

# Facts about



## What is Mandatory Alcohol Screening (MAS)?

Mandatory alcohol screening (also called random breath testing) is a roadside breath screening test to detect impaired drivers. The test itself is not new as the police will continue to use the same roadside breathalyzer devices they currently use. What it does is give police the ability to demand a breath sample from any driver they have lawfully stopped. The result from the screening test is not used in court as the basis of a *Criminal Code* charge – rather, the screening test result gives police grounds to demand a second test on an approved screening device. The results from that second test can be used as the basis of a *Criminal Code* impaired driving charge and used in court for evidentiary purposes.

## Why was MAS needed?

The previous laws around breath screening tests have not served as a meaningful deterrent to impaired driving. Under those laws, police could only demand a roadside breath sample if they had reasonable grounds to suspect the driver had been drinking. They had to rely on behavioural clues and observations. The problem is, however, that people do not always exhibit obvious signs of intoxication, particularly those who routinely drink and drive. As a result, the majority of drinking drivers have been going undetected at sobriety checkpoints.

## Does MAS reduce impaired driving?

Mandatory alcohol screening is widely acknowledged as one of the most effective means of deterring impaired driving. It has been adopted in the great majority of comparable, developed democracies, resulting in significant and sustained reductions in overall road crashes and fatalities.

## What impact will MAS have in Canada?

Given the results in other countries where mandatory alcohol screening is being used, MADD Canada estimates the measure will reduce impaired driving in this country by about 20% annually. That is more than 200 lives saved and more than 12,000 injuries prevented every year.

## Didn't police already have the authority to request a breath sample?

Prior to mandatory alcohol screening, police were able to demand a roadside breath sample only if they had a reasonable suspicion that the driver had been drinking. The officer's reasonable suspicion was based on behavioural clues and observations (manner of driving, the odour on a driver's breath, lack of coordination, bloodshot eyes, and slurred or indistinct speech). The difficulty with that process is that, in the brief interaction with police, only a small percentage of drinking drivers exhibit clear and obvious signs of intoxication, particularly if they routinely drink and drive.

The existing law has not been an effective deterrent. Millions of Canadians continue to drink and drive, in part because the likelihood of ever being stopped or charged is low.

By authorizing police to demand a breath sample from any driver lawfully stopped, the number of drivers screened and objectively analyzed is greatly increased, resulting in more impaired drivers being caught. The new measure also greatly enhances the deterrent impact of our impaired driving laws because drivers know if they are stopped, they can be asked for a breath sample.

## What about the criticisms that MAS infringes on the Charter of Rights?

Mandatory alcohol screening will certainly be challenged under certain sections under the *Charter of Rights* (specifically under the sections dealing with unreasonable search and seizure, arbitrary detention and the right to counsel). But we believe – and legal experts agree – that mandatory alcohol screening will successfully withstand that challenge.

Drivers are already required to provide their drivers license, ownership and insurance information when requested by police. This is not that different. Nor is it different than the 109 million searches at airports, the 52 million searches at borders, and the countless searches at the entrances to courtrooms and many other government buildings conducted each year. Those screening procedures at airports, borders and courts can be considerably more invasive and time-consuming than mandatory alcohol screening, and they have been upheld in the courts because they help ensure public safety.

Alcohol-related crashes pose a far greater risk to Canadians daily than attacks at our airports, borders or courts. Mandatory alcohol screening is less intrusive, inconvenient and stigmatizing than many of these other screening procedures, operates in the same way and serves the same protective purposes.

**I read recently in a newspaper that the new MAS law permits police to approach people in their homes or at bars and demand that they provide a breath sample, even if the police don't have reasonable suspicion or grounds to believe that they have been drinking and driving. Is that true?**

The simple answer is no.

Mandatory alcohol screening only applies to individuals who are driving. The police can only make a demand if they have lawfully stopped the driver, the demand is made immediately on stopping the driver and the officer has an approved screening device in his or her possession.

The Canadian *Criminal Code* was amended in 1969 to authorize police to demand that individuals submit to evidentiary breath testing (not mandatory alcohol screening) in specified circumstances. The police could invoke this power whether the individual was driving or had left the scene and was found at home or elsewhere shortly thereafter. Thus, the police have long had the power, during the course of an impaired driving investigation, to come to the residence of a suspected impaired driver and demand that he or she accompany them to the police station and submit to evidentiary breath testing.

The police are very unlikely to approach an individual at home, unless he or she caused a crash and fled the scene, or were described by reliable witnesses as being drunk while driving.

**I read that an individual who drives home completely sober and then drinks can be vulnerable to being convicted of impaired driving. Is that true?**

Once again, the simple answer is no. This conflates two distinct provisions of the *Criminal Code*.

Bill C-46 makes it an offence (subject to a major exception) to have a blood-alcohol concentration (BAC) of .08% or more within two hours of having driven (the two-hour rule).

However, the Bill specifically states that no offence is committed if: the alcohol was consumed after driving; the individual had no reason to expect that he or she would be required to submit to a breath or blood test; and the individual's evidentiary BAC is consistent with being below .08% when driving.

Contrary to what some media stories have stated, the two-hour rule does not give the police any new powers to demand a breath test. The police cannot require an individual who is sitting at home to submit to mandatory breath screening. However, as has always been the case, the police can go to an individual's residence in the course of investigating an impaired driving or other criminal offence. If, on completing their investigation, the police conclude that there are reasonable grounds to believe that the individual committed an impaired driving offence, they may demand that the individual accompany them to the police station and submit to evidentiary breath testing. This is not new.

**For more in-depth information concerning the topic of Mandatory Alcohol Screening, please go to:**

**<https://madd.ca/pages/impaired-driving/public-policy-initiatives/random-breath-testing/>**



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