

# MADD CANADA MODEL 2009



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## LIST OF ABBREVIATIONS

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Administrative Licence Suspension	ALS
Blood-Alcohol Concentration	BAC
Canadian Addiction Survey	CAS
Canadian Centre on Substance Abuse	CCSA
Centre for Addiction and Mental Health	CAMH
Graduated Licensing Program	GLP
Insurance Corporation of British Columbia	ICBC
Insurance Institute for Highway Safety	IIHS
International Council on Alcohol, Drugs and Traffic Safety	ICADTS
National Highway Traffic Safety Administration	NHTSA
Ontario Student Drug Use and Health Survey	OSDUHS
Société de l'Assurance Automobile du Québec	SAAQ
Traffic Injury Research Foundation	TIRF
Transportation Research Board	TRB

## INTRODUCTION

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The *MADD Canada Model 2009* is a revision and update of the models produced for *Rating the Provinces* in 2000 and 2003. As described below, there have been many traffic safety developments in Canada and abroad since the last *Model* was prepared. Nevertheless, impaired driving remains the leading criminal cause of death in Canada, with impairment-related crashes accounting for approximately 1,278 deaths and 75,374 injuries, and as much as \$12.7 billion in financial and social costs, in 2006.<sup>1</sup> This document is intended to provide guidance to the provinces and territories on the most effective ways to address the impaired driving problem.

Like the other *Models*, the *MADD Canada Model 2009* affirms the importance of provincial and territorial<sup>2</sup> initiatives in reducing impaired driving and otherwise improving traffic safety. Under the *Constitution Act, 1867*,<sup>3</sup> the provinces have legislative authority over the administration of justice, property and civil rights, and licensing. Taken together, these powers give the provinces broad authority over law enforcement practices, civil liability, and the regulation of drivers and vehicle ownership.<sup>4</sup> While the federal government obviously has a major role to play in reducing impaired driving through the criminal law, the provinces have the constitutional authority to enact many of the most promising traffic safety measures. Indeed,

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<sup>1</sup> G. Mercer, *Estimating the Presence of Alcohol and Drug Impairment in Traffic Crashes and their Costs to Canadians: 1999 to 2006* (Vancouver: Applied Research and Evaluation Services, University of British Columbia, 2009) at 8 and 11. In contrast, there were only 605 homicides in Canada in 2006, including first and second degree murder, manslaughter and infanticide cases. G. Li, *Homicide in Canada, 2006* (Ottawa: Canadian Centre for Justice Statistics, 2007) at 2.

<sup>2</sup> For the remainder of this report, any reference to the provinces is intended to refer to the territories as well.

<sup>3</sup> *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3, reprinted in R.S.C. 1985, App. II, No. 5, ss. 92(13), (14) and (16).

<sup>4</sup> See *Prince Edward Island (Provincial Secretary) v. Egan*, [1941] S.C.R. 396 [Egan]; *Ross v. Canada (Registrar of Motor Vehicles)*, [1975] 1 S.C.R. 5 [Ross]; and *Horsefield v. Ontario (Registrar of Motor Vehicles)* (1999), 44 O.R. (3d) 73 (C.A.) [Horsefield]. Moreover, s. 92(15) gives the provinces authority to create offences in relation to matters within their legislative competence. Provincial driving offences have been repeatedly upheld under this head of power. See *Egan*; *Ross*; and *O'Grady v. Sparling*, [1960] S.C.R. 804.

many of the most progressive initiatives in recent years have been introduced at the provincial level.<sup>5</sup>

Much has happened since we published the *MADD Canada Model 2003*. We released a comprehensive review of provincial legislation in *Rating the Provinces and Territories: The 2006 Report Card*,<sup>6</sup> as well as shorter annual progress reports in 2004, 2005, 2007 and 2008. We also produced a report card on provincial interlock programs in 2008.<sup>7</sup> In 2006, MADD Canada prepared a large-scale review of measures to reduce impaired driving and alcohol-related harms among youth, of which graduated licensing and a .00% blood-alcohol concentration (BAC) limit to age 21 were rated as priority recommendations.<sup>8</sup> In the summer of 2008, the federal government introduced a number of changes to the *Criminal Code*'s impaired driving provisions, including provisions allowing for field sobriety testing and drug recognition evaluation testing.<sup>9</sup> In addition, as the individual legislative summaries that were prepared along with this report describe, there has been considerable legislative activity at the provincial level since 2003. Finally, MADD Canada has just published a substantial collection of alcohol, drug and traffic-related statistics, *Alcohol, Trauma and Impaired Driving*, 4th edition,<sup>10</sup> which provides a valuable and convenient reference to key data from Canada and around the world.

We have considered and built on these developments in preparing the *MADD Canada Model 2009*. In particular, we have focused on measures that are practical and achievable, many of which have already been introduced in one or more provinces. We have attempted to highlight provincial successes, and use existing programs as best practices that other provinces should emulate. MADD Canada is generally encouraged by the introduction of promises, albeit

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<sup>5</sup> These include graduated licensing programs, administrative licence suspensions, ignition interlocks, and vehicle impoundment programs. These developments are discussed in further detail where relevant throughout this report.

<sup>6</sup> R. Solomon & S. Pitel, *Rating the Provinces and Territories: The 2006 Report Card* (Oakville: MADD Canada, 2006).

<sup>7</sup> J. Suggett & R. Solomon, *Rating the Provinces and Territories on Ignition Interlock Programs: The 2008 Report Card* (Oakville: MADD Canada and Allstate Insurance, 2008).

<sup>8</sup> R. Solomon & E. Chamberlain, *Youth and Impaired Driving in Canada: Opportunities for Progress* (Oakville: MADD Canada and Allstate Insurance, 2006) [*Opportunities for Progress*].

<sup>9</sup> *An Act to amend the Criminal Code and to make consequential amendments to other Acts*, S.C. 2008, c. 6, ss. 18-26.

<sup>10</sup> R. Solomon *et al.*, *Alcohol, Trauma and Impaired Driving*, 4th ed. (Oakville: MADD Canada, 2009).

rudimentary in some cases, in the fields of graduated licensing, .00% BAC limits, administrative licence suspensions, interlocks, and vehicle impoundment. However, there is still much that the provinces and territories can do to reduce impaired driving within their respective jurisdictions.

The *MADD Canada Model 2009* also incorporates a wealth of traffic safety research that has been published since 2003. We have drawn on Canadian and international research to determine the most effective measures to reduce impaired driving and improve overall traffic safety. However, as with its predecessors, the *MADD Canada Model 2009* has been drafted to reflect Canada's unique division of constitutional powers between the provincial and federal governments, as well as the requirements of Canada's *Charter of Rights and Freedoms*.<sup>11</sup> While some *Charter* litigation is inevitable with any legislative reform, we believe that the measures proposed in this *Model* should withstand constitutional scrutiny, as long as they are carefully drafted and include appropriate safeguards.

The *MADD Canada Model 2009* focuses on a narrower set of issues than its predecessors. This is consistent with the expressed preference of most provinces and territories to focus their legislative attention on a smaller number of issues. Perhaps most notably, it does not include detailed discussions of police enforcement powers, except as incidental to other key recommendations. As indicated, several of the measures that MADD Canada had previously recommended, including standardized field sobriety testing and drug recognition evaluation, were addressed by the recent amendments to the federal *Criminal Code*. It is undoubtedly preferable that further enforcement powers, such as random breath testing, be introduced by the federal government. This would encourage more uniform police practice and increase the rates of detection and apprehension of impaired drivers across the country.

We have instead focused primarily on the licensing of drivers, licence suspensions, vehicle sanctions, and remedial programs. MADD Canada thus advocates a comprehensive approach to the impaired driving problem, acknowledging that a combination of countermeasures is the best way to deter impaired driving among the general population and reduce recidivism among offenders. As will be seen, MADD Canada is particularly concerned about crash rates and impaired driving among young and novice drivers, and many of our recommendations are aimed at improving traffic safety among these vulnerable populations.

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<sup>11</sup> Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 [the *Charter*].

Finally, as with previous editions, the *MADD Canada Model 2009* contains a preference for administrative measures rather than criminal or court-based sanctions, where possible. Administrative procedures are more streamlined, cost-effective and flexible, and allow the police or licensing authority in each jurisdiction to take swift licensing or vehicle action to prevent impaired driving crashes before they occur, rather than prosecute offenders after the fact. This serves MADD Canada's ultimate goal of improving safety on Canada's roads.

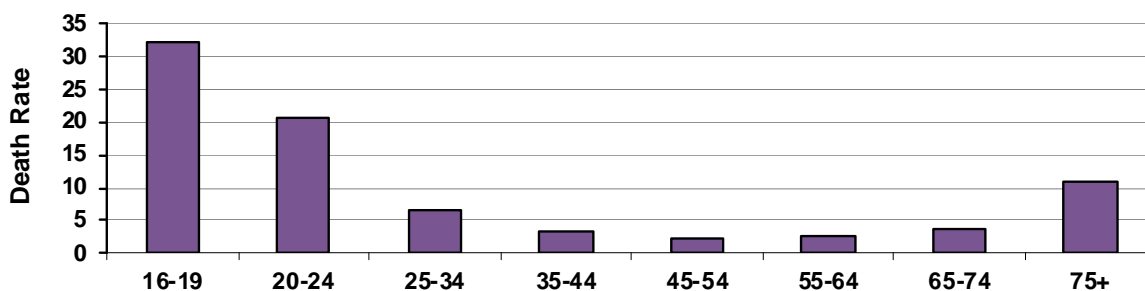
## SECTION I: LICENSING

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### Introduction

The recommendations in this section focus on the process of obtaining a driver's licence, and are primarily aimed at improving safety among young and novice drivers. Motor vehicle crashes are the leading cause of death among 15-24 year old Canadians, accounting in 2005 for 35% of deaths among 15-19 year olds and 29% of deaths among 20-24 year olds.<sup>12</sup> In addition to having the highest rates of traffic deaths and injuries per capita,<sup>13</sup> 15-24 year olds have the highest rates of traffic deaths per kilometre driven among all driver age groups.<sup>14</sup> As Figure 1 illustrates, 16-19 year olds are more than 15 times more likely to die per kilometre driven than their parents, and 20-24 year olds are at more than 9 times the risk of their parents.

**FIGURE 1. DRIVER DEATHS PER BILLION KILOMETRES DRIVEN, BY AGE: CANADA, 2004**



Source: P. Emery, D. Mayhew & H. Simpson, *Youth and Road Crashes: Magnitude, Characteristics and Trends* (Ottawa: Traffic Injury Research Foundation (TIRF), 2008) at 15.

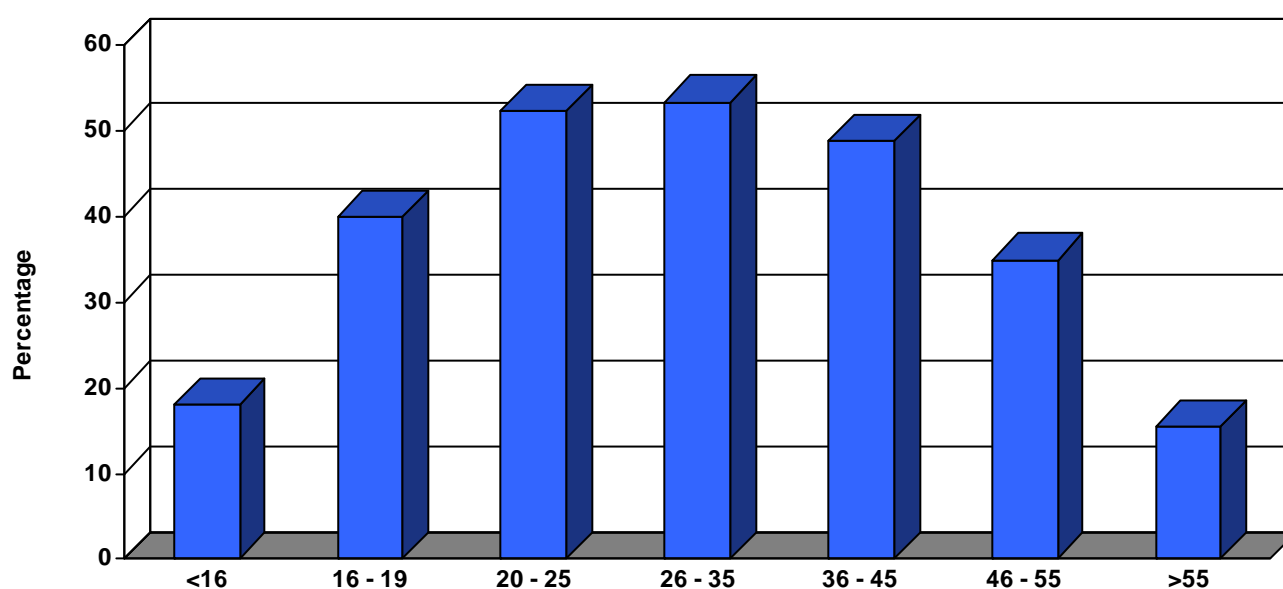
<sup>12</sup> Statistics Canada, *Mortality, Summary List of Causes – 2005* (Ottawa: Statistics Canada, 2009). Catalogue No. 84F0209X, Tables 2-5 and 2-6.

<sup>13</sup> Statistics Canada, *CANSIM Table 051-0001, Population by Age and Sex* (Ottawa: Statistics Canada, 2008); and Transport Canada, *Canadian Motor Vehicle Traffic Collision Statistics, 2006* (Ottawa: Transport Canada, 2007) at 2.

<sup>14</sup> P. Emery, D. Mayhew & H. Simpson, *Youth and Road Crashes: Magnitude, Characteristics and Trends* (Ottawa: Traffic Injury Research Foundation (TIRF), 2008) at 15. Note that these figures per kilometre driven were reported for those aged 16-24, whereas the per capita death and injury rates from Transport Canada were reported for those aged 15-24.

Canadian youth also have the highest rates of weekly, monthly and annual binge drinking (5 or more standard drinks for men, and 4 or more drinks for women, on a single occasion), and the highest rates of binge drinking on a typical drinking day.<sup>15</sup> They also have the highest rates of being a passenger in a vehicle driven by someone under the influence of alcohol or someone under the influence of cannabis.<sup>16</sup> As Figure 2 illustrates, in 2006, almost 40% of crash deaths among 16-19 year olds and 50% of crash deaths among 20-25 year olds were alcohol-related.

**FIGURE 2. PERCENTAGE OF ALCOHOL-RELATED CRASH DEATHS, BY AGE GROUP: CANADA, 2006**



Source: TIRF, *The Alcohol-Crash Problem in Canada: 2006* (Ottawa: TIRF, 2009) at 14.

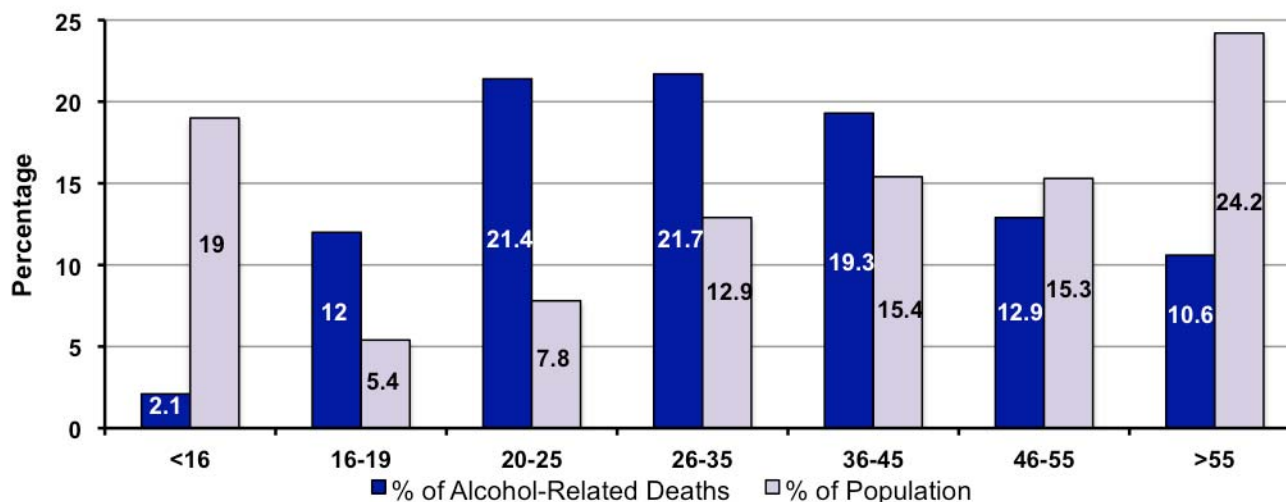
Alcohol-related crashes take a disproportionate toll among 16-25 year old Canadians.<sup>17</sup> Figure 3 illustrates that, although this age group constituted only 13.2% of the Canadian population in 2006, it accounted for 33.4% of the total alcohol-related crash deaths.

<sup>15</sup> See *infra* note 128. See also Table 3.

<sup>16</sup> J. Flight *et al.*, *Canadian Addiction Survey: Substance Use by Canadian Youth* (Ottawa: Health Canada, 2007) [Flight] at 97-99.

<sup>17</sup> TIRF, *The Alcohol-Crash Problem in Canada: 2006* (Ottawa: TIRF, 2009) at 14 [*Alcohol-Crash Problem*].

**FIGURE 3. PERCENTAGE OF ALCOHOL-RELATED TRAFFIC DEATHS AND POPULATION, BY AGE GROUP: CANADA, 2006**



Sources: TIRF, *The Alcohol-Crash Problem in Canada: 2006* (Ottawa: TIRF, 2009) at 14; and Statistics Canada, *CANSIM Table 051-0001, Population by Age and Sex* (Ottawa: Statistics Canada, 2008).

MADD Canada believes that immediate and effective action is necessary to reduce this death toll among Canadian youth, and to instil safer driving habits among the next generation of drivers.

#### (a) Minimum Age for Beginning to Drive

In North America, the conventional minimum age for driver licensing has been 16,<sup>18</sup> or even younger in rural jurisdictions.<sup>19</sup> In contrast, most European countries, which generally have more concentrated urban populations and better public transportation, have a minimum driving age of 17 or 18.<sup>20</sup> Unfortunately, the young minimum driving age in North America is associated with higher crash rates. This apparently occurs for several reasons. First, young drivers' immaturity leads both to deliberate risk taking and a failure to recognize risks when they arise.

<sup>18</sup> Although it is not entirely clear why this age was initially chosen, it appears to have coincided with child labour laws and the needs of rural and farming families during the era when drivers' licences were first introduced. See D. Mayhew, M. Fields & H. Simpson, *Why 16?* (Arlington, VA: Insurance Institute for Highway Safety (IIHS), 2000) at 6-10.

<sup>19</sup> *Ibid.* at 14. For example, Colorado, New Mexico, North and South Dakota, and Texas originally had licensing ages of 14 or 15.

<sup>20</sup> *Ibid.* at 18. Indeed, fewer than 10% of eligible 16-17 year olds took advantage of France's "apprentissage" system (which allows them to obtain a licence if they participate in a specified instructional program), suggesting that most youth feel no urgent need to drive. The minimum licensing age is 17 in most Australian states.

Second, their lack of driving skills and experience increases the likelihood that these high-risk situations will result in crashes.<sup>21</sup>

Furthermore, the lower minimum driving age may encourage teenagers to drive unlicensed, as demonstrated by an American study comparing five states with differing ages of full licensure.<sup>22</sup> Two of the states were Delaware (where full, unrestricted licensure was granted at age 16), and New Jersey (where full licensure was not granted until age 17). The study found that Delaware teens had the highest reported rate of driving on public roads before obtaining a valid licence (58%), while New Jersey teens had the lowest (35%).<sup>23</sup> This study suggests that delaying licensure reduces illegal driving among younger teenagers,<sup>24</sup> and thereby lends support to enacting higher minimum licensing ages.<sup>25</sup>

Raising the minimum licensing age to 18 across Canada would undoubtedly reduce crash deaths and injuries among teenagers. However, given Canada's limited public transportation systems, large rural populations, and the role of driving in the lifestyle of young Canadians, such a change is unlikely to occur.<sup>26</sup> Fortunately, as discussed in the next section, benefits comparable to a higher licensing age can be achieved by enacting a comprehensive graduated licensing program.<sup>27</sup> While such programs often establish or maintain a minimum driving age of 16, their

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<sup>21</sup> See A. Williams & S. Ferguson, "Rationale for graduated licensing and the risks it should address" (2002) 8 (Suppl II) *Inj. Prev.* ii9 at ii9 [Rationale].

<sup>22</sup> S. Ferguson *et al.*, "Differences in Young Driver Crash Involvement in States with Varying Licensure Practices" (1996) 28 *Accid. Anal. and Prev.* 171.

<sup>23</sup> *Ibid.* at 172 and 174. See also A. Williams *et al.*, "Analysis of the Fatal Crash Involvements of 15-Year-Old Drivers" (1997) *J. Safety Research* 49.

<sup>24</sup> This is consistent with the Australian experience. See H. Ross, *Confronting Drunk Driving: Social Policy for Saving Lives* (New Haven, CT: Yale University Press, 1992) at 131.

<sup>25</sup> For a recent review of the evidence on raising the licensing age, see A. Williams, "Licensing Age and Teenage Driver Crashes: A Review of the Evidence" (2009) 10 *Traffic Inj. Prev.* 9.

<sup>26</sup> For a response to similar concerns that were expressed about raising the minimum driving age in New Zealand, see D. Begg & J. Langley, "A Critical Examination of the Arguments Against Raising the Car Driver Licensing Age in New Zealand" (2009) 10 *Traffic Inj. Prev.* 1.

<sup>27</sup> Indeed, an American study of crash rates between 1993 and 2003 found that the licensure rate and per capita crash rate of 16 year olds decreased as more states introduced key graduated licensing measures. Moreover, there was no evidence that the delay in licensure simply shifted the crash problem to an older age group. A. Williams, S. Ferguson & J. Wells, "Sixteen-Year-Old Drivers in Fatal Crashes, United States, 2003" (2005) 6 *Traffic Inj. Prev.* 202, Table I.

various driving restrictions often delay full licensure until the age of 18. Further, they help young and novice drivers to acquire driving skills in relatively low-risk situations.

Even within a graduated licensing program, the high crash rates of young drivers suggest that the minimum age at which individuals can obtain beginner permits should be no lower than 16. As indicated in Table 1, this is already the norm in some provinces. However, Alberta's minimum licensing age is 14, and both Manitoba and Saskatchewan offer a "discount" ranging from 6 to 12 months for youth enrolled in driver education. As will be discussed, there is no scientific justification for these discounts, because driver education has limited traffic safety benefits, and may even increase crash rates.<sup>28</sup>

Given the rural character of some parts of Canada, a limited exception to the minimum driving age may be warranted for young people operating machinery on the family farm and adjacent roadways. Such legislation is not uncommon. For example, while Ontario's minimum licensing age is 16, the *Highway Traffic Act* allows those under this age to drive farm machinery directly across a highway.<sup>29</sup>

## (b) Graduated Licensing Programs

A comprehensive graduated licensing program (GLP) is the cornerstone of any policy aimed at reducing crash risks among youth. Such programs were introduced in numerous jurisdictions in the mid-1990s, and remain a popular means of addressing the inexperience and risky behaviour of young and beginning drivers.<sup>30</sup> Currently, every province and two territories in Canada, and all American states<sup>31</sup> have enacted at least one element of a GLP. Typically, GLPs include some combination of mandatory supervised driving and restrictions in terms of

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<sup>28</sup> See generally, D. Mayhew & H. Simpson, "The safety value of driver education and training" (2002) 8 (Suppl II) *Inj. Prev.* ii3. See also *infra* notes 107-114.

<sup>29</sup> R.S.O. 1990, c. H.8, s. 37(3).

<sup>30</sup> See A. Williams, "Next Steps for Graduated Licensing" (2005) 6 *Traffic Inj. Prev.* 199 at 199. GLPs were introduced in Maryland and California during the 1980s, and more rigorous programs were subsequently introduced in, *inter alia*, New Zealand (1987), Ontario (1994), Nova Scotia (1994), Florida (1996), Kentucky (1996), and Michigan (1997). D. Mayhew *et al.*, "Specific and Long-Term Effects of Nova Scotia's Graduated Licensing Program" (2003) 4 *Traffic Inj. Prev.* 91 at 91 [Mayhew 2003].

<sup>31</sup> A. Williams, "Contribution of the components of graduated licensing to crash reductions" (2007) 38 *J. Safety Research* 177 at 177 [Williams 2007].

passengers, nighttime driving, high-speed roads, and alcohol consumption. Thus, these programs allow new drivers to gain on-the-road experience in low-risk circumstances, while gradually exposing them to more challenging situations.<sup>32</sup> An ideal GLP includes two stages: Stage 1, during which the driver must be supervised at all times by a licensed adult and is subject to stringent conditions; and Stage 2, during which the driver can drive unsupervised in some situations, but must be supervised in more challenging situations. As we will discuss, following the GLP and full licensing, drivers should be subject to a .00% BAC limit until they reach the age of 21, or for five years from obtaining their Stage 1 licence, whichever is longer.

Research from numerous jurisdictions, including New Zealand,<sup>33</sup> the Canadian provinces of Ontario,<sup>34</sup> Nova Scotia,<sup>35</sup> Québec,<sup>36</sup> and British Columbia,<sup>37</sup> and American national and state-

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<sup>32</sup> IIHS and TIRF, *Graduated Licensing: A Blueprint for North America* (Arlington, VA: IIHS, 2002) [Blueprint]. A somewhat modified program should also be introduced for novice motorcycle drivers. See D. Mayhew & H. Simpson, *Graduated licensing for motorcyclists* (Ottawa: TIRF, 2001).

<sup>33</sup> See for example, J. Langley, A. Wagenaar & D. Begg, "An Evaluation of the New Zealand Graduated Driver Licensing System" (1996) 28 *Accid. Anal. and Prev.* 139; and A. Reeder *et al.*, "An evaluation of the general effect of the New Zealand graduated driver licensing system on motorcycle traffic crash hospitalisations" (1999) 31 *Accid. Anal. and Prev.* 651 [Reeder].

<sup>34</sup> P. Boase & L. Tasca, *Graduated Licensing System Evaluation, Interim Report '98* (Toronto: Ministry of Transportation of Ontario, 1998) [Boase].

One recent study suggested that Ontario's GLP was not responsible for the reported reductions in youth road fatalities, considering the downward trend in such deaths during the 1980s and early 1990s. C. Carpenter, "Did Ontario's Zero Tolerance & Graduated Licensing Law Reduce Youth Drunk Driving?" (2006) 25 *J. Policy Analysis and Management* 183. However, the outcome measures used in the study were self-reported drinking and any driving after drinking. Neither measure directly addresses crash rates, and thus the traffic safety benefits of GLPs or zero tolerance laws. Even if teenagers admitted to driving after drinking, they may well have consumed less alcohol than they would have consumed prior to the introduction of the GLP (*i.e.* the average BAC of those driving after drinking may be lower). Given the weight of contrary evidence and the significant declines in the per capita rates of motor vehicle deaths among 15-19 year olds between 1997 and 2004, Carpenter's conclusions should be treated with caution.

<sup>35</sup> A preliminary study reported a 37% reduction in the total number of collisions among 16 year old drivers during the first three years of Nova Scotia's GLP. In addition, the collision rate among new drivers aged 25 and older dropped by 42.7%. D. Mayhew, H. Simpson & M. des Groseilliers, *Impact of the Graduated Driver Licensing Program in Nova Scotia* (Ottawa: TIRF, 1999).

A more recent Nova Scotia study compared the crash rates of drivers licensed immediately prior to the introduction of the GLP and those licensed under the GLP. It found that the collision rates for GLP drivers were not only 50% lower during the first six months of licensure (when they were subject to significant restrictions), but also 10% lower during the first two years of licensure (when the majority of these restrictions were lifted). Mayhew 2003, *supra* note 30 at 92-94.

<sup>36</sup> See J. Bouchard *et al.*, "The Québec Graduated Licensing System for Novice Drivers: A Two-Year Evaluation of the 1997 Reform" in H. Laurell & F. Schlyter, eds., CD-ROM: *Proceedings of the 15th*

specific studies,<sup>38</sup> has consistently shown that GLPs are associated with significant reductions in crash deaths and injuries among affected drivers.<sup>39</sup> Indeed, the author of a recent meta-analysis of 27 studies of GLPs in Canada and the United States wrote, “Overall, one can safely conclude that [GLPs] have reduced the youngest drivers’ crash risk by roughly 20 to 40%.”<sup>40</sup>

Because most jurisdictions introduced a package of GLP measures, the research tends to focus on GLPs as a whole; there is a smaller body of research on the safety benefits of each individual component of the program.<sup>41</sup> Importantly, however, the research suggests that GLPs are most effective when they are comprehensive in scope. The above meta-analysis concluded: “the evidence from the studies reviewed... is clear – when [GLPs] are more comprehensive, thoughtfully created, and thorough by including highly recommended components, they are more effective.”<sup>42</sup> In addition, an American study of fatal crash rates among teenagers found that the greatest reductions occurred in states with the most comprehensive GLPs.<sup>43</sup> The following

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*International Conference on Alcohol, Drugs and Traffic Safety* (Stockholm: International Council on Alcohol, Drugs and Traffic Safety (ICADTS), 2000); and R. Simard *et al.*, “The New Graduated Licensing System in Québec: Impact on the Number of New Drivers and on Nighttime Single Crashes” in D. Mayhew & C. Dussault, eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: Société de l’Assurance Automobile du Québec (SAAQ), 2002) [Simard].

<sup>37</sup> See S. Wiggins, *Graduated Licensing Program, Interim Evaluation – Year 3* (Vancouver: Insurance Corporation of British Columbia (ICBC), 2004) at 11 [Wiggins], which reported that GLP drivers had a 16% lower crash involvement rate than comparable drivers pre-GLP.

<sup>38</sup> See the recent national study: S. Baker, L-H. Chen & G. Li, *Nationwide Review of Graduated Driver Licensing* (Washington: AAA Foundation for Traffic Safety, 2007) [*Nationwide Review*]. It found that there were reductions of 11% and 19% in fatal and injury crashes, respectively, among 16 year old drivers in states with three-stage GLPs (at 48). See also R. Foss, J. Feaganes & E. Rodgman, “Initial effects of graduated driver licensing on 16-year-old driver crashes in North Carolina” (2001) 286 J.A.M.A. 1588; and J. Shope & L. Molnar, “Michigan’s graduated driver licensing program: evaluation of the first four years” (2004) 35 J. Safety Research 337.

<sup>39</sup> For a recent review of the literature, see T. Senserrick & M. Whelan, *Graduated Driver Licensing: Effectiveness of Systems and Individual Components* (Melbourne: Monash University Accident Research Centre, 2003) [Senserrick].

<sup>40</sup> J. Shope, “Graduated driver licensing: Review of evaluation results since 2002” (2007) 38 J. Safety Research 165 at 173 [Shope].

<sup>41</sup> See Senserrick, *supra* note 39, and Williams 2007, *supra* note 31.

<sup>42</sup> Shope, *supra* note 40 at 173. See also M. Morrissey *et al.*, “The strength of graduated drivers license programs and fatalities among teen drivers and passengers” (2006) 38 *Accid. Anal. and Prev.* 135.

discussion outlines the measures that, based on the available research, are likely to have the most significant traffic safety benefits.<sup>44</sup>

*(i) Stage 1*

Those applying to Stage 1 should be required to pass a conventional traffic rules and road signs test, and establish their fitness to drive in terms of eyesight and other medical criteria. As indicated above, entry to Stage 1 should not occur before the age of 16. Furthermore, because the elevated crash risks of beginning drivers are related to their inexperience<sup>45</sup> and not just their age,<sup>46</sup> the GLP should apply to beginning drivers of all ages. This is especially important in Canada, where many new drivers are not young.<sup>47</sup> Studies indicate that the traffic safety benefits of GLPs extend to older beginning drivers. Indeed, New Zealand, whose GLP initially applied only to drivers under 25, has extended its program to all new drivers for this reason.<sup>48</sup>

During Stage 1, new drivers should be supervised at all times by a front seat passenger, who is at least 21 and has held a full licence for at least two years. The adult supervisor assists in

<sup>43</sup> A. McCartt *et al.*, *Graduated Licensing Laws and Fatal Crashes of Teenage Drivers: A National Study* (Arlington, VA: IIHS, 2009) at 11 [McCartt]. Similar results were reported in *Nationwide Review*, *supra* note 38 at 65, where it was found that GLPs with the most components were able to achieve reductions of 38% and 40% in fatal and injury crashes, respectively, among 16 year old drivers.

<sup>44</sup> For other recent reviews of GLPs, see J. Hedlund, R. Shults & R. Compton, “What we know, what we don’t know, and what we need to know about graduated driver licensing” (2003) 34 *J. Safety Research* 107; D. Mayhew *et al.*, *Reducing the Crash Risk for Young Drivers* (Washington: AAA Foundation for Traffic Safety, 2006) [Mayhew 2006]; and McCartt, *ibid.*

<sup>45</sup> J. Groeger & I. Brown, “Assessing One’s Own and Others’ Driving Ability: Influence of Sex, Age and Experience” (1989) 21 *Accid. Anal. and Prev.* 155 [Groeger]. See also the literature review by A. McCartt *et al.*, “Effects of Age and Experience on Young Driver Crashes: Review of Recent Literature” (2009) 10 *Traffic Inj. Prev.* 209.

<sup>46</sup> For example, 30 year old beginners have a 41% higher collision rate than 30 year olds with five years’ driving experience. Similarly, 20 year old beginners have a 28% higher collision rate than 20 year olds with five years’ driving experience. See H. Simpson & D. Mayhew, *Reducing the Risks for New Drivers: A Graduated Licensing System for British Columbia* (Victoria: Ministry of the Attorney General, Motor Vehicle Branch, 1992) at 6 [*Reducing the Risks*]. Presumably, this latter figure was drawn from jurisdictions in which the minimum driving age was 15 or younger. See also N. Gregersen *et al.*, “Sixteen Years Age Limit for Learner Drivers in Sweden – an Evaluation of Safety Effects” (2000) 32 *Accid. Anal. and Prev.* 25.

<sup>47</sup> See D. Mayhew & H. Simpson, *New to the Road: Young and Novice Drivers: Similar Problems and Solutions?* (Ottawa: TIRF, 1990) at 103-112 [*New to the Road*].

<sup>48</sup> D. Mayhew, H. Simpson & D. Singhal, *Best Practices for Graduated Driver Licensing in Canada* (Ottawa: TIRF, 2005) at 46 [*Best Practices*].

the learning process by monitoring and correcting the driver's actions. While the supervision requirement has been a feature of a learner's permit for quite some time, the period was typically short, and the licensed driver may well have been as young as 16.<sup>49</sup> This could result in beginning drivers being supervised by newly-licensed peers. It is questionable whether such supervisors would provide suitable training for beginning drivers.

As discussed below, the minimum duration of the initial period of supervised driving should be 12 months. Because the purpose of this stage is to allow the new driver to gain experience in low-risk situations, several other restrictions should apply, including a restriction on late-night driving, teenage passengers, high-speed roads, and alcohol or drug consumption. The main features of the first stage of current Canadian GLPs are illustrated in Figure 4.

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<sup>49</sup> Rationale, *supra* note 21 at ii10.

**FIGURE 4. CANADIAN GRADUATED LICENSING PROGRAMS:  
CURRENT FEATURES OF STAGE 1**

Prov./ Terr.	Minimum Driving Age	Minimum Length Of Stage 1	Restrictions <sup>1</sup>		
			Nighttime	Passengers (excluding supervisor)	High-speed Roadways
AB	14	12 months and until 16	12 a.m. - 5 a.m.	Number of belts	None
BC	16	12 months	12 a.m. - 5 a.m.	1 passenger	None
MB	15½ <sup>2</sup>	9 months	None	Number of belts in back seat	None
NB	16	12 months (4 with driver ed.) <sup>3</sup>	12 a.m. - 5 a.m.	Only supervisor	None
NL	16	12 months (8 with driver ed.)	12 a.m. - 5 a.m.	Only supervisor	None
NS	16	6 months (3 with driver ed.) <sup>4</sup>	None	Only supervisor	None
NT	15	12 months	11 p.m. - 6 a.m.	Only supervisor	None
NU	15	No GLP. Beginning drivers must be supervised for 12 months, but there are no BAC limits or other restrictions.			
ON	16	12 months (8 with driver ed.) <sup>5</sup>	12 a.m. - 5 a.m.	Number of belts in back seat	Prohibited
PE	16	12 months (9 with driver ed.)	1 a.m. - 5 a.m. (unless ≥ 21)	Supervisor's family and number of belts	None
QC	16	12 months (8 with driver ed.)	None	None	None
SK	15 <sup>2</sup>	9 months and until 16	None	Number of belts and additional limits <sup>6</sup>	None
YK	15	6 months and until 16	12 a.m. - 5 a.m.	1 passenger, other than family	None

1. Unless otherwise stated, all Stage 1 drivers are subject to a .00% BAC restriction.
2. These minimum driving ages apply to those who are in, or have graduated from, a driver education program.
3. Legislation, when proclaimed in force, will lengthen Stage 1 to 8 months for those with driver education.
4. Legislation, when proclaimed in force, will lengthen Stage 1 to 1 year, or 9 months for those with driver education.
5. The Ontario government announced that it intends to lengthen Stage 1 to 18 months, or 12 months for those with driver education.
6. There can be no passengers other than family members from 12 a.m. - 5 a.m., and no passenger in the front if there is a backseat.

The restriction on late-night driving is aimed at ensuring that beginning drivers do not have to cope with the added visibility and judgment problems posed by night driving,<sup>50</sup> or with the presence of fatigued, dangerous or impaired drivers, who tend to be more prevalent at night.<sup>51</sup> It also helps to reduce recreational driving among youth, which is often associated with risk-taking and alcohol consumption.<sup>52</sup> The risks of nighttime driving were demonstrated in an American study, which found that, while 16-17 year olds drove only about 15% of their total mileage between 9 p.m. and 6 a.m., about 40% of their fatal crashes occurred during this time.<sup>53</sup>

Since most nighttime crashes among young drivers occur before midnight,<sup>54</sup> an earlier curfew, such as 10 p.m., is preferable to a later one.<sup>55</sup> North Carolina's 9 p.m. driving curfew, which is one of the earliest in North America, has been associated with a 47% reduction in nighttime crashes among 16 year old drivers.<sup>56</sup> This compared to a 22% reduction in daytime crashes under that state's GLP. Thus, an additional 25% reduction in nighttime crashes was

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<sup>50</sup> The difficulties associated with nighttime driving are one of the reasons that fatal crash rates among youth are significantly higher at night than during the day. For a review of the relevant studies, see Senserrick, *supra* note 39 at 43.

<sup>51</sup> See A. McKnight & R. Peck, "Graduated driver licensing: what works?" (2002) 8 (Suppl II) *Inj. Prev.* ii32 at ii34 [McKnight].

In an 18-month study of impaired driving charges in Sudbury, Ontario, the peak time period for impaired driving was between midnight and 4 a.m. This period accounted for 58% of all charges. See L. Anglin *et al.*, *A Study of Impaired Drivers Stopped by Police in Sudbury, Ontario* (Toronto: The Addiction Research Foundation of Ontario and Sudbury Regional Police, 1997).

<sup>52</sup> See Senserrick, *supra* note 39 at 43.

<sup>53</sup> A. Williams & D. Preusser, "Night driving restrictions for youthful drivers: a literature review and commentary" (1997) 18 *J. Public Health Policy* 334 at 335-36.

<sup>54</sup> An American study indicated that three-quarters of nighttime crashes and more than half of the nighttime fatalities among 16-17 year olds occur between 9 p.m. and midnight. A. Williams, *Protecting New Drivers: 10 Components of Graduated Licensing that Make Sense* (Arlington, VA: IIHS, 1996) at 5. In Canada, about half of all teenage motor vehicle deaths and 64% of all such injuries occur between 9 p.m. and 6 a.m., even though teens drive far less during nighttime hours. D. Mayhew & H. Simpson, *Youth and Road Crashes: Reducing the Risks from Inexperience, Immaturity and Alcohol* (Ottawa: TIRF, 1999) at 14 [*Youth and Road Crashes*].

In Ontario, 16-24 year olds accounted for only 30.5% of nighttime drivers, but 47.7% of nighttime driver deaths. Thus, their relative risk of a nighttime crash is significantly higher than that of older drivers. *New to the Road*, *supra* note 47 at 61.

<sup>55</sup> McCartt *et al.* reported that each additional hour of a nighttime driving restriction reduced the fatal crash rate among drivers aged 15-17. Thus, while restrictions beginning at 9 p.m. were associated with an 18% reduction in fatal crashes, restrictions beginning after 1 a.m. were associated with only a 9% reduction. McCartt, *supra* note 43 at 12.

<sup>56</sup> McKnight, *supra* note 51 at ii34.

attributable to the early driving restriction.<sup>57</sup> A recent summary of the literature also concluded that nighttime driving restrictions can effectively reduce both the number and rate of crashes among teenage drivers.<sup>58</sup> In addition, it is a restriction that is strongly supported by parents.<sup>59</sup>

In MADD Canada's view, the substantial traffic safety benefit of nighttime driving limits justify any accompanying minor restriction on the mobility of young drivers. Beginning drivers have relatively few late-night travel demands and would have to be accompanied by an adult supervisor in any event.<sup>60</sup> A California survey of teenagers found that a nighttime driving restriction did not generally prevent them from engaging in desired social activities.<sup>61</sup> They reported that they adjusted their plans by either going out earlier or getting a ride from a parent. As shown in Figure 4, several Canadian jurisdictions already include nighttime driving restrictions in the initial stage of their GLPs, with the longest restriction being in the Northwest Territories (11 p.m. to 6 a.m.).

In Stage 1 of the GLP, there should also be a limit on the number of teenage passengers that beginning drivers may carry. Research prior to the widespread adoption of GLPs indicated that young drivers are at increased risk when they have passengers.<sup>62</sup> The presence of teenage passengers is a source of distraction and peer pressure to engage in risky behaviour. An American study conducted by the Ford Motor Company found that the relative risk of crash for

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<sup>57</sup> *Ibid.*

<sup>58</sup> M-L. Lin & K. Fearn, "The provisional license: nighttime and passenger restrictions – a literature review" (2003) 34 *J. Safety Research* 51 at 59.

<sup>59</sup> *Ibid.* See also *Blueprint*, *supra* note 32 at 5; and A. Williams, L. Nelson & W. Leaf, "Responses of Teenagers and their Parents to California's Graduated Licensing System" (2002) 34 *Accid. Anal. and Prev.* 835 at 839 [Responses].

<sup>60</sup> Since a licensed adult would have to be present anyway, the adult could drive the teenager home from any late-night employment or extra-curricular activities.

One study found that citywide teenage curfews had traffic safety benefits comparable to late-night driving curfews for new drivers. D. Preusser, P. Zador & A. Williams, "The Effect of City Curfew Ordinances on Teenage Motor Vehicle Fatalities" (1993) 25 *Accid. Anal. and Prev.* 641. Such curfews have the added benefit of requiring schools and employers not to schedule activities or work past the time of the curfew.

<sup>61</sup> See Responses, *supra* note 59 at 839.

<sup>62</sup> See generally, D. Preusser, S. Ferguson & A. Williams, "The Effect of Teenage Passengers on the Fatal Crash Risk of Teenage Drivers" (1998) 30 *Accid. Anal. and Prev.* 217; and A. Williams, *Teenage Passengers in Motor Vehicle Crashes: A Summary of Current Research* (Arlington, VA: IIHS, 2001).

16 year old drivers increases with the number of passengers.<sup>63</sup> Sixteen year old drivers with one passenger were 39% more likely to be killed in a crash than 16 year olds driving alone. This increased to 86% for two passengers, and 182% for three or more passengers.<sup>64</sup> A more recent study found that the presence of a male teenage passenger increases the likelihood that a teenage driver will speed and leave less space between his or her vehicle and the vehicle in front.<sup>65</sup>

In addition, several studies indicate that teenage passengers are at great risk when riding with young drivers. While 15-19 year olds constitute only 6.8% of the population,<sup>66</sup> they account for nearly 20% of vehicle passenger deaths and serious injuries.<sup>67</sup> The majority of these passenger fatalities occur in vehicles driven by young drivers. For example, an American study based on 1993 data found that 79% of all fatally-injured 16 year old passengers were riding in a vehicle operated by another teenager.<sup>68</sup> A 1999 Canadian study reported that nearly 80% of teenage passengers killed were travelling with a teenage driver.<sup>69</sup> Thus, research suggests that teenage passenger limits would not only discourage risky driving by beginning drivers, but also reduce crash deaths among teenage passengers.

However, as noted, the preceding research was undertaken prior to the enactment of comprehensive GLPs. Presumably, the risks associated with passengers are much lower for beginners who are driving with their parents and siblings, than was the case for unsupervised

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<sup>63</sup> “Study: More Deaths with Young Drivers” Associated Press (21 June 2000).

<sup>64</sup> *Ibid.*, See also L-H. Chen *et al.*, “Carrying Passengers as a Risk Factor for Crashes Fatal to 16- and 17-Year-Old Drivers” (2000) 283 J.A.M.A. 1578.

<sup>65</sup> Interestingly, the presence of a female passenger reduced risky driving behaviour among male drivers. B. Simons-Morton, N. Lerner & J. Singer, “The observed effects of teenage passengers on the risky driving behavior of teenage drivers” (2005) 37 *Accid. Anal. and Prev.* 973. See also J. Farrow, “Young driver risk taking: a description of dangerous driving situations among 16-19-year-old drivers” (1987) 22 *Int. J. Addict.* 1255, which reported that dangerous driving behaviour, such as speeding, consuming alcohol, and running a red light, was strongly associated with the presence of teenage passengers.

<sup>66</sup> Statistics Canada, *CANSIM Table 051-0001, Population by Sex and Age Group* (Ottawa: Statistics Canada, 2009).

<sup>67</sup> Transport Canada, *Canadian Motor Vehicle Traffic Collision Statistics, 2006* (Ottawa: Transport Canada, 2007).

<sup>68</sup> A. Williams & J. Wells, “Deaths of Teenagers as Motor-Vehicle Passengers” (1995) 26 *J. Safety Research* 161 at 164. Also, more teenage passengers were killed when riding with a 16 year old driver than with drivers of any other age (*ibid.*).

<sup>69</sup> *Youth and Road Crashes*, *supra* note 54 at 14. See also L-H. Chen *et al.*, “Potential benefits of restrictions on the transport of teenage passengers by 16 and 17 year old drivers” (2001) 7 *Inj. Prev.* 129.

beginners driving with a carload of teenage friends.<sup>70</sup> Thus, if jurisdictions are successful in enacting comprehensive GLPs with strict supervision of beginning drivers, the passenger restriction will be less critical during Stage 1.<sup>71</sup> Nevertheless, it is still prudent to limit the number of teenage passengers to one non-family member, thereby providing an atmosphere that is more conducive to concentrating on the task of driving. Currently, New Brunswick, Newfoundland and Labrador, the Northwest Territories, and Nova Scotia have even more stringent restrictions, prohibiting beginning drivers from carrying any passengers other than their supervisor.<sup>72</sup>

There is a growing number of studies indicating the positive effects of passenger restrictions.<sup>73</sup> A recent study performed for the American National Highway Traffic Safety Administration (NHTSA) evaluated the effects of passenger restrictions in California, Massachusetts and Virginia, all of which were judged to have “strong” passenger restrictions.<sup>74</sup> The study found crash reductions among 16 year old drivers in each state. For instance, in California, it was estimated that there was an annual average of 740 fewer crashes by 16 year old drivers attributable to the passenger restriction.<sup>75</sup> The crashes were not simply “deferred” to older teenage drivers once they became authorized to carry passengers.<sup>76</sup> However, the study

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<sup>70</sup> An American study of pre-GLP statistics from 1993 reported that 53% of 16 year old drivers in fatal crashes had one or more teenage passengers, but no other occupants. A. Williams, S. Ferguson & J. Wells, “Sixteen-year-old drivers in fatal crashes, United States, 2003” (2005) 6 *Traffic Inj. Prev.* 202 at 204 [Williams 2005]. Presumably, the presence of a parent or other responsible adult would help to mitigate the risk-taking behaviour encouraged by the teenage passengers.

<sup>71</sup> As will be discussed, the passenger restriction is more critical in Stage 2, which allows novices to drive without an adult supervisor.

<sup>72</sup> *Best Practices*, *supra* note 48 at 10-12, Table 1.

<sup>73</sup> See for example, D. Cooper, F. Atkins & D. Gillen, “Measuring the impact of passenger restrictions on new teenage drivers” (2005) 37 *Accid. Anal. and Prev.* 19. See generally, A. Williams, “Contribution of the components of graduated licensing to crash reductions” (2007) 38 *J. Safety Research* 177 at 181-82 [Williams 2007], where the author briefly summarizes the growing body of evidence; and W. Vanlaar *et al.*, “An evaluation of graduated driver licensing programs in North America using a meta-analytic approach” (2009) 41 *Accid. Anal. and Prev.* 1104 [Vanlaar].

<sup>74</sup> N. Chaudhary, A. Williams & W. Nissen, *Evaluation and Compliance of Passenger Restrictions in a Graduated Driver Licensing Program* (Washington: NHTSA, 2007) [Chaudhary]. A “strong” law was defined as one that allowed a maximum of one passenger for at least the first six months of unsupervised driving.

<sup>75</sup> *Ibid.* at 12.

<sup>76</sup> *Ibid.* at 35.

also found that compliance with the passenger restriction was far from ideal,<sup>77</sup> and that police had some difficulties enforcing the law, particularly because the restriction was not obvious on the face of a driver's licence.<sup>78</sup> This suggests that Canada's provinces and territories should adopt appropriate measures to improve enforcement of the conditions under a GLP, as discussed in Section I(d) below.

Another advisable restriction during Stage 1 of the GLP is a prohibition against driving on high-speed, multi-lane roads. These roads typically carry heavy traffic, including large trucks moving at high speeds, which can be overwhelming for a new driver. Moreover, crashes on high-speed roads can be catastrophic.<sup>79</sup> Since such road restrictions have not been widely implemented in GLPs, there are few studies on their effectiveness. Ontario is the only Canadian jurisdiction to include a high-speed road restriction. An early evaluation of this restriction reported a 61% decrease in the collision rate of beginning drivers on these roads.<sup>80</sup>

Beginning drivers should be subject to a .00% BAC restriction throughout the GLP, and for the first five years of licensed driving or until they reach the age of 21, whichever is longer. This key limit is discussed in detail in Section I(c) of this *Model*. Currently, all provinces with a GLP impose a .00% BAC restriction on drivers in Stage 1 of the program. Similarly, all beginning drivers should be prohibited from driving while under the influence of a drug. Although such behaviour is prohibited by the *Criminal Code*,<sup>81</sup> it warrants extra emphasis among young drivers, whose rates of driving after drug use appear to be increasing. A recent Health Canada report indicated that the percentage of respondents aged 15-24 who admitted to driving

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<sup>77</sup> Nearly all the teenagers in the focus group admitted to violating the restriction at least occasionally. *Ibid.* at 33.

<sup>78</sup> *Ibid.* at 28. This meant that officers had to estimate, based on age, whether the driver was subject to a passenger restriction, and then check with the licence registry. Further, in Virginia, violation of the passenger restriction was classified as a "secondary," meaning that the officer could not check for compliance unless the vehicle was otherwise stopped for another infraction.

<sup>79</sup> The considerable dangers of high-speed roads were illustrated by the string of multiple-vehicle collisions on the stretch of Ontario's Highway 401 known as "carnage alley" during the late 1990s. See J. Shragge, "Highway 401 – The Story" (2004), online: <<http://roadscholar.on.ca/lateststory.html>>.

<sup>80</sup> Boase, *supra* note 34 at 4. Of course, had the road restriction been fully obeyed, the collision rate for beginning drivers on these highways would have been zero. This suggests that more effective measures are needed to identify beginning drivers and enforce the relevant restrictions on their licences.

<sup>81</sup> Section 253(a) of the *Criminal Code*, R.S.C. 1985, c. C-46, prohibits drivers from operating a vehicle when their ability to do so is impaired by alcohol, a drug, or a combination of the two.

within two hours of consuming cannabis or hashish increased from 25.8% in 1989 to 39.8% in 2004.<sup>82</sup> Further, a Québec study found that over 24% of 16-19 year old drivers and over 22% of 20-24 year old drivers providing samples in a nighttime roadside survey tested positive for cannabis.<sup>83</sup> Moreover, national,<sup>84</sup> Atlantic Canada,<sup>85</sup> and Ontario<sup>86</sup> surveys indicate that young drivers have high self-reported rates of driving after using drugs, and of riding as a passenger in a vehicle driven by someone who has been using drugs.

GLP supervisors should also be subject to a .00% BAC restriction. Several provinces already impose some BAC limits on supervisors, the lowest being .00% in both Yukon and the Northwest Territories, with other provinces having a limit of .05%.<sup>87</sup> While better than nothing, such .05% BAC limits may permit supervisors to consume several drinks before getting in a car with a beginning driver,<sup>88</sup> a situation which is not conducive to the learning experience. Alcohol consumption impairs the supervisor's ability to monitor the beginning driver and respond quickly to any urgent situation that develops. Moreover, permitting supervisors to consume alcohol sets a very poor example for beginning drivers, and increases the likelihood that they will be used as "designated drivers" for their older friends.

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<sup>82</sup> Flight, *supra* note 16 at 111, Table 8.10. This question was only asked of respondents who had both driven within the past 12 months and consumed cannabis within the past 12 months.

<sup>83</sup> C. Dussault *et al.*, "The Contribution of Alcohol and Other Drugs Among Fatally Injured Drivers in Québec: Some Preliminary Results" in D. Mayhew & C. Dussault, eds., CD-ROM: *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002).

<sup>84</sup> D. Beirness, H. Simpson & K. Desmond, *The Road Safety Monitor 2002: Drugs and Driving* (Ottawa: TIRF, 2002) at 14-15. See also H. Simpson *et al.*, *The Road Safety Monitor 2005: Drugs and Driving* (Ottawa: TIRF, 2006) at 10-11.

<sup>85</sup> M. Asbridge *et al.*, "Motor vehicle collision risk and driving under the influence of cannabis: Evidence from adolescents in Atlantic Canada" (2005) 37 *Accid. Anal. and Prev.* 1025 at 1028-29. See also C. Poulin & D. Elliot, *Student Drug Use Survey in the Atlantic Provinces* (Halifax: Dalhousie University, 2007) at 73 [Poulin].

<sup>86</sup> A. Paglia-Boak *et al.*, *Drug Use Among Ontario Students 1977-2009: OSDUHS Highlights* (Toronto: Centre for Addiction and Mental Health (CAMH), 2009) at 15 [OSDUHS].

<sup>87</sup> *Best Practices*, *supra* note 48 at 10-12, Table 1; *Motor Vehicles Act*, R.S.Y. 2002, c. 153, s. 9(3); and *Driver's Licence Regulations*, R.R.N.W.T. 1990, c. M-27, s. 4.1(d).

<sup>88</sup> For instance, a 200-pound male supervisor could consume nearly four standard drinks in a two-hour period before reaching a BAC of .05%. See R. Solomon & E. Chamberlain, "Calculating BACs for Dummies: The Real World Significance of Canada's 0.08% Criminal BAC Limit for Driving" (2003) 8 *Can. Crim. L. R.* 219 at 224 [Dummies].

During Stage 1, it is advisable to require beginners to “log” a specified number of hours of supervised driving. This would facilitate the goal of gaining driving experience, and discourage beginning drivers from simply “waiting out” the 12-month initial stage to avoid traffic violations and crashes.<sup>89</sup> Although many American states include such a log requirement, Yukon and Prince Edward Island are the only Canadian jurisdictions to do so.<sup>90</sup> New drivers in Yukon are required to have at least 50 hours of supervised driving, of which 10 must be in darkness and 10 in winter conditions.<sup>91</sup> The traffic safety benefits of minimum driving hours have not, to our knowledge, been independently investigated,<sup>92</sup> and there is a possibility that some parents might be tempted to falsify the driving log. Nevertheless, there are no obvious drawbacks to imposing a log requirement, and it would encourage at least some beginners to gain on-the-road experience in different situations. Consequently, a log requirement would appear to be an appropriate component of a comprehensive GLP.

A beginning driver should be required to spend at least 12 months in Stage 1 of the GLP. Since studies indicate that the greatest safety benefits of GLPs occur during the period of supervised driving,<sup>93</sup> it is reasonable to make the period a substantial length. This increases the likelihood that the beginner will gain on-the-road experience in a variety of situations, including winter conditions. It also delays entry into Stage 2 until at least the age of 17, when the driver will likely be somewhat more mature. Moreover, there is a growing body of research indicating that extended learner periods have a variety of traffic safety benefits, including increased

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<sup>89</sup> *Blueprint*, *supra* note 32 at 3. See also Mayhew 2006, *supra* note 44 at 11-12.

<sup>90</sup> The log requirement in Prince Edward Island only applies to drivers who are not enrolled in a driver education program. They must provide documentation, initialed by their accompanying drivers, indicating that they have had 10 hours of supervised driving prior to their road test. The log is included in “Co-Pilot: A Guide for Parents of New Drivers.” Online: <[http://www.gov.pe.ca/photos/original/tpw\\_co-pilot.pdf](http://www.gov.pe.ca/photos/original/tpw_co-pilot.pdf)> (date accessed October 2, 2009). E-mail from Graham Miner, Registrar of Motor Vehicles, to Robert Solomon, National Director of Legal Policy, MADD Canada, dated September 10, 2009.

<sup>91</sup> *Best Practices*, *supra* note 48 at 24.

<sup>92</sup> Presumably, the log requirement will increase the amount of practice time for new drivers. However, in order for there to be a meaningful analysis, researchers would need to know the average amount of practice time prior to introduction of the log requirement. As noted by A. Williams in 2007, such a study has yet to be undertaken. Williams 2007, *supra* note 31.

<sup>93</sup> D. Mayhew, H. Simpson & A. Pak, “Changes in collision rates among novice drivers during the first months of driving” (2003) 35 *Accid. Anal. and Prev.* 683; McKnight, *supra* note 51; and Simard, *supra* note 36.

practice, decreased collision rates, and decreases in fatal and personal injury crashes.<sup>94</sup> There should be no discounting of the 12-month initial stage, even for drivers who have taken a driver education course. As discussed below, such courses have not proven effective in terms of traffic safety, and may be counterproductive if they reduce the beginning driver's periods of supervised and restricted driving.<sup>95</sup>

After 12 months in the initial GLP stage, the driver should be entitled to take a road test. Road tests are a conventional requirement of most driver licensing schemes, and are required in every Canadian jurisdiction.<sup>96</sup> However, research has generally failed to demonstrate the effectiveness of conventional road tests in identifying poor drivers.<sup>97</sup> While drivers should be required to demonstrate their practical skills before entering Stage 2 of the GLP, jurisdictions need to develop tests that better reflect an applicant's ability to drive safely once the initial GLP restrictions are lifted. In particular, research suggests that hazard recognition should be a crucial component of a practical skills test, whether performed on a computer simulator or on the road.<sup>98</sup> British Columbia currently includes hazard recognition components in its Stage 1 road test and Stage 2 "exit" road test, in which candidates are tested orally by the examiner while driving.<sup>99</sup>

### **(ii) Stage 2**

After successfully completing the practical skills test, a driver may enter Stage 2 of the GLP. Drivers in Stage 2 should be able to drive unsupervised in most situations. However, they should still be required to have a supervisor when driving late at night or on high-speed roads. As indicated, late-night driving and high-speed roads pose additional challenges for beginning

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<sup>94</sup> These studies are summarized in D. Mayhew, "The learner's permit" (2003) 34 J. Safety Research 35 at 39.

<sup>95</sup> *Ibid.* at 40.

<sup>96</sup> *Best Practices*, *supra* note 48 at 16-18, Table 2.

<sup>97</sup> *Best Practices*, *ibid.* at 38. However, another literature review found that road tests were of some use. In particular, drivers who took several attempts to pass the road test were more likely to be involved in crashes once licensed. Senserrick, *supra* note 39 at 58-59. It may be that failed road tests are a better predictor of poor drivers than passed road tests are predictors of good drivers.

<sup>98</sup> Senserrick, *ibid.* at 59-60. For example, the computerized "Hazard Perception Test" used in Victoria, Australia more accurately predicts drivers at risk of a crash than the standard road test examining practical driving skills.

<sup>99</sup> *Ibid.*; and ICBC, *Tuning up for Drivers* (Vancouver: ICBC, 2006) at 113.

drivers that warrant imposing an initial period of on-road supervision. The main features of Stage 2 of current Canadian GLPs are illustrated in Figure 5.

**FIGURE 5. CANADIAN GRADUATED LICENSING PROGRAMS:  
CURRENT FEATURES OF STAGE 2**

Prov./ Terr.	Minimum Length of Stage 2	Restrictions <sup>1</sup>		
		Nighttime	Passengers	High-speed Roadways
AB	24 months	None	Number of belts	None
BC	24 months (18 with driver ed.)	None	1 passenger, other than family, unless supervised	None
MB	15 months	None	1 passenger in front, number of belts in backseat & additional night restrictions <sup>2</sup>	None
NB	12 months <sup>3</sup>	12 a.m. - 5 a.m., with exceptions <sup>4</sup>	3 passengers	None
NL	12 months	12 a.m. - 5 a.m., unless supervised	Number of belts	None
NS	24 months	12 a.m. - 5 a.m., with exceptions <sup>5</sup>	1 passenger in front and number of belts <sup>6</sup>	None
NT	12 months	None	1 passenger in front	None
NU	No GLP. Drivers can be fully licensed at 16 and are not subject to any BAC or other restrictions.			
ON	12 months <sup>7</sup>	None	Number of belts and additional night restriction if the driver is under 20 <sup>8</sup>	None
PE	24 months stages 2 and 3	1 a.m. - 5 a.m., with exceptions <sup>9</sup>	Number of belts	None
QC	24 months or until 25 <sup>10</sup>	None	None	None
SK	18 months <sup>11</sup>	None	Number of belts and additional restrictions in the first 6 months <sup>12</sup>	None
YK	18 months	12 a.m. - 5 a.m., unless supervised <sup>13</sup>	Number of belts	None

1. Unless otherwise stated, all Stage 2 drivers are subject to a .00% BAC restriction.
2. Stage 2 drivers cannot have more than 1 passenger from 12 a.m. to 5 a.m., unless there is a supervisor in the front and all the passengers in the back seat have a belt.
3. Drivers must spend a total of 24 months in Stages 1 and 2 combined, with at least 12 months spent in Stage 2.
4. This restriction does not apply to drivers who are 21 or older, drivers accompanied by a supervisor and no other passenger, those driving for educational or employment purposes, or drivers who are exempted by the Registrar.
5. This restriction does not apply to drivers who are supervised, or drivers who have obtained an exemption for employment purposes.
6. Legislation, when proclaimed in force, will prohibit carrying more than 1 passenger unless supervised, or unless the passengers are family members.
7. The Ontario government announced that it intends to lengthen Stage 2 to 18 months.

8. During the first 6 months of Stage 2, drivers cannot have more than 1 passenger under 20, other than family members, from 12 a.m. to 5 a.m. After 6 months, Stage 2 drivers can only have 3 passengers under 20. These restrictions do not apply if the driver is supervised, in which case the number of passengers is limited to the number of belts.
9. This restriction does not apply to drivers who are 21 or older, drivers accompanied by a supervisor, or drivers who have obtained a work or other exemption.
10. Drivers who are 25 or older obtain full driving privileges on completing Stage 1. There is no Stage 2 for these drivers.
11. Saskatchewan has a 2-part Stage 2, which lasts a total of 18 months. The novice-1 part is 6 months and the novice-2 part is 12 months.
12. During the 6-month novice-1 part, drivers may only carry 1 passenger other than family members.
13. This supervision requirement does not apply to Stage 2 drivers who are commuting directly between work and home.

The passenger restriction is particularly critical during Stage 2, because a responsible adult will not necessarily be present to discourage risky behaviour and maintain a low-risk driving atmosphere. While several Canadian jurisdictions, including Manitoba, Nova Scotia and Ontario, impose passenger restrictions during Stage 2, the restriction typically only prohibits the driver from having more than one passenger in the front, or from having more rear seat passengers than the number of seatbelts.<sup>100</sup> Thus, these restrictions would readily allow Stage 2 drivers to have four or more teenage passengers in a vehicle, a situation that would likely encourage risky driving. Instead, Stage 2 drivers should be limited to one non-family teenage passenger at a time, unless there is an adult supervisor present.

During Stage 2, drivers should be subject to lower demerit point thresholds or otherwise be more closely monitored by licensing authorities than experienced drivers. This may result in earlier intervention, suspension or remedial education than would apply to other drivers. Monitoring new drivers assists the licensing authorities in identifying potentially at-risk drivers and in taking remedial action before they have a serious crash. In addition, the threat of suspension or other intervention generally has a deterrent impact and will likely discourage newly-licensed drivers from taking risks.<sup>101</sup> Most Canadian jurisdictions already have lower demerit point thresholds or closer scrutiny of drivers during the GLP.<sup>102</sup>

Finally, the .00% BAC restriction should remain in effect throughout Stage 2. This restriction is already in force in all 12 Canadian jurisdictions that have a GLP. Stage 2 of the

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<sup>100</sup> *Best Practices*, *supra* note 48 at 16-18, Table 2.

<sup>101</sup> *Reducing the Risks*, *supra* note 46 at 16.

<sup>102</sup> *Best Practices*, *supra* note 48 at 10-12, Table 1 and 16-18, Table 2.

GLP should last 24 months, making the minimum age of full licensure at least 19. Bearing in mind the previously expressed concerns about the effectiveness of skill testing, a more advanced road test should be required at the end of Stage 2, including some driving on a high-speed road.<sup>103</sup> The requirements of this “exit” road test should reflect the fact that the driver will be permitted to drive unsupervised in all situations. The test should be designed to identify drivers who need to spend more time in the GLP. Ideally, it should also motivate new drivers to practice driving in more difficult situations and gain confidence on high-speed roads. A recent meta-analysis found that an exit road test led to a 98% reduction in relative fatality risk among 19 year old drivers.<sup>104</sup>

Currently, only British Columbia, Alberta and Ontario require an exit road test,<sup>105</sup> while Nova Scotia requires the successful completion of a government-approved driver improvement course.<sup>106</sup> In the other jurisdictions, the driver typically “graduates” to full licensure at the end of Stage 2, which lasts from 12 to 24 months. In Québec, a driver will automatically graduate to full licensure after 24 months or upon turning 25 years old, whichever comes first.

### ***(iii) A Note on Driver Education***

Although MADD Canada recognizes the potential benefits of driver education programs, we have not included mandatory driver education as a cornerstone of graduated licensing. Research has failed to establish that current driver education programs have a long-term positive impact on the likelihood of crashes.<sup>107</sup> A 1999 review of nine studies on high school driver

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<sup>103</sup> Since few jurisdictions have such “exit” tests, there is little research on their effectiveness. However, most researchers who have addressed the issue have recommended exit tests. Senserrick, *supra* note 39 at 60.

<sup>104</sup> Vanlaar, *supra* note 73 at 1110.

<sup>105</sup> *Operator Licensing and Vehicle Control Regulation*, Alta. Reg. 320/2002, s. 33(7) (Alberta); and *Drivers’ Licences*, O. Reg. 340/94, ss. 28(13) and (14) (Ontario). For details of the exit test in British Columbia, see “About the graduated licensing program (GLP) in B.C.” Online: <[http://www.icbc.com/driver-licensing/getting-licensed/graduated-licensing#Variables.\\_frag\\_](http://www.icbc.com/driver-licensing/getting-licensed/graduated-licensing#Variables._frag_)> (date accessed: June 25, 2009).

<sup>106</sup> *Motor Vehicle Act*, R.S.N.S. c. 293, s. 70A(3).

<sup>107</sup> Perhaps most famously, a large-scale experimental study in DeKalb County, Georgia, had disappointing results. The DeKalb Study, undertaken in the late 1970s and early 1980s, was intended to demonstrate the benefits of enhanced high school driver education. Sixteen thousand students were divided into three groups. The first participated in the “Safe Performance Curriculum,” a state-of-the-art education program lasting 72 hours. The second group took a basic driver education course called “Pre-Driver Licensing,” lasting only 20 hours. The control group was not formally enrolled in driver

education programs concluded that: “there is no convincing evidence that high school driver education reduces motor vehicle crash involvement rates for young drivers, either at the individual or community level.”<sup>108</sup> In addition, some studies suggest that some forms of driver education may negatively affect traffic safety by inducing new drivers to overestimate their skills and, as a result, underestimate their risks and drive with smaller margins of error.<sup>109</sup> Until more effective driver education programs are designed,<sup>110</sup> they should not be a mandatory component of a GLP.

Further, MADD Canada advises against the practice of shortening the minimum graduated licensing periods for drivers who participate in driver education programs.<sup>111</sup> The programs simply do not provide an adequate substitute for extensive, supervised, on-the-road driving experience. This is borne out by the experience in Nova Scotia, where novice drivers who have taken a driver education course can have the initial stage of the GLP reduced from six

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education. The results showed that driver education had only a small, short-lived positive effect on new drivers. Although students with driver education initially had fewer crashes per licensed driver than the control group, this difference was not sustained beyond six months of licensed driving. J. Stock *et al.*, *Evaluation of Safe Performance Secondary School Driver Education Curriculum Demonstration Project: Final Report* (Washington: NHTSA, 1983).

See also L. Robertson, “Crash Involvement of Teenaged Drivers when Driver Education is Eliminated in High School” (1980) 70 A.J.P.H. 599; L. Potvin, F. Champagne & C. Laberge-Nadeau, “Mandatory Driver Training and Road Safety: The Québec Experience” (1988) 78 A.J.P.H. 1206; N. Gregersen, “Systematic Cooperation Between Driving Schools and Parents in Driver Education, an Experiment” (1994) 26 *Accid. Anal. and Prev.* 453; and Vanlaar, *supra* note 73 at 1110.

<sup>108</sup> J. Vernick *et al.*, “Effects of High School Driver Education on Motor Vehicle Crashes, Violations and Licensure” (1999) 16(1S) *Am. J. Prev. Med.* 40 at 40.

<sup>109</sup> See for example, B. Jones, *The Effectiveness of Skid-car Training for Teenage Novice Drivers in Oregon* (Salem: Driver and Motor Vehicle Services, 1983); A. Katila *et al.*, *Changes in Slippery Road Accidents as an Effect of Renewed Driver Education in Finland* (Turku, Finland: University of Turku, 1995); N. Gregersen, “Young Drivers’ Overestimation of their Own Skill – An Experiment on the Relation Between Training Strategy and Skill” (1996) 28 *Accid. Anal. and Prev.* 243; and D. Mayhew *et al.*, “Effectiveness and Role of Driver Education in a Graduated Licensing System” (1998) 19 *J. Pub. Health Policy* 51 [Mayhew 1998].

<sup>110</sup> This may include longer programs that are better integrated with the stages of the GLP, better hazard recognition training, and measures to counteract overconfidence. See Operator Education and Regulation Committee, *Driver Education: The Path Ahead* (Washington: Transportation Research Board (TRB), 2006).

<sup>111</sup> See A. Williams & S. Ferguson, “Driver education renaissance? Why we need evidence based highway safety policy” (2004) 10 *Inj. Prev.* 4.

months to three months.<sup>112</sup> A study of Nova Scotia's GLP found that these drivers had a 27% higher collision rate during their first six months of licensure than those who had not participated in a driver education course and consequently had three additional months of supervision.<sup>113</sup> Similarly, in British Columbia, drivers who had taken an approved driver education course to obtain the time discount had a 26% higher crash rate during the first year of unsupervised driving than those who reported taking no driver education.<sup>114</sup>

### (c) A .00% BAC Limit for all Novice Drivers

A key GLP component is the requirement of abstaining from alcohol. Beginning drivers are already disadvantaged because of their inexperience, and should not have their judgment further impaired by alcohol. This limitation should apply to all new drivers, regardless of age. While older beginning drivers may be more mature and experienced with alcohol than young beginning drivers, they still lack driving experience, and this is reflected in their crash rates. Thus, all beginning and intermediate drivers should be required to have a .00% BAC when driving. All Canadian jurisdictions with a GLP now include a .00% BAC restriction for drivers in the program.

Zero and low BAC restrictions have been shown to have very positive results.<sup>115</sup> American states that introduced .00% or low BAC restrictions for young drivers between 1983

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<sup>112</sup> A 2007 amendment, when proclaimed in force, will extend the learner's stage to 12 months in Nova Scotia, or 9 months if a driver has taken an approved driver's education course. See *An Act to Amend Chapter 293 of the Revised Statutes, 1989, the Motor Vehicle Act*, S.N.S. 2007, c. 20, s. 3(4). For similar plans in Ontario, see "Getting Off to a Better Start: Measures for New Drivers." Online: <<http://news.ontario.ca/mto/en/2009/04/getting-off-to-a-better-start-measures-for-new-drivers.html>> (date accessed: July 4, 2009).

<sup>113</sup> Mayhew 2003, *supra* note 30 at 95. See also Boase, *supra* note 34.

<sup>114</sup> Wiggins, *supra* note 37 at 16. When the first two years of unsupervised driving were considered, the driver education group still had an 18% higher crash involvement rate.

<sup>115</sup> See generally, C. Zwerling & M. Jones, "Evaluation of the Effectiveness of Low Blood Alcohol Concentration Laws for Younger Drivers" (1999) 16(1S) *Am. J. Prev. Med.* 76; and A. Wagenaar, P. O'Malley & C. LaFond, "Lowered legal blood alcohol limits for young drivers: Effects on drinking, driving, and driving-after-drinking behaviors in 30 states" (2001) 91 *A.J.P.H.* 801 [Wagenaar 2001]. See also Babor *et al.*, *Alcohol: No Ordinary Commodity* (New York: Oxford University Press, 2003) at 159-60 [Babor]; R. Shults *et al.*, "Reviews of Evidence Regarding Interventions to Reduce Alcohol-Impaired Driving" (2001) 21(4S) *Am. J. Prev. Med.* 66 at 71-72 [Shults]; and J. Fell *et al.*, "The Impact of Underage Drinking Laws on Alcohol-Related Fatal Crashes of Young Drivers" (2009) 33 *Alcohol Clin. Exp. Res.* 1208.

and 1992 had a 16% decrease in the proportion of single-vehicle nighttime fatal crashes<sup>116</sup> among affected drivers, while the proportion among this age group in the control states increased by 1%.<sup>117</sup> The authors of one study estimated that, if the remaining 21 states had introduced a .00% or low BAC limit for young drivers, at least 375 fatal single-vehicle nighttime crashes would have been prevented each year among 15-20 year old drivers.<sup>118</sup> The largest traffic safety improvements occurred in those states that lowered their BAC limit to .00%. For example, Maine had a .02% restriction on drivers under 21 from 1983 until 1995, at which point it enacted a .00% BAC limit. Following the introduction of the new limit, there was an additional 36% reduction in nighttime single-vehicle injury crashes among youth under 21.<sup>119</sup> This likely resulted because a .00% BAC limit prohibits drinking and driving altogether, whereas a .02% limit suggests to the driver that some drinking before driving is acceptable.

The *National Highway System Designation Act*<sup>120</sup> of 1995 required all American states to enact a .00% or .02% BAC limit for drivers under 21 or lose a portion of their federal highway funding. As a result, by 1998, all states had enacted a so-called “zero tolerance law” for drivers under 21. A recent review article concluded, “Zero tolerance laws definitely have reduced drinking and driving.”<sup>121</sup> The authors reasoned that affected drivers are heavily deterred from drinking and driving because they fear losing their licences. Indeed, survey data from several states indicate that there is a high perceived rate of apprehension under the zero tolerance law,<sup>122</sup>

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<sup>116</sup> Because single-vehicle nighttime fatal crashes have such a high rate of alcohol involvement, they are often used as a surrogate measure for estimating alcohol-related crashes.

<sup>117</sup> R. Hingson, T. Heeren & M. Winter, “Lower Legal Blood Alcohol Limits for Young Drivers” (1994) 109 Public Health Reports 738.

<sup>118</sup> *Ibid.* at 744. In addition, one study concluded that BAC restrictions on young drivers have even greater traffic safety benefits if they are combined with extensive public education campaigns. For example, while Maryland’s .02% BAC restriction resulted in a 21% decrease in the number of young crash-involved drivers judged to have been drinking, the addition of a public education campaign resulted in a further 30% decrease. R. Blomberg, *Lower BAC Limits for Youth: Evaluation of the Maryland .02 Law* (Washington: NHTSA, 1992) at 67.

<sup>119</sup> J. Lacey, R. Jones & C. Wiliszkowski, *Zero Tolerance Laws for Youth: Four States’ Experience* (Washington: NHTSA, 2000) at 24 [Lacey].

<sup>120</sup> 23 U.S.C. 109.

<sup>121</sup> J. Hedlund, R. Ulmer & D. Preusser, *Determine why there are fewer young alcohol-impaired drivers* (Washington: NHTSA, 2001), Part IV.B.

<sup>122</sup> D. Balmforth, *National survey of drinking and driving attitudes and behavior: 1997* (Washington: U.S. Department of Transportation, 1999).

and that binge drinkers with such perceptions are less likely to drink and drive.<sup>123</sup> This has translated into reductions in alcohol-related crashes among young people. A comprehensive review covering 16 years of statistics from all 50 states and the District of Columbia found that the presence of a zero tolerance law reduced the odds of an alcohol-positive fatal crash by over 24% for drivers under 21.<sup>124</sup>

Evidence from Canada also demonstrates the traffic safety benefits of .00% BAC limits. For example, an early study of Ontario's .00% BAC restriction for beginning drivers found that there was a 25% reduction in the number of grade 11 and 12 males who reported driving after drinking.<sup>125</sup> A preliminary study of Québec's GLP, which included a .00% BAC restriction, attributed an 8.9% decrease in single-vehicle nighttime crashes to the GLP. Given that such crashes are more likely to involve alcohol, it is likely that the zero tolerance law contributed to the decrease.

The existing research clearly supports the enactment of a .00% BAC restriction not just for beginning and intermediate drivers, but for all drivers under the age of 21.<sup>126</sup> As Figure 2 illustrates, a large percentage of crash deaths and injuries among 16-20 year olds are alcohol-related.<sup>127</sup> This is not surprising, given their patterns of alcohol consumption and high rates of frequent binge drinking.<sup>128</sup> While GLPs have significantly reduced alcohol-related crashes

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<sup>123</sup> See Wagenaar 2001, *supra* note 115; and D. Grosvenor, T. Toomey & A. Wagenaar, "Deterrence and the adolescent drinking driver" (1999) 20 J. Safety Research 187.

<sup>124</sup> R. Voas, A. Tippetts & J. Fell, "Assessing the effectiveness of minimum legal drinking age and zero tolerance laws in the United States" (2003) 35 *Accid. Anal. and Prev.* 579 at 585.

<sup>125</sup> R. Mann *et al.*, "Graduated Licensing in Ontario: Impact of the 0 BAL Provision on Adolescents' Drinking-Driving" in C. Mercier-Guyon, ed., *Alcohol, Drugs and Traffic Safety* (Annecy, France: Centre d'études et de recherche on médecine du trafic, 1997) at 1055. Moreover, the graduated licensing system reportedly reduced attendance at heavy drinking events, such as "bush parties." In a survey of Ontario students, only 38.4% of drivers in the GLP reported attending a bush party in the last 23 months, down from 57% prior to the introduction of the program. G. Stoduto, E. Adlaf & R. Mann, "Adolescents, Bush Parties and Drinking-Driving" (1998) 59 *J. Stud. Alcohol* 544 at 546.

<sup>126</sup> This recommendation is supported by the National Alcohol Strategy Working Group in *Reducing Alcohol-Related Harm in Canada: Toward a Culture of Moderation* (Ottawa: National Alcohol Strategy Working Group, 2007) at 22.

<sup>127</sup> See *Alcohol Crash Problem*, *supra* note 17.

<sup>128</sup> In a 2005 survey, almost 65% of 15-19 year old current drinkers reported binge drinking (defined as consuming 5 or more standard drinks on one occasion) at least once in the past 12 months and, of these, 48.3% reported doing so at least 12 times in the past 12 months. Furthermore, 20-24 year olds had the highest rate (75.9%) of reported binge drinking in the past 12 months. Of these, 59% reported binge

among young beginning drivers, the reach of these programs is limited. Part of the problem is that the BAC restriction is typically lifted upon completion of the GLP, which usually occurs around the age of 18 or 19.<sup>129</sup> This corresponds to the legal drinking age in most provinces, a period during which alcohol consumption and rates of binge drinking increase.<sup>130</sup> As illustrated in Figure 6, 18-19 year olds have the highest rates of weekly and monthly heavy drinking of all age groups.

**FIGURE 6. WEEKLY AND MONTHLY HEAVY DRINKING\* AMONG CURRENT DRINKERS: CANADA, 2004**

Age Group	Weekly	Monthly
15 - 17	7.6%	35.7%
18 - 19	16.1%	51.8%
20 - 24	14.9%	47.0%
25 - 34	6.5%	30.4%
35 - 44	5.3%	24.2%
45 - 54	6.0%	22.0%
All (15 - 75+)	6.2%	25.5%

\*Males consuming 5 or more standard drinks and females consuming 4 or more standard drinks on a single occasion.

**Source: E. Adlaf et al., *Canadian Addiction Survey (CAS): Detailed Report* (Ottawa: Canadian Centre on Substance Abuse (CCSA), 2005) at 31.**

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drinking at least 12 times in the past 12 months. Statistics Canada, *CANSIM Table 105-0431, Frequency of drinking in the past 12 months, by age group and sex...peer groups, every two years, 2005* (Ottawa: Statistics Canada, 2005).

Similarly, in the 2005 *Canadian Addiction Survey*, 15-24 year olds had the highest rates of weekly and monthly heavy drinking and of consuming five or more drinks on a typical drinking day in the past year. Of current drinkers, 42.5% of 18-19 year olds reported drinking five or more drinks on a typical drinking day, the highest of all age groups. E. Adlaf, P. Begin & E. Sawka, eds., *Canadian Addiction Survey (CAS): Detailed Report* (Ottawa: Canadian Centre on Substance Abuse (CCSA), 2005) at 29 and 31 [CAS]. See also E. Adlaf, A. Demers & L. Gliksman, eds., *Canadian Campus Survey 2004* (Toronto: CAMH, 2005).

Various provincial surveys have reported similar high rates of binge drinking. See for example, *OSDUHS*, *supra* note 86; Poulin, *supra* note 85; Alberta Alcohol and Drug Abuse Commission (AADAC), *The Alberta Youth Experience Survey (TAYES) 2005: Summary Report* (Edmonton: AADAC, 2006); P. Kendall, *Public Health Approach to Alcohol Policy: An Updated Report from the Provincial Health Officer* (British Columbia: Ministry of Healthy Living and Sport, 2008); and D. Patton, T. Mackay & B. Broszeit, *Alcohol and Other Drug Use by Manitoba Students* (Winnipeg: Addictions Foundation of Manitoba, 2005).

<sup>129</sup> See E. Chamberlain & R. Solomon, "Zero blood alcohol concentration limits for drivers under 21: lessons from Canada" (2008) 14 *Inj. Prev.* 123.

<sup>130</sup> As indicated in *CAS*, *supra* note 128 at 29, 31 and 42, 18-19 year olds have the highest reported rate of drinking five or more drinks on a typical drinking day of all age groups. They also have the highest rates of hazardous drinking.

Moreover, this is precisely the age at which teenage drivers are currently most vulnerable to alcohol-related crash deaths and injuries. A 1999 Canadian study reported that 18-19 year olds account for almost 74% of all alcohol-related crash deaths among teenage drivers.<sup>131</sup> It is dangerous to expose 18-20 year olds to their first experiences of unrestricted driving at the same time as their first legal use of alcohol.

Consequently, the .00% BAC requirement should apply beyond the GLP until a driver is 21. Young beginning drivers usually lack both driving and drinking experience.<sup>132</sup> They tend to be risk takers and are less cautious than their older counterparts.<sup>133</sup> Thus, even in the absence of alcohol, young drivers are at a greater relative risk of crash than older, more experienced drivers.<sup>134</sup> Moreover, as indicated in Figure 7, young drivers who drink are at a far greater relative risk of death than older drivers with comparable BACs.

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<sup>131</sup> *Youth and Road Crashes*, *supra* note 54 at 21.

<sup>132</sup> Some researchers have suggested that this dual lack of experience leads to a far greater inability to drive after drinking. See D. Mayhew *et al.*, “Youth, Alcohol and Relative Risk of Crash Involvement” (1986) 18 *Accid. Anal. and Prev.* 273 at 283 [Relative Risk]. Many young drivers may not have acquired a tolerance for even small amounts of alcohol and, thus, cannot compensate adequately for its adverse effects on their driving. In addition, inexperienced drivers must focus more attention on the task of driving, whereas more experienced drivers perform the task automatically or instinctively. Consequently, even a small amount of alcohol can substantially decrease an inexperienced driver’s ability to drive safely.

<sup>133</sup> Young drivers are more likely to speed, follow too closely, allow less time to merge with traffic, cross traffic lanes, and pass other vehicles. They also tend to overestimate their driving abilities. See Groeger, *supra* note 45; J. Arnett, “Developmental sources of crash risk in young drivers” (2002) 8 (Suppl II) *Inj. Prev.* ii17; D. Clarke, P. Ward & W. Truman, “Voluntary risk taking and skill deficits in young driver accidents in the UK” (2005) 37 *Accid. Anal. and Prev.* 523; and J. Arnett, D. Offer and M. Fine, “Reckless Driving in Adolescence: ‘State’ and ‘Trait’ Factors” (1997) 29 *Accid. Anal. and Prev.* 57.

<sup>134</sup> See P. Zador, S. Krawchuk and R. Voas, “Alcohol-Related Relative Risk of Driver Fatalities and Driver Involvement in Fatal Crashes in Relation to Driver Age and Gender: An Update Using 1996 Data” (2000) 61 *J. Stud. Alcohol* 387 at 390 [Zador].

**FIGURE 7. RELATIVE RISK OF A FATAL SINGLE-VEHICLE CRASH FOR MALES, AT VARIOUS BACS**

	.02% - .049%	.05% - .079%	.08% - .099%	.10% - .149%	.15% +
<b>Age 16-20</b>	5	17	52	241	15,560
<b>Age 21-34</b>	3	7	13	37	573
<b>Age 35+</b>	3	6	11	29	382

**Source: P. Zador, S. Krawchuk & R. Voas, "Alcohol-Related Relative Risk of Driver Fatalities and Driver Involvement in Fatal Crashes in Relation to Driver Age and Gender: An Update Using 1996 Data" (2000) 61 J. Stud. Alcohol 387 at 392.**

Given that alcohol-related crash rates do not decrease until well after the age of 21,<sup>135</sup> it is justifiable to extend the .00% BAC restriction until a driver reaches at least 21 years of age. As indicated, these BAC restrictions have been shown to reduce impaired driving deaths among all drivers under the age of 21. For example, Oregon experienced a 40% reduction in single-vehicle nighttime crashes among affected drivers after its .00% BAC restriction was extended from drivers under the age of 18 to include drivers under 21 in 1991.<sup>136</sup>

As illustrated in Figure 8, several Canadian jurisdictions have already taken steps to introduce an extended .00% BAC restriction, either to the age of 21 or for the first five years of licensure. However, it is still too early to provide a statistical analysis of the effects of these laws.

<sup>135</sup> Relative Risk, *supra* note 132 at 281-83.

<sup>136</sup> Lacey, *supra* note 119 at 29.

**FIGURE 8. ADDITIONAL .00% BAC LIMITS EXTENDING BEYOND THE GLP**

Prov./ Terr.	.00% BAC Limit Beyond GLP	Minimum Age At Which .00% BAC Limit Ends	Legal Drinking Age
AB	None	18	18
BC	None	18½	19
MB	3 years	20½	18
NB	3 years	21	19
NL	None	17⅔	19
NS	None <sup>1</sup>	18¼	19
NT	None	17	19
NU	None	15	19
ON	None <sup>2</sup>	17⅔	19
PE	¼ year	19	19
QC	None	18⅔	18
SK	None	17½	19
YK	None	17½	19

1. Legislation, when proclaimed in force, will require drivers to have a .00% BAC for 2 years after completing Stage 2. Thus, the minimum length of the .00% BAC restriction will be 4¾ years for drivers who have completed the driver education course in Stage 1 and 5 years for those who have not.
2. Legislation, when proclaimed in force, will require drivers under the age of 22 to have a .00% BAC.

#### (d) Enforcement of Graduated Licensing Programs and .00% BAC Limits

In order to effectively enforce the graduated licensing program and the .00% BAC restriction on young drivers, provincial legislation must specifically authorize the police to stop vehicles at random and demand that beginning drivers and their supervisors identify themselves and present their driver's licences. As several studies have noted, GLP conditions are violated, at least occasionally, by a large portion of new drivers.<sup>137</sup> Further, the American experience suggests that GLP conditions are very difficult to enforce unless the police have authority to stop

<sup>137</sup> See Chaudhary, *supra* note 74 at 33. See also Responses, *supra* note 59; and A. Goodwin & R. Foss, "Graduated driver licensing restrictions: Awareness, compliance and enforcement in North Carolina" (2004) 35 J. Safety Research 367.

drivers at random and easily identify any conditions on a driver's licence.<sup>138</sup> While some jurisdictions require a sign, such as a large "L" or "N", to be attached to the vehicle to identify the driver as a learner or novice, American research indicates that drivers who are willing to violate the other conditions of their licence may also ignore this identification requirement.<sup>139</sup>

In order to enforce the .00% BAC restriction, police should be authorized to demand breath samples on an approved screening device from any driver in the graduated licensing program, any supervising driver, and any licensed driver who is still subject to the .00% BAC restriction.<sup>140</sup> The police would have great difficulty detecting those in breach of the .00% BAC limit through standard investigating techniques, because many of these individuals would exhibit no or few or no visible signs of alcohol consumption or impairment. Consequently, the ability to demand breath samples from young drivers and their supervisors should not be dependent on a suspicion that they have consumed alcohol. Although this may conflict with the general principle that searches should not be conducted in the absence of reasonable grounds,<sup>141</sup> this provision should withstand *Charter* scrutiny because it would be used for the limited purpose of enforcing the .00% BAC provision, and would not be admissible in evidence at a criminal trial.<sup>142</sup>

If the supervising driver breaches the .00% BAC restriction, his or her licence should be suspended for 24 hours, and the beginning driver should not be allowed to continue driving unless someone else is able to take over as the qualified, sober supervisor.

The graduated licensing program should also have some means of identifying potentially problem drivers and preventing them from obtaining full licensure before their problems can be

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<sup>138</sup> See *supra* note 78. See also L. Steenbergen *et al.*, "Kentucky's graduated driver licensing program for young drivers: barriers to effective local implementation" (2001) 7 *Inj. Prev.* 286; L. Hyde *et al.*, "Graduated Driver Licensing in Utah: Is It Effective?" (2005) 45 *Ann. Emerg. Med.* 147 at 152; and A. Goodwin *et al.*, "Encouraging compliance with graduated driver licensing restrictions" (2006) 37 *J. Safety Research* 343 at 350.

<sup>139</sup> Senserrick, *supra* note 39 at 77.

<sup>140</sup> That is, a driver under 21 or who has been licensed for fewer than five years, depending on the .00% BAC law in the jurisdiction.

<sup>141</sup> *Hunter v. Southam Inc.*, [1984] 2 S.C.R. 145.

<sup>142</sup> Further, the Canadian courts have found that there is a diminished expectation of privacy for certain "regulatory inspections" that are necessary to ensure compliance with a lawful condition of the exercise of a right or privilege. *R. v. Hufsky*, [1988] 1 S.C.R. 621. For a more complete *Charter* analysis, see *Opportunities for Progress*, *supra* note 8 at 79-82.

addressed.<sup>143</sup> Thus, drivers in Stages 1 and 2 who are involved in at-fault crashes, commit serious provincial traffic offences, or breach conditions of the GLP should be subject to extended periods of supervision<sup>144</sup> and, depending on the driver's record, possible licence suspensions.<sup>145</sup> As described below, licence suspensions tend to be a meaningful deterrent for young people, and should help to motivate them to drive safely.

#### (e) Penalties for Violating the Graduated Licensing and .00% BAC Programs

A driver who violates the conditions of his or her graduated licence should be considered to be driving without a valid licence, and should be subject to prosecution for unlicensed or unauthorized driving. This should result in administrative licence suspensions of 30, 90 and 120 days for first, second and subsequent infractions, respectively, and the suspension period should not count toward completion of the minimum length in each stage. Third offenders should be required to re-start the GLP. It is important for these drivers to remain in the program so that they can gain the benefits of supervised and low-risk driving.

Drivers who are subject to the .00% BAC restriction, even if otherwise fully licensed, should be prosecuted for unlicensed or unauthorized driving if caught driving in violation of that restriction. For a first infraction, the driver should be subject to a 30-day administrative licence suspension and a one-year extension of the .00% BAC restriction. For a second or subsequent infraction, the driver should be subject to a 90-day administrative licence suspension and a two-year extension of the .00% BAC restriction.

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<sup>143</sup> On the effectiveness of demerit point thresholds, see J. Tannahill & M. Smith, "States' experience with inexperienced drivers: update on status of provisional licensing" (1990) 21 *Traffic Safety* 18; and E. Forsyth, G. Maycock & B. Sexton, *Cohort Study of Learner and Novice Drivers: Part 3, accidents, offences and driving experience in the first three years of driving* (Crowthorne, U.K.: Transportation Research Laboratory, 1995), Research Report 111.

<sup>144</sup> It is important to motivate new drivers to demonstrate their skills through clean driving records, rather than allowing them to "graduate" to full licensure without regard to traffic violations. See Mayhew 1998, *supra* note 109 at 57.

<sup>145</sup> It should be noted that these licence sanctions should not apply to drivers who commit minor traffic violations. Suspending the licences of such drivers would only detract from their ability to improve their skills and gain experience. Rather, the suspensions would apply to drivers who deliberately violate key conditions of their licences, or who show a pattern of disregarding licensing laws and traffic safety.

While licence suspensions may appear to be a harsh penalty for those who violate their GLP restrictions or the .00% BAC restriction, research indicates that they may be the most meaningful punishment for young people. For example, at least 36 American states have “Use and Lose” laws, whereby youth who drink, possess or attempt to purchase alcohol while underage have their drivers’ licences suspended or, if not yet licensed, have their ability to apply for a licence delayed.<sup>146</sup> The theory behind such laws is that young people greatly value the ability to drive, and will be deterred by a law that threatens to remove that ability.<sup>147</sup> Thus, GLPs that include suspensions as a penalty should have a considerable deterrent impact, and thereby enhance traffic safety.

Several jurisdictions already impose significant sanctions on GLP drivers and supervisors who breach their BAC restrictions. For example, novice drivers in New Brunswick who are convicted of breaching the .00% BAC restriction are subject to a 12-month licence suspension. A novice driver who wishes to regain his or her licence must complete a drinking driver re-education course and re-start the entire GLP.<sup>148</sup> In Yukon, supervisors convicted of breaching their .00% BAC limit face a maximum penalty of a \$1,000 fine and six months imprisonment.<sup>149</sup>

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<sup>146</sup> R. Compton, R. Ulmer & V. Shabanova, “Effectiveness of the Use and Lose Law” in D. Mayhew and C. Dussault, eds., CD-ROM, *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety* (Montreal: SAAQ, 2002).

<sup>147</sup> *Ibid.* A licence suspension is seen as a more serious punishment than a fine, for example, which has less direct impact on teenagers. In addition, very few teens are sent to prison for breaching highway traffic or alcohol possession legislation.

<sup>148</sup> *Motor Vehicle Act*, R.S.N.B. 1973, c. M-17, ss. 84(11) and (12). In Newfoundland and Labrador, novice drivers who breach their .00% BAC restriction receive a two-month suspension for the first occurrence, a four-month suspension for a second occurrence, and a six-month suspension for a third occurrence. Once the suspension ends, the driver must restart the GLP level that he or she was in at the time of the suspension. *Highway Traffic Act*, R.S.N.L. 1990, c. H-3, s. 60.4(6) [NFLD HTA].

<sup>149</sup> *Motor Vehicles Act*, R.S.Y. 2002, c. 153, ss. 9(3) and (4). In Newfoundland and Labrador, the licence of a supervisor who has a BAC above .05% will be suspended for 24 hours. NFLD HTA, *ibid.*, ss. 60.5(2)-(5).

## SECTION II: LICENCE SUSPENSIONS AND REVOCATIONS

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### A Summary of Current Licence Suspensions in Canada

It is important to distinguish at the outset between provincial licence suspensions and federal driving prohibitions.<sup>150</sup> Under the *Constitution Act, 1867*,<sup>151</sup> only the provinces and territories have legal authority to issue, suspend, revoke, or cancel drivers' licences. Nevertheless, Parliament has authority under its criminal law power to impose driving prohibitions on those convicted of federal driving offences. The federal driving prohibitions for the impaired driving offences are set out in sections 252(1) and (2) of the *Criminal Code*,<sup>152</sup> and apply independently from any action the provincial authorities take. It should also be noted that, while the provinces and territories impose suspensions in a broad range of circumstances,<sup>153</sup> our discussion is generally limited to suspensions related to impaired driving.

Before proceeding to the specific licence suspension recommendations, it is necessary to outline the three types of licence suspensions relating to impaired driving that apply in most provinces and territories: short-term roadside suspensions; 90-day administrative suspensions; and suspensions imposed upon conviction for impaired and other *Criminal Code* driving offences. While the general characteristics of the suspensions are similar, there are numerous differences among the 13 jurisdictions. We have summarized below the most common features of each type of suspension.

First, as shown in Figure 9, if a driver is believed to be impaired or has a BAC above .05% (.04% in Saskatchewan), the police are authorized or required to seize the driver's licence,

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<sup>150</sup> Unfortunately, some of the provinces also use the term "prohibition" in reference to their 90-day administrative licence suspensions. See for example, *Motor Vehicle Act*, R.S.B.C. 1996, c. 318, s. 94.1(1)(a); and *Highway Traffic Act*, R.S.P.E.I. 1988, c. H-5, s. 277.2(1). Consequently, one cannot assume that the term "driving prohibition" always refers to a federal driving prohibition under the *Criminal Code*. In our discussion, however, we have reserved the use of the term "prohibition" for the federal criminal provisions.

<sup>151</sup> *Supra* note 3, s. 92(13).

<sup>152</sup> *Supra* note 81.

<sup>153</sup> Depending on the jurisdiction, the grounds for imposing suspensions may include: specified provincial traffic offences; too many demerit points; unfitness to drive; a poor driving record; and unpaid fees, fines and civil judgments.

typically for 24 hours for a first occurrence. In most cases, police will arrange a ride home for the driver, or the driver will be required to relinquish the wheel to a sober licensed passenger, if one is available. The driver is able to retrieve his or her licence from the police the following day.

**FIGURE 9. GROUNDS FOR SHORT-TERM ADMINISTRATIVE LICENCE SUSPENSIONS (ALS)**

Prov./ Terr.	Alcohol-Related Grounds	Other Grounds
AB	Reasonably suspect driver's ability is adversely affected by alcohol	Reasonably suspect driver's ability is adversely affected by a drug
BC	Reasonable grounds to believe driver is impaired by alcohol	Reasonable grounds to believe driver is impaired by a drug
MB	BAC $\geq$ .05%; or fails to provide a sample	Based on SFST, believe driver is unable to drive safely; refuses SFST; or is so impaired by alcohol or drugs as to be unable to provide a sample or take SFST
NB	BAC $\geq$ .05%; or charged with either an impaired driving offence or refusing to provide a sample	No
NL	BAC $\geq$ .05%; refuses to provide a sample; or charged with an impaired driving offence or refusing to provide a sample	No
NS	BAC $\geq$ .05%; or charged with either an impaired driving offence or refusing to provide a sample	No
NT	BAC $\geq$ .05%; or reasonable grounds to believe driver's ability is impaired by alcohol	Reasonable grounds to believe driver's ability is impaired by drugs or fatigue
NU	Reasonable grounds to believe driver's ability is impaired by alcohol	Reasonable grounds to believe driver's ability is impaired by drugs or fatigue
ON	BAC $\geq$ .05%	No
PE	BAC $\geq$ .05%; or refuses to provide a sample	No
QC	No Short-Term ALS.	
SK	Reasonable grounds to believe driver's BAC exceeds .04%	No
YK	Reasonable grounds to believe driver is impaired by alcohol	Reasonable grounds to believe driver's ability is impaired by drugs or another substance

In some provinces, there are no further penalties or record-keeping procedures for these roadside suspensions. However, as illustrated in Figures 10 and 11, several provinces have enacted escalating sanctions for repeat occurrences, including longer licence suspensions and

remedial programs. In any event, these roadside suspensions are not dependent on the laying of any federal criminal charges.

**FIGURE 10. DURATION OF SHORT-TERM ALS**

<b>Prov./ Terr.</b>	<b>First Occurrence</b>	<b>Second Occurrence</b>	<b>Third or Subsequent Occurrence<sup>1</sup></b>
AB	24 hours	24 hours	24 hours
BC	24 hours	24 hours	24 hours
MB	24 hours	24 hours	24 hours
NB	24 hours	24 hours	24 hours
NL	24 hours	24 hours	2 months <sup>2</sup>
NS <sup>3</sup>	24 hours	24 hours	24 hours
NT	24 hours	30 days <sup>2</sup>	30 days <sup>2</sup>
NU	4 to 24 hours	4 to 24 hours	4 to 24 hours
ON	3 days	7 days <sup>4</sup>	30 days <sup>4</sup>
PE	7 days	30 days <sup>2</sup>	90 days <sup>2</sup>
QC	No Short-Term ALS.		
SK	24 hours	15 days <sup>4</sup>	90 days <sup>4</sup>
YK	24 hours	24 hours	24 hours

1. In Newfoundland and Labrador, a 4-month suspension is imposed for a fourth 24-hour suspension within 2 years, and a 6-month suspension is imposed for a fifth or subsequent 24-hour suspension within 2 years.
2. Only applies to occurrences within 2 years.
3. The Nova Scotia government announced that it intends to introduce legislation that will increase the 24-hour suspension to 7, 15 and 30 days for a first, second and subsequent .05% infringement.
4. Only applies to occurrences within 5 years.

**FIGURE 11. OTHER FEATURES OF THE SHORT-TERM ALS**

Prov./ Terr.	Police Record Kept	Registrar Informed	Susp. on Abstract	Reinstate. Fee	Mandatory Legislated Remedial Programs
AB	Yes	No	Yes	No	No
BC	Yes	Yes (ICBC)	Yes	No	No, but Super. requires drivers to participate in a remedial program consisting of alcohol screening, education or counselling, and an alcohol assessment if they have 3 suspensions within 5 years.
MB	Yes	Yes	Yes	\$50	Drivers with 2 or more suspensions within 3 years must undergo an impaired driver's assessment and may be required to complete an education or treatment program.
NB	Yes	No	Yes	No	No
NL	Yes	Yes	No	\$100	Drivers with 2 suspensions within 2 years must complete an education program. Drivers with 3 or more suspensions within 2 years must complete an alcohol dependency assessment and rehabilitation program.
NS	Yes	Yes <sup>1</sup>	Yes <sup>2</sup>	\$89.63	No
NT	Yes	Yes	Yes	No	No
NU	Yes	Yes <sup>1</sup>	No	\$25	No
ON	Yes	Yes	Yes	\$100	No, but Registrar requires drivers with 2 suspensions within 5 years to participate in an alcohol education program. Drivers with 3 or more suspensions within 5 years must participate in an alcohol treatment program and are subject to a 6-month interlock order. Drivers with 4 or more suspensions within 5 years must undergo a medical examination.
PE	Yes	Yes	No	\$75	No
QC	No Short-Term ALS.				
SK	Yes	No	Yes	No	Drivers with 2 suspensions within 5 years must complete the "Driving Without Impairment" course.
YK	Yes	Yes <sup>1</sup>	No	No	No

1. The law does not require the Registrar to be informed, but the police do so as a matter of administrative policy.
2. The law does not require the suspension to be recorded on the driver's abstract, but the Registrar does so as a matter of administrative policy.

Second, most provinces have created 90-day administrative licence suspensions for drivers who, based on an evidentiary breath or blood test, have BACs of .08% or higher. Similarly, 90-day suspensions are imposed on drivers who fail, without a reasonable excuse, to

provide a breath or blood sample upon a lawful demand. Typically, the police may issue a 90-day ALS regardless of whether they lay a federal criminal charge. The police will often impose a 90-day ALS in combination with a short-term roadside suspension. In these cases, the driver is issued an immediate roadside suspension, which prevents him or her from driving home in an impaired condition. In most jurisdictions, the driver is then given a temporary licence (usually 7 days), which only comes into effect once the short-term roadside suspension is over. The temporary licence allows the driver to make arrangements for alternate transportation before the 90-day suspension comes into effect. Most jurisdictions give the driver a right to challenge the officer's decision to issue an ALS, but the grounds for such challenges are very limited. The ALS takes effect when the temporary licence expires.

Third, the provinces and territories typically impose licence suspensions on drivers convicted of federal impaired or other *Criminal Code* driving offences. These provincial and territorial suspensions are in addition to any mandatory or discretionary driving prohibitions that have been imposed under the *Criminal Code*. It should be noted that the provincial and territorial licence suspensions for second and subsequent federal convictions are typically considerably longer than the federal driving prohibitions. Moreover, in most provinces, the offender must satisfy various requirements before his or her licence is reinstated. The conditions may include: installing an alcohol interlock; attending an education program; undergoing an alcohol/drug assessment; or successfully completing a treatment program.

A single impaired driving occasion may trigger all three suspensions, as well as a federal driving prohibition. The short-term roadside suspension applies immediately to remove the suspected impaired driver from the road. The 90-day ALS provides a more significant sanction and prohibits those charged with an impaired driving offence from driving for at least part of the time prior to trial. If the driver is convicted, he or she is then subject to both the mandatory federal driving prohibition and the provincial licence suspension.

The discussion below outlines key features for the provincially-imposed licence suspensions. The recommended suspensions are administrative in nature, and can operate independently of the federal criminal justice system. Not only are administrative suspensions more streamlined and cost-effective, but they may be more effective in terms of achieving deterrence. General deterrence is accepted to be the product of three factors: the certainty, celerity, and severity of the penalty. Administrative suspensions satisfy the first two, in that they

take effect immediately and without exception. By contrast, federal driving prohibitions are tied to the outcome of criminal proceedings, and may not take effect until months after the alleged offence. Moreover, due to the various evidentiary and other problems that may arise in criminal prosecutions, the driver may not be convicted. Thus, although federal prohibitions may be more severe, they are neither as certain nor as swift as provincial administrative licence suspensions.<sup>154</sup> Similarly, while MADD Canada continues to support post-conviction licence suspensions by the provinces, we have not made them a priority of the current *Rating the Provinces* project, which focuses instead on a more comprehensive approach to impaired driving including interlocks, remedial programs and vehicle sanctions.

#### (a) 24-Hour Licence Suspensions for Unfitness

There are numerous reasons why an individual may be considered unfit to drive. These include not only alcohol and drug impairment, but also fatigue<sup>155</sup> and illness.<sup>156</sup> Where police have reasonable grounds to believe that an individual is unfit to operate a motor vehicle, they should be authorized to impose an immediate 24-hour licence suspension. This suspension is not meant to be punitive; rather, it is meant to protect the public from drivers who are unfit to drive by temporarily removing them from the road. If police believe that the driver's unfitness is due to a long-term problem, they should be authorized to report the driver to the provincial licensing authority, which can investigate further and take any licence action considered to be necessary.

#### (b) 7-14 Day (Short-term) Administrative Licence Suspensions for Alcohol and/or Drug Impairment

Most Canadian jurisdictions already have a 90-day administrative licence suspension (ALS) program for drivers who have BACs of .08% or above, or who fail to provide breath or

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<sup>154</sup> See generally, B. Sweedler, *Strategies for Dealing with the Persistent Drinking Driver* (Washington: National Transportation Safety Board, 1995).

<sup>155</sup> See generally, National Centre on Sleep Disorders Research/National Highway Traffic Safety Administration Expert Panel on Driver Fatigue and Sleepiness, *Drowsy Driving and Automobile Crashes* (Washington: NHTSA, 1997); and J. Connor *et al.*, "Driver sleepiness and risk of serious injury to car occupants: population based case control study" (2002) 324 B.M.J. 1125. The effects of sleepiness are exacerbated by alcohol. See R. Wilson *et al.*, "Sleepiness Among Night-Time Drivers: Relationship to Blood Alcohol Concentration and Other Factors" (2006) 7 Traffic Inj. Prev. 15.

<sup>156</sup> See generally, B. Dobbs, *Medical Conditions and Driving: A Review of the Literature (1960-2000)* (Washington: NHTSA, 2005).

blood samples without a reasonable excuse. Similarly, most jurisdictions have instituted short-term roadside licence suspensions for drivers with BACs of .05% or higher. However, as indicated in Figures 10 and 11, this roadside suspension often lasts no longer than 24 hours, and only some provinces have escalating penalties for repeat .05% BAC drivers. Thus, for many motorists, driving with a BAC of between .05% and .08% entails little more than relinquishing the wheel to a sober driver or paying for a cab ride home.<sup>157</sup> This is particularly troubling given that many police officers admit that they sometimes or frequently impose a short-term roadside suspension, rather than lay criminal charges, even if a driver's BAC exceeds the *Criminal Code* limit of .08%.<sup>158</sup> The current situation sends drivers the dangerous message that it is acceptable to drink not insubstantial amounts of alcohol prior to driving.<sup>159</sup>

Consequently, MADD Canada recommends that each province and territory enact a 7-14 day ALS program for drivers with BACs of .05% or higher. Studies consistently demonstrate that key driving-related skills are impaired at this BAC level,<sup>160</sup> and that these drivers have

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<sup>157</sup> This addresses the immediate risk posed by the driver, but not necessarily the underlying risky behaviour. Further, while a 24-hour suspension might serve as a “wake up call” to some drivers who drink, it has not been shown to have a significant general deterrent effect. See D. Beirness & D. Singhal, *Short-term Licence Suspensions for Drinking Drivers: An Assessment of effectiveness in Saskatchewan* (Ottawa: TIRF, 2007) at 44-46.

<sup>158</sup> B. Jonah *et al.*, “Front-line police officers’ practices, perceptions and attitudes about the enforcement of impaired driving laws in Canada” (1999) 31 *Accid. Anal. and Prev.* 421 at 426; and Police Services Division, *Safe Roads, Safe Communities* (Victoria: Ministry of the Attorney General, Public Safety and Regulatory Branch, 2000) at B-4.

<sup>159</sup> Given current enforcement practices, a 200-pound man could consume 6 bottles of beer in 2 hours without facing a significant risk of a criminal charge. See Dummies, *supra* note 88.

<sup>160</sup> Both laboratory and field studies establish that various driving-related skills are significantly impaired at BAC levels of .05% or lower. Drivers with low and moderate BACs have impaired psychomotor skills, such as steering and braking, as well as impaired visual function and reaction time. However, the skills most affected by small amounts of alcohol are information processing and divided attention skills, which are crucial if drivers are to respond quickly and accurately to various traffic hazards. See for example, H. Moskowitz and D. Fiorentino, *A Review of the Literature on the Effects of Low Doses of Alcohol on Driving-Related Skills* (Washington: NHTSA, 2000); H. Moskowitz *et al.*, *Driver Characteristics and Impairment at Various BACs* (Washington: NHTSA, 2000); P. Howat, D. Sleet & I. Smith, “Alcohol and Driving: Is the 0.05% Blood Alcohol Concentration Limit Justified?” (1991) 10 *Drug and Alcohol Rev.* 151; A. Liguori *et al.*, “Alcohol Effects on Mood, Equilibrium, and Simulated Driving” (1999) 23 *Alcoholism: Clinical and Experimental Research* 815; and E. Ogden & H. Moskowitz, “Effects of Alcohol and Other Drugs on Driver Performance” (2004) 5 *Traffic Inj. Prev.* 185.

significantly higher relative risks of fatal crash than drivers with BACs of .00%.<sup>161</sup> The international jurisdictions that have introduced .05% BAC laws have experienced significant declines in driver impairment and alcohol-related crashes.<sup>162</sup> For example, the .05% BAC restriction in New South Wales was estimated to have reduced fatal collisions by 8%, serious collisions by 7% and single-vehicle nighttime collisions by 11%. This translated into the prevention of 75 fatal, 605 serious and 296 single-vehicle nighttime collisions per year.<sup>163</sup>

The ALS should apply to all drivers who register a BAC of .05% or higher on a breath, blood or urine test, or to any driver who police reasonably believe is impaired by alcohol or drugs. The provinces need to emphasize that this risky driving behaviour will be taken seriously. It should result in a suspension of at least 7 days for a first occurrence, with additional consequences for subsequent occurrences, as described below.

The program would likely work best, but certainly not exclusively, in conjunction with testing on approved screening devices (ASDs) at sobriety checkpoints. The ASDs in most provinces are already calibrated to register a “warn” at a .05% BAC level. If a driver blows a “warn,” police should immediately seize his or her licence and serve the driver with a notice that the licence is suspended for 7 or 14 days, whichever is applicable in the jurisdiction.<sup>164</sup> Police should have a duty to inform the driver of the right to challenge the results of the ASD test by

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<sup>161</sup> See Zador, *supra* note 134; and H. Moskowitz *et al.*, “Methodological Issues and Epidemiological Studies of Alcohol Crash Risk” and R. Compton *et al.*, “Crash Risk of Alcohol Impaired Driving” in D. Mayhew and C. Dussault, eds., *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety - T’2002*, CD-ROM (Montréal: SAAQ, 2002).

<sup>162</sup> See for example, Shults, *supra* note 115 at 69-71; R. Mann *et al.*, “The effects of introducing or lowering legal *per se* blood alcohol limits for driving: an international review” (2001) 33 *Accid. Anal. and Prev.* 569; E. Chamberlain & R. Solomon, “The Case for a 0.05% Criminal Law Blood Alcohol Concentration Limit for Driving” (2002) 8 (Suppl III) *Inj. Prev.* iii1 at iii5-iii14; Babor, *supra* note 115 at 159-60; D. Morrison, M. Petticrew & H. Thomson, “What are the most effective ways of improving population health through transport interventions? Evidence from systematic reviews” (2003) 57 *J. Epidemiol. Community Health* 327 at 331; J. Grube, “Preventing Alcohol-Related Problems: Public Policy Strategies” in *Implementing Impaired Driving Countermeasures: Putting Research into Action* (Washington: Transportation Research Board, 2005) 93 at 102; and J. Fell & R. Voas, “The Effectiveness of Reducing Illegal Blood Alcohol Concentration (BAC) Limits for Driving: Evidence for Lowering the Limit to .05 BAC” (2006) 37 *J. Safety Research* 233.

<sup>163</sup> J. Henstridge, R. Homel & P. Mackay, *The Long-Term Effects of Random Breath Testing in Four Australian States: A Time Series Analysis* (Canberra: Federal Office of Road Safety, 1997), Table 7.4.

<sup>164</sup> If a driver cannot produce his or her licence for the officer, the driver should be given two days to bring the licence to the police station. Drivers failing to surrender their licences within this period should have their licences revoked.

submitting, without delay, to a test on an approved evidentiary breath-testing instrument. If the approved instrument indicates that the driver's BAC was below .05% at the time of driving,<sup>165</sup> the driver's licence should be returned. However, drivers should also be warned that, if they register a BAC above .08% on the evidentiary breath test, they may be charged under section 253(b) of the *Criminal Code* and be subject to a 90-day administrative licence suspension. Drivers should be able to apply in writing to have the 7-14-day ALS reviewed by the provincial licensing authority, but the grounds for review should be limited to whether the driver's BAC reading was below .05%.

Drivers suspended under the provincial .05% ALS legislation should be required to pay a licence reinstatement fee of between \$150 and \$300 to help cover the administrative costs of the program. In addition, police should be required to report the suspension and send the driver's licence to the provincial licensing authority.<sup>166</sup> If no other suspensions or conditions have been imposed, the driver should be permitted to obtain his or her licence from the licensing authority at the end of the suspension period. A record-keeping system should be implemented, with additional fees and countermeasures applicable for repeat occurrences within a three-year period. For instance, a second .05% ALS should last 30 days, and the driver should be required to submit to an impaired driving assessment from a recognized agency. For a third occurrence in three years, the driver should receive a 90-day suspension and be required to install an alcohol interlock on his or her vehicle for six months. The licensing authority should note all short-term licence suspensions on a driver's record, and include them on driver's abstracts for a period of ten years.

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<sup>165</sup> Because the driver's BAC will decline as time passes, these confirmatory tests on approved instruments should be conducted as soon as possible. Otherwise, the driver may be able to delay the evidentiary test long enough for his or her BAC to fall below the .05% threshold. In Canada, it is generally accepted that an average person's BAC declines by .015% per hour. Thus, an individual whose BAC was just below .08% would have a BAC below .05% after two hours. H. Fisher, R. Simpson & B. Kapur, "Calculation of Blood Alcohol Concentration (BAC) by Sex, Weight, Number of Drinks and Time" (1987) 78 Can. J. Public Health 300 at 301.

<sup>166</sup> It is important that the driver's licence be physically seized. Otherwise, there is a risk that the driver will be able to continue driving while suspended, with little chance of apprehension. A 2002 New Brunswick study indicated that 91% of suspended drivers stopped at a roadside checkpoint were able to produce an apparently valid licence. Police only learned of a driver's suspension if they checked the licence with the Ministry of Transportation database. This undermines the deterrent impact of the impaired driving laws and makes it difficult to enforce driving prohibitions and suspensions. J. Malenfant, R. Van Houten & B. Jonah, "A Study to Measure the Incidence of Driving Under Suspension in the Greater Moncton Area" (2002) 34 Accid. Anal. and Prev. 439 at 441-42 [Malenfant].

MADD Canada has been advocating for an extended .05% ALS since *Rating the Provinces 2003*, and has since worked with the Canadian Council of Motor Transport Administrators (CCMTA) to develop a model .05% ALS program, based on existing best practices in Canada. Several jurisdictions have now introduced or proposed ALS of longer than 24 hours for drivers with BACs above .05%, with longer suspensions and other countermeasures for repeat offenders, as shown in Figures 10 and 11. These provincial measures are an important component of the strategy to address impaired driving in the .05% to .08% BAC range, which poses substantial risks to road users. However, MADD Canada continues to advocate for a *Criminal Code* .05% BAC offence, and the provincial .05% ALS should not be seen as a substitute for that vital federal action.

### (c) 90-Day Administrative Licence Suspensions (ALS)

As explained above, 90-day ALS programs are often triggered by a *Criminal Code* impaired driving charge, but operate independently of the progress and outcome of any criminal proceedings. They are provincial licence suspensions that take effect almost immediately, and remove impaired drivers from the road prior to their criminal trials. They have been shown to have significant traffic safety benefits. Early studies of American 90-day ALS programs found that they reduced impaired driving among the general public (general deterrence), and among offenders both during and after their suspension periods (specific deterrence).<sup>167</sup>

More recently, a meta-analysis of these ALS laws in the United States showed that such laws led to significant reductions in single-vehicle nighttime crashes, and in fatal crashes involving drivers with low (.01% to .07%), medium (.08% to .14%) and high (.15% or greater) BACs.<sup>168</sup> The study found that ALS laws had stronger general deterrent effects than licence suspensions that occur after criminal conviction. The authors suggested that this was due to the celerity of the sanction.<sup>169</sup> Moreover, as indicated, ALS laws result in more certain sanctions

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<sup>167</sup> K. Stewart, P. Gruenewald & T. Roth, *An Evaluation of Administrative Per Se Laws: Final Report* (Washington: National Institute of Justice, 1989). See also J. Nichols & H. Ross, "The effectiveness of legal sanctions in dealing with drinking drivers" (1990) 6:2 *Alcohol, Drugs and Driving* 33; and A. Lund, *Effectiveness of Administrative License Revocation (ALR) Laws* (Arlington, VA: IIHS, 1992).

<sup>168</sup> A. Wagenaar & M. Maldonado-Molina, "Effects of Drivers' License Suspension Policies on Alcohol-Related Crash Involvement: Long-Term Follow-Up in Forty-Six States" (2007) 31:8 *Alcohol Clin. Exp. Res.* 1.

<sup>169</sup> *Ibid.* at 6.

than post-conviction suspensions, since numerous cases result in an acquittal or a conviction for a lesser offence, such that no post-conviction suspension applies. Administrative suspensions, which are applied immediately and uniformly, thus tend to have better deterrent effects.

Positive results were also reported for Ontario's<sup>170</sup> and Manitoba's ALS programs. For example, in the six years following the introduction of ALS and a vehicle impoundment program in Manitoba, there was a 12% net decrease in drinking-driver fatalities, and an approximate 32% decrease in overall impaired driving charges.<sup>171</sup> There was also a 69% decrease in crash involvement among accused impaired drivers while subject to the ALS.<sup>172</sup> Further, impaired drivers who received an ALS had a 44% lower recidivism rate over the next four years than drivers without an ALS.<sup>173</sup> In Ontario, ALS was associated with a 14% decrease in driver fatalities in the two years following its introduction.<sup>174</sup>

The police should be required to issue an immediate 90-day ALS to any driver they have reasonable grounds to believe has a BAC of .08% or higher, based on a breath, blood or urine test, or to any driver whose ability to drive they have reasonable grounds to believe is impaired by drugs, or a combination of drugs and alcohol, based on a drug recognition evaluation. Suspensions should also be issued to drivers who, without a reasonable excuse, fail to submit to any test of impairment required by federal or provincial law.<sup>175</sup> Although the driver should be

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<sup>170</sup> Preliminary evaluations of Ontario's ALS law found that it helped to reduce both alcohol-related fatalities and self-reported driving after drinking. See R. Mann *et al.*, "The Early Effects of Ontario's Administrative Driver's Licence Suspension Law on Driver Fatalities with a BAC >80 mg%" (2002) 93 C.J.P.H. 176; and G. Stoduto *et al.*, "The Impact of the Administrative Driver's Licence Suspension Law in Ontario" in H. Laurell and F. Schlyter, eds., *Proceedings of the 15th International Conference on Alcohol, Drugs and Traffic Safety – T'2000* (Stockholm: ICADTS, 2000).

<sup>171</sup> D. Beirness, H. Simpson and D. Mayhew, *Evaluation of Administrative Licence Suspension and Vehicle Impoundment Programs in Manitoba* (Ottawa: Transport Canada, 1997) at 34 and 46 [*Manitoba Evaluation*].

<sup>172</sup> The proportion of offenders involved in crashes during the 97 days following their impaired driving event dropped from .94% prior to the introduction of ALS to .29% afterward. Obviously, if all offenders observed their suspensions, the number of crashes during the ALS period would be zero. *Ibid.* at 55.

<sup>173</sup> *Ibid.* at 59.

<sup>174</sup> M. Asbridge *et al.*, "The effects of Ontario's administrative driver's licence suspension law on total driver fatalities: A multiple time series analysis" (2009) 16 *Drugs: Education, Prevention and Policy* 140.

<sup>175</sup> This would include breath and blood tests, field sobriety testing, or a drug recognition evaluation.

entitled to a review of this suspension, the legislation should limit the grounds for a review.<sup>176</sup> The provincial licensing authority should be required to confirm the suspension if it is satisfied that the driver: had a BAC of .08% or higher; was impaired by drugs, or drugs and alcohol; or failed, without a reasonable excuse, to submit to the relevant test. If the licensing authority is not satisfied that the criteria have been met, it should be required to revoke the suspension. In any case, an application for review should not delay the 90-day suspension from coming into effect.

Again, the police should have a duty to seize the driver's licence, and the driver should have a corresponding duty to submit his or her licence to the police.<sup>177</sup> The police should send the driver's licence to the provincial licensing authority, from which the driver can collect it at the end of the 90-day period, if no other suspension has been imposed. Finally, the accumulation of multiple 90-day suspensions within a prescribed period should result in a mandatory review of the driver's record and additional sanctions. For example, those who accumulate two or more 90-day suspensions within ten years should be required to undergo an alcohol assessment and complete any recommended treatment prior to licence reinstatement.

The ALS legislation should operate independently of any criminal proceedings. Thus, drivers should be subject to a 90-day<sup>178</sup> licence suspension, regardless of whether they have been charged or convicted under the *Criminal Code*. Since the ALS imposes an immediate administrative sanction, it will discourage suspects from delaying their criminal trials in an effort to keep their licences.<sup>179</sup> In fact, the ALS legislation provides suspects who are likely to be convicted under the *Criminal Code* with an incentive to address the criminal charge as soon as possible. Drivers who delay the criminal proceedings risk having to serve the 90-day ALS

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<sup>176</sup> It should be noted that the ALS laws have withstood various constitutional challenges. See *Leclair v. R.* (1990), 25 M.V.R. (2d) 252 (Man. Q.B.); *White v. Nova Scotia (Registrar of Motor Vehicles)* (1996), 20 M.V.R. (3d) 192 (S.C.); *Horsefield*, *supra* note 4; *Buhlers v. British Columbia (Superintendent of Motor Vehicles)* (1999), 170 D.L.R. (4th) 344 (B.C.C.A.); and *Gonzalez v. Alberta (Driver Control Board)* (2001), 96 Alta. L.R. (3d) 324 (Q.B.).

<sup>177</sup> See *supra* note 166.

<sup>178</sup> It is important that the ALS last for a substantial amount of time for two reasons. First, this helps to keep suspected offenders off the roads until the date of trial. Second, studies have found that the deterrent effects of ALS laws are greater when the ALS has a longer duration. F. Chaloupka, H. Saffer & M. Grossman, "Alcohol-Control Policies and Motor Vehicle Fatalities" (1992) 22 J. Legal Stud. 161.

<sup>179</sup> For example, after Manitoba introduced its ALS program, the average number of days between the offence and the conviction was reduced from 114 to 55. *Manitoba Evaluation*, *supra* note 171 at 55.

separately from any subsequent federal driving prohibition and automatic provincial or territorial licence suspension.

## SECTION III: VEHICLE AND REMEDIAL PROGRAMS

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### (a) Alcohol Interlock Programs

Each province and territory should establish an alcohol interlock program as part of a comprehensive approach to dealing with impaired driving offenders. An interlock is a small breath-testing device that is connected to the engine to prevent the vehicle from being driven if the driver's BAC is above a low pre-set level (usually .02%). The driver must blow into the instrument to provide a breath sample from which his or her BAC is determined. If the sample is above the pre-set level, the driver will not be able to start the vehicle or, depending on the type of interlock, set it in motion.<sup>180</sup>

The current devices are quite sophisticated and include various anti-circumvention features.<sup>181</sup> Interlocks contain computerized data logs that retain all attempts to drive the vehicle, the driver's BACs and any efforts to tamper with the device. In addition, they generally require "rolling re-tests" periodically while driving. These retests are designed to discourage the driver from getting a friend or passenger to start the car, to detect drivers whose BACs are still rising, and to prevent a driver from leaving the vehicle idling while he or she drinks.<sup>182</sup> Typically, the interlock device requires service at regular intervals, at which time it can be recalibrated, checked for attempts at tampering, and the data log can be downloaded. As will be described, the data log is an important aspect of the offender's overall remedial program.

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<sup>180</sup> Some types of interlocks are attached to the ignition to prevent the vehicle from being started, while other types are attached to the transmission to prevent the vehicle from being shifted into drive.

<sup>181</sup> These features include: temperature and pressure sensors, which prevent the use of filtered or mechanically-produced samples; and "hum-tone" recognition and breath pulse codes, which take some time to master and thus prevent bystanders from providing samples. R. Compton & J. Hedlund, *Reducing Impaired-Driving Recidivism Using Advanced Vehicle-Based Alcohol Detection Systems: A Report to Congress* (Washington: NHTSA, 2007) at 8-9. See also J. Patten, *A Proposed Technical Standard for Vehicular Breath Alcohol Ignition Interlock Devices in Canada* (Ottawa: National Research Council of Canada, Centre for Surface Transportation Technology, 2007).

<sup>182</sup> D. Beirness & P. Marques, "Alcohol Ignition Interlock Programs" (2004) 5 *Traffic Inj. Prev.* 299 at 300 [Beirness & Marques]. The device allows the driver several minutes to pull the car over safely and provide a new breath sample. Failure to provide a new sample within the allotted time will typically result in some external warning or alarm, such as the car lights flashing and the horn sounding. It may also require the driver to take the vehicle to an interlock service centre before it can be used again.

The use of an interlock should be a mandatory condition of licence reinstatement for all *Criminal Code* impaired driving offenders. Participation in the program can occur in two ways. First, offenders may apply for early reinstatement of their licences to begin once they have served the minimum period of “absolute prohibition” prescribed by the *Criminal Code* (three, six and twelve months for first, second and subsequent offences, respectively).<sup>183</sup> This type of program is often known as a “voluntary” program, because it provides offenders with an incentive, in the form of a shortened suspension, to install an interlock. As discussed below, this incentive is justifiable based on the proven traffic safety benefits of alcohol interlocks. Second, even offenders who do not apply for early reinstatement and who serve the full term of the prescribed driving prohibition under the *Criminal Code* should be required to install an interlock as a term of licence reinstatement. This is typically known as a “mandatory” interlock program, because it applies to all offenders and cannot be avoided by simply “waiting out” the term of prohibition.<sup>184</sup> The combination of these programs has the effect of requiring all federal impaired driving offenders to install an interlock at some time prior to regaining full, unrestricted driving privileges.

Details of current mandatory interlock programs in the provinces and territories are illustrated in Figure 12, below.

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<sup>183</sup> *Criminal Code*, *supra* note 81, s. 259(1.2).

<sup>184</sup> It should be noted that the term “mandatory” is not always used consistently with respect to provincial interlock programs: some mandatory programs allow for reduced licence suspensions, and some can be avoided by sitting out the full driving prohibition under the *Criminal Code*. Consequently, our classification of programs as “voluntary” or “mandatory” is a generalization only.

**FIGURE 12. MANDATORY INTERLOCK PROGRAMS – INCLUSION CRITERIA, SUSPENSION REDUCTIONS AND DURATION<sup>1</sup>**

Prov./ Terr.	Inclusion Criteria	Reduced Suspension	Minimum Duration		
			1st	2nd	3rd
AB	Driving with a BAC $\geq$ .16%; refusing a test; or repeat .08% BAC within 10 years <sup>2</sup>	Discretionary	6 months		
BC	Any alcohol-related <i>Criminal Code</i> offence <sup>2</sup>	No	1 year	2 years	3 years
MB	Impaired driving causing death or bodily harm; impaired with a passenger < 16; or repeat impaired and/or refusing a test <sup>3</sup>	No	1 year	1 year	3 years <sup>4</sup>
NB	No Mandatory Interlock Program.				
NL	No Mandatory Interlock Program.				
NT	No Mandatory Interlock Program.				
NS	“High-risk first offenders” <sup>5</sup> ; impaired causing death or bodily harm <sup>6</sup> ; or offenders with a prior impaired driving, refusing a test or driving while disqualified convictions	Yes	1 year	2 years	3 years
NU	No Interlock Program.				
ON	Impaired driving; or refusing a test	No <sup>7</sup>	1 year	3 years	Lifetime
PE	Offenders with a prior impaired driving or refusing conviction	Yes	1 year		
QC	Offenders convicted of impaired driving or refusing a test who did not apply or were ineligible for the voluntary program	No	1 year <sup>8</sup>	2 years	3 years
SK	Judges can order offenders convicted of impaired driving or refusing a test to participate in alcohol interlock program	Yes	1 year	2 years	3 years
YK	No Mandatory Interlock Program.				

1. In addition, the traffic authorities typically have broad discretionary power which could be used to impose an interlock requirement on any federal impaired driving offender.
2. Participation is mandated by administrative policy.
3. Although the Manitoba website describes the program as being “mandatory,” the legislation indicates that these offenders can sit out the “prescribed period” and apply for a full licence without an interlock.
4. The sanctions for repeat offenders apply to prior convictions within 10 years. The prescribed interlock period is the driver's lifetime for a fourth conviction, but a driver can apply to have an interlock order longer than 3 years removed at the end of the third year.
5. A “high-risk” offender is a driver who has been assessed in an alcohol rehabilitation program as being “high risk.”
6. The minimum participation period for these offenders is 2 years if the driver is a first offender and 5 years if he or she is a repeat offender.
7. Pending legislation will give the Registrar discretionary authority to reduce the length of the provincial licence suspension that would otherwise apply.
8. Pending legislation will increase the minimum duration of the interlock order for some first and repeat offenders. The lookback period for repeat offenders is 10 years.

Research indicates that impaired driving offenders with interlocks on their vehicles have a significantly lower recidivism rate than offenders who do not.<sup>185</sup> For instance, in Illinois, drivers who had an interlock installed were only one-fifth as likely to be re-arrested for impaired driving as those who did not have the device installed.<sup>186</sup> It has been estimated that alcohol interlocks could reduce impaired driving recidivism by 40-95% relative to simple licence suspensions.<sup>187</sup> However, interlock programs to date have suffered from two primary drawbacks: low participation rates; and an increase in recidivism once the device is removed from the vehicle. MADD Canada has attempted to address those drawbacks in the following recommendations.

It has been estimated that less than 10-20% of eligible offenders participate in the existing Canadian and American interlock programs.<sup>188</sup> Data from 2008 further suggest that, while some provinces have reasonably active interlock programs, other provinces have minimal or no participation.<sup>189</sup> Drivers who do not participate in interlock programs not only have higher

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<sup>185</sup> *Ibid.* at 302. See also K. Beck *et al.*, “Effects of Ignition Interlock License Restrictions on Drivers with Multiple Alcohol Offences: A Randomized Trial in Maryland” (1999) 89 A.J.P.H. 1696; and C. Willis, S. Lybrand & N. Bellamy, *Alcohol ignition interlock programmes for reducing drink driving recidivism (Review)* (Oxford: The Cochrane Collaboration, 2009).

<sup>186</sup> R. Raub, R. Lucke & R. Wark, “Breath Alcohol Ignition Interlock Devices: Controlling the Recidivist” (2003) 4 *Traffic Inj. Prev.* 199 at 202.

<sup>187</sup> ICADTS Working Group on Alcohol Interlocks, *Alcohol Ignition Interlock Devices I: Position Paper* (Calverton, MD: ICADTS, 2001) at 10. Additionally, an American report to Congress estimated that, had all impaired driving offenders been subject to a 3-year interlock order, 753 lives would have been saved in 2005. R. Compton & J. Hedlund, *Reducing Impaired-Driving Recidivism Using Advanced Vehicle-Based Alcohol Detection Systems: A Report to Congress* (Washington: NHTSA, 2007) at 13-14.

<sup>188</sup> Beirness & Marques, *supra* note 182 at 301. See also R. Voas *et al.*, “Evaluation of a program to motivate impaired driving offenders to install ignition interlocks” (2002) 34 *Accid. Anal. and Prev.* 449; and D. DeYoung, “An evaluation of the implementation of ignition interlock in California” (2002) 33 *J. Safety Research* 473. It should be noted, however, that most American interlock programs are court-based, and there is some reluctance among judges to order the installation of an interlock. In contrast, Canadian programs are administered by the provincial licensing authorities, and should, if properly implemented, be able to achieve higher participation rates.

<sup>189</sup> We compared the number of *Criminal Code* impaired driving convictions in each province (providing a rough estimate of those eligible for an interlock order) with the number of active interlocks to determine an approximate participation ratio for 2008. Participation rates were highest in Québec (118% - probably indicating that some offenders received interlock orders lasting longer than one year), Ontario (31.6%), Saskatchewan (25.2%), and Alberta (24.5%). The rates in other provinces ranged from 0% to 18.4%, resulting in a national average of 38.6%.

recidivism rates, but are also likely to drive, at least occasionally, while suspended.<sup>190</sup> As will be discussed in Section III(b), these suspended drivers are over-represented in crashes.<sup>191</sup> Consequently, there are traffic safety benefits in encouraging offenders to install an interlock, even if this means shortening the licence suspension that would otherwise apply. While these offenders would likely drive more than if the hard suspension had remained in place, at least they would be much less likely to be driving while impaired. Thus, as outlined above, drivers should be eligible to participate in the provincial interlock program after serving the required minimum term of the driving prohibition prescribed by the *Criminal Code*. Provincial legislation should provide an incentive, in the form of a shortened provincial licence suspension period, to encourage drivers to install an interlock.

At the same time, it is important to carefully balance the benefits of interlock programs with the proven benefits of licence suspensions as a general and specific deterrent. Studies consistently demonstrate that licence suspensions significantly reduce recidivism and subsequent crashes among impaired driving offenders.<sup>192</sup> Accordingly, we would advise against using interlocks as a complete substitute for licence suspensions.<sup>193</sup> The fact that some offenders drive while suspended simply means that additional measures are needed to address the problem of unauthorized driving. For example, stronger vehicle sanctions, described in the next sections, may help to deter such drivers.

Even offenders who do not apply for early reinstatement and have served the full term of their hard licence suspensions should be required to install an interlock as a mandatory condition of licence reinstatement and as part of a comprehensive remedial program. Thus, MADD Canada recommends a hybrid initiative, involving both a voluntary interlock program (which provides an incentive to participate at an early stage) and a mandatory interlock program (in which the use of an interlock is a condition of licence reinstatement). This approach should significantly increase participation in voluntary interlock programs, as well as help ensure that offenders do not “graduate” to an unrestricted licence until their underlying alcohol problems

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<sup>190</sup> See *infra* notes 201-204.

<sup>191</sup> See *infra* notes 204-206.

<sup>192</sup> See generally, Babor, *supra* note 115 at 163.

<sup>193</sup> See generally, D. DeYoung, “An evaluation of the effectiveness of alcohol treatment, driver license actions and jail terms in reducing drunk driving recidivism in California” (1997) 92 *Addiction* 989 [DeYoung 1997].

have been addressed.<sup>194</sup> Furthermore, the provincial licensing authority should have explicit authority to impose an interlock requirement on any driver who it reasonably believes poses a significant risk of driving while impaired.

Figure 13 illustrates the relicensing conditions of current mandatory interlock programs in Canada.

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<sup>194</sup> Surveys of impaired driving offenders suggest that they are not necessarily quick to change their drinking behaviour, even if an interlock has been installed on their vehicles. A study of interlock program participants in Australia found that most were unwilling to change their consumption levels, and tended to blame failed breath tests on false positives. J. Freeman, M. Sheehan & C. Schonfeld, “The Impact of Alcohol Ignition Interlocks on a Group of Recidivist Offenders: A Case-study Approach” in B. Logan, ed., *Proceedings of the 18th International Conference on Alcohol, Drugs and Traffic Safety* (Seattle: ICADTS, 2007).

**FIGURE 13. MANDATORY INTERLOCK PROGRAMS –  
REMEDIAL AND RELICENSING MEASURES**

<b>Prov./ Terr.</b>	<b>Mandatory Remedial Programs</b>	<b>BAC-Based Relicensing</b>
AB	Prior to interlock program, first offender must complete the “Planning Ahead Program” and repeat offenders must complete the “Impact Program.”	Last 3 months must have no unexplained “warns” or “fails.”
BC	Drivers must complete all the elements of the “Responsible Driver Program” (RDP) before the interlock order will be removed. <sup>1</sup>	Interlock “activity reports” are reviewed, and the final report must be “violation-free.”
MB	Offenders must successfully complete an alcohol assessment and any required education or treatment program.	Interlock order may be extended for breaching program “rules” or for having a positive BAC.
NB	No Mandatory Interlock Program.	
NL	No Mandatory Interlock Program.	
NT	No Mandatory Interlock Program.	
NS	Offenders must submit to an assessment and may be assigned to an educational, counselling or treatment program. Following the interlock program the driver must attend a follow-up meeting with Addiction Services.	The service provider's reports must be reviewed to determine if the order should be lifted.
NU	No Alcohol Interlock Program.	
ON	Offenders must participate in a “Conduct Review” and are assigned to an education or treatment program. <sup>2</sup>	No <sup>3</sup>
PE	Offenders must take the “Driver Rehabilitation Program” prior to relicensing. Repeat offenders must have an assessment and “high-risk” offenders may be required to have treatment.	Unclear. Program violations <sup>4</sup> will result in extensions of the interlock order.
QC	First offenders must complete an educational program and a cursory alcohol and drug assessment. Repeat offenders are subject to a more intensive assessment that may result in an individualized treatment program.	No <sup>5</sup>
SK	Offenders must undergo an addiction assessment and any prescribed recovery or education program prior to the interlock program.	A positive BAC or other program violation in the last 3 months results in a 3-month interlock order extension.
YK	No Mandatory Interlock Program.	

1. Elsewhere on the government website, it states that federal offenders must complete the RDP before an interlock can be installed.
2. Offenders with 2 prior impaired driving convictions are assigned to the treatment program.
3. The regulations state that a conviction for tampering, missing an appointment, or driving an unequipped vehicle will result in the order being extended. In contrast, the website states that a violation of these provisions will result in an extension.
4. The website defines “program violations” to include tampering or driving an unequipped vehicle, but it is unclear whether

the term also includes registering a positive BAC.

5. Breaches of program conditions, which include registering a positive BAC and driving an unequipped vehicle, may result in a 3-month licence suspension or licence revocation.

The driver should bear the costs of installing and maintaining the interlock.<sup>195</sup> The minimum duration of the interlock order should be one year for a first offence, three years for a second offence within a ten-year period, and five years for a third offence within this period. As indicated, studies show that the positive effects of interlocks are often lost once the device is removed from the vehicle.<sup>196</sup> For example, studies of interlock programs in Ohio and North Carolina found that, once the interlocks were removed, the recidivism rates of offenders who had used interlocks were very similar to the rates of offenders who had not.<sup>197</sup> The sharp rise in recidivism after removal of the device indicates a need to impose longer interlock orders and to incorporate interlocks into comprehensive remedial programs. On their own, interlocks are simply restrictive, not rehabilitative. Therefore, even after the prescribed minimum interlock period ends, the interlock order should remain in place until the licensing authority is satisfied that the offender no longer poses a significant risk of re-offending, and that any underlying alcohol problem has been successfully addressed.

In making this determination, the licensing authority should be required to consider the offender's entire driving record, treatment history and, most importantly, the interlock data log. Research indicates that the data log is a critical tool in identifying individuals who have continuing alcohol problems and are likely to re-offend. For example, a study of interlock program participants in Alberta and Québec found that an offender's overall rate of positive

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<sup>195</sup> Provinces may wish to establish a fund to help subsidize offenders who are able to demonstrate that they truly cannot afford the costs of the program.

<sup>196</sup> See Beirness & Marques, *supra* note 182 at 301-3. See also R. Voas *et al.*, "The Alberta Interlock Program: The evaluation of a province-wide program on DUI recidivism" (1999) 94 *Addiction* 1849; R. Roth, R. Voas & P. Marques, "Mandating Interlocks for Fully Revoked Offenders: The New Mexico Experience" (2007) 8 *Traffic Inj. Prev.* 20; and D. DeYoung, H. Tashima & S. Masten, *An Evaluation of the Effectiveness of Ignition Interlock in California: Technical Report* (Sacramento: California Department of Motor Vehicles, 2005).

<sup>197</sup> D. Elliott & B. Morse, *In-vehicle BAC test devices as a deterrent to DUI (Final Report)* (Washington: National Institute on Alcohol Abuse and Alcoholism, 1993); and C. Popkin *et al.*, "An evaluation of the effectiveness of interlock systems in preventing DWI recidivism among second-time DWI offenders" in H.-D. Utzelmann, G. Berghaus & G. Kroj, eds., *Alcohol, drugs and traffic safety – T-92: Proceedings of the 12th International Conference on Alcohol, Drugs and Traffic Safety* (Cologne: Verlage TÜV Rheinland, 1993) 1466.

BAC tests on the interlock was a strong indicator of post-interlock recidivism.<sup>198</sup> The recidivism rate was even higher for offenders who had a pattern of positive BAC tests in the morning, which likely indicates very heavy consumption the preceding night.

For the program to be effective, drivers subject to interlock orders should have ongoing supervision. Each province should establish an agency to monitor the offenders' performance in the interlock program and prescribed remedial programs. Moreover, the interlock data log should be downloaded every 30 to 60 days, and the accuracy of the machine should be checked. A pattern of attempts to drive with a prohibited BAC may indicate that the driver requires additional treatment and that the interlock should remain on the vehicle.<sup>199</sup> Finally, the legislation should provide that driving an unequipped vehicle while subject to an interlock order constitutes driving while suspended or disqualified.<sup>200</sup> In order for this to be adequately enforced, it is imperative that a driver's licence clearly indicate that he or she is subject to an interlock order.

## (b) Vehicle Impoundment and Immobilization

### (i) *Uninsured Vehicles and Unlicensed or Prohibited Drivers*

Many suspended and prohibited drivers continue to drive, at least occasionally, during the period of their licence suspension or revocation.<sup>201</sup> Indeed, American studies have estimated that 65% to 75% of suspended drivers continue to drive.<sup>202</sup> A 1997 study, using data from the Fatal

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<sup>198</sup> P. Marques, A. Tippetts & R. Voas, "The Alcohol Interlock: An Underutilized Resource for Predicting and Controlling Drunk Drivers" (2003) 4 *Traffic Inj. Prev.* 188. See also P. Marques, R. Voas & A. Tippetts, "Behavioral measures of drinking: Patterns in the interlock record" (2003) 98 (*Suppl 2*) *Addiction* 13.

<sup>199</sup> *Ibid.*

<sup>200</sup> This recommendation is important because the easiest way to "circumvent" an interlock device is simply to drive another vehicle.

<sup>201</sup> See Malenfant, *supra* note 166.

<sup>202</sup> See J. Snortum, "Deterrence of Alcohol-impaired Driving: An Effect in Search of a Cause" in M. Laurence, J. Snortum & F. Zimring, eds., *Social Control of the Drinking Driver* (Chicago: The University of Chicago Press, 1988) at 198; H. Ross & P. Gonzales, "Effects of License Revocation on Drunk-Driving Offenders" (1988) 20 *Accid. Anal. and Prev.* 379 at 383; T. Newman *et al.*, *National Cooperative Highway Research Program Report 500, Volume 2: A Guide for Addressing Collisions Involving Unlicensed Drivers and Drivers with Suspended or Revoked Licenses* (Washington: Transportation Research Board, 2003) at III-1; and A. McCartt, L. Geary & A. Berning, "Observational study of the extent of driving while suspended for alcohol impaired driving" (2003) 9 *Inj. Prev.* 133.

Accident Reporting System (FARS) for the period 1987-1992, estimated the number of suspended/revoked drivers on California roads.<sup>203</sup> The authors indicated that 8.8% of the drivers, during the times examined, had a suspended or revoked licence, and that a further 3.3% had no record of a licence.<sup>204</sup> Thus, roughly 12% of California drivers were driving illegally. Moreover, relative to the amount of driving they did, suspended and revoked drivers were 3.7 times more likely to be involved in a fatal crash than licensed drivers. Unlicensed drivers were over-represented in fatal crashes by a factor of 4.9 to 1.<sup>205</sup> Similarly, a 2003 study found that 20% of all fatal crashes in the United States between 1993 and 1999 involved at least one driver who was suspended or did not otherwise have a valid licence.<sup>206</sup>

This American experience is relatively consistent with comparable research from Great Britain,<sup>207</sup> the Australian states of Victoria<sup>208</sup> and Queensland,<sup>209</sup> and the Canadian provinces of Saskatchewan<sup>210</sup> and Ontario.<sup>211</sup> The Ontario study found that unlicensed or suspended drivers were more likely to be involved in a crash, more likely to be at fault for the crash, and more

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<sup>203</sup> D. DeYoung, R. Peck & C. Helander, "Estimating the Exposure and Fatal Crash Rates of Suspended/Revoked and Unlicensed Drivers in California" (1997) 29 *Accid. Anal. and Prev.* 17 [*Estimating Exposure*].

<sup>204</sup> Since their analysis relies on fatal accidents data, it reflects the prevalence of such drivers during the times and at places where fatal accidents occur. Consequently, their estimates do not necessarily reflect the percentage of such drivers on all California roads throughout the entire day. *Ibid.* at 22.

<sup>205</sup> *Ibid.*

<sup>206</sup> R. Scopatz *et al.*, *Unlicensed to Kill: The Sequel* (Washington: AAA Foundation for Traffic Safety, 2003) at 7.

<sup>207</sup> A study published in 2003 found that nearly 4% of crashes in which someone was killed or seriously injured involved a driver who was subsequently prosecuted for unlicensed driving. This amounted to about 900 deaths or serious injuries annually. D. Knox *et al.*, *Research into Unlicensed Driving: Final Report (Executive Summary)* (London: Department for Transport, 2003) at 11-12.

<sup>208</sup> In a study of disqualified drivers in a focus group, 60% admitted to driving during their suspension periods. B. Clark & I. Bobevski, *Disqualified Drivers in Victoria: Literature review and focus group study* (Victoria: Monash University Accident Research Centre, 2008) at 99-100.

<sup>209</sup> See B. Watson, "The Crash Risk of Disqualified/Suspended and Other Unlicensed Drivers" in P. Williams & A. Clayton, eds., *Proceedings of the 17th International Conference on Alcohol, Drugs and Traffic Safety* (Glasgow: ICADTS, 2004), which confirmed that unlicensed and suspended drivers in Queensland were more likely to be involved in crashes and had crashes of greater severity than the regular driving population.

<sup>210</sup> J. Suggett, *Driving While Disqualified in Saskatchewan, Report to MADD Canada* (St. Catharines: Synectics Transportation Consultants Inc., 2006).

<sup>211</sup> J. Suggett, *Fatal and Injury Crashes Among Unlicensed Drivers in Ontario: 1996-2003, Report to MADD Canada* (St. Catharines: Synectics Transportation Consultants Inc., 2007).

likely to flee the scene than the general driving population. In addition, they were 5.22 times more likely to be impaired by alcohol or drugs when involved in fatal or personal injury crashes.<sup>212</sup>

This research demonstrates that licence suspensions, alone, are insufficient to keep certain offenders off the roads, and insufficient to keep them from driving while impaired. Obviously, it would be ineffective to simply extend the length of the licence suspension for these offenders, who have already shown a willingness to drive in contravention of their suspensions. Consequently, some sort of vehicle-based sanction may be essential to discourage and at least temporarily prevent some unlicensed, disqualified and prohibited offenders from driving and, particularly, from driving while impaired.

Various North American impoundment or immobilization<sup>213</sup> programs have shown positive results in reducing recidivism and subsequent crashes among affected drivers.<sup>214</sup> For example, an Ohio study found that offenders whose vehicles were not immobilized were twice as likely to re-offend as those whose vehicles were immobilized.<sup>215</sup> In addition, it found that offenders whose vehicles were immobilized had lower recidivism rates for impaired driving after the end of the sanction, thereby demonstrating that immobilization programs have both a deterrent and a habituation effect.<sup>216</sup> Similarly, drivers subject to Manitoba's impoundment program had a 27% lower recidivism rate in the four years following their driving while

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<sup>212</sup> *Ibid.* at 21-22, 25, 29, and 31.

<sup>213</sup> Generally, "impounded" vehicles are secured in a locked storage facility, whereas some form of boot or club is attached to "immobilized" vehicles to prevent them from being driven. Immobilization programs tend to be less costly than impoundment programs, because the vehicle can be kept on the owners' property and no storage costs are incurred. See R. Voas *et al.*, "Controlling Impaired Driving Through Vehicle Programs: An Overview" (2004) 5 *Traffic Inj. Prev.* 292 at 293 [*Controlling Impaired*].

<sup>214</sup> See generally, R. Voas & D. DeYoung, "Vehicle action: effective policy for controlling drunk and other high-risk drivers?" (2002) 34 *Accid. Anal. and Prev.* 263 [Voas & DeYoung].

<sup>215</sup> R. Voas, A. Tippetts & E. Taylor, "Temporary Vehicle Immobilization: Evaluation of a Program in Ohio" (1997) 29 *Accid. Anal. and Prev.* 635 at 639. Because the study reviewed all offenders eligible for immobilization within a two-year period, the follow-up period varied considerably. For example, offenders whose vehicles were immobilized near the beginning of the study were tracked for nearly two years, while those immobilized near the end of the study had a much shorter follow-up period.

<sup>216</sup> This longer-term effect was confirmed in a follow-up study by the same authors. R. Voas, A. Tippetts & E. Taylor, "Temporary Vehicle Impoundment in Ohio: A Replication and Confirmation" (1998) 30 *Accid. Anal. and Prev.* 651 [Voas 1998]. However, they were unable to determine whether this was a result of specific deterrence or extended incapacitation by being denied access to a vehicle (at 654-55).

suspended convictions, than drivers convicted before the impoundment law came into effect.<sup>217</sup> California's impoundment program was also reported to have reduced subsequent crashes and traffic convictions among affected offenders.<sup>218</sup>

The police should be required to impound or immobilize<sup>219</sup> any vehicle that they have reasonable grounds to believe is uninsured, or is being driven by an unlicensed, suspended, disqualified or prohibited driver. These drivers have shown that they are unwilling to respect provincial licensing laws, and pose a serious risk to public safety.<sup>220</sup> The impoundment period should be 45 days for a first occurrence. A second occurrence within three years involving the same owner or driver should result in a 90-day impoundment.<sup>221</sup> Further occurrences should result in vehicle forfeiture, as described in Section III(d).

The features of the current impoundment programs in Canada's provinces are illustrated in Figures 14 and 15.

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<sup>217</sup> *Manitoba Evaluation*, *supra* note 171 at 48, 57 and 59. The program also had a general deterrent effect among suspended drivers. During the six years following its implementation, there was a 35% decrease in the number of charges for driving while suspended. In addition, recidivism during the three months following conviction was reduced from 10.3% prior to the introduction of impoundment to 6.3% after its enactment.

<sup>218</sup> In addition to reducing recidivism for impaired driving and driving while prohibited, California's impoundment program resulted in an 18-22% reduction in traffic convictions and a 25-38% reduction in subsequent crashes for both first and repeat offenders whose vehicles were impounded. Offenders subject to impoundment also had 24-34% fewer convictions for driving while suspended in the year following the 30-day impoundment. D. DeYoung, *An Evaluation of the Specific Deterrent Effects of Vehicle Impoundment on Suspended, Revoked, and Unlicensed Drivers in California* (Washington: NHTSA, 1997) at 40-43.

<sup>219</sup> It will be for each jurisdiction to determine whether the preferred vehicle sanction is impoundment or immobilization. MADD Canada has no specific preference. For ease of reference, however, the word "impoundment" will be used hereafter to refer to either an impoundment or immobilization program.

<sup>220</sup> As indicated, individuals who drive while suspended generally have higher crash rates than members of the general driving population. *Estimating Exposure*, *supra* note 203. See also S. Blows *et al.*, "Unlicensed Drivers and Car Crash Injury" (2005) 6 *Traffic Inj. Prev.* 230.

<sup>221</sup> An evaluation of Manitoba's vehicle impoundment program revealed that 20% of owners whose vehicles were impounded had previously had a vehicle impounded. D. Beirness, D. Mayhew & H. Simpson, *DWI Repeat Offenders: A Review and Synthesis of the Literature* (Ottawa: Health Canada, 1997) at 71 [*DWI Repeat Offenders*].

**FIGURE 14. MANDATORY ADMINISTRATIVE IMPOUNDMENT FOR DRIVING WHILE UNAUTHORIZED/UNLICENSED OR UNINSURED**

<b>Prov./ Terr.</b>	<b>Unauthorized/Unlicensed</b>	<b>Uninsured</b>
AB	No, but police may impound for 30 days the vehicle of a driver who is charged with driving while unauthorized.	No, but if police reasonably believe that a driver is uninsured, they may seize his or her vehicle pending any <i>TSA</i> prosecution.
BC	No, but police may impound for 30 days the vehicle of a driver they reasonably believe is unlicensed and has had a notice placed on his or her driving record for a previous unlicensed driving conviction.	No
MB	No, but police may detain a vehicle for 5 days that they reasonably believe was involved in a federal or provincial offence.	No
NB	No	No, but police may impound the vehicle of an uninsured driver who has a prior uninsured driving conviction in the past 2 years.
NL	No	No, but police may impound for 90 days the vehicle of a driver who is convicted of driving uninsured.
NS	No, but pending legislation will permit police to impound the vehicle of a driver without a valid licence.	No
NT	No	No
NU	No	No
ON	No	No, but a judge may impose a 3-month impoundment on an owner convicted of driving uninsured.
PE	No, but a judge may impose a 3-week impoundment on a driver convicted of driving without a valid licence.	No
QC	If police reasonably believe that a driver is unlicensed, they may impound his or her vehicle for 30 days.	No
SK	Police must impound for 90 days the vehicle of a driver who they reasonably believe is “unauthorized” (includes unlicensed).	No
YK	If police reasonably believe that a driver is unlicensed or uninsured, they may impound his or her vehicle for 30 days.	

**FIGURE 15. MANDATORY ADMINISTRATIVE IMPOUNDMENT FOR DRIVING WHILE SUSPENDED, PROHIBITED OR DISQUALIFIED**

Prov./ Terr.	Driving While Suspended, Prohibited or Disqualified Under Provincial Law
AB	No, but police may impound for 30 days the vehicle of a driver who is charged with driving while disqualified.
BC	Police must impound for 24 hours the vehicle of a driver they reasonably believe is driving while suspended under the <i>MVA</i> . They must also impound for 60 days the vehicle of a driver they reasonably believe is driving while subject to specific prohibitions under the <i>MVA</i> or <i>Criminal Code</i> . <sup>1</sup>
MB <sup>2</sup>	Police must impound for 30 days the vehicle of a driver they reasonably believe is prohibited or disqualified.
NB	No
NL	Police must impound for 30 days the vehicle of a driver they reasonably believe is disqualified or prohibited.
NS	Police must impound for 90 days the vehicle of a driver whose licence has been revoked under the <i>MVA</i> for a <i>Criminal Code</i> offence. <sup>3</sup>
NT	No, but police may impound for 30 days the vehicle of a driver charged with driving while prohibited, suspended or disqualified for a prior <i>Criminal Code</i> impaired driving offence.
NU	No
ON	Police must impound for 45 days the vehicle of a driver who is driving while subject to: a provincial suspension; or a federal driving prohibition for a <i>Criminal Code</i> traffic, impaired driving, or driving while disqualified offence. <sup>4</sup>
PE	Police may impound for 30 days the vehicle of a driver who is driving with a suspended or cancelled licence if he or she had been convicted in the past 2 years of driving while suspended or cancelled under <i>MVA</i> or while disqualified under <i>Criminal Code</i> .
QC	Police may impound for 30 days the vehicle of a driver they reasonably believe is driving while suspended or cancelled, but only if that suspension or cancellation had been imposed on certain specified grounds. <sup>5</sup>
SK <sup>6</sup>	Police must impound for 30 days the vehicle of a driver they reasonably believe is driving while “unauthorized” (includes prohibited, suspended and disqualified).
YK <sup>7</sup>	Police may impound for 30 days the vehicle of a driver they reasonably believe is suspended or disqualified.

1. These include: (i) court-imposed prohibitions for provincial or *Criminal Code* driving convictions; (ii) prohibitions imposed in the public interest or for unfitness to drive; (iii) 90-day driving prohibitions for having a BAC above .08% or failing to provide a sample; and (iv) 24-hour roadside driving prohibitions for suspected impairment.
2. The police may also detain any vehicle for 5 days if they reasonably believe that it was involved in a federal or provincial offence.
3. Pending legislation enacted in 2008 will permit the police to impound the vehicle of a driver whose licence is suspended or revoked.
4. Pending legislation scheduled to come into force in 2011 will authorize the police to impound the vehicle of a driver they are satisfied is suspended under any provincial law, subject to specified exceptions.
5. The suspension or cancellation must result from a *Criminal Code* offence, an accumulation of demerit points, or a breach of an interlock program requirement. The specified grounds include: 90-day administrative suspensions imposed for driving with a BAC above .08% or failing to provide a sample; and suspensions imposed by SAAQ due to medical unfitness to drive.

Pending legislation enacted in 2007 will authorize the police to impound for 30 days the vehicle of a driver who has: a

BAC above .16%; a BAC above .08% and a prior licence cancellation for specified federal driving offences within the past 10 years; or failed to provide a sample.

6. Moreover, the police may seize any vehicle they reasonably believe is being driven contrary to the *TSA* or its regulations.
7. Moreover, the police may detain until the conclusion of a case the vehicle of a driver they reasonably believe has committed specified *MVA* offences.

Drivers and owners should have the right to a review of the impoundment order. The grounds for review should be limited to whether the driver had a valid licence or the vehicle was properly insured. Further, owners should be able to have the impoundment cancelled if they can establish that the driver took the vehicle without the owner's explicit or implicit permission.

Both the driver and the owner should be liable for any towing, impoundment, storage or immobilization costs, which would constitute a lien on the vehicle. The towing and storage company should have the right to sell the vehicle to recover its costs if it has not been paid within 90 days of the end of the impoundment period.<sup>222</sup> Owners of impounded vehicles should have the right to recover any costs that they incurred from the culpable driver.<sup>223</sup> Nevertheless, the vehicle should not be released before the end of the impoundment period unless the owner can prove that the car was taken without explicit or implicit permission, or that he or she took reasonable steps in attempting to verify that the driver had a valid licence. As described below, the provinces and territories should establish a system that assists vehicle owners in determining whether a prospective driver has a valid licence.

### ***(ii) Short-term Impoundment for Impaired Driving Events***

In addition to the longer-term impoundment program for those caught driving without a valid licence, the provinces should implement short-term (7-day) impoundment programs where there are reasonable grounds to believe that the driver has committed an impaired driving offence. More specifically, the police should be authorized to impound a vehicle if: a driver fails to submit to a required impairment test (breath or blood test, field sobriety test, or drug

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<sup>222</sup> In some cases, the proceeds from the sale of the vehicle will not be sufficient to recover the towing and storage costs. This is particularly true for lengthy impoundment periods. If costs are a potential problem, the province or territory may wish to use immobilization, rather than impoundment. See *Controlling Impaired*, *supra* note 213.

<sup>223</sup> An evaluation of Manitoba's impoundment program indicated that 20% of the vehicles seized from repeat offenders belonged to someone other than the offender. *Manitoba Evaluation*, *supra* note 171. American research suggests that up to half of vehicles driven by suspended drivers are owned by someone else, or jointly owned with the suspended driver. Voas & DeYoung, *supra* note 214 at 269.

recognition evaluation); a driver is charged with any federal impaired driving or traffic offence; the police have reasonable grounds to believe that a driver's BAC is .08% or higher, based on a breath, blood or urine test; or the police have reasonable grounds to believe that a driver's ability to drive is impaired by a drug, based on a drug recognition evaluation. In most cases, these events will coincide with a federal criminal charge.

These short-term administrative impoundments are intended to supplement the roadside and administrative licence suspension provisions outlined in Section II of the *MADD Canada Model*. They serve to immediately remove impaired drivers and their vehicles from the road, and reduce the risk that these individuals will drive during the administrative suspension period. The features of the current short-term administrative impoundment programs in the provinces and territories are outlined in Figure 16. These short-term administrative impoundments are relatively novel, and have not, to our knowledge, been scientifically evaluated. Nevertheless, there is every reason to believe that they will have traffic safety benefits similar to those of the longer-term impoundment programs described in Section III(b)(i).

**FIGURE 16. MANDATORY SHORT-TERM (7-DAY) ADMINISTRATIVE VEHICLE IMPOUNDMENT FOR IMPAIRED DRIVING SUSPECTS**

Prov. / Terr.	Impaired Driving Suspects
AB	No, but police may impound for 24 hours the vehicle of a driver charged with a <i>Criminal Code</i> impaired driving offence.
BC	No
MB <sup>1</sup>	Yes. If police reasonably believe that a driver has a BAC > .08% they must impound the vehicle for 30 days. However, if the driver has failed to provide a sample or take a SFST, or has a BAC ≥ .16%, the police must impound the vehicle for 60 days.
NB	No
NL	No, but police may detain a vehicle until the end of the case, if it has been involved in a federal or provincial offence, or if its owner or driver has been arrested under the <i>HTA</i> or <i>Criminal Code</i> .
NS	No, but pending legislation will permit police to impound a vehicle if they reasonably believe that the driver has committed a <i>MVA</i> or a vehicle-related <i>Criminal Code</i> offence. <sup>2</sup>
NT	No, but police may seize for 15 days the vehicle of a driver found committing an offence under the <i>MVA</i> or its regulations if the vehicle is required for evidence. <sup>3</sup>
NU	No, but police may seize for 15 days the vehicle of a driver found committing an offence under the <i>MVA</i> or its regulations if the vehicle is required for evidence. <sup>3</sup>
ON	No, but pending legislation will authorize police to impound for 7 days a vehicle if they are satisfied that a driver: failed to submit to a breath, blood, SFST, or drug recognition test; or had a BAC ≥ .08%, based on a breath or blood test. <sup>4</sup>
PE	No, but a judge may issue a 3-week impoundment order if a driver is convicted of a federal impaired driving offence.
QC	No, but pending legislation will authorize police to impound for 30 days the vehicle of a driver: (i) who has a BAC > .16%; (ii) who has a BAC > .08% and has had a prior licence cancellation for specified federal driving offences within the past 10 years; or (iii) who fails to provide a sample. <sup>5</sup>
SK	No, but police may seize any vehicle they reasonably believe is driven contrary to the <i>TSA</i> or its regulations.
YK	No, but police may seize a vehicle until the end of the case, if they reasonably believe that the driver has committed a specified <i>MVA</i> offence.

1. The police may also detain any vehicle for 5 days if they have reason to believe that it was involved in a federal or provincial offence.
2. The pending legislation does not include information on the duration of the impoundment. Currently, the police may detain a vehicle involved in a *MVA* or vehicle-related *Criminal Code* offence until the end of the case.
3. The police may also seize for 24 hours a vehicle involved in a *MVA* offence, if the seizure is in the public interest.
4. Currently, a judge may issue a 3-month impoundment order if a driver is convicted of a federal impaired driving offence, the provincial offence of driving while suspended, or a second federal offence for failing to stop at the scene of an accident.
5. Currently, the police may impound a vehicle if they reasonably believe that it was involved in a *HSC* offence, or a *Criminal Code* offence that triggers a mandatory provincial licence cancellation.

### (c) Licence Abstract Programs

As a corollary to the vehicle impoundment and forfeiture programs, vehicle owners should have some readily available means of verifying that a prospective driver has a valid licence. Often, the fact that a driver is able to produce what appears to be a valid licence is misleading. For example, a study of suspended drivers in the Greater Moncton Area found that 91% of suspended drivers stopped at a roadside check program were able to produce an apparently valid driver's licence to police.<sup>224</sup> Drivers were only discovered to be suspended when their information was checked against a Department of Motor Vehicles computer. Given that vehicle owners may face impoundment, forfeiture and damage claims if they allow a suspended or unlicensed driver to use their vehicles,<sup>225</sup> they should be able to obtain reliable information on the status of a driver's licence.

This could be accomplished by providing a system whereby a driver could obtain, for a small administrative fee, an abstract or certification of his or her licence, as of a particular date, from the provincial licensing authority. Likewise, these abstracts or certificates could be made available at the self-serve government kiosks that exist in some provinces, or via the internet.<sup>226</sup> Vehicle owners who reasonably rely on such certification should be protected from the vehicle sanctions and adverse insurance consequences that would otherwise result from unwittingly allowing a suspended or unlicensed person to drive their vehicles. This system may be particularly useful to employers and car rental companies.

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<sup>224</sup> Malenfant, *supra* note 166 at 441-42. This raises two issues. First, licensing authorities need to be stricter in seizing driver's licences from individuals who are suspended. Second, the fact that an individual is able to produce a licence does not mean that he or she is legally entitled to drive. A better system needs to be implemented to verify the validity of a driver's licence.

<sup>225</sup> In many cases, the insurance company will be partially or completely exempt from responsibility for certain damages caused by an unlicensed or suspended driver. For instance, collision coverage will be denied, and accident benefits will be severely limited. Further, third-party liability coverage will, in most jurisdictions, be limited to the statutory minimum, and the insurance company may have a right to recover from the vehicle owner any damages that it had to pay out because of an unauthorized driver. Thus, the owner may be held unexpectedly responsible for most or all of the damages arising from the crash. See R. Solomon *et al.*, "Automobile Insurance, Impaired Driving and Victim Compensation Across Canada" (2005) 12 M.V.R. (5th) 22 at 38-39. Similar limitations on insurance will apply when the driver is driving contrary to the conditions of a graduated licence. See *Anwar v. Iqbal*, [2008] O.J. No. 1836 (S.C.J.) (QL).

<sup>226</sup> Ontario offers such an internet service for a \$2.00 fee. See "Driver Licence Check," <<https://www.dlcheck.rus.mto.gov.on.ca/Scripts/OrderForm.asp>>.

#### (d) Vehicle Forfeiture

If a driver is responsible for three or more vehicle impoundments within a ten-year period, provincial legislation should authorize the forfeiture of his or her vehicle. Drivers subject to forfeiture under this recommendation have shown a repeated willingness to endanger the public and violate vehicle licensing laws. Moreover, they often have limited or no third-party liability insurance, which puts the public at risk of serious financial loss in the event of a crash. Consequently, we believe that vehicle forfeiture is eminently justifiable. Provincial authorities should be permitted to take all steps necessary to prevent such drivers from gaining access to a vehicle.

To date, vehicle forfeiture programs have not been widely implemented,<sup>227</sup> and research into their effectiveness is limited.<sup>228</sup> Nevertheless, the existing research suggests that vehicle forfeiture programs are associated with reductions in alcohol-related crashes, fatalities and arrests.<sup>229</sup> The research also indicates that judicial or court-based forfeiture programs tend to be underused.<sup>230</sup> Programs that are premised on the vehicle being the instrument of a crime or a public nuisance, and that thereby rely on criminal or civil forfeiture laws, are too cumbersome to be used on a widespread basis.<sup>231</sup> For instance, Ontario enacted a limited vehicle forfeiture program under its *Civil Remedies Act, 2001*.<sup>232</sup> However, the proceedings must be commenced by the Attorney General in the Superior Court of Justice, and the judge has residual discretion

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<sup>227</sup> Although 30 American states had programs allowing forfeiture as of December 2004, most were used infrequently. R. Voas *et al.*, *Update of Vehicle Sanction Laws and Their Application*, Vol. I (Washington: NHTSA, 2008) at 21 [Update].

<sup>228</sup> Voas & DeYoung, *supra* note 214 at 267-68.

<sup>229</sup> See J. Hammerschmidt *et al.*, *Actions to Reduce Fatalities, Injuries and Crashes Involving the Hard Core Drinking Driver* (Washington: National Transportation Safety Board, 2000) at 24.

<sup>230</sup> Voas & DeYoung, *supra* note 214 at 267. See also S. Simon, “Vehicle Sanctions for Repeat Driving While Intoxicated Offenders: Factors That Facilitate or Impede Their Adoption or Implementation” in P. Spellman & J. Gawel, eds., *Implementing Impaired Driving Countermeasures: Putting Research Into Action* (Washington: Transportation Research Board, 2005) at 63-64 [Simon].

<sup>231</sup> Section 490.1 of the *Criminal Code* permits a provincial/territorial Attorney General to seek forfeiture of “offence-related property,” which may include the vehicles of impaired drivers, but only if they have been convicted of an indictable offence. Moreover, judges have broad discretion to deny the application if they are satisfied that forfeiture would be disproportionate in terms of the “nature and gravity” or “circumstances” of the offence, or the offender’s criminal record. It is highly unlikely that it will be invoked for those caught driving while suspended.

<sup>232</sup> S.O. 2001, c. 28.

not to order forfeiture if it would “clearly not be in the interests of justice.”<sup>233</sup> Given the complexities of the legislation, Ontario’s civil forfeiture program will likely only be used against impaired or suspended drivers in exceptional cases.

Because court-based forfeiture proceedings tend to be cumbersome and underused, MADD Canada recommends that provincial vehicle forfeiture laws be administrative, similar to administrative licence suspensions and vehicle impoundments or immobilizations. Thus, the forfeiture should be processed by police and provincial licensing authorities upon the offender’s third impoundment in ten years.<sup>234</sup> As described above, offenders will have had an opportunity to seek review of each of the respective impoundments at the time that they occurred. Accordingly, there is no need for a further court-based application process if the vehicle is ultimately forfeited. Moreover, an administrative forfeiture program would operate more immediately, and would reduce the risk that the offender will sell or transfer title to the vehicle during the time it takes to process the forfeiture.<sup>235</sup>

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<sup>233</sup> *Ibid.*, s. 11.2(1).

<sup>234</sup> Such an administrative forfeiture program currently exists in Minnesota. See E. Shapiro, *Minnesota’s Forfeiture Laws* (St. Paul: Minnesota House of Representatives, Research Department, 2000). Prior to 1999, Minnesota’s forfeiture program was judicially based, and was rarely used. The process often took up to six months. See Simon, *supra* note 230 at 64.

<sup>235</sup> NHTSA indicates that successful impoundment or forfeiture programs involve immediate seizure of the vehicle. See Update, *supra* note 227 at 42.

**FIGURE 17. MANDATORY ADMINISTRATIVE AND OTHER  
VEHICLE FORFEITURE PROVISIONS**

<b>Prov. / Terr.</b>	<b>Administrative</b>	<b>Other<sup>1</sup></b>
AB	No	No
BC	No	No. <i>Civil Forfeiture Act</i> <sup>2</sup>
MB	No. However, vehicles involved in the most serious federal driving offences, <sup>3</sup> or in 3 or more specified offences <sup>4</sup> committed by the same offender within 3 years, may be subject to forfeiture.	No
NB	No	No
NL	No	No
NS	No	No
NT	No	No
NU	No	No
ON	No	No. <i>Civil Remedies Act</i> <sup>5</sup>
PE	No	No
QC	No	No. <i>An Act Respecting the Forfeiture, Administration and Appropriation of Proceeds and Instruments of Unlawful Activity</i> <sup>6</sup>
SK	No	No
YK	No	No

1. Section 490.1(1) of the *Criminal Code* permits a provincial Attorney General to seek the forfeiture of “offence-related property,” which may include the vehicles of impaired drivers, but only if they have been convicted of an indictable offence. Moreover, judges have broad discretion to deny the application if they are satisfied that forfeiture would be disproportionate in terms of the “nature and gravity” or “circumstances” of the offence, or the offender’s criminal record.
2. The Crown may seek forfeiture of an “instrument of unlawful activity,” which may include the vehicle of an impaired driving offender. However, the court has broad discretion to deny the application if ordering forfeiture is “contrary to the interests of justice.”
3. These offences include: impaired driving causing death or bodily harm; driving with a BAC > .08% and causing death or bodily harm; refusing to provide a sample and causing death or bodily harm; criminal negligence causing death or bodily harm; manslaughter; and willfully attempting to evade police pursuit causing death or bodily harm.
4. These offences include: impaired driving; driving with a BAC > .08%; failing to provide a sample; driving while prohibited; and willfully attempting to evade police pursuit.
5. The Attorney General may apply to a Superior Court seeking the forfeiture of a vehicle: if it was or is likely to be used in a “vehicular unlawful activity,” and the licence of the owner or driver has been suspended for a “vehicular unlawful activity” on 2 or more previous occasions within 10 years.

However, the court has broad discretion to deny the application if ordering forfeiture is “clearly not in the interests of justice.”

6. The Attorney General may apply to a court seeking the forfeiture of any “proceeds or an instrument of unlawful activity,” which may include the vehicle of an impaired driver. The court must grant the order if it is convinced that the property is proceeds or an instrument of unlawful activity.

### (e) Remedial Programs

It has been estimated that as many as 30 to 75% of impaired driving offenders have serious alcohol problems.<sup>236</sup> Many of these individuals are persistent drinking drivers, and comprehensive remedial programs are needed to address their underlying addictions. In addition, there is some evidence that a growing number of impaired driving offenders, particularly young people, have drug problems.<sup>237</sup> Therefore, the provinces should establish comprehensive remedial programs for impaired drivers involving three components: education, assessment and treatment.

Most education programs include information on the effects of alcohol and drugs on behaviour, the relationship between alcohol consumption and BAC, and the current impaired driving legislation.<sup>238</sup> Some also provide information on making responsible lifestyle choices.<sup>239</sup>

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<sup>236</sup> H. Simpson, D. Mayhew & D. Beirness, *Dealing with the Hard Core Drinking Driver* (Ottawa: TIRF, 1996) at 57 [*Hard Core*]. See also M. Del Rio, J. Gonzalez-Luque & F. Alvarez, “Alcohol-Related Problems and Fitness to Drive” (2001) 36 *Alcohol and Alcoholism* 256; D. Eensoo *et al.*, “Predicting Drunk Driving: Contribution of Alcohol Use and Related Problems, Traffic Behaviour, Personality and Platelet Monoamine Oxidase (MAO) Activity” (2005) 40 *Alcohol and Alcoholism* 140; and A. Cavaiola, D. Strohmets & S. Abreo, “Characteristics of DUI recidivists: A 12-year follow-up study of first time DUI offenders” (2007) 32 *Addictive Behaviors* 855.

<sup>237</sup> See M. Asbridge, C. Poulin & A. Donato, “Motor vehicle collision risk and driving under the influence of cannabis: Evidence from adolescents in Atlantic Canada” (2005) 37 *Accid. Anal. and Prev.* 1025; J. Davey, N. Leal & J. Freeman, “Screening for drugs in oral fluid: illicit drug use and drug driving in a random sample of motorists” (2007) 26 *Drug and Alcohol Review* 301; and J. Maxwell, J. Freeman & J. Davey, “Young DUI Offenders Seen in Substance Abuse Treatment” (paper presented to the Transportation Research Board, *Young Impaired Drivers: The Nature of the Problem and Possible Solutions*, Woods Hole, MA, 3-4 June 2008).

<sup>238</sup> *DWI Repeat Offenders*, *supra* note 221 at 80. Most programs are based on the so-called “Phoenix Model” described by E. Stewart & J. Malfetti, *Rehabilitation of the Drunken Driver: A Corrective Course in Phoenix, Arizona, for Persons Convicted of Driving Under the Influence of Alcohol* (New York: Teachers College Press, 1970).

<sup>239</sup> For instance, a program recently tested in Florida included a session teaching offenders to avoid recidivism by planning ahead and not driving their vehicles to drinking events, *i.e.*, controlling their driving, not just their drinking. Relative to the control group, who received Florida’s traditional education program, participants in the new program showed a greater willingness to change their behaviour. R. Rider *et al.*, “The impact of a novel educational curriculum for first-time DUI offenders

The assessment programs are designed to determine if a driver has an alcohol or drug problem and, if so, the nature of that problem.<sup>240</sup> The treatment programs are designed to assist the individual in recognizing that he or she has an alcohol problem, and in overcoming that problem.

In general, alcohol and drug treatment programs have substantial benefits. One Canadian study reported that between 50 and 65% of individuals receiving treatment showed some evidence of improvement with their addictions at follow-up interviews.<sup>241</sup> Half of these individuals were either abstinent or had substantially reduced their consumption. A remedial program may thus provide significant personal and public health benefits, apart from any traffic safety benefits. For instance, impaired driving offenders who attend treatment programs have been shown to have significantly reduced mortality rates.<sup>242</sup> Moreover, studies indicate that remedial programs aimed at impaired drivers have consistent, albeit modest, effects on impaired driving recidivism.<sup>243</sup>

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on intermediate outcomes relevant to DUI recidivism” (2006) 38 *Accid. Anal. and Prev.* 482. See also K. Moore *et al.*, “A cognitive therapy treatment program for repeat DUI offenders” (2008) 36 *J. Crim. Justice* 539.

<sup>240</sup> Research indicates that individualized assessment is preferable to a system that assigns offenders to remedial programs based solely on the number of prior convictions or the offender’s BAC at the time of arrest. This allows experts to consider other relevant factors, such as the offender’s personality, lifestyle and risk-taking behaviour. *DWI Repeat Offenders*, *supra* note 221 at 79. See generally, R. Robertson, H. Simpson & P. Parsons, *Screening, Assessment and Treatment of DWI Offenders: A Guide for Justice Professionals and Policy Makers* (Ottawa: TIRF, 2008).

<sup>241</sup> Addiction Research Foundation, *The effectiveness of treatment for alcohol and other drug problems* (unpublished paper, 1990), cited in M. Eliany & B. Rush, *How Effective are Alcohol and Other Drug Prevention and Treatment Programs? A Review of Evaluation Studies* (Ottawa: Health and Welfare Canada, 1992) at 49.

<sup>242</sup> R. Mann *et al.*, “Rehabilitation for convicted drinking drivers (second offenders): Effects on mortality” (1994) 55 *J. Stud. Alcohol* 372.

<sup>243</sup> E. Wells-Parker & M. Williams, “Enhancing the Effectiveness of Traditional Interventions with Drinking Drivers by Adding Brief Individual Intervention Components” (2002) 63 *J. Stud. Alcohol* 655 at 655.

A leading meta-analysis concluded that remedial programs reduce impaired driving recidivism and alcohol-related crashes by 7-9%. E. Wells-Parker *et al.*, “Final results from a meta-analysis of remedial interventions with drink/drive offenders” (1995) 90 *Addiction* 907. The authors noted numerous methodological and reporting weaknesses with the underlying studies, and explained that the effects of treatment were probably underestimated. Another study found that impaired drivers who did not participate in remedial programs were 1.5 to 1.7 times more likely to re-offend than those who did. DeYoung 1997, *supra* note 193. Further, a Canadian study found that remedial programs combining educational and therapeutic elements reduced impaired driving recidivism by as much as 24% for “low problem” offenders. G. Stoduto *et al.*, *Existing Programs for Convicted Drinking-Drivers in Canada* (Toronto: Addiction Research Foundation, 1998) at 4.

The modest effects of remedial programs on impaired driving recidivism to date may be attributable to the reluctance of offenders to participate in such programs, and to the lack of individualized interventions under existing traffic safety-oriented programs. One of the challenges of mandatory remedial programs is that participants may be reluctant to admit that they have an alcohol or drug problem.<sup>244</sup> Due to their efforts to hide or minimize their problems, they may be difficult to accurately assess.<sup>245</sup> Further, offenders may feel coerced into the program, and may therefore lack the necessary motivation to change their behaviour. Finally, convicted impaired drivers are not necessarily a homogenous group, and may share only some characteristics with other alcohol or drug abusers.

Provincial treatment programs for impaired drivers should be designed with these challenges in mind. To the extent possible, treatment programs should be tailored to the needs of each offender, or at least include some portions where the offender has one-on-one contact with an addictions counsellor or other treatment professional. In addition, programs should have multiple components, as this increases the chance that at least one of the components will work effectively for a particular offender.<sup>246</sup> Programs should also specifically address the risks of combining hazardous drinking with the operation of a motor vehicle, and provide guidance on practical ways to reduce this behaviour.<sup>247</sup>

Alcohol and/or drug assessment should be a mandatory condition of licence reinstatement for any driver who: is convicted of a federal impaired driving offence; receives two or more 90-day administrative licence suspensions, within five years, for alcohol or drug impairment or for failing to take a required impairment test; or receives two or more alcohol-related 7-14 day administrative licence suspensions within three years. Such drivers should also be required to successfully complete any prescribed education or treatment programs as a precondition of licence reinstatement. In addition, the provincial licensing authority should have discretion to

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<sup>244</sup> Offenders may exhibit classic symptoms of denial (“I wasn’t drinking; it must have been the cough syrup I was taking”), minimization (“I only had three beers”), or projection (“Those cops were out to nail me”). See A. Cavaola & C. Wuth, *Assessment and Treatment of the DWI Offender* (New York: The Haworth Press, 2002) at 131.

<sup>245</sup> *Ibid.* at 65.

<sup>246</sup> P. Dill & E. Wells-Parker, “Court-Mandated Treatment for Convicted Drinking Drivers” (2006) 29 *Alcohol Research & Health* 41 at 43.

<sup>247</sup> See *supra* note 239, which describes such a program in Florida.

require any driver who it reasonably believes has an alcohol or drug problem to undergo an assessment and successfully complete any recommended remedial program. The costs of participating in the assessment and education programs should be borne by the driver.<sup>248</sup> However, the public health system should cover the cost of any medical treatment that an offender requires for his or her alcohol or drug problems.<sup>249</sup>

The first step in a provincial remedial program should be a professional alcohol and/or drug assessment. Then, depending on the results, the driver should be directed into an appropriate education<sup>250</sup> or treatment program.<sup>251</sup> Drivers should not have their licences reinstated until the provincial licensing authority is convinced that any underlying alcohol or drug problems have been adequately addressed.<sup>252</sup> Successful completion of the prescribed remedial program should be a requirement, but not a guarantee, of licence reinstatement. The burden of proof should remain on the driver to satisfy the licensing authority that he or she is fit to drive and will do so in a safe, sober and responsible fashion.<sup>253</sup> Thus, for example, the mere

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<sup>248</sup> This not only allows the province to recover some of the costs of the program, but also serves as a possible financial deterrent against impaired driving.

<sup>249</sup> In addition to its positive impact on individual offenders, increased levels of treatment have also been shown to have positive effects on public health in general. Increased treatment rates have been associated with declines in problems such as liver cirrhosis, pancreatitis, alcoholism, alcohol intoxication, and alcohol psychosis, as well as lower rates of alcohol-related and total collision fatalities. R. Smart & R. Mann, “The Impact of Programs for High Risk Drinkers on Population Levels of Alcohol Problems” (2000) 95 *Addiction* 37 at 42. See also R. Smart & R. Mann, “Are Increased Levels of Treatment and Alcoholics Anonymous Membership Large Enough to Create the Recent Reductions in Liver Cirrhosis?” (1990) 85 *British J. Addiction* 1385; and R. Mann *et al.*, “Cirrhosis mortality in Ontario: effects of alcohol consumption and Alcoholics Anonymous participation” (2005) 100 *Addiction* 1669.

<sup>250</sup> Educational programs are most suited to offenders with few or only early-stage alcohol problems. See *Hard Core*, *supra* note 236 at 60.

<sup>251</sup> We have not commented on the specific structure or content of the treatment program, as this is a matter best left to health and addictions professionals. A summary of existing programs in Canada can be found in Health Canada, *Best Practices: Treatment and Rehabilitation for Driving While Impaired Offenders* (Ottawa: Health Canada, 2004) [*Treatment and Rehabilitation*]. It is also possible to use a variety of treatment programs that are already available to the general population, and to direct offenders into the program that best suits their needs.

<sup>252</sup> However, the offender may be eligible for the provincial interlock program, which would allow him or her to drive a vehicle equipped with an alcohol interlock, during the course of any prescribed remedial program.

<sup>253</sup> This burden of proof is not intended to be so severe that it is impossible to meet. Nevertheless, there should be some affirmative duty on the individual to prove his or her fitness to drive, rather than an automatic licence reinstatement upon completion of a prescribed remedial program.

fact that the individual attended all the required sessions falls short of discharging the requisite burden of proof.<sup>254</sup> The legislation should clearly provide that participation in the remedial program is not an alternative to the existing federal or provincial sanctions, but rather, a requirement of licence reinstatement.<sup>255</sup> Indeed, the research indicates that a combination of licence suspensions and remedial programs is more effective at reducing recidivism than either component alone.<sup>256</sup> Remedial programs are, thus, one part of the overall strategy to reduce impaired driving in any jurisdiction.

Finally, the provinces should institute a follow-up program to monitor each offender's progress after completing treatment. A recent Health Canada report identified several purposes of such a follow-up: additional therapeutic contact, an extended period of therapeutic supervision, consolidation of behavioural and attitudinal changes, and a check on success.<sup>257</sup> A follow-up can also assist the licensing authority in determining whether any additional licensing action is necessary to prevent the offender from driving while impaired, and can potentially provide valuable data regarding the overall success of a given remedial program.

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<sup>254</sup> A study prepared for the Ontario government recommended that "successful completion" of a remedial program should entail full attendance, sobriety while in attendance, and some form of client-initiated follow-up six months after completing the program. Only after such follow-up would the program provider endorse the offender's application for licence reinstatement. R. Mann *et al.*, *Remedial Programs for Convicted Drinking Drivers. Part 2: Implementing a Systematic Program in Ontario* (Toronto: Addiction Research Foundation, 1997) at 21-22 [*Remedial Programs*].

<sup>255</sup> It is important that remedial programs are assigned in addition, and not as an alternative, to licence suspension or revocation. When remedial programs are used to reduce or replace a licence suspension, recidivism rates are similar to or higher than those of offenders who received licence suspension only. R. Mann, "Effectiveness of DUI Treatment and the Importance of Screening and Matching Clients to Appropriate Treatment" (paper presented to *Drinking and Driving Prevention Symposium*, Los Angeles, 15-17 November 1992) at 117.

<sup>256</sup> In a California study of convicted impaired driving offenders, those assigned to treatment and some form of licence sanction had lower recidivism rates than those who received only a licence sanction, treatment or jail. The author suggested that suspensions plus treatment are best because suspensions reduce driving exposure and encourage more cautious driving, while treatment allows offenders to address their alcohol problems. DeYoung 1997, *supra* note 193 at 994 and 997. See also *Remedial Programs*, *supra* note 254; and R. Mann *et al.*, "Sentence severity and the drinking driver: Relationships with traffic safety outcome" (1991) 23 *Accid. Anal. and Prev.* 483.

<sup>257</sup> *Treatment and Rehabilitation*, *supra* note 251 at 38.

## CONCLUSION

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In the *MADD Canada Model 2009*, we have outlined a number of key measures that the provinces and territories can implement to reduce impaired driving and improve traffic safety within their jurisdictions. These recommendations are not exhaustive. However, they identify priority measures in three broad areas: graduated licensing, licence suspensions, and vehicle-based and remedial programs. MADD Canada has focused on measures that are well-supported by international research and have proven traffic safety benefits. Moreover, many of these measures have already been introduced in one or more Canadian provinces and are, thus, readily achievable within Canada's legal and social framework.

As in the past, the *MADD Canada Model* reflects the following principles:

- Obtaining and holding a driver's licence is a privilege and not a right.
- Traffic authorities must be empowered to take action to prevent tragedies, not just react after the event by sanctioning offenders.
- The police need broader investigatory authority to efficiently detect impaired drivers and obtain admissible evidence.
- Administrative proceedings are far more expedient, efficient and inexpensive than penal sanctions, and more appropriate for the regulatory issues relating to the licensing of drivers, vehicle sanctions and remedial programs.
- Public safety should be given the highest priority in framing provincial and territorial impaired driving legislation.

The provinces and territories should not view the *Model* as a criticism of their current laws, but rather, as a framework for legislative reform. MADD Canada is committed to working with each jurisdiction and, as in the past, welcomes the opportunity to publicly support any government that demonstrates leadership. We hope to be able to report on continued progress both in terms of legislative activity and in terms of crash reductions in the near future.