



Addressing the Problem of Repeat and Chronic Impaired Drivers

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INTRODUCTION

Canadians are outraged by cases of repeat and chronic drinking drivers who amass multiple convictions, yet return to their communities to drive impaired again. Time and again, the question is asked: “How can someone with 10, 15 or 20 impaired driving convictions still be out there driving”?

MADD Canada echoes these sentiments and shares the very real concern about how Canada is dealing with individuals who repeatedly disregard the law and show no consideration for the safety of others. Although these cases make up a small percentage of impaired driving cases in Canada, they highlight our legal system’s difficulty keeping repeat and chronic impaired drivers off the roads.

Long-term incarceration has been suggested for those individuals who refuse to change their drinking and driving behavior. While that may be the only alternative to deal with the worst of these offenders, MADD Canada believes the focus should be on preventive measures which stop individuals from becoming repeat and chronic impaired drivers in the first place.

MADD CANADA’S POSITION

MADD Canada recommends a two-track approach to addressing the problem of the repeat and chronic drinking driver:

- Prevent individuals from becoming repeat and chronic offenders through early identification and intervention, including alcohol assessment, treatment and rehabilitation to address their drinking behavior, as well as licence suspensions, alcohol ignition interlocks, vehicle impoundment and forfeiture programs.
- For individuals with 4 or more *Criminal Code* convictions within 10 years, the Crown should pursue longer jail terms and other appropriate sanctions. Further, the Crown should

pursue dangerous offender or long-term offender status for all convicted drinking drivers who meet the respective criteria.

MADD Canada's position on early intervention reflects its belief that preventing someone from becoming a repeat or chronic offender, and thereby preventing alcohol-related crashes, is preferable to incarcerating an individual after they have amassed multiple convictions or, worse, killed or injured someone.

PREVENTIVE MEASURES

Identification:

Prevention is based on the early identification of individuals who have the potential to become repeat and chronic drinking drivers and helping them sever the connection between their drinking and their driving. This requires both licence and vehicle-based sanctions, as well as education and treatment of the driver's alcohol issues.

For maximum effectiveness, these measures should be triggered by the provincial .05% BAC legislation, rather than waiting for a federal *Criminal Code* .08% BAC or other federal impaired driving convictions.

Exclusive reliance on *Criminal Code* convictions will not achieve our prevention goals. The 2006 criminal charge and conviction data indicate a person could drive drunk once a week for more than 3 years before ever being charged with an impaired driving offence, and for more than 6 years before ever being convicted. Limiting intervention until after there is a federal *Criminal Code* conviction squanders important opportunities to make meaningful changes in the driver's behaviour.

Intervention:

The interventions applied to drivers in the .05% BAC range should include a series of escalating sanctions, such as licence suspensions and mandatory alcohol ignition interlocks. Most provinces and territories have administrative licence suspension programs in place, but there is little consistency in the length of the suspensions or other sanctions for repeat offenders. MADD Canada encourages all provinces to adopt the 7-14 day licence suspension model endorsed by the Canadian Council of Motor Transport Administrators.

Driving bans alone may not deter some chronic impaired drivers; many will simply continue to drive while unlicensed and uninsured. All provinces and territories are encouraged to implement

rigorous vehicle impoundment and forfeiture programs to take vehicles out of the hands of those who refuse to abide by their driving suspensions.

In addition to the driving and vehicle-related sanctions, impaired drivers should be subject to an alcohol/drug assessment and be required to successfully complete any treatment, monitoring or other rehabilitative measures deemed necessary by the assessment. The alcohol and/or drug assessment should be a mandatory condition of licence re-instatement for any driver who: is convicted of a federal impaired driving offence; receives two or more .08% BAC 90-day administrative licence suspensions within five years; or receives two or more .05% BAC provincial 7-14 day administrative licence suspensions within three years.

Successful completion of the assessment and any prescribed treatment or rehabilitative program should be mandatory before the driver's licence can be re-instated.

The administrative programs in most provinces and territories include some form of remedial measures such as education and rehabilitation therefore the framework for early intervention with potentially chronic drinking drivers is in place. There is, however, a lack of consistency among the programs. The best practices are to have an assessment for alcohol/drug addiction as a key component. Not all jurisdictions have this component in place.

For more information on the recommended models for provincial/territorial administrative licence suspension, ignition interlock and vehicle impoundment and forfeiture programs, please see MADD Canada's Rating the Provinces and Territories: The 2009 Report and the MADD Canada Model 2009 at www.madd.ca.)

CRIMINAL CODE PENALTIES

For 1st, 2nd and 3rd Impaired Driving Convictions:

Existing penalties for 1st, 2nd and 3rd impaired driving convictions are sufficient, provided the provinces and territories ensure that these individuals participate in treatment, rehabilitation and alcohol ignition interlock programs as applicable.

For a 4th Impaired Driving Conviction:

If a driver is convicted of a 4th impaired driving offence within a 10-year period, MADD Canada recommends that he or she receive a minimum sentence of two years less a day. This jail term should be followed by a life-time driving ban with an option for licence reinstatement after 5 years, provided the individual has no violations for driving while prohibited/suspended.

If a licence re-instatement is granted for a 4th-time offender, that individual should be required to have an alcohol ignition interlock on his or her vehicle(s) for life.

For a 5th Impaired Driving Conviction:

On a 5th impaired driving conviction within 10 years, the individual should face a minimum of 5 years less a day in jail. This jail term should be followed by a life-time driving ban with an option for licence re-instatement after 10 years, provided the individual has no violations for driving while prohibited/suspended.

If a licence re-instatement is granted for a 5th- time offender, that individual should be required to have an alcohol ignition interlock on his or her vehicle(s) for life.

Finally, any individual convicted of a 5th impaired driving charge should automatically be classified as a long-term offender. Offenders with this classification are subject to close supervision which should contribute to preventing further impaired driving offences.

Dangerous Offender and Long-Term Offender Status:

The dangerous offender and long-term offender classifications are tools which provide the Crown with additional controls over the length of incarceration and the terms of the offender's release based on their progress with treatment and rehabilitation.

An individual can be classified as a **dangerous offender** if they have committed a "serious personal injury offence" and will continue to be a threat to the life, safety or physical well-being of others. The term "serious personal injury offence" is limited to an offence which carries a penalty of 10 years incarceration or more. Consequently, the only impaired driving offences that meet the criteria are impaired driving causing death and impaired driving causing bodily harm.

An individual can be classified as a **long-term offender** if the Crown establishes that it is appropriate to sentence the offender to prison for two years or more, there is a substantial risk that the offender will re-offend and there is a reasonable possibility of eventual control of the risk in the community.

Although these classifications are clearly applicable in a number of impaired driving cases, there appears to be a reluctance to invoke the legislation. The long-term offender classification has only been successfully applied in a handful of impaired driving cases, and the dangerous offender classification has never been applied to an impaired driving offender.

MADD Canada strongly believes that if an individual has a chronic history of impaired driving convictions and meets the other stringent criteria for long-term offender or dangerous offender status, Crown prosecutors should rigorously pursue these classifications.

CONCLUSION

Long-term incarceration is necessary in those cases where an individual continues to drink and drive despite various interventions. However, such sentences are rarely imposed unless a repeat or chronic impaired driving offender has killed or seriously injured others.

MADD Canada's believes the most effective approach in dealing with repeat and chronic drinking drivers is to intervene early and change their behavior. Providing a drinking driver with the opportunity and tools to change their behavior before it becomes chronic is a safer choice for everyone.