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# Impaired Driving Enforcement in Abbotsford



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## Executive Summary

Impaired driving is a criminal offence that has the potential to both directly and indirectly affect many lives. Although reported rates of this dangerous activity have decreased over the past several decades, impaired driving continues to represent a large proportion of cases heard in court. However, there is a lack of research in Canada regarding the specific nature of impaired driving.

The current report presents the results of an analysis of all impaired driving incidents with a judicial outcome that occurred in Royal Canadian Mounted Police (RCMP) jurisdictions of British Columbia in 2003. This research project was funded by the British Columbia Superintendent of Motor Vehicles and coordinated by the RCMP Research Chair at the University College of the Fraser Valley, the BC Centre for Social Responsibility, the School of Criminology and Criminal Justice at the University College of the Fraser Valley, and the RCMP.

Over the spring and summer of 2006, research assistants coded information from over 4,000 police files of impaired driving incidents. The researchers collected information on the nature of the impaired driving incident, the background characteristics of the impaired driver, and the criminal justice outcomes from this incident. The results are summarized below.

Of all RCMP jurisdictions in British Columbia, Surrey had the highest proportion of impaired driving incidents with a judicial outcome (8.9 per cent). Impaired driving incidents were distributed relatively evenly across the 12 months of the year; unsurprisingly, most impaired driving incidents occurred on a Saturday, and over half occurred between 10 pm and 2 am. The majority (84 per cent) of impaired drivers were male and the average age of these offenders was 36 years old. The point at which a driver becomes legally impaired in Canada is 80 milligrams per 100 millilitres of blood; in the current study, the average blood alcohol level of the impaired driving offenders was 172 milligrams.

Researchers recorded the manner in which impaired drivers came to the attention of the police. Most commonly (39.6 per cent), the police themselves observed the impaired driver commit a motor vehicle violation such as speeding or swerving. Alternatively, nearly one-quarter (23.4 per cent) of impaired driving incidents came to the attention of the police through a motor vehicle crash, while 19.3% were the result of a witness expressing a concern to the police. Another 15.8% of these impaired drivers were detected through the use of a police check stop.

An important aspect of the current study was the recording of criminal history and the corresponding criminal justice outcomes that the impaired driver experienced. The results suggest that most impaired driving offenders have a serious criminal history, commonly characterized by prior alcohol-related driving convictions. Nearly half (48.4 per cent) of the sample was previously convicted of impaired driving or had either a 24 hour or 12 hour driving prohibition. Slightly less than three-quarters of the sample had been convicted of a prior alcohol-related offence. The average number of prior alcohol-related convictions was 2.2, while the average number of prior non-alcohol-related convictions was 5.1.

The criminal justice outcomes did not always appear to reflect the seriousness of their previous criminal history. In fact, in some cases, the punishment for impaired driving was *more* severe for a first time offender than for a repeat offender. However, other than this exception, an offender

was 55% more likely to receive a custodial sentence with each additional previous alcohol-related driving conviction, and 47% less likely to receive a fine. Overwhelmingly, the most common (79 per cent) penalty given to impaired driving offenders was the combination of a driving prohibition (average of 14 months) and a fine (average of \$685). The next most common (5.5 per cent) penalty awarded was a combination of prohibition and custody, followed by a fine alone (2.4 per cent).

Those cases that did not proceed to court were typically pleaded down to a lesser charge. For instance, many of the cases that did not proceed strictly as an impaired charge were plead down instead to a provincial Motor Vehicle Act charge such as driving without due care (section 144). Most of the justifications for pleading cases down could be categorized into one of six reasons: because it was their first offence (22.8 per cent); because there was a low chance of conviction (16.5 per cent); because of a guilty plea (12.6 per cent); because of a relatively low BAC that may lead to problems in obtaining a conviction (7.9 per cent); because of a potential human rights violation (6.3 per cent); or because an RCMP member was not available for court. The time to reach a final disposition starting from the initial incident averaged 18.8 months.

In considering subsequent impaired driving behaviour, approximately one-third of drivers (32.0 per cent) with a judicial outcome of an alcohol-related driving offence in 2003 received a subsequent offence within the four year follow up period. For those who did reoffend, they did so 1.67 times over the next four years and twice as many of those who reoffended (n = 876 compared to n = 360) had additional alcohol-related driving offences prior to their 2003 key offence. Finally, the most common type of charge for the first alcohol-related driving offence after the 2003 key violation was a 24-hour driving prohibition and, on average, this occurred 627 days after the date of the 2003 violation.

Given the results of an analysis into subsequent alcohol-related driving offences based on the way the 2003 offence was responded to, it would appear that there were no specific benefits in terms of reducing recidivism or delaying subsequent offences between a Criminal Code impaired driving offence and a Motor Vehicle Act driving prohibition. Moreover, it did not appear that the way the previous alcohol-related driving offence was dealt with by the criminal justice system affected the way in which the first subsequent alcohol-related driving offence was responded to.

Most importantly, it was extremely alarming to uncover, given the inherent difficulties associated with apprehending and convicting an impaired driver, that 70% of the sample of impaired drivers in 2003 had more than one alcohol-related driving offence by the end of 2007.

As a result of this analysis, the researchers are able to provide several recommendations. For instance, the results imply that there is a need for a standardized police department impaired driving investigation course to better prepare police officers on the necessary procedure and various elements of investigating impaired driving incidents which may lead to an improved ability of the Crown Counsel to prosecute. A second recommendation was the need to have experienced expert Crown Counsel specifically dealing with impaired driving offences. This would allow for a faster progression between the initial incident and the subsequent conviction.

The report recommends a need for legislative change in order to better reflect when an offender has been convicted of an alcohol-related driving offence regardless of whether or not the initial charge was proceeded with or resulted in a guilty plea to a lesser charge.

Finally, the need for legislative change was also identified with respect to the application of sentences to convicted impaired driving offenders. It appears that judges were not considering the prior record of the offender in their sentencing decisions. Furthermore, the severity of sentences may not be sufficient, especially with respect to chronic offenders. These results suggest the need for major legislative change.

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## Introduction

In November 2006, Bill C-32 had its first reading in Canada's Parliament. This Bill is intended to amend the Canadian *Criminal Code* to, in part, increase the penalties for impaired driving. The introduction of this Bill is a partial response to public opinion that sanctions for impaired drivers are too lenient and that the current law does little to deter impaired drivers. However, while the public may be correct in their assessment of the severity of sanctions, in 2005, research in Canada reported that the incidence of impaired driving had consistently declined since 1981 (Gannon, 2005).<sup>1</sup>

In 2005, there were a reported 76,000 incidents of impaired driving, a 7% decrease from the previous year. In research conducted three years earlier, the Canada Safety Council (2005) reported that the number of people injured or killed as a result of impaired driving decreased by nearly 50% since 1986, even though there had been a substantial increase in the number of drivers and vehicles on the road. Still, impaired driving, in 2002, accounted for the largest proportion of cases heard in court (approximately 12 per cent). In addition to being the most commonly heard case in court, impaired driving also had the highest conviction rate (73 per cent) compared to other offences concluded in court that year (Canada Safety Council, 2005).

While there has been some research into the characteristics of those who drive while impaired and there are statistics which provide a general assessment of the state of impaired driving in Canada, there is a paucity of research examining the specific quality and characteristics of impaired driving incidents or the outcomes of impaired driving cases for a given year within Canada. This report will examine all of the impaired driving incidents in RCMP jurisdictions in British Columbia in 2003 for which there was judicial outcomes in order to better understand how impaired driving incidents were responded to by the criminal justice system in British Columbia. In addition, based on the findings, this report will make some recommendations to better assist the criminal justice system in preventing and addressing impaired driving.

## Review of the Canadian Research Literature

Impaired driving in Canada is defined as being in care or control of a motorized vehicle with a blood alcohol concentration (BAC) level of 80 or more milligrams of alcohol per 100 millilitres of blood (80 mg), otherwise known as .08 mg in section 253 of the *Criminal Code of Canada*. While the number of impaired drivers appears to be declining, a national survey in 2005 indicated that approximately 15% of Canadian drivers reported driving a vehicle within two hours of consuming alcohol in the past 30 days (Canada Safety Council, 2005). This survey also concluded that 2.3% of all Canadian drivers operated a vehicle while impaired at least four times in the past 30 days. Given this, it would appear that a small minority of drivers were responsible for most impaired driving in Canada.

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<sup>1</sup> The one exception was in 2001 which had a slight increase from the previous year.

While there are several legally accepted methods for determining a driver's BAC, which will be discussed below, there are several factors that can affect a BAC level, such as having a lean body weight or gender. For example, females or persons with a smaller build commonly record a higher BAC level than males or a person with a larger build when consuming the same amount of alcohol in the same time frame (Addictions Foundation of Manitoba, 2004). Given this, it is important to recognize that BAC levels do not prove impairment, but simply provide toxicological information about the amount of alcohol present in the blood stream.

For the public, a significant concern related to impaired driving is the injuries to drivers and others associated with driving while intoxicated. In 2001, the large majority (85%) of fatally injured drivers who were tested for the presence of alcohol in their bloodstream (38% of the total road crash related deaths) had levels of alcohol exceeding 80mg (Transport Canada, 2004). Similarly, in 2003, 38% of fatally injured drivers who were tested for alcohol had BACs above the legal limit; the majority of which (57 per cent) exceeded 160mg (Traffic Injury Research Foundation of Canada, 2005). According to Transport Canada (2005), impaired driving accounts for nearly one-third (29 per cent) of all driver fatalities.

Of all alcohol-related impaired driving deaths in 2004 in Canada, youth aged 16 to 19 years old were more likely than any other age group to crash with a BAC between both 50mg to 80mg and 80mg to 160mg (Traffic Injury Research Foundation of Canada, 2006). This finding suggests that youth are less able than other age groups to handle even small amounts of alcohol in their bloodstream when driving and tend to operate vehicles with as much as twice the legal limit of alcohol in their systems. Still, it is important to keep in mind that drivers between 36 to 45 years had the highest rate of BACs exceeding 160mg (27.6 per cent) (Traffic Injury Research Foundation of Canada, 2006). In other words, of those driving impaired with a BAC of at least twice the legal limit, more than one-quarter were middle-aged people.

With respect to British Columbia, in 2004, 485 people died in motor vehicle collisions. It was possible to determine whether alcohol was a factor in nearly 94% of these cases, and slightly more than one-third (35.9%) were deemed to be alcohol-related. In three-quarters of the alcohol-related road crash fatalities in British Columbia in 2004, drivers had an illegal BAC level. In fact, slightly more than one-fifth (21.7 per cent) had a BAC exceeding twice the legal limit (Traffic Injury Research Foundation of Canada, 2006). As alluded to above, the greatest proportion of alcohol-related road crash fatalities was also found among 36 to 45 year olds (21.5%), and the smallest proportion (9.2%) were found among 16 to 19 year olds (Traffic Injury Research Foundation of Canada, 2006). However, 26 to 35 year olds most commonly drove above the legal BAC limit, as nearly one-third (31.5%) had BACs exceeding 80mg. Finally, approximately three-quarters (76 per cent) of all impaired driving collision fatalities occurring in British Columbia in 2004 were single-vehicle crashes (Traffic Injury Research Foundation of Canada, 2006).

Although the rates of fatal alcohol-related motor vehicle accidents have declined over the past several decades, alcohol-related accidents continue to be a primary cause of road fatalities and a leading cause of non-fatal road-related injuries (Briscoe, 2004; Mann et al., 2006; Schell, Chan, & Morral, 2006). In Canada, in 2004, over 1,000 people died in an alcohol-related crash, and of the 18,865 driver crashes, nearly 17% were alcohol-related (Traffic Injury Research Foundation of Canada, 2006). British Columbia statistics for 2004 indicated that of all drivers involved in a

motor vehicle collision in which an injury occurred, 14.5% of these crashes were alcohol-related (Traffic Injury Research Foundation of Canada, 2006). Slightly more than half of these crashes (56.2%) were single-vehicle crashes.

In a review of injured alcohol-impaired drivers (those with a BAC over 80mg), Goecke et al. (2007) identified that the mean BAC level among 1,933 patients in a Calgary area trauma hospital was 190mg. Many of these drivers were seriously injured and 8% died. A concerning result of this study was that, while many of these injured drivers were impaired, few faced serious legal consequences. In effect, with the exception of those who caused a fatal injury to another (all of whom were convicted), the severity of legal consequences appeared to decrease with the increasing severity of injury. Overall, only slightly more than one-third of these drivers (37 per cent) were charged, and a slightly lower proportion (31 per cent) experienced some form of legal consequence (Goecke et al., 2007).

Given this, in addition to the public’s concern with the physical, psychological, and emotional harm resulting from impaired driving, there is also growing concern with the penalties given to impaired drivers. While the conviction rate is high (Canada Safety Council, 2005), many believe that the sentences are much too lenient for impaired drivers. While our research findings will be reported below, the Canadian Centre for Justice Statistics in 2005 reported that a fine was the most common penalty (77 per cent) for impaired driving offences in 2001 – 2002 (Canada Safety Council, 2005). In less than one-fifth of cases (17 per cent) offenders were sentenced to custody and those who were sentenced to custody received an average sentence length of 2½ months (73 days) (Canada Safety Council, 2005).

### Penalties for Impaired Driving in Canada

The *Criminal Code of Canada* includes a range of penalties for drivers convicted of impaired driving (see Table 1). These penalties can include a fine up to \$2,000; imprisonment; or a loss of the privilege of driving for between one (for a first offence) to three years. According to the law, the available penalties should become more severe as the number of prior impaired driving offences increases. Those who have multiple offences or who cause a death while driving impaired can, for example, be sentenced to life in prison (Addictions Foundation of Manitoba, 2004).

**TABLE 1: CRIMINAL CODE PENALTIES FOR DRIVING WHILE IMPAIRED**

	Driving while Impaired or BAC over 80mg or Refusal to provide sample			Impaired Driving Causing Bodily Harm	Impaired Driving Causing Death
	1 <sup>st</sup> offence	2 <sup>nd</sup> offence	3 <sup>rd</sup> offence		
<b>Driving Prohibition</b>	1 – 3 years	2 – 5 years	3 years - lifetime	Up to 10 years	<b>Up to Lifetime</b>
<b>Fine</b>	\$600 and up	No maximum	No maximum	No maximum	<b>No maximum</b>
<b>Jail</b>	<b>0 – 5 years</b>	<b>14 days – 5 years</b>	<b>3 months to 5 years</b>	<b>Up to 10 years</b>	<b>Up to Life</b>

(Adopted from ICBC, 2006)

There are also penalties associated with refusing to provide a breath or blood sample to the police. In fact, refusing to provide a sample can be punished in the same manner as those found guilty of driving while impaired (Addictions Foundation of Manitoba, 2004). A further sanction imposed on impaired drivers is that prior to regaining a driver's license, convicted impaired driving offenders must complete and pass a rehabilitative program (Insurance Corporation of British Columbia (ICBC), 2006).

In British Columbia, a person who police have reasonable grounds to believe is driving while impaired may be issued a 24 hour driving prohibition by the officer. These short-term prohibitions are reported to and recorded by ICBC. With two 24-hour prohibitions in two years, a driver can lose their license (ICBC, 2006). Further, under the provincial *Motor Vehicle Act*, police may issue an Administrative Driving Prohibition (ADP) to all drivers whom they have reasonable and probable grounds to believe are driving while impaired (Office of the Superintendent of Motor Vehicles, 2003).

Under an ADP, a suspected impaired driver (a person with a BAC exceeding 80mg or who refuses to provide a breath or blood sample) can continue to drive with a temporary license for 21 days, at which point they are subject to a 90 day prohibition on their license. If caught driving during this 90 day period, drivers can be charged with driving while prohibited and can be fined or imprisoned as a consequence. Following the 90 day prohibition, drivers can reapply for a driver's license. If the licence is issued, the licence is valid for a reduced period of time. In other words, the licence will be issued for two years rather than five years. There is recourse for a driver who is issued an ADP. Drivers are permitted to apply for a review by the Superintendent of Motor Vehicles within seven days of being issued an ADP, and a decision will be made either to revoke or uphold the suspension (Office of the Superintendent of Motor Vehicles, 2003).

In addition to public concern with the treatment of impaired drivers by the criminal justice system, there is some degree of confusion about the legal mechanisms associated with determining a driver's level of impairment.

### **Determining Blood Alcohol Concentration in Canada**

If a police officer suspects that a driver is impaired, they may ask the driver to provide a breath sample to be analyzed by a roadside screening device. If a driver fails this initial screen, they are taken to the police station where they will be given further tests to determine their BAC (ICBC, 2006). There are essentially two ways that police can determine the BAC of a suspected impaired driver. The most common method used by police at the scene of suspected impaired driving incident to detect BAC is through a breath test where a driver is requested to blow deeply (to provide a sample of deep lung breath) into an instrument that is calibrated to measure the level of alcohol present in the blood. Alternatively, police may request that blood be drawn from the driver to determine the amount of alcohol present in the blood stream. Although the latter method is not commonly practiced on the road, according to Bergman et al. (2005), blood tests are more often used in cases of traffic accidents.

As mentioned above, as long as the police have reasonable grounds to request a sample, the driver must provide one or face the same consequences as being found guilty of impaired driving. However, it is beyond the scope of this report to discuss all of the due process procedures that

police must use in obtaining a sample, nor will this report discuss the case law associated with the admissibility of this evidence in court.

### **Manner of Detection in Canada**

Impaired drivers come to the attention of the police either through direct observation of a traffic violation (e.g. speeding or swerving) by the police, through contact with a concerned witness, by attending the scene of an accident, or through general police screening measures, such as a sobriety checkpoint or a road check. If a police officer suspects that a driver is impaired by alcohol and/or drugs, they may request that they perform three Standard Field Sobriety Tests (SFST), which include the Horizontal Gaze Nystagmus test, the Walk-and-Turn test, and the One-Leg Stand test (MADD, no date).

In the Horizontal Gaze Nystagmus test, a police officer requests that an impaired driving suspect follow a horizontally moving stimulus (often a penlight) with their eyes. Nystagmus is the involuntary jerking of the eyes and, in screening for impaired driving, an officer is trained to look for the inability of the driver to follow the moving stimulus smoothly. In the Walk-and-Turn test, the driver is asked to walk heel-to-toe along a straight line upon a hard, level surface for nine steps, and then to turn and walk back in the same manner. This test forces the driver to divide their attention between mental and physical tasks, something that is made increasingly difficult with the presence of alcohol (MADD, no date). Lastly, the One-Leg Stand test requires that the driver stand on one foot on a hard, level surface, holding one foot up in front of them for thirty seconds while counting out loud (MADD, no date). This latter test also demands separation of mental and physical tasks. Although failure of any or all of these tests does not confirm that a driver is impaired, it gives the officer reasonable grounds to believe that the driver may be impaired by alcohol and/or drugs. These grounds allow the officer to demand that a breath sample be provided. When used together, there is evidence to suggest that over 85% of BAC levels exceeding 100mg can be accurately detected. It is important to note that only one province in Canada, Quebec, provides police with the authority to demand that a driver participate in a SFST (MADD, no date).

Police in Canada may also utilize an Approved Screening Device (ASD) to determine whether a driver may be impaired. Police may demand that drivers in care and control of a motor vehicle, who are suspected of driving while impaired, comply with an ASD test. A driver may pass (typically a BAC below 50mg), receive a warning (a BAC between 50mg and 100mg), or fail (a BAC exceeding 100mg) the ASD test. A warning may result in an immediate 24 hour driving prohibition; however, if the driver fails the ASD, they will be taken to the station for further breath test analysis (Beirness, Mayhew, & Simpson, 1994).

### **Characteristics of Impaired Drivers in Canada**

Most impaired drivers in Canada are male. Given this, it follows that most alcohol-related road crashes and fatalities also involve males. For example, in 2004, males represented 80% of all alcohol-related crashes (Traffic Injury Research Foundation of Canada, 2006). While passengers or people in other cars are also at risk from impaired drivers, for the most part, Canadian statistics indicate that the impaired driver is the person most commonly killed in an alcohol-related crash (65.6 per cent of all alcohol-related driving deaths). In other words, when there is a fatality

associated with an incident of impaired driving, passengers are killed in approximately 21.5% of cases and pedestrians are the victim in nearly 13% of incidences involving at least one fatality (Traffic Injury Research Foundation of Canada, 2006).

Alcohol-related crashes commonly occur among young drivers aged 16 to 19 years. In 2004, of the nearly 300 persons aged 16 to 19 years killed in a road crash, slightly more than one-third of the crashes (37.2 per cent) were determined to be alcohol-related. However, this total represented only approximately 10% of all alcohol-related road crash fatalities in 2004 (Traffic Injury Research Foundation of Canada, 2006). However, investigations into the road crash fatalities of 20 to 25 year olds indicated that, in 50% of these crashes, alcohol was a factor (Traffic Injury Research Foundation of Canada, 2006).

According to a study by Bergman et al. (2005), the mean age of suspected impaired drivers is middle-aged for both men (40 years old; ranging from 15 to 88 years of age) and women (39 years old; ranging from 15 to 73 years of age). Eensoo and colleagues (2005) found a slightly lower median age of drinking and driving offenders at 33 years of age.

In their analysis of 203 male drinking and driving offenders and 211 control participants, Eensoo et al. (2005) identified significant independent variables that discriminated between drinking and driving offenders and control group members. These characteristics included: the presence of alcohol-related problems; the frequency of using alcohol; the amount of alcohol consumed; levels of smoking; seat-belt use; paying for parking; dysfunctional impulsivity; platelet monoamine oxidase (MAO) activity; and age. Overall, the drinking and driving offenders were significantly younger than controls, had less education, had more alcohol-related problems, consumed strong alcoholic drinks more frequently, were less likely to use a seat-belt or pay for parking, were significantly more impulsive, and had significantly lower platelet MAO levels (Eensoo et al., 2005).

An analysis by Freeman et al. (2005) suggested that repeat drinking and driving offenders tended to express motivations to change their drinking and driving behaviours, but not necessarily to change their actual levels of alcohol consumption. Freeman et al. (2005) analyzed the results for a sample of 132 repeat drinking and driving offenders who had a mean BAC of nearly twice the legal limit (150mg) at the time of their current offence. Although nearly three-quarters (70.5 per cent) of the repeat offenders were identified as having problematic levels of alcohol consumption, and nearly half (48 per cent) were determined to be alcohol-dependent, most reported higher perceived levels of control over their drinking than over their drinking and driving activities (Freeman et al., 2005). Overall, nearly half of the repeat offenders (41.5 per cent) could be classified in the “precontemplation” stage for change with respect to drinking behaviours, and the “action” stage for change with respect to drinking and driving. However, approximately two-thirds of the sample did not express a desire to reduce their alcohol consumption to less harmful levels. Finally, Freeman et al. (2005) noted that regular drinking and driving activities were predicted by more prior drinking and driving convictions and lower precontemplation scores with respect to their readiness to change their behaviour. Similarly, future drinking and driving behaviours were predicted by higher levels of alcohol consumption, lower scores on self-efficacy, and lower precontemplation scores (Freeman et al., 2005). In effect, Freeman et al. (2005) concluded that for this group of drivers, legal sanctions as a response to drinking and driving will

likely be ineffective in the long term. Given this, attention must be paid to the underlying causes of their drinking behaviours.

Additional research provides some evidence that the type of alcohol itself may be predictive of tendencies to drink and drive. Research has indicated that beer drinkers were more likely to drink and drive than drinkers of spirits or wine, even when controlling for risk factors related to age, sex, marital status, and education levels. In their analysis of 15,376 drivers who were fatally injured between 1962 and 1996 in Ontario, Mann et al. (2006) concluded that, compared to spirits and wine, beer had the strongest effect on fatality rates. Essentially, a one-litre increase in beer consumption resulted in a 23% increase in drinking and driving fatalities. The researchers cautioned, however, that this relationship could be due to the combination of an increased tendency for young drivers to drink and drive and beer being the most commonly consumed alcoholic beverages by younger people. Alternatively, Mann et al. (2006) suggested that an important factor in this association was the generally lower rate at which beer was taxed compared to other alcoholic beverages. They argued that taxation was associated with availability of alcohol, levels of consumption of alcohol, and, therefore, problem behaviours, such as drinking and driving. As beer remains generally cheaper than other forms of alcohol, it is likely to be over-represented among people arrested for drinking and driving offences (Mann et al., 2006).

It has been suggested that impaired drivers are more likely to have alcohol problems than persons who do not drive while under the influence of alcohol. For instance, Peck et al. (1994) determined that repeat impaired driving offenders tended to have a greater severity of alcohol-related problems, and that those offenders who were most severely suffering from alcoholism were most at risk for drinking and driving recidivism.

### Impaired Driving Policies

Many of the impaired driving policies introduced internationally have been based on the theoretical concept of deterrence. Basically, deterrence is the theory that to prevent people from engaging in criminal acts, the state must make the punishment for that act certain, swift, and severe. While there are many different forms of deterrence, for the purposes of this report, there are two main forms, namely specific and general. Specific deterrence attempts to dissuade the particular offender from reoffending by making the sanction applied to them outweigh any benefits they might enjoy by engaging in the criminal act. Conversely, general deterrence is aimed at using the individual offender as an example to dissuade others from deciding to engage in similar behaviour. Policies that focus on deterrence are based on the assumption that people who commit crimes are rational human beings with the capacity to consider the benefits and consequences of committing the offence in question (Briscoe, 2004). In terms of impaired drivers, the question is whether one's impairment due to alcohol also affects one's ability to rationally choose between driving and selecting some other option, such as taking a taxi or remaining at one's current location. In other words, in addition to the general consideration of the punishments and risks associated with impaired driving, deterrence as the main policy to deal with impaired driving may be flawed because the potential driver, due to the effects of alcohol, may not have the capacity to be deterred. It is also unclear whether the current sanctions in Canada for impaired driving act as a deterrent. Nonetheless, deterrence-based impaired driving policies focus on the notion that a severe sanction should prevent most people from driving while impaired.



According to Briscoe (2004), policies in Australia have attempted to increase the certainty of being caught driving while impaired through increasing the number of police dedicated to locating impaired driving, by implementing programs such as police road checks and sobriety checkpoints, introducing legislation that provide police with few restrictions to administer breath tests of suspected impaired drivers, and introducing laws that allow for the use of BAC levels as evidence of having committed an impaired driving offence. However, Briscoe (2004) also argued that such policies tended to have only short-term effects as drivers quickly learned that they were unlikely to be caught driving while impaired.

In Canada, the challenges facing deterrence-based policies are that only a small minority of impaired drivers are caught and only a minority of those drivers are successfully charged and convicted of an impaired driving related offence under the *Criminal Code*. Instead, many more offenders remain undetected and those who are found are frequently charged or plead guilty to the less severe provincial motor vehicle act offence. Thus, current Canadian policies do not necessarily achieve deterrence of impaired driving as there is a lack of certainty among impaired drivers that they will be caught and punished for their actions. Furthermore, the severity of the punishment is not often viewed by the Canadian public as sufficient to deter those who drive while impaired. Finally, the celerity of punishment is also not often assured as it frequently takes months to process and complete a court case involving impaired driving or a lesser charge.

Another important consideration in developing impaired driving policies is whether first time and repeat impaired drivers differ and, if so, in what ways. An important study conducted by Freeman et al. (2005) in Australia provided evidence that repeat drinking and driving offenders did differ significantly from first-time impaired driving offenders. Specifically, Freeman et al. (2005) identified that repeat drinking and driving offenders with self-reported lower levels of perceived self-control over problem behaviours were more likely to admit future intentions to drink and drive. Furthermore, although many of the repeat offenders implied a motivation to change their drinking and driving behaviours, Freeman et al. (2005) reported that these motivations were not necessarily stable in the long-term. This analysis suggested that repeat drinking and driving offenders differed from first-time drinking and driving offenders, and that repeat offenders required more severe sanctions or interventions to achieve successful change with respect to their problem behaviours. In effect, similar to the conclusion drawn above by Freeman et al. (2005), policies aimed at providing sanctions for drinking and driving behaviours are not likely to have an effect on this group of offenders, and it is worthwhile to identify and respond to the underlying risk factors that are leading to their propensity to consume harmful levels of alcohol and to drink and drive.

It is interesting to note that the review of the current research literature for Canada on impaired driving provides only a general overview of the issue. In other words, while there are general rates available to the public and there is general criminal justice statistics published on impaired driving, there are no systematic, comprehensive analyses of the quantity and nature of impaired driving in Canada or, more specifically, in British Columbia. The following sections of this report will help provide some needed insight into impaired driving in British Columbia.

## Research Methodology

In partnership with the Superintendent of Motor Vehicles of the Government of British Columbia, the RCMP Research Chair at the University of the Fraser Valley, the BC Centre for Social Responsibility, and the School of Criminology and Criminal Justice at the University of the Fraser Valley, this research project was undertaken to provide a detailed examination of impaired driving files in 2003 for which there was a judicial outcome in all RCMP jurisdictions in British Columbia.

To conduct the project, the Superintendent of Motor Vehicles and the RCMP identified all impaired driving files for 2003 in RCMP jurisdictions in British Columbia in which there was a judicial outcome using the RCMP police codes DW11 to DW17 inclusive. These codes encompassed all RCMP charges related to impaired driving or driving while under the influence of alcohol. In total, 4756 files were identified; 4388 files in which there were judicial outcomes and 368 files in which the original impaired driving charges were stayed, withdrawn, or not accepted by Crown Council.

Once all the files were identified and located, the principal investigators from the University College of the Fraser Valley developed a coding form to collect all the paper-file data (see Appendix A for a copy of the file data form). Once the form was designed, a research team was trained on the form and pre-tested the coding book in one RCMP detachment. After the pre-test was completed and all partners were satisfied with both the coding form and the business rules associated with completing the coding form, the research teams travelled throughout the province in the Spring and Summer of 2006 to code all the paper files.

Once all the files were coded, the data was entered into a statistical database for analysis by the principal researchers. The findings in this report are based on the results of that analysis.

## Research Results

All RCMP detachments in British Columbia participated in this study. As indicated by Table 2, the highest proportion of impaired driving occurrences were in Surrey (8.9 per cent) followed by Burnaby (4.9 per cent) and Nanaimo (4.5 per cent).<sup>2</sup> However, of the top three locations, only Nanaimo was overrepresented in the proportion of impaired incidents relative to its population size. In other words, Nanaimo accounted for 4.5% of the impaired driving cases in RCMP jurisdictions in 2003, but only comprised 1.9% of the population of British Columbia.

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<sup>2</sup> These findings do not control for any specific initiatives to prevent or respond to impaired driving in any RCMP jurisdiction.

**TABLE 2: TOP TEN LOCATIONS OF IMPAIRED OCCURENCES**

	n	% of Total Sample	% of BC Population
Surrey	417	8.9	9.1
Burnaby	234	4.9	4.9
Nanaimo	214	4.5	1.9
Ridge Meadows	197	4.1	1.7
Prince George	175	3.6	1.8
Upper Fraser Valley Region	170	3.6	1.6
Kelowna	159	3.3	2.5
Coquitlam	140	2.9	2.9
Kamloops	132	2.8	4.1
Richmond	131	2.8	2.0
<b>TOTAL</b>	<b>1,969</b>	<b>41.4%</b>	<b>32.5%</b>

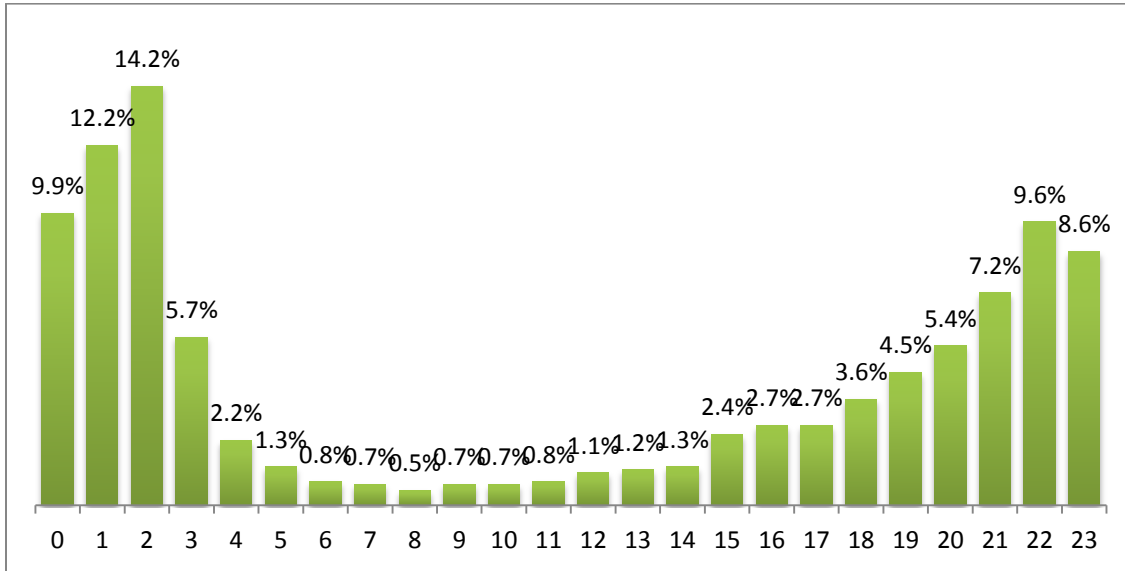
While only comprising one-third of British Columbia’s population (32.5 per cent), these ten locations contributed 41.4% of all incidents of impaired driving in 2003. Moreover, of the top ten locations, only Kamloops was underrepresented with respect to population size, while in addition to Nanaimo, Ridge Meadows, Prince George, and the Upper Fraser Valley region were at least two times overrepresented in terms of their proportion of impaired incidents to their respective populations.

### General Characteristics of the Incident

For the most part, incidents of impaired driving were evenly distributed throughout the year. Specifically, January had the greatest proportion of incidents, accounting for 10% of all impaired driving incidents, while October had the fewest incidents (6.6 per cent). In other words, there was approximately only a 3.5% difference between the highest month and the lowest month with respect to the number of impaired driving incidents. As expected, Saturday had the highest volume of incidents (27.1 per cent) followed by Sunday (18.8 per cent) and Friday (18.1 per cent). The day of the week with the lowest proportion of incidents was Tuesday (7 per cent). In effect, Friday to Sunday accounted for slightly less than two-thirds (64 per cent) of all impaired driving incidents.

The peak hours of the day for the police to have contact with an impaired driver was 2 am (14.2 per cent), 1 am (12.2 per cent), and midnight (9.9 per cent) (see Figure 1). As expected, a majority of impaired driving incidents (54.5 per cent) occurred between 10 pm and 2 am. These results likely reflect more than just the fact that there were more impaired drivers on the streets during these hours, but the nature of police work. In other words, it is likely that, during daylight hours, police may be more focused on other kinds of offences, rather than specifically targeting impaired drivers as is more common among traffic officers at night.

**FIGURE 1: TIME OF DAY OF IMPAIRED DRIVING INCIDENTS**



While there are potentially many reasons for how an impaired driver comes to the attention of the police, the primary reason for why an impaired investigation was initiated was selected from the paper file and coded. In slightly more than one-third of incidents (39.6 per cent), an impaired investigation was initiated as a result of an officer observing some driving violation, such as speeding or driving erratically. In nearly one-quarter of cases (23.4 per cent), the investigation was initiated as a result of a vehicle crash. In slightly fewer instances (19.3 per cent), the investigation was initiated as a result of a witness contacting the police to register a complaint about someone’s driving. Very few investigations were initiated as a result of some mechanical abnormality, such as a car pulled over by the side of the road due to a flat tire or engine failure (1.4 per cent) or a pursuit (0.3 per cent).

It is interesting to note that one of the most publicly visible methods of reducing impaired driving is the use of police check stops at strategically located places, such as highway on-ramps or at intersections near bars or pubs. Moreover, the use of check stops are a main part of the advertising campaign of the police and other organizations interested in reducing impaired driving and may play a key part in any deterrence strategy. While this current study is not focused on the cost effectiveness, in terms of money, time, and other resources, of check stops on rates of impaired driving, in 2003, check stops were the basis for the initiation of an impaired driving investigation in 15.8% of all incidents. This finding may suggest that while check stops detect some impaired drivers, they may also serve the purposes of raising community awareness to the issue of impaired driving and increasing general deterrence.

While there were no substantial differences in the reason that an impaired driving investigation was initiated by the time of day, it should be noted that of the few pursuits that did occur, nearly three-quarters (71.4 per cent) happened between 1 am and 3 am.

In those cases where the investigation was initiated as a result of a vehicle crash (n = 954), there was an even distribution between the crash involving just the driver and multiple vehicle crashes. In total, two-thirds of all crashes resulted in property damage, while nearly one-third (31.5 per

cent) resulted in some degree of personal injuries to either the driver, their passengers, passengers in another car or cars, or pedestrians. Of great concern to the public, 1.7% of crashes resulted in at least one fatality. In fact, of all the files reviewed for this study, 19 people died as a result of an impaired driver.<sup>3</sup> In terms of the seriousness of the injuries suffered by those in either the accused's vehicle or in other vehicles, there were no substantial variations. For the most part, the vast majority of injuries as a result of an impaired driver were bruising or abrasions (84.8 per cent of those in the accused's vehicle and 82.8 per cent in another vehicle). Still, there were troublingly high rates of head injuries (14.5 per cent in the accused's vehicle and 12.4 per cent in other vehicles) and broken bones (13.7 per cent and 17.4 per cent respectively).

### General Characteristics of the Accused

As reported in other research, overwhelmingly, the accused was male (84 per cent) with a mean age of 36.4 years old. While the majority of research on impaired drivers concludes that males are much more likely to drive while impaired than females, there is a sense that impaired drivers tend to be younger. For example, the Canada Safety Council (2005) reported that those between 19 and 24 years old are the most frequent impaired drivers and that impaired driving peaked at 21 years old. In a finding more similar to the one reported for this research, the Canada Safety Council (2005) indicated, however, that drivers between the ages of 25 to 34 years old were most likely to self-report that they had driven while impaired.

In terms of the driving status of the sample, the vast majority of drivers (85.4 per cent) had a valid driver's licence at the time of the incident. Less than one-tenth of the sample (8.5 per cent) had no driver's licence or had their licence cancelled, while an even smaller proportion were driving with an expired licence (2.4 per cent) or had a prohibited licence, a suspended licence, or were disqualified from driving (3.7 per cent).

In terms of the type and make of vehicles, in nearly half of cases (49.5 per cent), the accused was driving a car. In one-third of incidents, the vehicle was a truck. The most common vehicles were Fords (23.7 per cent) and Chevrolets (17.2 per cent). On average, the vehicle was ten years old. Commonly, the vehicle was either owned by the accused or the owner lived in the same household as the accused (78.4 per cent). More rarely, the vehicle was borrowed (13.5 per cent), was a company vehicle (2.9 per cent), or rented (0.9 per cent). In very few cases, the vehicle was stolen (1.3 per cent).

### Criminal History of Drivers

The alcohol-related driving histories of the drivers in this study were extremely serious. Nearly half of the sample (48.4 per cent) had been previously convicted of either impaired driving or been given at least one 24/12 hour driving prohibition. More specifically, nearly one-third of the

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<sup>3</sup> Of these 17 fatalities, 12 people died in the accused's vehicle and the remaining people died in other vehicles. It is also important to keep in mind that this number under represents the total number of people killed in impaired driving accidents in British Columbia in 2003. The reason for this is that this report focuses exclusively on impaired driving incidents with a judicial outcome. If the driver was deceased, charges of impaired driving would not be brought forth, thus their death and potentially all other people killed in this incident would not be captured by this study.

drivers (30.9 per cent) had been previously convicted of impaired driving, while 32% of drivers had been previously given at least one 24/12 hour driving prohibition. In fact, slightly more than one-third of current impaired drivers (37.0 per cent) had never been previously convicted of any alcohol-related driving offence.<sup>4</sup>

In terms of an impaired driving conviction, drivers had, on average, 2.2 previous convictions with a conviction range of 1 prior to 15 previous convictions.<sup>5</sup> With respect to 24/12 hour driving prohibitions, the average rate was somewhat lower at 1.7 priors and the range was one to nine prior driving prohibitions. Similar to the impaired driving result, nearly half of those with a previous driving prohibition (48.7 per cent) had only one previous driving prohibition.<sup>6</sup>

Slightly more than one-quarter of drivers (26.8 per cent) had at least one non-alcohol driving-related conviction. However, this group was engaged in a high degree of criminality as the average number of convictions was 5.1 with a range of one previous conviction to 85 priors.<sup>7</sup> As indicated by Table 3, the offences for which these drivers had been previously convicted of were quite serious.

Slightly more than one-third of drivers (37.8 per cent) had been previously convicted of assault and a similar proportion (34.6 per cent) had been convicted of theft or attempted theft. There were also high rates of drug offence convictions (30.9 per cent), other driving offences (23.6 per cent), and non-compliance with previous dispositions (27.2 per cent) (see Table 3).

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<sup>4</sup> It is important to note that, as previously mentioned, there are options available in the criminal justice system where an impaired driver could be charged with an offence for which there is no official record that alcohol was involved in the incident. Given this, it would appear likely that the numbers presented here underrepresented the number of alcohol-related convictions associated with this sample of drivers.

<sup>5</sup> Of those drivers with a previous impaired driving conviction, a majority (50.6 per cent) had one prior, while 6.1% had six or more convictions.

<sup>6</sup> Of those drivers with a previous alcohol-related driving prohibition, 3.8% had five or more 24/12 hour driving prohibitions on their record.

<sup>7</sup> Of those drivers with a previous non-alcohol and driving related conviction, 31.5% had one prior, while 14.1% had ten or more previous convictions.

**TABLE 3: NATURE OF PREVIOUS CONVICTIONS OF DRIVERS**

Type of Offence	%	Type of Offence	%
Assaults	37.8	Sexual Assault	3.9
Theft / Attempted Theft	34.6	Assault with a Weapon	3.2
Drug Offences	30.9	Stalking or Harassment	1.0
Probation Violation / Breaches	27.2	Possession of B & E Tools	0.7
Driving Offences	23.6	Attempted Sexual Assault	0.7
B & E / Attempted B & E	20.6	Manslaughter	0.7
Mischief	19.5	Vandalism	0.5
Possession of Stolen Property	17.1	Criminal Negligence Causing Death	0.3
Fraud	6.3	2 <sup>nd</sup> Degree Murder	0.2
Robbery / Attempted Robbery	5.2	Attempted Murder	0.2
Threats or Intimidation	4.8	1 <sup>st</sup> Degree Murder	0.1
Motor Vehicle Theft	4.0	Attempted Motor Vehicle Theft	0

In sum, when considering the overall criminal history of drivers accused of operating a motor vehicle while under the influence of alcohol, there are some important facts to keep in mind. A majority of all drivers in this study (51 per cent) had at least one prior conviction. Approximately one-third of the sample had at least one conviction for an alcohol-related driving offence and at least one 24/12 hour driving prohibition. Among the approximately one-quarter of drivers with some other criminal conviction, more than one third were convicted, at least once, of an offence which might make them more likely to drive while impaired by alcohol, such as drug offences, other driving offences, or a history of non-compliance with criminal dispositions.

### **Drug and Alcohol Impairment**

In the large majority of cases where the information was available from the files (n = 3255), beer (78.5 per cent) was the alcoholic beverage consumed prior to the incident of impaired driving. This conforms to the information presented in the previous section. In less than one-fifth of known cases (16.6 per cent) ‘hard alcohol’ was consumed and in a small minority of cases (4.9 per cent) the alcoholic beverage consumed was wine.

When asked about the location where the alcohol contributing to the impaired incident was consumed, a slight majority of drivers (53.9 per cent) reported consuming their alcohol at a licensed premise. This is important because one of the ways to prevent impaired driving is for licensed premises to identify those who have had too much to drink or who appear to be impaired and to prevent them from driving. It would appear that licensed establishments need to do a better job of ensuring that they are not serving people alcohol to the point where they are impaired or preventing those who are drunk or impaired from driving. Other strategies would need to be employed to respond to the slightly less than one-third of drivers (31 per cent) who reported consuming alcohol at a private residence prior to the impaired incident. The remainder of drivers (14.8 per cent) provided some other location, such as a park or their car, as where they had consumed their alcohol. It should also be noted that these categories are not mutually exclusive,

but simply represent the location that drivers admitted coming from immediately prior to their contact with the police.

While the large majority of drivers were administered a breath test (79.8 per cent)<sup>8</sup>, an SFST was rarely used (7.9 per cent) as the grounds for requesting a breath test. A higher proportion of cases used an ASD (33.4 per cent) to establish the grounds for administering a breath test. While no information was provided in the files to provide any insight into why the rates of SFST and ASD use were so low, it would appear that officers were using other options to determine the need for a breath test, such as placing the suspect under arrest based on visual observations and impairment symptomology. It is also possible that SFST were not readily used because of potential language barriers in communicating the detailed instructions associated with the SFST to the driver, because a safe location is required to do the SFST, making it difficult to conduct these tests, for example, along a highway or some busy street, because a straight line on the ground is required for some of the tests again reducing its use along many roads or highways, because the SFST requires a sufficient level of experience and practice on the part of the officer to properly conduct all the tests, and because participation with the SFST is voluntary. The low rate of ASD use may be attributed to the practice of employing the ASD primarily when there are no overt indications of impairment present. In other words, the police may suspect that the driver is impaired, but the driver is not displaying any clear signs of impairment. In these cases, officers may use an ASD to confirm their suspicions.

As this sample is predominately comprised of those impaired drivers in which there was some judicial outcome, it was not unexpected that the average blood alcohol level from the breath tests would be well over the legal limit.<sup>9</sup> In this sample, the average blood alcohol level was 172mg (slightly more than twice the legal limit of 80mg), with a range of 0mg to 430mg. The median for this sample was 165mg and there were only eight people who had a blood alcohol level of 70mg or less. In fact, slightly more than one-fifth of the sample (22.9 per cent) had a blood alcohol level of 201mg or more (see Figure 2).

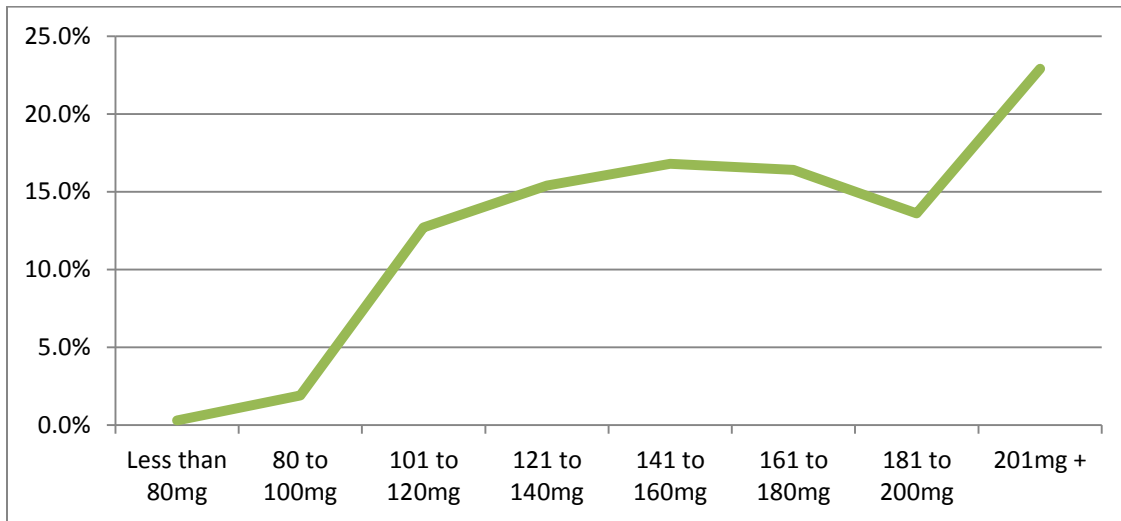
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<sup>8</sup> In 12.9% of cases, the driver refused to participate with a breath test.

<sup>9</sup> Conversations with police officers and other research indicated that it would be unusual for the police to charge a driver with impaired driving if they were not substantially over the legal limit.



**FIGURE 2: AVERAGE BLOOD ALCOHOL LEVEL FROM BREATH TEST**



There was very little variation on the mean blood alcohol level based on the nature of the stop. For example, at the low-end of the spectrum, the average blood alcohol level for drivers who were stopped due to a mechanical abnormality was 162mg, compared to the high-end of the spectrum where the average blood alcohol level was 188mg among those drivers who came to the attention of the police as a result of a driving complaint (see Table 4).

**TABLE 4: MEAN BLOOD ALCOHOL LEVEL BY TYPE OF OCCURENCE**

Type of Incident	Mean BAC
<b>Checkstop</b>	<b>160mg</b>
<b>Driving Complaint</b>	<b>188mg</b>
<b>Observed Violation</b>	<b>166mg</b>
<b>Mechanical Abnormality</b>	<b>162mg</b>
<b>Pursuit</b>	<b>166mg</b>
<b>Vehicle Crash</b>	<b>179mg</b>

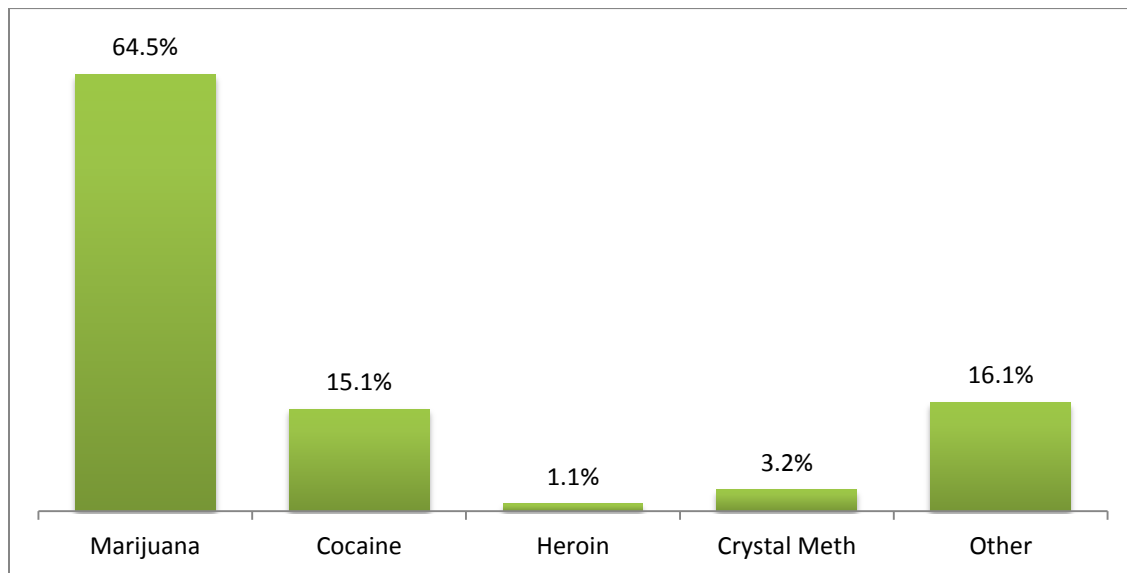
It is interesting to note that those involved in a pursuit did not have a substantially higher blood alcohol level compared to other impaired drivers. Moreover, those impaired drivers involved in a crash were very close to the average blood alcohol level for the entire sample (179mg for those involved in a crash compared to 172mg for the entire sample). In other words, while the average BAC was extremely high for the sample, those who crashed their cars or engaged the police in a pursuit did not have a very different BAC from other drivers.

Due to the low number of drug recognition experts (DRE’s) in British Columbia, the fact that submitting to a drug recognition test is voluntary, and that there are no roadside drug kits

currently in use in Canada by officers to accurately screen for the presence of drugs in a driver<sup>10</sup>, there were very few drivers who were identified as being impaired by drugs (6.4 per cent). Of those impaired by drugs, approximately two-thirds (67.2 per cent) were impaired by prescription drugs and slightly more than one-third (37 per cent) were impaired by non-prescription drugs.<sup>11</sup> It is interesting to note that the mean age of those impaired by prescription drugs was 42 years old, while the mean age of those impaired by non-prescription drugs was ten years younger (32 years old).

In terms of the types of drugs used at the time of the impaired driving stop, nearly two-thirds of drivers who were impaired by non-prescription drugs (64.5 per cent) were impaired by marijuana. A much smaller proportion (15.1 per cent) was impaired by cocaine, while very few were impaired by crystal methamphetamine (3.2 per cent) or heroin (1.1 per cent) (see Figure 3).

**FIGURE 3: TYPE OF NON-PRESCRIPTION DRUGS USED AT TIME OF OCCURENCE**



As mentioned above, there are very few DRE's in British Columbia and submitting to a drug recognition test is voluntary, thus reducing its use. This is evidenced by the fact that only five drivers had a DRE determine impairment. Slightly more drivers (n = 101) had a blood test administered to determine drug impairment. Of those who had a blood test, the average equivalent blood alcohol level was slightly more than twice the legal limit (188mg) with a range of 92mg to 310mg. The equivalent BAC for drug impairment was higher than the mean BAC for alcohol (172mg).

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<sup>10</sup> Such roadside drug kits have been in use in Australia for some time.

<sup>11</sup> In the whole sample, ten drivers were impaired by both prescription and non-prescription drugs at the time of the incident.

In sum, although this sample is composed of those impaired driving cases where there was some judicial outcome, the average blood alcohol level of the sample and the equivalent blood alcohol level as a result of drug use were very high. Based on the high levels of blood alcohol and the prior alcohol-related driving histories of many in this sample, it would appear that there is a portion of drivers who are chronic impaired drivers and that these drivers, on average, are operating vehicles with twice the legal limit of alcohol in their system. It would also appear that there is not one method that is better at identifying higher BAC among drivers as all of the methods, such as check stops or pursuits, tended to have around the same average BAC scores among impaired drivers.

## Criminal Justice Response to Impaired Driving

In all files where the information was available, researchers coded all the charges that the police recommended against the driver. In total, there were fourteen different charge types found in the files. Due to the nature of this sample, it was not surprising that in nearly all cases (96.7 per cent), the police recommended a charge of driving while impaired (see Table 5). Similarly, a very high proportion of cases (81.8 per cent) had a police recommendation for a charge of driving while over 80mg. In addition to these two main charges, in slightly more than one-third of cases (37.7 per cent), the police recommended a charge of no driver’s licence and slightly less than one-fifth of the cases (18.7 per cent) had a recommended charge of no insurance.

**TABLE 5: CHARGES RECOMMENDED BY THE POLICE**

Type of Charge	%	Type of Charge	%
<b>Driving While Impaired</b>	<b>96.7</b>	<b>Driving without Due Care</b>	<b>6.7</b>
<b>Driving with Over 80mg</b>	<b>81.8</b>	<b>Failure to Wear a Seatbelt</b>	<b>5.9</b>
<b>Other Offences</b>	<b>42.2</b>	<b>Failure to Produce a Driver’s Licence</b>	<b>5.7</b>
<b>No Driver’s Licence</b>	<b>37.7</b>	<b>Dangerous Driving</b>	<b>3.9</b>
<b>No Insurance</b>	<b>18.7</b>	<b>Driving While Prohibited</b>	<b>2.9</b>
<b>Refusing to Provide a Breath Sample</b>	<b>13.4</b>	<b>Refusing ASD</b>	<b>2.0</b>
<b>Speeding</b>	<b>11.3</b>	<b>Failure to Produce Insurance</b>	<b>1.1</b>

Moreover, nearly half of the cases (42.2 per cent) had other offences indicated on the file. While no specific charge represented more than one per cent of the total sample, examples of some of the most common additional offences included: failure to remain at the motor vehicle; obstruction

of a police officer; assault; auto theft; possession of stolen property; hit and run; and breach of probation. It should be kept in mind that as drivers could have more than one charge recommended, the totals presented in Table 4 do not add up to 100%.

Overwhelmingly, the driving while impaired and the driving with over 80mg charges were approved by Crown Counsel. Specifically, in 88.2% of cases, these charges were proceeded with. Similar to other research findings, conviction rates or having some other judicial outcome were high. In those cases where the driving while impaired or driving with over 80mg charges were proceeded with, nearly two-thirds (65.8 per cent) resulted in a conviction. Moreover, in those rare cases where the original charge was not proceeded with (11.8 per cent of incidents), the overwhelming majority of those cases (84.8 per cent) resulted in the charges being dealt down to a lesser charge with a guilty plea.<sup>12</sup>

### CONVICTIONS FOR IMPAIRED DRIVING

For the purposes of this analysis, the dispositions imposed as a result of an impaired driving conviction were divided into four options: (1) a driving prohibition; (2) a fine; (3) a custody term; and (4) some other penalty, such as community service or probation. Of course, offenders could be given any of these sentences exclusively or in any combination. In fact, the most common sentence imposed on a driver convicted of impaired driving or driving with over 80mg was a driving prohibition and a fine (79 per cent). The next most frequent sentence was a driving prohibition and a period of custody (5.5 per cent), followed by a driving prohibition alone (4.2 per cent) (see Table 6).

**TABLE 6: PENALTIES IMPOSED ON THOSE CONVICTED OF IMPAIRED DRIVING**

Nature of Penalties	%
Prohibition and a Fine	79.0
Prohibition and Custody	5.5
Prohibition Alone	4.2
Prohibition, a Fine, and Some Other Penalty	3.7
Prohibition, Custody, and Some Other Penalty	2.7
A Fine Alone	2.4
A Fine and Some Other Penalty	0.7
Prohibition, a Fine, Custody, and Some Other Penalty	0.6
Prohibition and Some Other Penalty	0.5
Custody and Some Other Penalty	0.4
Custody Alone	0.3
A Fine and Custody	0.1

<sup>12</sup> While these rates tend to conform to other research, it should be noted again that this sample was composed of those impaired driving incidents for which there was some judicial outcome.

In examining the results presented in Table 6, it is apparent that judges rarely imposed custody as a result of an impaired driving conviction. Specifically, of the 2,764 drivers convicted of impaired driving in this sample, only one-tenth (10.2 per cent) received custody. In those cases where custody was imposed, the mean sentence length was just over two months (63 days). However, in considering this, two facts are important. First, as just mentioned, very few drivers were given any custody time at all and, second, there were some drivers who were given long custody sentences, typically associated with someone dying as a result of the impaired driving. For example, the maximum custody sentenced imposed on a driver in this sample was nearly 3½ years (1,275 days). Given this, if one were to group custody sentences, nearly half of those who received any amount of custody (40 per cent) were handed a sentence of one to two weeks in custody, while only approximately 10% were sentenced to three or more months in prison. In effect, it may be somewhat misleading to suggest that the average custody length imposed for a conviction of impaired driving was just over two months (63 days).

The most common sentence for an impaired driving charge, as stated above, was a driving prohibition and a fine. While the range of driving prohibitions was from one month to 240 months, the mean length of the driving prohibition was just over fourteen months. More specifically, the overwhelming majority of driving prohibitions (83.9 per cent) were for twelve months. In terms of the fine, the range was from \$100 to \$2000 with the average fine being \$685. Here, slightly more than three-quarters (78 per cent) of those who received a fine received a fine of between \$501 and \$750. In effect, the mean sentence for those convicted of impaired driving was a \$700 fine and a twelve month driving prohibition.

It is important to keep in mind that the information presented above only examines the current sentence of a driver, but does not provide any information about the degree to which previous dispositions may have affected the current sentence. In order to assess the impact of previous convictions on current dispositions, an analysis was undertaken to determine the likelihood that a driver would receive a sentence type based on the number of previous convictions they had on record. The results are presented in Table 7.

**TABLE 7: ODDS RATIO – CURRENT IMPAIRED DRIVING CONVICTION**

	Each Additional Alcohol-Related Driving Offence	Each Additional 24/12 Hour Driving Conviction	Each Additional Non-Alcohol Related Conviction	Each Additional Conviction of Any Kind
Likelihood of Receiving a Driving Prohibition	- 3%	- 5%	0	- 1%
Likelihood of Receiving a Fine	- 47%	- 27%	- 8%	- 13%
Likelihood of Receiving Custody	+ 55%	+ 45%	+ 9%	+ 13%
Likelihood of Receiving Some Other Sentence	+ 45%	+ 23%	+ 3%	+ 6%

As demonstrated in Table 7, drivers were 55% more likely to receive a period of custody for their current conviction of impaired driving for each previous alcohol-related driving conviction. In other words, someone with three prior alcohol-related driving convictions was 55% more likely to be sentenced to custody for their current offence than someone with two previous alcohol-related convictions. Similarly, drivers were 45% more likely to receive some other sentence for each additional alcohol-related driving conviction on their record. It is interesting to note that one’s chances of receiving a fine were substantially reduced for each previous alcohol-related driving conviction (47 per cent less likely) and only slightly lower for receiving a driving prohibition (3 per cent less likely).

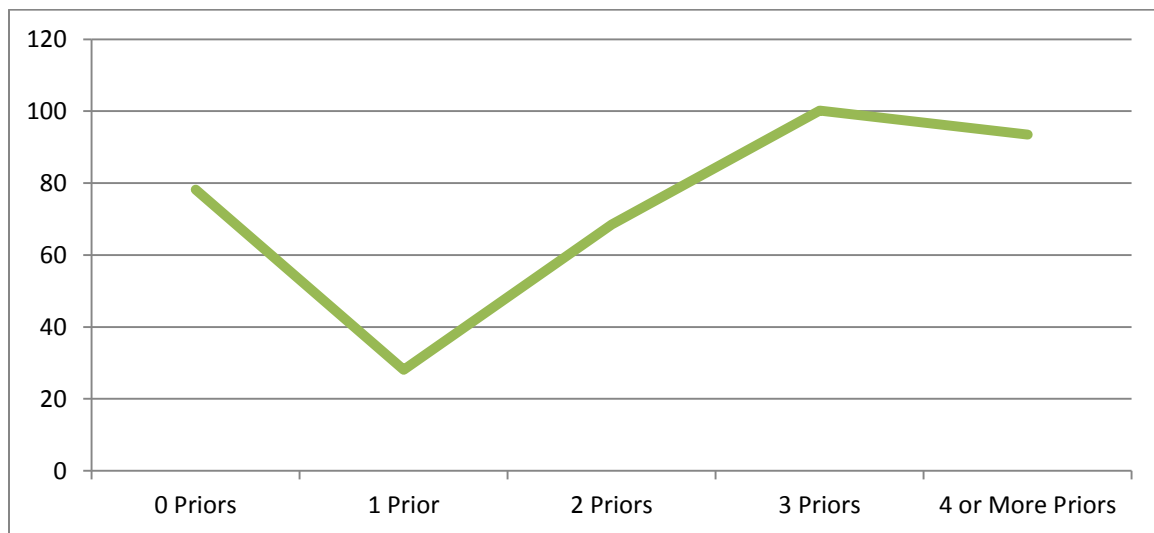
A somewhat similar pattern was found for drivers with previous 24/12 hour driving prohibitions on their records. For example, each additional 24/12 hour driving prohibition made the driver 27% less likely to receive a fine, 45% more likely to be sentenced to a period of custody, and 23% more likely to receive some other sentence. Again, each additional 24/12 hour driving prohibition made it less likely that the driver would be sentenced to either a fine (27 per cent less likely) or another driving prohibition (5 per cent less likely) (see Table 7).

For the most part, having a non-alcohol-related conviction did not substantially increase or decrease the odds of receiving a specific sentence, nor did one’s total number of convictions appear to have much of an effect. Given this, it would appear that when it comes to the sentencing of a driver for impaired driving, the more previous convictions for alcohol-related driving offences or 24/12 hour driving prohibitions a driver has, the greater the likelihood that they will be sentenced to custody.

In considering the average length of a custody sentence based on the number of previous alcohol-related convictions, there are some interesting findings. While it appears that, for the most part,

the number of previous alcohol-related driving convictions on one's record increases the length of the custody sentence for those who receive a period of incarceration, this does not hold true for first time offenders (see Figure 4). For those with no previous alcohol-related driving convictions (n = 67), the average length of custody was 78 days. However, the average length of custody drops to 28 days for those with one previous alcohol-related conviction (n = 83). In other words, those who were convicted for the second time for impaired driving and received custody were, on average, sentenced to nearly three times less days in custody than first time offenders. Moreover, while the length of incarceration increased for those with two (n = 50) or three (n = 23) previous impaired driving convictions (68.5 days and 100 days respectively), sentence length decreased slightly (93.5 days) for those with four or more previous alcohol-related driving convictions (n = 60).<sup>13</sup>

**FIGURE 4: LENGTH OF CUSTODY IN DAYS FOR AN IMPAIRED DRIVING CONVICTION BASED ON THE NUMBER OF PREVIOUS ALCOHOL-RELATED CONVICTIONS**



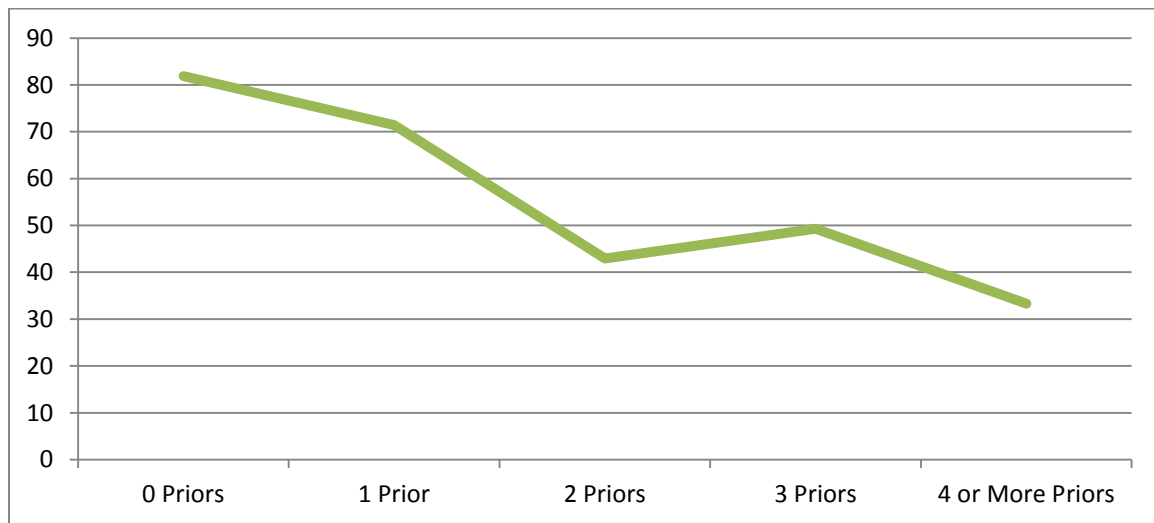
It would appear, therefore, that while the number of previous convictions for impaired driving does increase the chance of receiving custody and does increase the length of custody, those convicted of impaired driving for the first time, on average, receive slightly more than twice the amount of custody as those with one prior conviction and a slightly longer sentence than those offenders with two previous alcohol-related driving convictions. Still, there was a statistically significant positive correlation between custody sentence length and the number of previous impaired driving convictions (.252).<sup>14</sup>

<sup>13</sup> This analysis does not consider whether the sentence was associated with a fatality.

<sup>14</sup> This correlation suggests that there is a moderate positive relationship between days in custody and the number of previous impaired driving convictions. In other words, as the number of previous convictions increases, days in custody increase.

A somewhat different pattern emerged when considering the effect of the number of previous 24/12 hour driving prohibitions on the length of custody for those convicted of impaired driving. In this case, those with no prior 24/12 hour driving prohibitions (n = 131) received, on average, the longest period of incarceration (82 days) followed by those with one prior 24/12 hour driving prohibition (n = 62; 71 days in custody). As demonstrated in Figure 5, the length of custody drops substantially for those with two (n = 32; 43 days) or three (n = 28; 49 days) prior 24/12 hour driving convictions and then drops again for those with four or more priors (n = 30; 33 days).

**FIGURE 5: LENGTH OF CUSTODY IN DAYS FOR AN IMPAIRED DRIVING CONVICTION BASED ON THE NUMBER OF PREVIOUS 24/12 HOUR DRIVING PROHIBITIONS**



Given this, while the number of prior 24/12 hour driving prohibitions increased the chances of receiving a period of incarceration for a current impaired driving conviction, it did not increase the amount of custody one received. Conversely, the amount of custody was negatively correlated with the number of prior 24/12 hour driving prohibitions (-.127).<sup>15</sup>

When considering the data presented above, it is important to acknowledge, as mentioned above, that 90% of those convicted of impaired driving did not receive a custody sentence regardless of the number of prior impaired driving convictions or 24/12 hour driving prohibitions on their record.

#### **PENALTIES IMPOSED WHEN CHARGES WERE DEALT DOWN**

In nearly all cases (84.4 per cent) in which either the charges of driving while impaired or driving above 80mg were not proceeded with, or the accused was not convicted of either of these two offences, the charges were dealt down to a lesser charge with a guilty plea. This comprised slightly more than one-quarter (26.2 per cent) of the entire sample. Of those cases, the vast

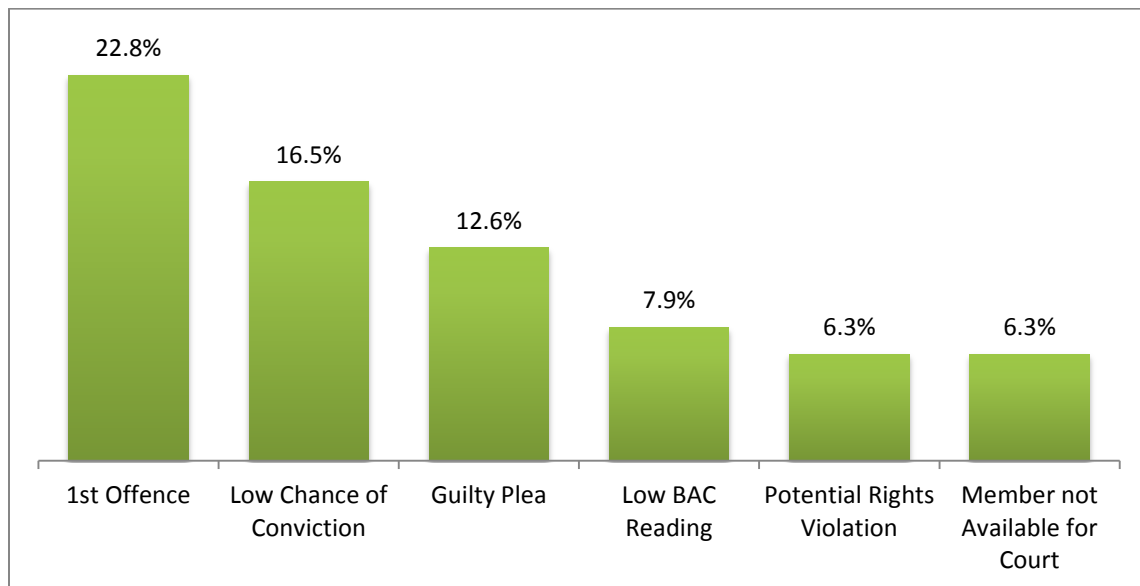
<sup>15</sup> It should be kept in mind that this correlation is very weak.



majority (85.3 per cent) were plead down to Section 144 of the Motor Vehicle Act (driving without due care). Slightly more than three-quarters (77.6 per cent) of the charges that were plead down but not to Section 144, were plead down to Section 224 of the Motor Vehicle Act (driving over 80mg). As Section 144 does not include a reference to alcohol consumption on the driver's record, this may be the leading cause for why drivers are more likely to plead guilty to this charge compared to Section 224 which explicitly places a drinking-related offence on the driver's record. Section 224 may also be a less attractive option for the driver as this conviction is more likely to be accompanied by a driving prohibition and also includes a 10 demerit point penalty compared to a six point penalty for a Section 144 violation.

The RCMP files contained many reasons for why a charge was reduced in exchange for a guilty plea. However, as demonstrated in Figure 6, nearly three-quarters (73.6 per cent) of the reasons fall into one of six explanations. The most common reason for dealing the charge down was that it was the driver's first offence (22.8 per cent). Other reasons included a Crown's assessment that conviction on the original charge was unlikely for some reason (16.5 per cent), there was an immediate guilty plea from the defence (12.6 per cent), or there was a low blood alcohol reading (7.9 per cent).

**FIGURE 6: MAIN REASONS FOR THE ORIGINAL CHARGE BEING DEALT DOWN TO A LESSER CHARGE WITH A GUILTY PLEA**



With respect to the low blood alcohol level, it should be noted that the mean BAC for those drivers who had their original charge dealt down was still twice the legal limit (160mg) compared to the mean BAC level of 179mg for those who were proceeded against with their original charges.

Unlike those who were convicted of impaired driving, only 40% of those who plead guilty to a lesser charge received a driving prohibition and a fine. Slightly more common (45 per cent) was

to receive just a fine (see Table 8). As expected, very few drivers received custody alone or as part of their sentence when pleading guilty to a lesser charge (n = 8).

**TABLE 8: PENALTIES IMPOSED ON DRIVERS WHO HAD THEIR ORIGINAL CHARGE DEALT DOWN TO A LESSER CHARGE WITH A GUILTY PLEA**

Nature of Penalties	%
A Fine Alone	45.0
A Driving Prohibition and a Fine	40.1
Fine and Some Other Penalty	11.4
A Driving Prohibition and Some Other Penalty	1.1
A Driving Prohibition, a Fine, and Some Other Penalty	0.9
A Driving Prohibition Alone	0.8
A Driving Prohibition, Fine, Custody, and Some Other Penalty	0.4
A Driving Prohibition and Custody	0.1
Custody and Some Other Penalty	0.1
Custody, a Fine, and Some Other Penalty	0.1
Prohibition, Custody, and Some Other Penalty	0.1

In terms of a driving prohibition, the average length was 7.8 months with a range of one month to 120 months. As indicated by Figure 7, nearly half (42.4 per cent) of all driving prohibitions were for less than six months, while only 3.7% were for more than 12 months.

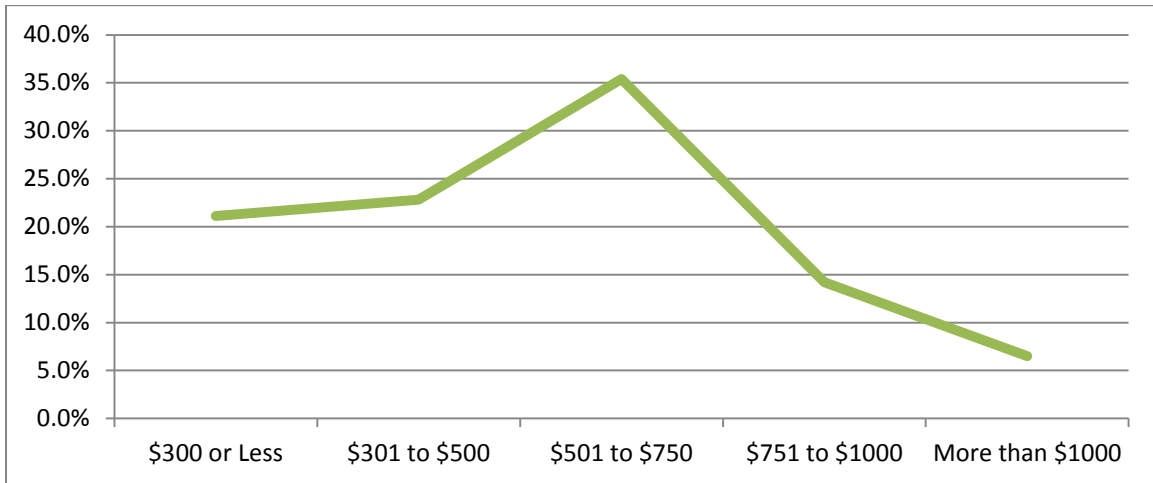
**FIGURE 7: LENGTH OF DRIVING PROHIBITION IN MONTHS FOR CHARGES THAT WERE PLEADED DOWN**



As demonstrated in Table 8 above, nearly everyone who plead guilty to a lesser charge received a fine (96.1 per cent). The average amount of the fine was \$602.29 with a range of \$50 to \$2000. This finding is supported by the fact that slightly more than one-fifth of those who plead guilty to a lesser charge (21.1 per cent) received a \$300 or less fine and only 6.5% received a fine of more

than \$1000 (see Figure 8). In effect, nearly all of those who plead guilty to a lesser charge received, on average, either a \$600 fine or a \$600 fine with an eight month driving prohibition.

**FIGURE 8: AMOUNT OF FINE FOR CHARGES PLEADED DOWN**



It appears, however, that a prior record of either alcohol-related driving convictions or 24/12 hour driving prohibitions did not, for the most part, affect the type of sentence one received (see Table 9). Moreover, having non-alcohol related driving convictions and one’s total number of convictions for any type of offence did not affect judicial decisions when the charges were plead down. While the clear exception to this finding was in relation to custody sentences, as so few drivers received this disposition (n= 8) we will not discuss this finding further.

**TABLE 9: ODDS RATIO – CURRENT PLEADED DOWN CHARGE**

Penalty	Each Additional Alcohol-Related Driving Offence	Each Additional 24/12 Hour Driving Conviction	Each Additional Non-Alcohol Related Conviction	Each Additional Conviction of Any Kind
Likelihood of Receiving a Driving Prohibition	- 2%	- 4%	- 1%	- 1%
Likelihood of Receiving a Fine	- 17%	0	- 2%	- 2%
Likelihood of Receiving Custody	- 45%	+ 19%	+ 3%	+ 3%
Likelihood of Receiving Some Other Sentence	+ 5%	- 3%	+ 1%	+ 1%

In effect, one's previous record of convictions had little to do with the judicial outcome when the charge was pleaded down. Instead, it may be that the reasons Crown Counsel accepted a guilty plea in exchange for a lesser charge and the current generally accepted sanction range for pleading guilty to Section 144 or 224 of the Motor Vehicle Act have a greater influence on sanctions than the driver's previous criminal record.

Finally, for all cases, the average time it took from the date of the incident to the date of the final disposition was 18.8 months (226 days) with a range of one day to 2 years 8 months. However, cases proceeded through the criminal justice system faster when cases were not pleaded down. Specifically, it took, on average, 189 days from incident to disposition for cases that were not plead down compared to 299 days for cases that were plead down.

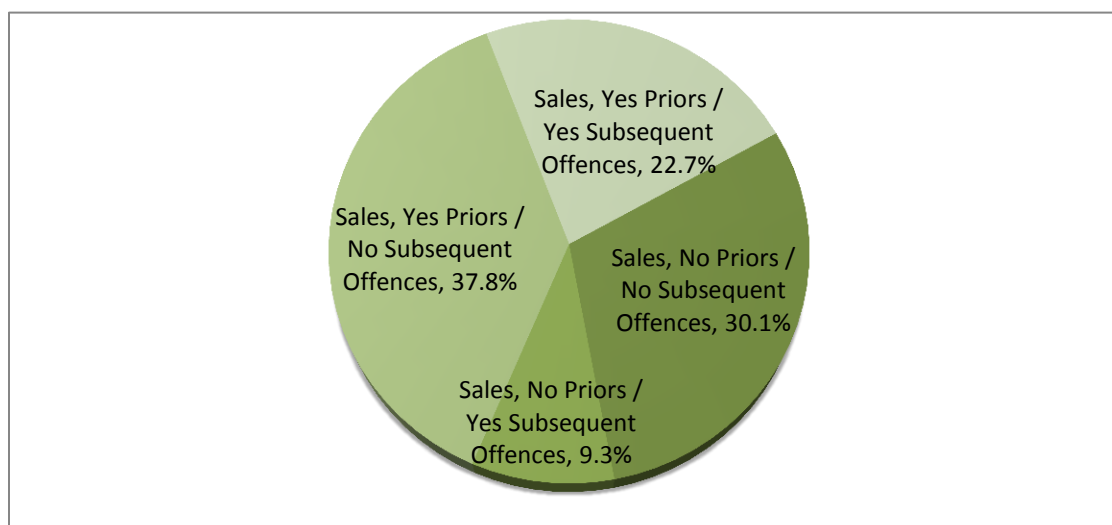
### **Alcohol Related Driving Offenses After 2003**

In order to consider the potential effects of the sanction imposed on impaired drivers in 2003, specifically in terms of subsequent alcohol-related driving offences, the Insurance Corporation of British Columbia (ICBC) provided data on impaired driving offences for 3,861 of cases in this sample (88.0 per cent) over a four year follow-up period ending December 2007. Of these cases, more than one-third (39.5 per cent) did not have a previous alcohol-related offence prior to their key offence in 2003. In other words, the offence in 2003 was the subject's first officially recorded alcohol-related offence.<sup>16</sup> Of those with prior convictions, the mean number of prior alcohol-related driving offences was 2.4 with a range of one to 17 priors. Most importantly, regardless of the subject's previous driving history, approximately one-third (32.0 per cent) of the sample had at least one additional subsequent alcohol-related offence to the end of 2007 following their 2003 offence (see Figure 9). In effect, one-third of the sample reoffending by driving impaired over the four year follow-up period.

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<sup>16</sup> An alcohol-related offence was defined as a conviction for: Driving without Due Care; Driving without Consideration; a 24-Hour Driving Prohibition; Dangerous Operation of a Motor Vehicle; Impaired Operation of a Motor Vehicle; Driving over .08; or Failure or Refusal to Provide a Sample.

**FIGURE 9: SUBSEQUENT ALCOHOL-RELATED DRIVING OFFENCES**



More specifically, nearly one-third of the sample (30.1 per cent) had only the 2003 alcohol-related driving offence. In other words, these individuals did not have any recorded alcohol-related driving offences prior to 2003 and did not have an official subsequent offence during the follow-up period. An additional one-third (37.8 per cent) of individuals had prior alcohol-related driving offences, but did not have any official subsequent offences during the follow-up period (see Figure 9). However, nearly one-third of drivers (32.0 per cent) did have at least one subsequent alcohol-related driving offence during the follow-up period, and the majority of these individuals (70.1 per cent) had at least one prior alcohol-related driving offence.

With respect to the number of subsequent alcohol-related driving offences, the mean number for those with an offence ( $n = 1,236$ ) was 1.7 subsequent offences with a range of one to nine offences. However, when considering whether the subject had a prior alcohol-related driving offence, there was a statistically significant, albeit small, difference in the number of subsequent alcohol-related driving offences. Specifically, the mean number of subsequent offences for those with no alcohol-related driving offence priors was 1.6 compared to 1.7 for those with priors.

In considering just those subjects with subsequent alcohol-related offences, a more detailed analysis was conducted on the first offence after the 2003 key offence. The overwhelming majority of these subjects (86.8 per cent) were given a 24-hour driving prohibition as the sanction for their subsequent offence (see Table 10). Only a very small proportion of subjects (2.2 per cent) were convicted of impaired driving subsequent to their 2003 alcohol-related driving conviction.

**TABLE 10: TYPE OF SUBSEQUENT DRIVING OFFENCE**

Offence Type	%
MVA 144[1][a] – Driving Without Due Care	6.2%
MVA 144[1][b] – Driving Without Consideration	1.8%
MVA 215 – 24-Hour Driving Prohibition	86.8%
CCC 249[1][a] – Dangerous Operation of a Motor Vehicle	0.4%
CCC 253[a] – Impaired Operation of a Motor Vehicle	2.2%
CCC 253[b] – Drive Over .08	2.3%
CCC 254[5] – Failure or Refusal to Provide Sample	0.3%

There was an extremely wide range for the mean number of days from the 2003 offence to the next alcohol-related driving offence (1 – 1,766 days). However, the mean was 627 days between official violations. Interestingly, only 40.1% of the sample had their first subsequent alcohol-related driving violation within one year of the 2003 key violation. There was only a very small, and not statistically significant, difference in the number of days between those with prior alcohol-related driving offences (624.9 days) and those without priors (632.3 days).

In terms of sanctions, of those given a driving suspension ( $n = 263$ )<sup>17</sup>, the mean number of days that the driver was suspended for their first alcohol-related driving offence subsequent to the 2003 offence was 359.2 days with a range of 30 days to 3,600 days. While approaching statistical significance, those with one prior alcohol-related driving offence, in other words the key 2003 offence, were, on average, suspended for 318 days compared to an average of 394.5 days for those drivers with at least one alcohol-related driving offence that pre-dated the 2003 key violation.<sup>18</sup>

Given this analysis, it would appear that the majority of drivers (68.0 per cent) with a judicial outcome of an alcohol-related driving offence in 2003 did not have a subsequent offence up to the end of 2007. However, for those who did reoffend, they did so 1.67 times over the next four years. Among those who did reoffended, more than twice as many ( $n = 876$  compared to  $n = 360$ ) had additional alcohol-related driving offences that predated the 2003 key offence. Finally, the most common type of charge for the first alcohol-related driving offence after the 2003 key violation was a 24-hour driving prohibition and, on average, this occurred 627 days after the 2003 violation.

<sup>17</sup> ICBC database only had information on driving suspensions and not other criminal justice sanctions, such as fines or incarceration.

<sup>18</sup>  $t(-1.94) = 261, p = .054$

### Effect of 2003 Sanction

Of the cases with ICBC data, nearly two-thirds (63.2 per cent) were convicted of an impaired driving offence, while the remainder were given a 12 or 24 hour driving prohibition. There was virtually no variation in the number of subsequent alcohol-related driving offences or the amount of time between the 2003 offence and the next alcohol-related offence based on whether the driver was convicted of an impaired driving offence or given a 12 or 24 hour driving prohibition in 2003. Specifically, those drivers convicted of an impaired driving offence had 0.56 subsequent alcohol-related driving offences compared to 0.57 for those given a 12 or 24 hour driving prohibition. Similarly, those convicted of an impaired driving charge reoffended, on average 591.3 days after the 2003 offence compared to 622.1 days for those given a 12 or 24 hour driving prohibition.

When only considering those who reoffended after the 2003 key offence (n = 1,293), the number of subsequent alcohol-related driving offences was identical at 1.71 subsequent offences for those who received an impaired driving conviction and those who received a 12 or 24 hour driving conviction. In addition, there was no change in the mean number of days until the first subsequent offence presented in the previous paragraph. In addition, the most common outcome of the first subsequent alcohol-related driving offence did not substantially differ based on whether the 2003 offence resulted in a conviction for impaired driving or a 12 or 24 hour driving prohibition (see Table 11).

**TABLE 11: TYPE OF SUBSEQUENT DRIVING OFFENCE BASED ON 2003 OUTCOME**

<b>1<sup>st</sup> Subsequent Alcohol-Related Driving Offence</b>	<b>2003</b>	<b>2003 12 or 24 Hour</b>
<b>MVA 144[1][a] – Driving Without Due Care</b>	5.4%	7.2%
<b>MVA 144[1][b] – Driving Without Consideration</b>	1.6%	1.9%
<b>MVA 215 – 24-Hour Driving Prohibition</b>	84.4%	89.0%
<b>CCC 249[1][a] – Dangerous Operation of a Motor Vehicle</b>	0.4%	0.6%
<b>CCC 253[a] – Impaired Operation of a Motor Vehicle</b>	3.5%	0.6%
<b>CCC 253[b] – Drive Over .08</b>	4.2%	0.2%
<b>CCC 254[5] – Failure or Refusal to Provide Sample</b>	0.5%	0.4%

Given these results, it would appear that there were no specific benefits in terms of reducing recidivism or delaying subsequent offences between being convicted of a Criminal Code impaired driving offence or a Motor Vehicle Act driving prohibition in 2003 among this sample. Moreover, it did not appear that the way the previous alcohol-related driving offence was dealt with by the criminal justice system affected the way in which the first subsequent alcohol-related driving offence was responded to.

## Recommendations

The review of the Canadian research literature and the consideration of the data analysed for this project lead to several recommendations that may assist both the police and Crown Counsel in responding to and preventing impaired driving. It would seem that the police would benefit from having a standardized impaired driving investigation course for all officers. In addition to the general benefit of having all officers trained in a similar fashion on the necessary procedures and roadside tests when encountering a suspected impaired driver, this training would increase the opportunities for Crown Counsel to more successfully prosecute impaired driving. This result might contribute to a reduction in the number of cases in which Crown Counsel needs to accept a plea to a lesser charge because the likelihood of a successful prosecution for impaired driving has been reduced by some police action or error.

Related to this point, there is likely a benefit in implementing or expanding the number of dedicated Crown Counsel to impaired driving. Not only would having expert Crown Counsel increase the likelihood of successful prosecutions, but reducing the amount of time it takes from offence to final disposition would increase the deterrent effect of the sanction.

Perhaps the most important recommendation of this report is to point out the need to have a charge that reflects that alcohol was involved in an offence for charges that are reduced. In other words, in the practice of dealing down impaired drivers to some lesser charge, that charge should still have some reference to the fact that the driving incident was alcohol-related. While the police are currently able to know whether a driver has had an ASD in the past, negotiating an impaired driving offence to Section 144 of the Motor Vehicle Act in exchange for a guilty plea does not result in the driver having an alcohol-related offence on their record. Enacting a Provincial Impaired Driving offence similar to the existing Section 224 of the Motor Vehicle Act would allow for a record of the alcohol-related conviction should the driver be a repeat offender.

Another recommendation might be to fingerprint all persons detained for a Criminal Code driving offence. This practice would certainly ensure that these offences would appear on police databases, such as CPIC or PRIME. However, we would recommend that whenever possible the fingerprinting take place at another time. The reason for this is that it would allow the officer to observe the driver at another time, one in which the driver is unlikely to be impaired. This would allow the officer, at court, to give a detailed description of the behaviour, speech, and mannerisms of the driver at the time they were impaired compared to another time. This information may be useful at trial.

Finally, as the current policies to deal with impaired driving are designed to achieve both specific and general deterrence, rather than just publicising the sentences given to those convicted of impaired driving, the RCMP, ICBC, or the province should inform the public of the number of people arrested in order to increase the public's expectation of being detected if driving impaired. In terms of sanctions, the goals of specific deterrence might be enhanced if the vehicle used at the time of the impaired driving were impounded at the scene and forfeited by the driver. In other words, in addition to losing the privilege of driving for a specific period of time and paying a fine, drivers would lose their vehicles as a result of driving while impaired.



It appears evident that judges are not considering prior record in sentencing those convicted of impaired driving or pleading guilty to a lesser charge. It also appears that current sentences are insufficient to deter people, especially the small proportion of chronic impaired drivers, from continuing in this dangerous, criminal, and socially unacceptable behaviour. Without major legislative changes to increase the sanctions associated with impaired driving, there are, as outlined above, several options that the police and Crown Counsel could consider preventing and deterring impaired drivers, to respond more vigorously to those who persist in driving while impaired, and to ensure the successful prosecution of those drivers who place British Columbians at risk.

Nonetheless, it is clear that the police and the courts must remain vigilant against those who drive while impaired. In addition to the real and potential harm that impaired drivers cause to members of society, as demonstrated by the findings of this research project, a substantial proportion of impaired drivers have been previously convicted of alcohol-related driving offences and a range of other offences. Again, in this sample, one-third of drivers who received some judicial sanction as a result of driving while impaired in 2003 reoffended, on average, nearly two times within a four year follow-up period. Moreover, subsequent alcohol-related driving offences were typically responded to with a 12 or 24 hour driving prohibition. Most importantly, it was extremely alarming to uncover, given the inherent difficulties associated with apprehending and convicting an impaired driver, that 70% of the sample had more than one alcohol-related driving offence by the end of 2007.

Law enforcement and the courts must ensure that those who might choose to drive while impaired by alcohol are deterred, and that those who do operate a motor vehicle while under the influence of alcohol are responded to in a fashion that demonstrates to the driver and the public that impaired driving is a serious offence that will not be tolerated. Doing everything possible under the law to keep chronic and first-time impaired drivers off the roads makes all Canadians safer.

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## Appendix A

**File #:** 03 - | | | | | | | |

**Name of Subject:** \_\_\_\_\_

**Birth Date:** | | | | | | | |

**D D M M Y Y**

**Driver's Licence #:** | | | | | | | |

**Province of Issue:** | | | |

**FPS#:** | | | | | | | |

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**File Number: 03 -** | | | | | | | |

**Coder:** | | | |

**Detachment:** | | | | | |

### Accused Information

#### 1. Accused's Gender:

1. Male   
2. Female

**2. Accused's Date of Birth:** | | | | | | | |

**D D M M Y Y**

**3. Accused's Age:** | | | | years old

**4. Residential Postal Code:** 1. | | | | | | | |

2. Not Recorded

### Vehicle Information

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**5. Type of Vehicle:** \_\_\_\_\_ (Manufacturer)

**6. Vehicle Model:** \_\_\_\_\_

**7. Year of Vehicle:** | | | | | |

#### 8. Vehicle Ownership:

1. Accused or Same Household   
2. Employer   
3. Borrowed



6. Vehicle Crash

→ go to # 16

**15. Were witness statements taken?**

0. No

1. Yes

**16. Type of Vehicle Crash:**

1. Single Vehicle

2. Multiple Vehicles

3. Hit and Run

**17. Damage Caused by Vehicle Crash:**

1. Property Damage  → go to # 24

2. Personal Injury  → go to # 18

3. Fatality  → go to # 22

4. Unrecorded  → go to # 24

**18. Number of People Injured from Accused's Vehicle:** |\_\_\_\_\_|\_\_\_\_\_|

**19. Severity of Injuries of all People from Accused's Vehicle: (check all that apply)**

1. Bruising/Abrasions

2. Broken Bones

3. Internal Injuries

4. Head Injury

5. Unrecorded

**20. Number of People Injured from Other Vehicle(s):** |\_\_\_\_\_|\_\_\_\_\_|

**21. Severity of Injuries of all People from Other Vehicle(s): (check all that apply)**

1. Bruising/Abrasions

2. Broken Bones

3. Internal Injuries

4. Head Injury

5. Unrecorded

**22. Number of People Killed from Accused's Vehicle(s):** |\_\_\_\_\_|\_\_\_\_\_|

**23. Number of People Killed from Other Vehicle(s):** |\_\_\_\_\_|\_\_\_\_\_|



**35. Check all Offences that the Accused has been Convicted of:**

1. 1 <sup>st</sup> Degree Murder		13. Theft/Attempted Theft: Personal Property	
2. 2 <sup>nd</sup> Degree Murder		14. Threats or Intimidation	
3. Attempted Murder		15. Stalking or Harassment	
4. Criminal Negligence Causing Death		16. Motor Vehicle Theft	
5. Manslaughter		17. Attempted Motor Vehicle Theft	
6. Sexual Assault		18. Vandalism	
7. Attempted Sexual Assault		19. Drug Offence	
8. Assault with a Weapon		20. Fraud	
9. Assault		21. Mischief	
10. Robbery/Attempted Robbery		22. Driving Offence	
11. B&E/Attempted B&E		23. Probation Violation/Breach Conditions/Failure to Appear	
12. Theft/Attempted Theft Household Property		24. Other Criminal Charges Specify:	

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**Alcohol and Drug Impairment**

**36. Type of Alcohol Consumed:**

- 1. Beer
- 2. Wine
- 3. Other Liquor
- 4. Unrecorded



**37. Location of Consumption:**

- 1. Licensed Premise
- 2. Private Residence
- 3. Other
- 4. Unrecorded

**38. Was SFST used to Determine Grounds for Breath Test?**

- 0. No
- 1. Yes  → go to # 40
- 2. Refused

**39. Was ASD used to Determine Grounds for Breath Test?**

- 0. No
- 1. Yes  → go to # 40
- 2. Refused  → go to # 52

**40. Was a Breath Test Administered?**

- 0. No  → go to # 42
- 1. Yes  → go to # 41
- 2. Refused  → go to # 48

**41. Average Blood Alcohol Level: . |\_\_\_\_\_|\_\_\_\_\_|\_\_\_\_\_| mg**

**42. Was the Accused Using a Prescription Drug(s) at the time?**

- 0. No
- 1. Yes
- 2. Unrecorded

**43. Was the Accused Using a Non-Prescription Drug(s) at the time?**

- 0. No
- 1. Yes
- 2. Unrecorded

**44. Was a DRE used to Determine Impairment**

- 0. No
- 1. Yes  → go to # 45
- 2. Refused

**45. Type of Drug(s): (Check all that apply)**

- 1. Marijuana
- 2. Cocaine
- 3. Heroin
- 4. Crystal Meth
- 5. Ecstasy
- 6. Other
- 7. None

**46. Was a Blood Test Administered?**

- 0. No  → go to # 48
- 1. Yes  → go to # 47
- 2. Refused  → go to # 48

**47. Average Equivalent Blood Alcohol Level: . |\_\_\_|\_\_\_|\_\_\_| mg**

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**Criminal Justice Response**

**48. Was Section 215 or 90.3 of the Motor Vehicle Act Prohibition Issued?**

- 0. No  → go to # 49
- 1. Yes  → go to # 50

**49. Why Not?**

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**50. Was an Administrative Driving Prohibition Issued?**

- 0. No  → go to # 51
- 1. Yes  → go to # 52

**51. Why Not?**

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**52. Was a Report To Crown Counsel Approved and Charges Laid?**

- 0. No  → go to # 53
- 1. Yes  → go to # 54

**53. Why Not?**

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**54. What were the Charges? (check all that apply)**

- 1. Impaired/Care & Control
- 2. Driving over 80 mg
- 3. Refused to Provide a Breath Sample
- 4. Refused ASD
- 5. Driving While Prohibited
- 6. Other (Specify)\_\_\_\_\_

**55. Were Any Other Driving Related Charges Laid Other than Impaired at the time of the Stop?**

0. No  → go to # 57

1. Yes  → go to # 56

**56. What were the Other Charges? (check all that apply)**

- 1. Speeding
- 2. Drive with w/o due Care
- 3. Fail to wear Seatbelt
- 4. No Driver's Licence
- 5. Fail to Produce Licence
- 6. No Insurance
- 7. Fail to Produce Insurance
- 8. Other Motor Vehicle Offence

**57. Were Either the Charges of Driving While Impaired or Driving with More than 80 mg Proceeded With?**

0. No  → go to # 58

1. Yes  → go to # 59

**58. Why Not?**

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(GO TO # 62)

**59. Was the Accused Convicted of Either Driving While Impaired or Driving with More than 80mg?**

0. No  → go to # 60

1. Yes  → go to # 61

**60. Why Not?**

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**61. What was the Penalty(s) Imposed?**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**62. Was the Original Charge Dealt Down to a Lesser Charge with a Guilty Plea?**

0. No  → go to # 66

1. Yes  → go to # 63

**63. Why?**

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**64. What was the Original Charge Plead Down to?**

1. Section 144 of the Motor Vehicle Act – Driving with w/o Due Care

2. Other: \_\_\_\_\_

**65. What was the Penalty(s) Imposed?**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

**66. What was the Amount of Time Between the Date of the Stop and the Final Disposition?**

|\_\_\_\_\_| |\_\_\_\_\_| |\_\_\_\_\_| Number of Days

-- End --

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