

Criminal Profiles of Drinking Drivers in Ontario

Stewart¹, S., Boase², P., Lamble³, R.W

¹Ministry of the Attorney General Ontario, Toronto, Canada

²Transport Canada, Ottawa, Canada

³Ministry of Transportation Ontario, Toronto, Canada.

Criminal Law Division, 9th Floor, 720 Bay Street, Toronto, Canada, M5G 2K1

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Abstract:

The paper reviews the criminal and driving history of a sub-sample of 100 drivers drawn randomly from 879 drivers charged with an alcohol related driving offence in Toronto, Ontario, Canada in 1996. Many of the drivers had previous unsafe driving ranging from prior drinking and driving convictions to careless driving convictions and unsafe driving behaviours. Some of the drivers identified as first time offenders under the 1996 laws were actually repeat offenders. The data also suggest drivers with a BAC in excess of 120mg are more likely to be convicted of a drinking and driving related criminal offence. The data also suggest that some improvement is required in communicating charges and convictions to both the criminal and transportation databases so that complete, up to date records are ensured resulting in the appropriate treatment and sanctioning of convicted drivers. More analysis of a similar 1998 file will be required to further assess some of these issues and monitor changes in the criminal law and related provincial laws in the intervening time period.

Introduction:

In Canada the rate of impaired driving has been declining, but still represent a sizable problem. In Canada during 1997, 39% of all driver fatally injured in road crashes had been drinking (STRID, 1998). Alcohol was involved in 38.6% of all motor vehicle fatalities with an estimated 1,300 people killed. In response, different levels of governments have been examining countermeasures to try to address the problem. Driving while impaired (DWI) and having a blood alcohol content (BAC) in excess of 80mgs are criminal offences under the *Criminal Code of Canada*. Failure to provide a sample upon request of a police officer is also a criminal offence with equivalent penalties. In 1996, *the Criminal Code* provided for a minimum \$300 fine and a minimum 3 month licence prohibition for a first conviction. Subsequent convictions carried an increased period of licence prohibition and minimum jail terms

In addition to the criminal sanctions, which apply across the country and are judicially imposed, each provincial jurisdiction also applies administrative, non-discretionary licence suspensions upon conviction. In Ontario, in 1996, a driver convicted of a first offence received a twelve month driver license suspension in addition to the criminal penalties. The period of suspension increased with subsequent convictions within a five year driver record search length. On November 29, 1996 Ontario introduced an administrative driver's licence suspension (hereinafter referred to as A.D.L.S.) program whereby a driver receives an immediate 90 day driver licence suspension after blowing over 80mgs or refusing to provide a sample. (Lamble et al, 2000).

The relevant document flow for a drinking and driving related criminal conviction in Ontario starts with the charging of the driver, which includes serving the driver with the applicable A.D.L.S. at the police station. The charging documents are filed with the criminal court and entered onto the integrated court offences network. The charge(s) proceed through the judicial system, and if a conviction is registered, the court office is required by law to notify the Registrar of Motor Vehicles. In 1996, this documentation was mailed from the specific court office to the Ministry of Transportation, where it was posted on the driver record. In 1998, the notification process was automated. The fact of the conviction is conveyed to the charging police service, which must notify the Canadian Police Information Centre in order to ensure that both the charge and the disposition, including conviction, are posted to the person's criminal record. The transportation record should have information on all traffic related incidents including convictions and collisions, and the criminal record should have the complete criminal record, including charges and dispositions for that individual. The merging of these records should provide a profile on the complete driving and criminal history of an individual.

Materials and Method:

Information on 879 drivers who had been stopped and charged for a drinking and driving related criminal offence by the Toronto Police Service from June 3, 1996 to December 30, 1996 was obtained. Of the 879 drivers, 31% were stopped as the result of a collision investigation, while the remaining 69% came to the attention of police for other reasons, including random spot checks and regular patrols. An approved screening device was not administered in 74% of the drivers suggesting that another probable cause was the reason for the breath test being requested. Drivers ranged in age from 20 to 78 with a median age of 39. In total, 74% of the drivers were male, 7 % were female. The remaining 19% did not have licence information recorded on the system or failed to produce a licence.

Of the 879 drivers, 11% failed to provide a sample upon request and 45% had a recorded BAC of less than 160mgs (a BAC of 160mgs was selected as the measurement given the July 1, 1999 amendment to the *Criminal Code of Canada* which made a blood alcohol level over 160 mgs an aggravating factor on sentencing). In addition to the drinking and driving related criminal charges faced by these drivers, three were charged with a cocaine related offence and six were charged with a marijuana related offence. A number of other criminal or provincial charges were also laid arising out of the same incident including driving without a licence criminal harassment, resisting arrest, obstructing police, failing to stop for police and assault.

In order to fully assess the criminal records of those charged with drinking and driving related criminal offences in Toronto, the CPIC records of 100 of the 879 drivers were manually retrieved and assessed. Of the 100 drivers sampled, 6 % were female, 85% were male and 9% did not have gender identified. They ranged in age from 22 to 73 years of age. Where a sample was provided, the blood alcohol level ranged from 97mgs to 331mgs, with 42% below 160mgs. 14% refused to provide a sample. An approved screening device was administered in 24% of the cases. A collision resulted in the investigation and arrest of 24% of the drivers.

Results:

Of the 100 drivers sampled, provincial driver records for 15 could not be located based on the information obtained at the time of the arrest. Criminal records could not be matched for 2 drivers. Seven drivers had neither a provincial driver record nor a criminal record and these drivers were eliminated from all of the measurements, including breath test reading. Six drivers had no record of the

1996 arrest on either the criminal record or the provincial driver record. As a result, the measurements relate to the 76 drivers with both criminal and driver records unless otherwise noted.

Thirty-one percent of the 78 (76 plus two drivers who had a driver record but no criminal record) drivers with provincial driver records were not licenced at the time of the driver record search (November, 1999). Fifty percent of these drivers (15% of the total) were subject to a driver licence suspension as a result of a conviction for a drinking and driving related criminal offence. As many drivers (5) were suspended as a result of a conviction for the criminal offence of drive while disqualified as the provincial offence of driving under suspension. Twenty percent of the unlicenced drivers were suspended as a result of unpaid fines, with one medical suspension and one demerit point suspension in effect. Two drivers remained unlicenced/suspended despite the fact that, in both cases, the reinstatement date preceded the search date by months.

With regard to collisions, 23% of the 94 drivers for whom this information was available were arrested and tested as a result of a collision. Ninety percent of these drivers were charged with a drinking and driving related criminal offence or offences. There was no criminal record of charges or dispositions related to the collision and arrest in 10% of the cases. In reviewing the 78 available driver records, 73% of the drivers had collision reports on record. Furthermore, of the 57 drivers with collisions on record, 32% had 3 or more collisions reported over the course of their driver history in Ontario. One driver had 9 collisions on record and another driver had 11 on record within 18 years. When reviewing the convictions on record for the 78 drivers, 58 % had non-alcohol related, provincial offence convictions such as careless driving, speeding, fail to report an accident, and no insurance to driving while under suspension. One driver had a conviction for failing to stop for police which arose out of the same incident as the drinking and driving related charges.

In reviewing the criminal profile of the sampled drivers (based on available or matched criminal records for 93 of the drivers) 45% were found to have had other, non – drinking and driving related charges or convictions, including, for example, robbery, assault and narcotic offences. As the offence date for criminal dispositions is not included on the criminal record, no findings can be reported of the other detected criminal activity that occurred pre- or post- the 1996 drinking and driving arrest or arose out of that incident. With regard to drinking and driving charges and dispositions (of the 91 drivers with criminal records available) 36 % had drinking and driving related charges or convictions prior to the 1996 arrest. Fifty-two percent (18% of the total) of these drivers had multiple priors, ranging from 12 drivers with 2 priors to 3 drivers with 5 priors. Measuring the post-1996 charges or administrative driver licence suspensions within the sample, 14% were found either to have been convicted or to have received a ninety- day suspension. One of the drivers had two arrests and related administrative driver licence suspensions subsequent to the 1996 arrest.

Thirteen of the drivers arrested in 1996 had an administrative driver licence suspension imposed immediately upon arrest, since they were arrested after the initiative came into effect November 29, 1996. Of this number, 54% were subsequently convicted of the criminal charges. Three of the drivers had the related criminal charge dismissed, stayed or withdrawn. Of the balance of the drivers 23% had no criminal or driver record of any related criminal charges.

Fifteen percent of the 93 drivers in the sample refused to take a breath test when the police officer made the demand. Of these, 70% were charged with the criminal offence of refusing to provide a sample. Four of the drivers charged had the charge withdrawn by the crown or dismissed by the court. Six drivers were convicted of both the refusal and the related charge of impaired driving. Of the drivers providing a breath sample, 42% had blood alcohol levels over the legal limit of 80mg but at or under

160mg, with a range from 97mg to 160mg. Forty-three percent of the drivers had a blood alcohol level over 160mg, with a range from 166mg to 331mg.

A total of 80 drivers were charged as a result of having a blood alcohol level over the legal limit. Of the 17 drivers with a blood alcohol level of 120 mg or less, 76% were charged. Fifty-three percent of these drivers had the charge withdrawn by the crown or dismissed by the court, with four drivers being convicted of either drive over or impaired. Of the 63 drivers with blood alcohol levels over 120, 100% were charged and 87% were convicted. One driver, with a blood alcohol level of 295mg, was convicted of the criminal offence of driving while disqualified; however, there is no record of the driver being charged with a drinking and driving related offence. One driver was convicted of careless driving, which is a provincial offence, with the same offence date as the arrest on the criminal drinking driving charge; however, no criminal charges appear on the driver's criminal record.

The records were reviewed to determine the number of months (to the nearest month) between the 1996 arrest and the disposition (appeal or trial) of the resulting charges. The range was from 1 month to 28 months. Where a conviction resulted, the average time from charge to disposition was 9 months. For those drivers who were not convicted, the average time increased to 11.6 months. For drivers charged for the first time, the average time from charge to disposition was 9.5 months, the exact average of those drivers who had prior charges or convictions. The criminal and driver records of convicted drivers were reviewed to determine if the drivers received the appropriate criminal sentence as well as the appropriate administrative consequence. A number of drivers benefited from the five year driver record search length that was applicable in 1996 for the assessment of the administrative sanctions or from lengthy gaps between criminal convictions which caused the judge to treat them as a first – time offender in sentencing. Of the 47 drivers treated criminally as a first time offender, 4 should have been treated as a second time offender. Five drivers received a 3 month prohibition order, which is the minimum order, and 1 received a 6 month prohibition order. Of the 37 drivers treated administratively as a first time offender, 1 driver had a previous conviction within the preceding two years. Twelve drivers were treated criminally as second time offenders. One of those drivers should have been treated as a first time offender on the face of the criminal record and was, in fact, treated as a first time offender administratively. One driver received a custodial disposition (jail term) but a prohibition order of only 3 months. Six drivers were treated criminally as being convicted for a third or subsequent time. One of those drivers was treated administratively as a second time offender because of the five year driver record search length. In one case, where the driver was convicted of impaired driving causing bodily harm, it was impossible to determine the administrative consequence assigned as the 5 year prohibition order (a criminal sanction) appears on the driver record as the length of the administrative post- conviction suspension (such a sanction was legally not available at the time).

For 23% of the convicted drivers, there is no indication on the criminal record of a prohibition order being issued. Seven convicted drivers had no corresponding entry on the provincial driver record, as a result of which the administrative treatment could not be assessed.

Of the drivers with either a prior arrest or conviction or a subsequent arrest, conviction or administrative driver licence suspension on the driver record, the time between the incidents or occurrences was measured. Thirty-one drivers had a prior arrest or conviction, ranging from 1 month to 14 years before the 1996 arrest. On average, this resulted in 6.5 years between occurrences. Eliminating the 17 drivers with lengthier periods, ranging from 4 to 14 years, reduced the average to 25.5 months or just over two years between occurrences. A review of the 14 drivers with a post – 1996 drinking and driving occurrence indicates an average of 17.6 months between occurrences, with a range of 3 months to 31 months.

Discussion:

While statistically not significant, there appeared to be some incorrect references in the sample data that precluded obtaining either the matching criminal or provincial driver record. Furthermore, the record keeping is not necessarily precise, in that six drivers had no reference to the 1996 arrest on either the criminal or driver record. Even if the fingerprinting or record follow up was not carried out on the criminal side by the charging police agency, any conviction that would have been entered would be communicated from the courts to the Registrar of Motor Vehicles.

The records indicate that a large number of these drivers are experienced, either in the criminal (45%) or provincial (58%) court systems. While reference to first-time drinking and driving offenders remains technically valid, in practice the majority are experienced. With regard to prior drinking and driving charges or convictions, 36% of the drivers had prior experience as compared to the provincial average of one-third of all convicted drivers. Over half of the 36% had more than one prior. While only 14% of the drivers in the sample have re-entered the detected drinking driver population subsequent to their arrest in 1996, it is arguable that a much higher percentage re-offends but is not detected.

Almost one quarter of the drivers in the sample came to the attention of the police as a result of a collision. Given that 73% of the drivers with available provincial driver records had a record of collisions, with 32% of these having 3 or more on record, there is arguably a link between collision history and drinking and driving which is arguably stronger than the link with other violations (58%). Because of police response time and other factors, such as collision reporting centres (where police do not attend the scene, rather the driver attends a police station within twenty-four hours to report the collision), it is not known how many of the collisions that preceded the drinking and driving related arrest involved alcohol. The information will need to be compared with a similar sample drawn from the City of Toronto for drinking and driving related criminal offences which occurred in 1998 to better determine the extent of the link. Ten percent of the drivers were not charged and, although somewhat speculative without the actual collision reports, the impact of self-reporting centers for collisions on the avoidance of detection of the drinking driver is a possible explanation.

The inclusion of the A.D.L.S. on the driver record assists in comparison and tracking the outcome of any related criminal charges. Given that the initiative was only operational for just over four weeks in relation to the 1996 sample, it is premature to state any conclusions about the 23% of drivers under an administrative driver licence suspension who had no subsequent record of criminal charges or dispositions. It will be necessary to compare the cases with those in the e 1998 sample to determine the actual or more long- term percentage of drivers who receive an administrative driver licence suspension but have no subsequent record of criminal charges and dispositions.

More work needs to be undertaken to determine the precise benefit to those drivers who refuse to provide a sample of breath upon arrest. Only 70% of the drivers who refused were actually charged with that offence. Almost half were not convicted of the charge, either because the crown withdrew the charge or because the court dismissed the charge (found the driver not guilty). There seems to be a corresponding reluctance to charge the driver when the breath readings are under 120mg, with just over three-quarters of the drivers in this category being charged as compared to 100% when the reading is over 160mg. If the blood alcohol level is less than 120mg, the driver stands an equal chance of being convicted as being acquitted or having the charge withdrawn based on the sample. If the driver is charged with a blood alcohol level over 160mg, it is quite likely that they will be convicted (87%).

Despite long-time allegations in Ontario that careless driving is frequently substituted for the drinking and driving charges in a low blood alcohol level case, only one driver in the sample was found to have a conviction for careless with the same offence date as the impaired arrest but with no corresponding criminal charge outcome reported.

The apparent lack of a prohibition order in 23% of the cases indicates either a difficulty with data entry on the part of the originating police service, that the fact of the order is simply not recorded or communicated or that some judges in certain cases do not issue such an order, possibly because of the other consequences that the offender faces as a result of conviction, including the administrative sanctions and insurance costs. With regard to the drivers who had no record of the criminal conviction on the driver record, a comparison will need to be made with the 1998 information to determine if this continues in light of the automated communication between the courts and the Registrar of Motor Vehicles. The discrepancy might also be explained by the fact that some conviction information that is conveyed to the Registrar either lacks the necessary information or is incorrect and cannot simply be posted to the driver record.

Little can be said about the time between occurrences, other than to note that given the average times indicated, coupled with the time to disposition, the increase in the driver record search length for previous convictions from five years to life-time search as of September, 1998 will ensure that more drivers are treated as subsequent offenders. Under the significantly increased record search length, ten more drivers in the sample would have received a longer period of provincial suspension based on prior occurrences. As the maximum period of time to the post-1996 occurrence was 31 months, it is speculative to estimate how many of the drivers, when the post-1996 charge is dealt with, would have benefited from the previous 5 year record search length. The extended search length will ensure that the 14 drivers, as of the record search date, are treated as subsequent offenders regardless of how long the criminal disposition of the charges takes.

Overall, the average time to disposition is the same for all charged drivers except for the small number who are not convicted. Due to the numbers as well as the provincial variance in time to trial from time of arrest it is difficult to determine the significance of this nearly three month differences. It is expected that the 1998 sample will demonstrate more significant difference in the time from charge to disposition because of the significantly increased administrative consequences facing those drivers.

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