanctions.

4. Contact Police Agency of jurisdiction to notify of investigation and to attend (as per the IENB Policy 4.09, Special Constable Policy, Section 5).

Advise the Police Agency of Jurisdiction of the following:

- A. You have reasonable grounds to suspect the subject has alcohol and/or drugs in their body and care and control of a conveyance; therefore, you require an Approved Screening Device along with a qualified Officer to administer the test, or an Officer qualified to complete a Standard Field Sobriety Test (SFST)
or
- B. You have reasonable grounds to believe you have an impaired driver and require an Officer to arrest the suspect and process the impaired driving charge. Maintain continuity and safety of suspect and upon arrival of the police, provide the officer with the details of your stop and the reasonable grounds (to suspect or to believe) you have established. The responding officer will take over at this point.

5. If the Police Agency of Jurisdiction is unable to attend due to operational priorities, or do not take over the investigation consider the following options:

A. Approved Screening Device (ASD):

- i. If you have “**reasonable grounds to suspect**” that a person has alcohol in their body and is operating or is in care or control of a conveyance, and you have determined an Approved Screening Device and a qualified officer to administer test are available, you may make the Demand for Breath test by an Approved Screening Device.
- ii. If the driver registers a fail on the approved screening device, you now have “**reasonable grounds to believe**” that they have operated a conveyance while their ability to operate was impaired by alcohol (you will now proceed to subsection **c**).
- iii. If the driver, without reasonable excuse, fails or refuses to comply with the demand (Ensure you note details if refusal by way of actions including number of times attempts made and seize mouthpiece) they have committed an offence and may be arrested and charged for refusal. If a records query determines the driver has **not** satisfied the **Grounds to Hold for Court**, they may be served the appropriate notices and documents and released at the scene. If a records query determines the driver has satisfied the **Grounds to Hold for Court**, they may be held at the nearest detention facility for a Court appearance within 24 hours. (Charge file must be prepared for Crown approval the subsequent day). If the driver registers a warn or

other readings please refer to the link at end of guide: Impaired Readings and Sanctions.

B. Standard Field Sobriety Test (SFST)

- i. If you have “**reasonable grounds to suspect**” that a person has alcohol and/or drugs in their body and within preceding 3 hours have operated a conveyance, and you have determined a qualified officer to administer SFST is able to attend, you may make the demand for the SFST.
- ii. If the driver performs poorly on the SFST, you now have reasonable grounds to believe that they have operated a conveyance while their ability to operate was impaired by alcohol and/or drugs (you will now proceed to subsection C).

C. Reasonable Grounds Impaired Driving & Care or Control:

If you have reasonable grounds to believe that the driver has operated a conveyance while his/her ability to operate was impaired by alcohol and/or drugs, by performing poorly on SFST or a fail on an approved screening device or a combination of erratic driving, strong odor of alcohol coming from the breath, slurred speech, lack of coordination etc. the following steps may be conducted:

- i. Arrest for impaired driving, handcuff when justified, search incident to arrest for officer safety and evidence related to the offence, advise of charter and caution. Record times and responses. Maintain a visual on the accused to ensure nothing is ingested.
- ii. Administer the appropriate Demand (i.e., Breath test by an Approved Instrument, Drug Evaluation, etc.). Record the time and responses.
- iii. Contact nearest Police Agency to perform Breath test or Drug Recognition Expert (DRE) evaluation.
- iv. Arrange for towing, provide tow truck driver with Notice of Vehicle Impoundment form, if required.
- v. Transport to the nearest police agency where the Breath test or DRE evaluation will be performed, advise PMCC to record mileage.
- vi. Provide the opportunity for the suspect to phone counsel, record the time and response.

- vii. Turn the accused over to the qualified Breathalyzer Technician or DRE. Record the time.
- viii. Observe all breath samples, record the times and readings of each, if applicable. If DRE evaluation, follow instructions of DRE. Please note that nothing ingested by accused.
- ix. If Breath test performed, the Breathalyzer Technician will provide you with a Certificate of a Qualified Technician document.
- x. If DRE evaluation, you may have to maintain continuity of evidence/exhibits collected and send for analysis if Demand was made for bodily substance by DRE. Obtain appropriate documents from DRE.
- xi. Decide on whether the accused should be released, or do they meet the Grounds to Hold for Court (i.e., If intoxicated they cannot be served documents as they are unable to understand and you cannot ensure their appearance, they will have to be held until they meet conditions of release)
- xii. Prior to release:
 - a. Seize driver's license.
 - b. Serve the Notice and order of suspension and if applicable Notice of Impoundment.
 - c. Serve Certificate of Analysis, Notice of Intention to Produce Certificate of a Qualified Breathalyzer Technician, if applicable.
 - d. Serve the Notice of Intention for previous convictions.
- xiii. Release on a Promise to Appear.

Note: If unable to serve documents after completion of tests you must ensure they are served prior to release of accused.

6. What is required for follow up?

Complete your report and ensure all pertinent information is included. Remember to ensure that you have detailed and accurate notes. Your report **must** include:

- A. A detailed account of the driving evidence which led to the traffic stop.
- B. The Active Offer and response by the accused.
- C. A detailed account of your “reasonable grounds”. Take your time with this, articulate your grounds well.
- D. The time of the arrest.
- E. The response to the charter and caution.
- F. The time of the Demand.
- G. The response to the Demand.
- H. If there is a refusal, record what was said and details of their actions.
- I. The times that phone calls were made to counsel.
- J. The time that the accused was turned over to the Breathalyzer Technician or DRE.
- K. The time of the breath samples and the readings, if applicable.
- L. The times of DRE evaluation and results, any evidence/exhibits turned over to you, if applicable.
- M. The time the accused was served with documents and the time they were released.
- N. Include notes/documents from all officers who assisted with the file.
- O. Obtain witness statements if required.
- P. Process any exhibits that were seized, i.e., open liquor, drugs, etc.
- Q. The Administrative License Suspension Notice, and if applicable, Notice of Impoundment to be faxed or emailed to number or email address on back of form, mail the seized driver’s license to the Registrar of Motor Vehicle.
- R. Prepare a Prosecutors Information Sheet (PIS) and a Court Brief.
- S. Prepare the Information for the charge.

T. Have the Crown approve the charge.

7. Links for references and important forms:

- A. Guide to Investigating Impaired Driving in New Brunswick (Post Bill C-46)
- B. Alcohol Impaired Driving Provisions
- C. Notice of Intentions (S. 727 of Criminal Code of Canada)
- D. Notice of Intention to Produce Certificate of a Qualified Breathalyzer Technician Form
- E. Promise to Appear/Affidavit