

**IMPAIRED DRIVING CAUSING BODILY HARM: CHARGES,
CASES AND CONVICTIONS: CANADA, 1994-2015/16
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Introduction

The goals of this document are to set out the number of impaired driving causing bodily harm charges, completed criminal cases and convictions.

(a) Persons charged with alcohol and/or drug-impaired driving causing bodily harm¹

The charge data are reported by calendar year and include adults, youth and cases involving motor vehicles, vessels and aircraft. The data are comprehensive and are available without cost.²

The offence of impaired driving causing bodily harm was first enacted in 1985.³ In order to address perceived gaps in the law, two new impaired driving offences involving bodily harm were added to the *Criminal Code* in 2008.⁴ Both of these new indictable offences carry the same penalties as the pre-existing offence of impaired driving causing bodily injury.

The first offence entails driving with a blood-alcohol concentration (BAC) above .08% and causing a crash involving bodily harm.⁵ This new offence makes it somewhat easier for the Crown to obtain a conviction because it does not require proof that the accused's ability to drive was impaired by alcohol, but rather only that his or her BAC exceeded .08%. Nor must it be proven that the crash was caused by the accused's illegal BAC.

The second offence enacted in 2008 entails failing or refusing, without a reasonable excuse, to submit to a required breath or blood test, physical coordination test (*i.e.* Standardized Field Sobriety Test or SFST) or drug recognition evaluation (DRE) when one knows or ought to know that he or she has caused a crash involving bodily harm.⁶ Previously, most impaired drivers who injured someone and then refused to take a required test could only be convicted of refusing to take the test. By doing so, the driver denied the police the evidence needed to lay the more serious charge of impaired driving causing bodily harm. This new offence eliminated the tactical benefits of refusing a test because, as indicated, it carries the same penalties as impaired driving causing bodily harm.

However, the 2008 amendments did not address the major problem, namely the lack of police

¹ While Canada first prohibited drug-impaired driving in 1925, the police were not given any specific means of collecting the evidence necessary for laying and prosecuting these cases until July 1, 2008. Prior to this date, the very small number of drug-impaired driving charges and convictions were not separately reported, but rather were included in the total impaired driving charges and convictions.

As of July 1, 2008, Statistics Canada separately reported drug-impaired and alcohol-impaired driving charges, but not convictions. We have not separately reported drug-impaired driving charges in this document, because there is no corresponding conviction data. For a detailed report on drug-impaired driving charges, see R. Solomon, C. Ellis & C. Zheng, *Persons Charged with Drug-Impaired Driving, By Offence and Jurisdiction: Canada, 2008-2016* (Oakville, Ontario: Mothers Against Drunk Driving (MADD) Canada, 2017).

² Statistics Canada, *CANSIM Table 252-0051: Incident-based crime statistics, by detailed violations annual (number unless otherwise noted)* (Ottawa: Statistics Canada, 2017) [Table 252-0051].

³ *Criminal Law Amendment Act, 1985*, S.C. 1985, c. 19, s. 36.

⁴ *Tackling Violent Crime Act*, S.C. 2008, c. 6, s. 21(3).

⁵ *Criminal Code*, R.S.C. 1985, c. C-46, s. 255(2.1) [*Criminal Code*].

⁶ *Ibid*, s. 255(2.2).

authority to obtain breath or blood evidence from accused in injury crashes.⁷ Consequently, these new offences have had a limited impact on charges and convictions.⁸ In fact, as Chart I illustrates, the total number of charges and convictions for impaired driving involving bodily harm fell following the enactment of the two new offences. The charges and convictions for these two new offences have not been separately reported in the Chart, but rather included in the totals for impaired driving causing bodily harm. Unless otherwise indicated, the phrase “impaired driving causing bodily harm” is used in the remainder of this document to refer to all three offences for impaired driving involving bodily harm.

(b) Persons convicted of impaired driving causing bodily harm⁹

Like the charge data, the conviction data include adults and youth, and cases involving motor vehicles, vessels and aircraft. However, unlike the charge data, the conviction data are reported by fiscal year and must be custom-ordered and purchased from Statistics Canada.¹⁰ There are several major problems with, and gaps in, the conviction data.

First, given the different reporting periods and the time lag between the laying of a charge and its disposition, the conviction data cannot be aligned with the charge data. While some accused may plead guilty on first appearance or be tried within several months, other cases can take years to resolve, particularly those involving impaired driving causing bodily harm or death. For example, assume that a person is charged with impaired driving causing bodily harm in November 2013 and is convicted in April

⁷ Even if the police strongly suspect that a surviving driver is impaired by alcohol, it is extremely difficult for them to obtain BAC evidence, particularly if the driver is taken to a hospital. Thus, relatively few hospitalized impaired drivers are charged with, or convicted of, a federal impaired driving offence. For example, a 2004 British Columbia study involving six hospitals found that only 11% of hospitalized drivers with BACs of more than .08% were convicted of any *Criminal Code* impaired driving offence, despite the fact that the average BAC of the alcohol-positive drivers was .156%. Similarly, between 1995 and 2003, only 16% of alcohol-impaired drivers admitted to an Alberta tertiary care trauma centre following a crash were convicted of any federal impaired driving offence, even though their average BAC was .19% or almost 2½ times the *Criminal Code* limit. See respectively: R. Purssell *et al.*, “Proportion of injured alcohol-impaired drivers subsequently convicted of an impaired driving criminal code offence in British Columbia” (2004) 6(2) *Canadian Journal of Emergency Medicine* 80 at 80; and M. Goecke *et al.*, “Characteristics and conviction rates of injured alcohol-impaired drivers admitted to a tertiary care Canadian Trauma Centre” (2007) 30(1) *Clinical and Investigative Medicine* 26 at 26.

See generally E. Chamberlain & R. Solomon, “Enforcing Impaired Driving Laws Against Hospitalized Drivers: The Intersection of Healthcare, Patient Confidentiality, and Law Enforcement” (2010) 29 *Windsor Review of Legal and Social Issues* 45.

⁸ As charges for having a BAC > .08% and causing a crash resulting in bodily harm increased, charges for the pre-existing offence of impaired driving causing bodily harm decreased. Rather than increasing total charges, this new offence appears to be used in lieu of the pre-existing offence. In 2015/16, 30.6% of the total bodily harm cases were based on having a BAC > .08% and causing a crash resulting in bodily harm, and 68.6% were based on the pre-existing offence of impaired driving causing bodily harm. See references *infra* note 23.

⁹ The term “persons convicted” includes accused found guilty of the offence, an included offence, an attempt of the offence, or an attempt of an included offence. This category also includes court cases where an absolute or conditional discharge has been imposed.

¹⁰ Statistics Canada, Canadian Centre for Justice Statistics, *Adult criminal courts, completed guilty cases by type of sentence, for select Impaired Driving Offences, Canada, 1994/1995 to 2015/2016* [2017 Custom-ordered Report, *Adult*]; and *Youth courts, completed guilty cases by type of sentence, for select Impaired Driving Offences, Canada, 1994/1995 to 2015/2016* (Ottawa: Statistics Canada, 2017) [2017 Custom-ordered Report, *Youth*].

2015 following various *Charter* challenges, a preliminary hearing, a jury trial, sentencing, and appeals. The impaired driving causing bodily harm charge would be reported in the 2013 “persons charged” data in Statistics Canada, *CANSIM Table 252-0051: Incident-based crime statistics, by detailed violations annual (number unless otherwise noted)*.¹¹ The conviction would be included in the grand total of the 2015/16 impaired driving “guilty dispositions” reported in Statistics Canada, *CANSIM Table 252-0053: Adult criminal courts, number of cases and charges by type of decision annual (number)*.¹²

Second, when first reported, the data understate the total completed cases and convictions. For example, it was first reported that there were 200 convictions in the youth and adult courts for the impaired driving causing bodily harm offences in the 2014/15 fiscal year.¹³ However, this was revised to 220 in the latest custom-ordered Statistics Canada reports,¹⁴ presumably due to the failure of the courts to report all of the 2014/15 completed cases and convictions in a timely manner. Consequently, care must be taken in interpreting the decrease in total convictions from 234 in 2014/15 to 220 in 2015/16,¹⁵ because it is likely largely due to the late reporting of the remaining 2015/16 completed cases and convictions.

Third, the conviction data typically contain numerous, often technically-complex endnotes that qualify the data, or alert the reader to omissions or other problems. The two custom-ordered documents together contain 39 endnotes, most of which are relevant to impaired driving causing bodily harm convictions. Some of the relevant endnotes are not particularly consequential, while others address major deficiencies in the data. For example, the endnotes indicate that: the Manitoba provincial courts did not report from 1994/95 to 2004/05; the British Columbia provincial and superior courts only began reporting in 2000/01; and the Prince Edward Island, Québec, Ontario, Manitoba, and Saskatchewan superior courts do not provide any case and disposition data.¹⁶ Given this patchwork of reporting, it is difficult to determine the extent to which cases and convictions for impaired driving causing bodily harm are understated. The failure of the superior courts to report is particularly concerning because they often hear the most serious impaired driving cases, such as impaired driving causing bodily harm.

Conclusion

In 1985, Parliament enacted the indictable offences of impaired driving causing bodily harm and impaired driving causing death. The government was concerned that impaired drivers who killed or injured others were only being convicted of a simple impaired driving offence, rather than the more serious

¹¹ *Table 252-0051, supra note 2.*

¹² Statistics Canada, *CANSIM Table 252-0053: Adult criminal courts, number of cases and charges by type of decision annual (number)* (Ottawa: Statistics Canada, 2016).

¹³ Statistics Canada, Canadian Centre for Justice Statistics, *Adult criminal courts, completed guilty cases by type of sentence, for select Impaired Driving Offences, Canada, 1994/1995 to 2014/2015*; and *Youth courts, completed guilty cases by type of sentence, for select Impaired Driving Offences, Canada, 1994/1995 to 2014/2015* (Ottawa: Statistics Canada, 2016). These custom-ordered documents were purchased to prepare last year’s statistical reports.

¹⁴ *2017 Custom-ordered Report, Adult*, and *2017 Custom-ordered Report, Youth*, *supra note 10*.

¹⁵ *Ibid.*

¹⁶ *Ibid.* There are numerous other gaps in the conviction data. For example, information on municipal court cases are, for unexplained reasons, “excluded from the information that Québec transmits to Statistics Canada.”

offences of manslaughter, criminal negligence causing death and criminal negligence causing bodily harm.¹⁷ The offences in 1985 were intended to be easier to prove than manslaughter and criminal negligence¹⁸ and carried lengthier maximum penalties than the simple impaired driving offences.¹⁹ The 2008 amendments creating the new impaired driving offences involving bodily harm and death were intended to serve similar purposes.²⁰

However, the 1985 and 2008 amendments have clearly not achieved their intended goal, particularly when viewed in the context of the tens of thousands of Canadians who are injured each year in alcohol and/or drug-related crashes. In contrast, only 525 drivers were charged with impaired driving causing bodily harm in 2015 and only 220 (42%) were convicted in the 2015/16 fiscal year. Even discounting for impaired drivers who injured only themselves and multi-injury crashes, the charge and conviction rates for impaired driving causing bodily harm are extremely low.

¹⁷ Canada, *House of Commons Debates*, 33 Parl., 1st Sess., (20 December 1984) at 1384 (Hon. John Crosbie).

¹⁸ See Canada, Department of Justice, Policy Sector and Legislative Services Branch, *Impaired Driving Case Study* (Ottawa: Department of Justice, 2000).

¹⁹ The maximum penalty for impaired driving causing bodily harm and death were 10 and 14 years' imprisonment, respectively. In 2000, the maximum sentence for impaired driving causing death was increased to life. *An Act to amend the Criminal Code (impaired driving causing death and other matters)*, S.C. 2000, c. 25, s. 2.

²⁰ *Tackling Violent Crime Act*, S.C. 2008, c. 6, s. 21(3).

Chart I: Impairment-Related Crash Injuries, Charges, Cases and Convictions: Canada, 1998-2015/16

Year	Total Persons Charged	Completed Court Cases	Total Persons Convicted	
			Persons Convicted	% of Those Charged
1994	914	450 (94/95)	316 (94/95)	35%
1995	1,018	533 (95/96)	379 (95/96)	37%
1996	1,031	530 (96/97)	392 (96/97)	38%
1997	946	541 (97/98)	378 (97/98)	40%
1998	905	484 (98/99)	340 (98/99)	38%
1999	987	465 (99/00)	333 (99/00)	34%
2000	1,049	493(00/01)	346 (00/01)	33%
2001	945	514 (01/02)	385 (01/02)	41%
2002	960	492 (02/03)	368 (02/03)	38%
2003	932	505 (03/04)	356 (03/04)	38%
2004	897	408 (04/05)	313 (04/05)	35%
2005	848	466 (05/06)	333 (05/06)	39%
2006	847	414(06/07)	303 (06/07)	36%
2007	812	474 (07/08)	342 (07/08)	42%
2008	780	476 (08/09)	363 (08/09)	47%
2009	815	464 (09/10)	363 (09/10)	45%
2010	747	434 (10/11)	321 (10/11)	43%
2011	778	380 (11/12)	289 (11/12)	37%
2012	697	411 (12/13)	283 (12/13)	41%
2013	559	339 (13/14)	246 (13/14)	44%
2014	555	317 (14/15)	234 (14/15)	42%
2015	525	295 (15/16)*	220 (15/16)*	42%
2016	502	N/A	N/A	N/A

N/A – Not Available

* The completed cases, convictions and percentage convicted for 2015/16 will inevitably be revised upwards to reflect the late reporting of the remaining 2015/16 cases and convictions.