

**PERSONS CHARGED WITH, AND PERSONS CONVICTED  
OF, AN IMPAIRED DRIVING OFFENCE:  
CANADA, 1977-2015/16  
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# Introduction

The Chart and Graphs in this document provide information on federal impaired driving charges and related convictions.<sup>1</sup> The statistics include both adults and youth, and cases involving motor vehicles, vessels and aircraft. However, the impaired driving charge and conviction data do not capture the role of impairment in other *Criminal Code* traffic offences. For example, there were more than 35,400 criminal “incidents” of failing to remain at the scene of a crash in 2016,<sup>2</sup> a significant percentage of which are generally believed to involve impaired drivers. Similarly, given the well-documented problems in processing impaired driving cases,<sup>3</sup> the police may charge an impaired driver with the criminal offence of dangerous driving.<sup>4</sup> Rather than laying any criminal charge, the police may suspend an impaired driver’s licence and impound his or her vehicle pursuant to the provincial or territorial highway traffic legislation.<sup>5</sup>

## (a) The Canadian Charge and Conviction Data

The charge data are reported by calendar year. Charges from 1977 to 1997 are based on one Statistics Canada

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<sup>1</sup> Until the 1985 *Criminal Code* amendments, the impaired driving offences included: driving while one’s ability was impaired by alcohol or drugs; driving with a blood-alcohol concentration (BAC) in excess of .08%; and failing or refusing, without a reasonable excuse, to provide a breath sample. In 1985, the offences of failing to provide a blood sample, impaired driving causing death, and impaired driving causing bodily harm were added to the *Criminal Code* impaired driving offences. *Criminal Law Amendment Act, 1985*, S.C. 1985, c. 19.

As of July 1, 2008, three new sets of impaired driving offences were added to the *Criminal Code*. First, it was made a criminal offence to fail or refuse to submit, without a reasonable excuse, to a required physical coordination test (*i.e.* Standardized Field Sobriety Testing or SFST) or to a drug evaluation (*i.e.* Drug Recognition Evaluation or DRE). These offences are subject to the same penalties as the pre-existing offences of failing or refusing, without a reasonable excuse, to provide a breath or blood test.

The second set of offences entailed driving with a BAC above .08% and causing a crash involving death, and driving with a BAC above .08% and causing a crash involving bodily harm. These offences do not require proof that the crash was caused by the accused’s illegal BAC or impairment. The third set of offences entailed failing or refusing to submit to a required breath or blood test, SFST or DRE, without a reasonable excuse, when one knows or ought to know that he or she caused a crash involving death or bodily harm.

The second and third sets of offences are subject to the same penalties as the pre-existing offences of impaired driving causing death and impaired driving causing bodily harm. *An Act to amend the Criminal Code and to make consequential amendments to other Acts*, S.C. 2008, c. 6, ss. 18-26.

<sup>2</sup> 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].

<sup>3</sup> R. Solomon & E. Chamberlain, “The Road to Traffic Safety: Mandatory Breath Screening and Bill C-46” (2018) *Canadian Criminal Law Review* (in press); and R. Solomon & E. Chamberlain, “Canada’s New Drug-Impaired Driving Law: The Need to Consider Other Approaches” (2014) 15(7) *Traffic Injury Prevention* 685.

<sup>4</sup> *Table 252-0051*, *supra* note 2. In addition to the over 11,000 incidents of dangerous driving in 2016, there were more than 6,500 incidents of driving while prohibited or suspended for a federal impaired driving offence.

<sup>5</sup> In a national survey of Canadian police, 30% of officers reported that they sometimes or frequently let impaired drivers off with an administrative licence suspension rather than laying criminal charges. Moreover, 29% of officers reported that they sometimes or frequently took no legal action against impaired drivers, but rather arranged for them to be taken home by a sober licensed passenger, taxi or other similar means. B. Jonah *et al.*, “Front-line police officers’ practices, perceptions and attitudes about the enforcement of impaired driving laws in Canada” (1999) 31 *Accident Analysis and Prevention* 421 at 426.

While the police survey is somewhat dated, the number of criminal charges has continued to fall as the number of provincial administrative licence suspensions has increased. See M. Asbridge, *An Overview of Short-term Suspensions and Criminal Code Charges for Alcohol and Drug-Impaired Driving in Canada: 2010-14* (Oakville, Ont.: Mothers Against Drunk Driving (MADD) Canada, 2016) at 8.

CANSIM Table, and charges from 1998 onwards are based on another.<sup>6</sup> The conviction data are reported by fiscal year and are based on three CANSIM Tables.<sup>7</sup> In this document, the term “conviction rate” refers to the number of persons convicted relative to the number of persons charged.

Considerable confusion arises when the term “conviction rate” is used without being defined. For example, during the hearings of the House of Commons Standing Committee on Public Safety and National Security on Bill C-226, *Impaired Driving Act*, the 2011 impaired driving conviction rate was stated to be 84%. On this basis, it was suggested that the federal impaired driving law was working well.<sup>8</sup> However, this figure referred to the percentage of impaired driving cases completed in the adult courts that resulted in a guilty disposition.<sup>9</sup> It did not reflect the percentage of impaired driving incidents or charges that resulted in a conviction. In 2015, only 39.9% (28,695/71,870) of the impaired driving incidents known to the police led to a conviction, and only 56.3% (28,695/50,931) of drivers charged with an impaired driving offence were convicted.<sup>10</sup> We view these latter two figures as providing a more meaningful understanding of Canada’s conviction rate in impaired driving cases.

There are several major problems with 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 serious charges. For example, assume that a person is charged with impaired driving causing death in November 2012 and is convicted in April 2015 following various *Charter* challenges, a preliminary hearing, a jury trial, sentencing, and appeals. The impaired driving causing death charge would be reported in the 2012 “persons charged” data in *CANSIM Table 252-0051* and the conviction would likely be reported in the 2015/16 “guilty dispositions” data in *CANSIM Table 252-0053*.

Second, there are no conviction data from 1977/78 to 2003/04. Third, the conviction data, when first reported, significantly understate the total convictions. For example, it was first reported that there were 26,296

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<sup>6</sup> See respectively, Statistics Canada, *CANSIM Table 252-0014, Adult and youth charged, by detailed offences, \*Archived\* annual (number unless otherwise noted)*, terminated 1997 (Ottawa: Statistics Canada, 1997); and *Table 252-0051, supra* note 2.

While we have only included the total number of persons charged, the CANSIM Tables contain additional information, such as the number of “actual incidents” known to the police, incidents cleared by charge, and the incident and charge rates per 100,000.

<sup>7</sup> The adult and youth court conviction data from 1994/95 to 2004/05 are based on Statistics Canada, *CANSIM Table 252-0046, Adult criminal court survey, number of guilty cases, by type of sentence, \*Terminated\* (number) annual* (Ottawa: Statistics Canada, 2011). The conviction data from 2005/06 onwards are based on Statistics Canada, *CANSIM Table 252-0053, Adult criminal courts, number of cases and charges by type of decision annual (number)* (Ottawa: Statistics Canada, 2017) [*Table 252-0053*]; and Statistics Canada, *CANSIM Table 252-0064, Youth courts, number of cases and charges by type of decision annual (number)* (Ottawa: Statistics Canada, 2017). Consequently, the conviction totals in the Chart and Graphs for 2005/06 onwards are based on the sum of the adult and youth convictions.

Although the Tables contain additional information, such as total cases resolved by the courts and the total number of decisions in completed court cases, we have only included the total number of persons convicted of a federal impaired driving offence.

<sup>8</sup> Mr. N. Eriskine-Smith, MP Beaches-East York, *Proceedings of the Standing Committee on Public Safety and National Security*, 1st Sess., 42nd Parl., 2016, Tuesday, September 27, 2016, online: <<http://www.parl.gc.ca/content/hoc/Committee/421/SECU/Evidence/EV8445573/SECUEV25-E.PDF>>.

<sup>9</sup> S. Perreault, *Impaired Driving in Canada, 2011* (Ottawa: Statistics Canada, 2013) at 16. See however, *Table 252-0053, supra* note 7 which reported that 82% of the completed adult impaired driving cases in 2010/11 resulted in a guilty disposition (40,482 guilty dispositions in the 49,521 cases completed in the adult courts).

<sup>10</sup> See *Table 252-0051, supra* note 2 for driving incidents known to police and persons charged; and *Table 252-0053, ibid* for total cases completed in adult court and total guilty dispositions.

impaired driving convictions in the 2014/15 fiscal year. However, this was subsequently revised to 32,025, presumably due to the failure of the courts to report all of the 2014/15 convictions in a timely manner. Consequently, care must be taken in interpreting the decrease in convictions from 2014/15 to 2015/16, reported in the following Chart and Graphs. This decline is likely due, in large part, to the fact that the 2015/16 convictions have not yet been revised upwards to reflect the late reporting of the remaining 2015/16 convictions.

Fourth, the conviction data typically contain numerous endnotes that qualify the data or alert the reader to omissions or other problems. *CANSIM Table 252-0053* contains 48 endnotes, most of which are relevant to impaired driving. 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.<sup>11</sup> Given this patchwork of reporting, it is difficult to determine the extent to which impaired driving convictions are understated. The superior courts' failure to report is particularly concerning because they often hear the most serious impaired driving cases.

### **(b) Canada's Charge and Conviction Rates in Perspective**

It is important to provide a broader context for Canada's impaired driving charge and conviction data. Although per capita rates of alcohol consumption and patterns of impaired driving are similar in Canada and the United States,<sup>12</sup> Canada's 2015 charge rate for impaired driving offences per 100,000 licensed drivers<sup>13</sup> was about 40% of the American rate.<sup>14</sup> Moreover, in recent years, roughly 60% of those charged with an impaired driving offence in Canada were convicted, whereas the American conviction rate is approximately 80%.<sup>15</sup>

Based on the currently available charge and conviction data, only 1 in 880 licensed drivers are convicted of an impaired driving offence in Canada each year, compared to 1 in 250 licensed drivers in the United States. Canada's relatively low charge and conviction rates help explain the limited deterrent impact of the current federal impaired driving legislation.

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<sup>11</sup> *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."

<sup>12</sup> See Organization for Economic Co-Operation and Development (OECD), OECD.Stat, Health Status, Non-Medical Determinants of Health: Alcohol Consumption, online: OECD <[http://stats.oecd.org/Index.aspx?DataSetCode=HEALTH\\_STAT](http://stats.oecd.org/Index.aspx?DataSetCode=HEALTH_STAT)>; and E. Sauber-Schatz *et al.*, "Vital Signs: Motor Vehicle Injury Prevention – United States and 19 Comparison Countries" (2016) 65 (26) *Morbidity and Mortality Weekly Reports* 672, at 674-75.

<sup>13</sup> For the number of persons charged (50,931) and number of licensed drivers (25,273,000) in Canada, see respectively: *Table 252-0051*, *supra* note 2; and Transport Canada, *Canadian Motor Vehicle Traffic Collision Statistics: 2015* (Ottawa: Transport Canada, 2017) at 8.

<sup>14</sup> For the number of persons charged (1,089,171) and number of licensed drivers (218,084,465) in the United States, see respectively: US Department of Justice, Federal Bureau of Investigation (FBI), *Crime in the United States 2015*, online: FBI <<https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-29>>; and US Department of Transportation, Office of Highway Policy Information, *Highway Statistics 2015* (Washington, DC: US Department of Transportation, 2017) at DL-1C.

<sup>15</sup> J. Ringel *et al.*, *Project Report and User Guide* (Atlanta: Centers for Disease Control and Prevention (CDC), 2015) at "Chapter Three, Court Data, Estimates and Analysis," online: CDC <<https://www.cdc.gov/motorvehiclesafety/calculator/doc/3.html>>. While acknowledging that the data was limited and dated, the authors assumed that 88% of those arrested for an impaired driving offence were convicted. According to a leading American traffic safety researcher, the current conviction rate in the United States is approximately 80%. Phone communication with J. Fell, Senior Research Scientist, Pacific Institute for Research and Evaluation, Calverton, MD, on August 4, 2017. We have used the more recent estimate provided by J. Fell.

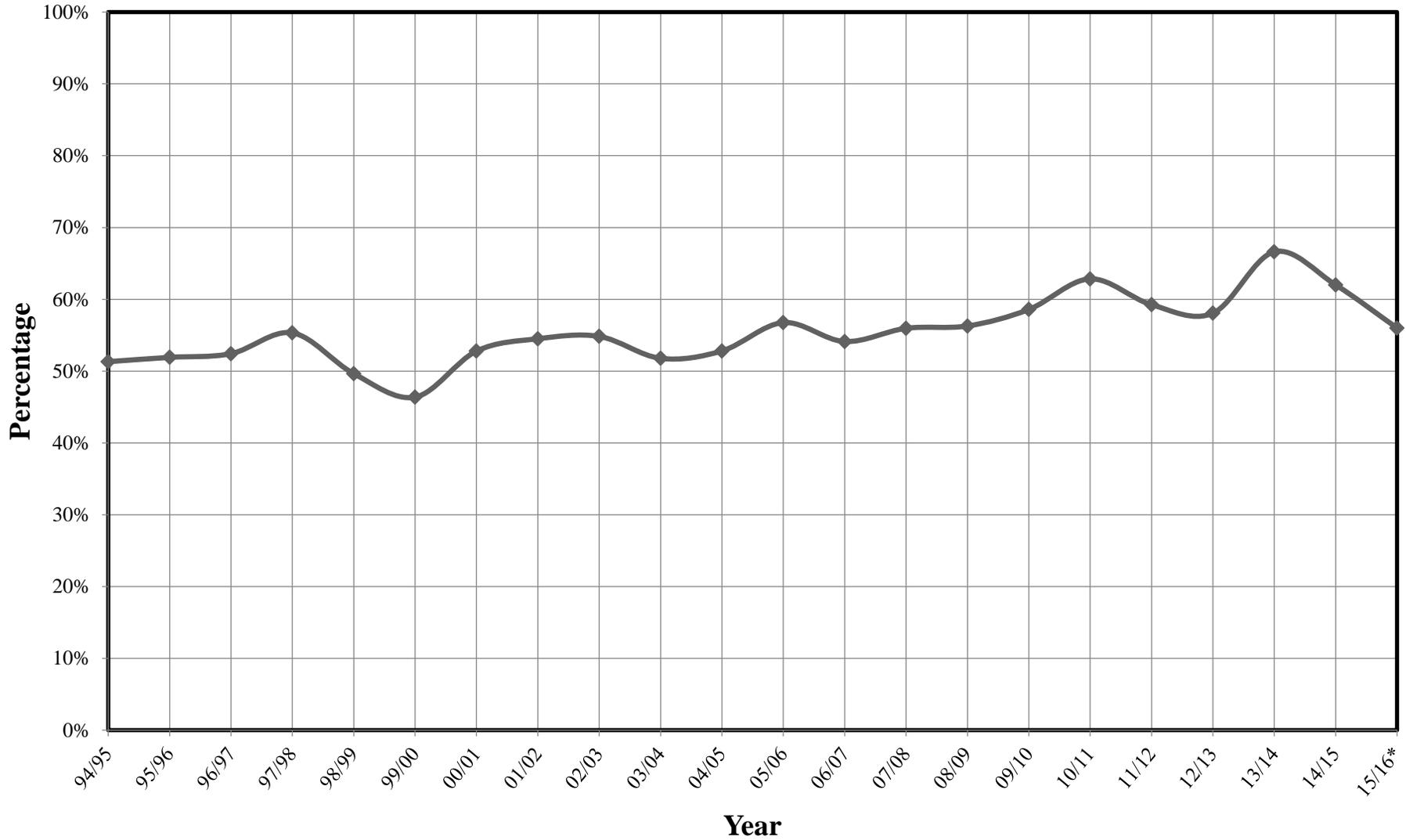
**CHART I: PERSONS CHARGED WITH, AND PERSONS CONVICTED OF,  
AN IMPAIRED DRIVING OFFENCE: CANADA, 1977-2015/16**

<b>Year</b>	<b>Number of Drivers Charged (Calendar Year)</b>	<b>Number of Drivers Convicted (Fiscal Year)</b>
1977	148,824	N/D
1978	149,738	N/D
1979	155,260	N/D
1980	157,492	N/D
1981	162,048	N/D
1982	143,424	N/D
1983	148,040	N/D
1984	142,100	N/D
1985	131,726	N/D
1986	128,797	N/D
1987	128,030	N/D
1988	121,178	N/D
1989	118,722	N/D
1990	112,161	N/D
1991	111,917	N/D
1992	105,805	N/D
1993	92,531	N/D
1994	88,582	45,460 (94/95)
1995	84,085	43,655 (95/96)
1996	79,347	41,602 (96/97)
1997	72,307	40,004 (97/98)
1998	72,579	36,033 (98/99)
1999	73,143	33,921 (99/00)
2000	69,126	36,492 (00/01)
2001	68,986	37,602 (01/02)
2002	66,889	36,677 (02/03)
2003	65,236	33,778 (03/04)
2004	63,317	33,438 (04/05)
2005	60,538	34,359 (05/06)
2006	60,978	33,003 (06/07)
2007	62,826	35,160 (07/08)
2008	65,822	37,048 (08/09)
2009	68,338	40,035 (09/10)
2010	65,188	40,965 (10/11)
2011	60,164	35,643 (11/12)
2012	60,261	34,994 (12/13)
2013	54,107	36,045 (13/14)
2014	51,784	32,025 (14/15)
2015	50,931	28,695 (15/16)*
2016	48,966	N/A

N/A – Not yet available      N/D – No data

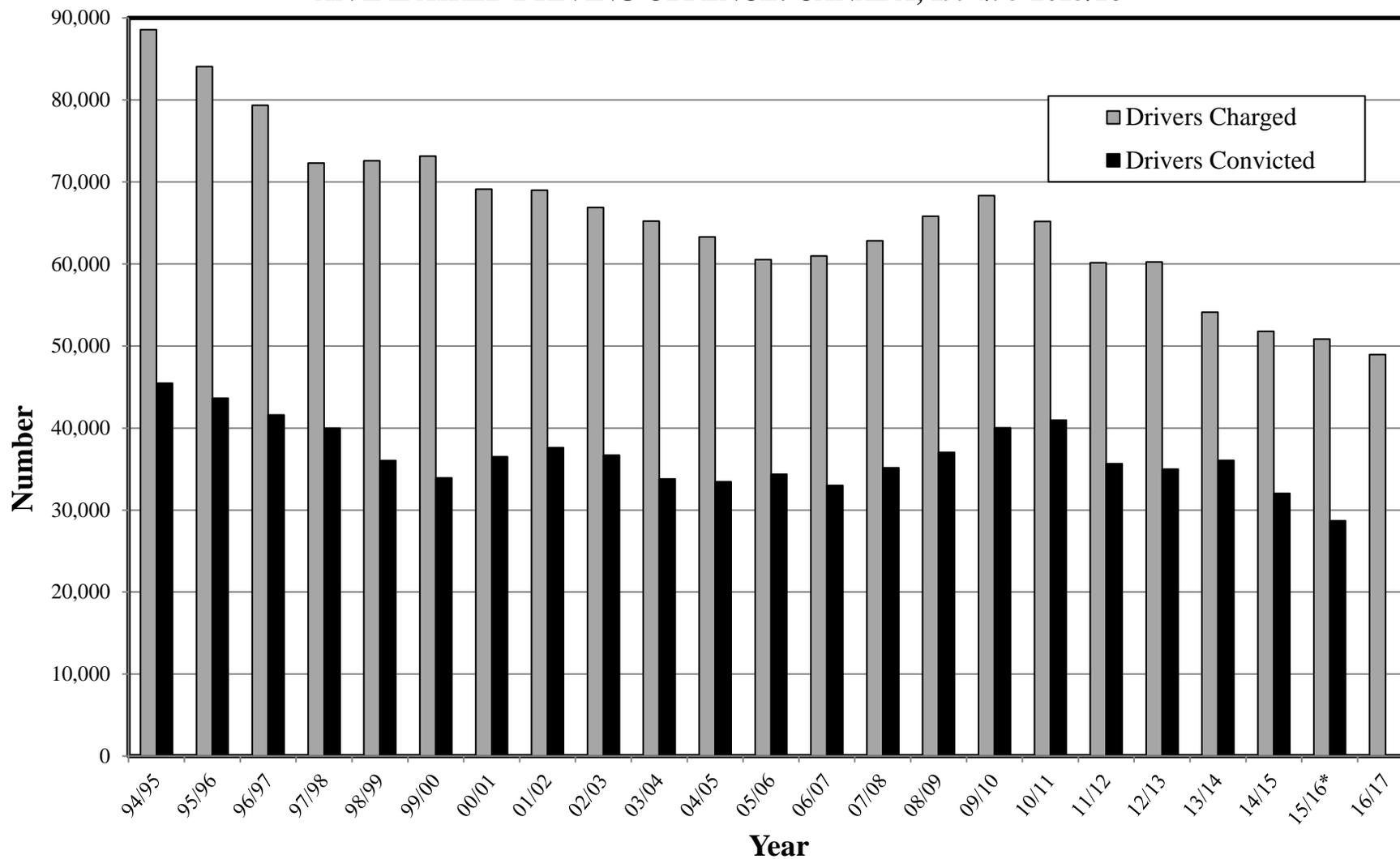
\* The 2015/16 conviction total will be revised upwards to reflect the late reporting of the remaining 2015/16 convictions.

**GRAPH I: PERCENTAGE OF DRIVERS CHARGED WITH AN IMPAIRED DRIVING OFFENCE WHO ARE CONVICTED: 1994/95-2015/16**



\* The 2015/16 conviction total will be revised upwards to reflect the late reporting of the remaining 2015/16 convictions.

**GRAPH II: PERSONS CHARGED WITH, AND PERSONS CONVICTED OF,  
AN IMPAIRED DRIVING OFFENCE: CANADA, 1994/95-2015/16**



\* The conviction total for 2015/16 will inevitably be revised upwards to reflect the late reporting of the remaining 2015/16 convictions.