



Mandatory Alcohol Screening

Key Considerations

- Mandatory alcohol screening (MAS) became law in Canada on December 18, 2018.
- MAS allows police officers to demand a preliminary breath test from a driver in the absence of having a reasonable suspicion that the driver has alcohol in their body.
- MAS has been implemented successfully in many other countries around the world.
- MAS has considerable potential to enhance deterrence, reduce the incidence of impaired driving and save lives in Canada.
- MAS should be subject to a comprehensive process and impact evaluation.

The Issue

Intensive efforts to reduce the magnitude of the alcohol-crash problem in Canada began in earnest in the early 1980s. Although significant progress has been made, the use of alcohol by drivers continues to be a leading contributor to deaths and injuries on Canadian roads. In 2014, the most recent year for which data are available, 28% of fatally injured drivers and an estimated 16% of drivers involved in serious injury crashes had been drinking.¹ Further measures are needed to reduce the number of deaths and injuries due to alcohol-impaired driving. Mandatory alcohol screening (MAS) has been introduced as one of these measures to assist in this effort.

The use of breath tests to assess the extent of alcohol use by drivers has become a standard procedure in the enforcement of impaired driving laws in countries around the world. Over the past four decades in Canada, if a police officer had reasonable grounds to suspect that a driver had alcohol in their body, the officer could demand the driver provide a sample of breath for preliminary analysis at roadside using an approved screening device (ASD). Changes to the *Criminal Code* of Canada in 2018 removed the requirement for the officer to have suspicion of alcohol in the body as the basis for demanding a roadside breath test. On December 18, 2018, MAS became law in Canada, allowing police in the lawful execution of their duties and with an ASD in their possession, to demand a breath test of any driver in the absence of suspicion or cause.

When used as part of a year-round intensive enforcement campaign supported by an ongoing program of public awareness, MAS is believed to increase the perceived and actual probability of drinking drivers being apprehended, both of which are key factors in general deterrence.² Increased deterrence is expected to have a demonstrably positive impact on the prevalence of drinking and driving and alcohol-related crashes. However, MAS raises questions about potential violations of individual freedom through the use of unreasonable search and seizure. The constitutionality of MAS



in Canada will be determined by the courts; the social value of MAS will be determined by demonstrated reductions in alcohol-related deaths and injuries on Canadian roads.

Background

Breath alcohol testing was introduced into Canadian criminal law in 1969. At that time, only approved instruments were authorized for use. In the mid-1970s, alcohol screening devices were approved for use by the police at roadside. Police were authorized to demand a breath sample on an ASD if they had “reasonable grounds to suspect” that a driver had alcohol in their body. In many provinces, ASDs are set to indicate “Warn” at a blood alcohol concentration (BAC) between 50 and 100 mg/dL and “Fail” at BACs over 100 mg/dL.* In most jurisdictions in Canada, a “Warn” reading can result in a short-term licence suspension (24 hours to seven days); a “Fail” reading leads to a trip to the police station for an evidential breath test using an approved alcohol breath test instrument. The results of a breath test on an approved instrument can be admitted in court as evidence of the driver having a BAC of 80 mg/dL or over.

Although the threshold for reasonable suspicion is not high (e.g., the smell of alcohol or an admission of drinking is usually sufficient), police officers vary considerably in their ability to detect the signs and symptoms of alcohol use. For example, in a study where researchers collected voluntary breath samples immediately downstream from a police checkpoint, it was determined that the police failed to detect more than 50% of drivers with a BAC in excess of 80 mg/dL and more than 90% of drivers with BACs greater than 50 mg/dL.³ Rather than discrediting the work of the police, this observation merely illustrates that the detection of alcohol in drivers can be a difficult task, particularly in a brief interaction at the side of the road. Nevertheless, if an impaired driver escapes detection at a roadside alcohol checkpoint, it serves to reinforce the behaviour and increases the likelihood of its reoccurrence. nMAS provides a more efficient and effective means of detection that would undoubtedly prove beneficial.

What the Evidence Says

MAS, also known as “random breath testing” or RBT in other countries, has been shown to have a positive impact on impaired driving and alcohol-related crashes. The majority of the evidence comes from Australia where MAS has been commonplace since the 1980s. Studies reported initial reductions in fatal crashes of up to 48% associated with MAS in the first several years after its introduction. Sustained reductions in serious crashes averaged about 25%.⁴

Studies in other countries have also shown positive effects of MAS. Following the introduction of MAS in Finland in 1977, the number of drinking drivers on the road, as assessed by roadside surveys, decreased by 58%.⁵ Evidence from Ireland indicates a 19% reduction in overall traffic fatalities in the first year following the introduction of MAS in 2006;⁶ subsequent years showed continued declines in overall fatalities. New Zealand reported a 15.6% decrease in injury crashes between 9 p.m. and midnight in the first year after the introduction of MAS.⁷

In summary, the overall weight of the evidence shows that an intensive program of MAS, supported by a comprehensive communications strategy, can have a profound and lasting beneficial impact on road crashes.

The impact of MAS programs is presumed to be a consequence of a combination of general deterrence and enforcement. The increased perceived and actual probability of being detected by the police if one has been drinking can serve as a powerful deterrent. In addition to an extensive

* The threshold BAC values to which ASDs are set varies somewhat by province.



program of MAS, the deterrent effect requires a high-profile communication and publicity campaign informing the general public about the likelihood of detection. Both elements of the program must be continuous and intensive.²

Additional Considerations

In evaluating the evidence on the impact of MAS, several caveats must be considered. For example, many of the studies on MAS have simply compared crash numbers before and after the introduction of MAS. The lack of an external control group is important because MAS was introduced in Australia during the 1980s, a decade during which many industrialized nations, including Canada, experienced unprecedented reductions in the number of alcohol-related crashes.⁸ Different countries took different approaches to deal with the alcohol-crash problem (e.g., new legislation, enhanced enforcement, more severe sanctions and intensive awareness campaigns) and all witnessed substantial reductions in the magnitude of the problem.⁹ Hence, it can be reasonably assumed that a portion of the impact of MAS can be attributed to other factors. Nevertheless, the impact of MAS in Australia still appears to have contributed to larger and more sustained decreases than those experienced in other countries.

One of the factors contributing to the success of MAS in Australia was the increase in enforcement that typically accompanied the introduction of MAS. In the United States, highly visible and publicized alcohol checkpoints have generated a great deal of interest and studies show reductions in alcohol-related crashes of 11 to 20% associated with them.^{10,11} Alcohol testing at these checkpoints is neither random nor mandatory.

It is anticipated that MAS will have a beneficial impact on the number of alcohol-related deaths and injuries in Canada. Achieving an ongoing reduction in alcohol-related crashes would require that MAS be implemented in Canada in a manner comparable to its implementation in Australia. In Australia, at least one-third of all licensed drivers are breath tested in a year. In New South Wales, the optimal level of testing was deemed to be in excess of the 6,300 breath tests conducted per day. Indeed, to avoid a constant decay in the deterrent effect of MAS, it has been suggested that the level of testing should be equivalent to one test per licensed driver per year.² This level represents a substantial commitment to breath testing. In the province of Ontario alone, testing one-third of licensed drivers would involve conducting in excess of three million breath tests per year, the equivalent of over 8,200 tests per day; testing every licensed driver once a year would require close to 28,000 breath tests be conducted every day.

Australian police achieve the high number of breath tests by simply asking every driver stopped in a checkpoint to provide a breath sample. Tests are conducted while drivers are seated behind the wheel of their vehicles. This procedure deviates from procedures typically used in Canada to administer an ASD where the officer has a reasonable suspicion that the driver has alcohol in their body. For officer safety, drivers required to provide a breath sample are removed from their vehicle and placed in the police car. This procedure allows the officer to record basic information (e.g., date, time, location, driver name, driver licence number, date of birth) and note any signs and symptoms of impairment. It also provides a period of time to clear residual alcohol from the oral cavity. The entire procedure requires approximately 15 minutes, well beyond the “few seconds” reported for the process in Australia. The acceptance and effectiveness of MAS in Canada may depend on the use of a more efficient process that causes minimal inconvenience and increases the number of breath tests administered.



What Other Countries Are Doing

Although Australia is often viewed as the originator of MAS and its MAS program has the highest international profile, other countries such as Finland and Sweden have allowed MAS since the late 1970s. Currently, most countries in Europe allow some form of mandatory breath testing (e.g., all drivers, drivers stopped for other reasons, drivers in crashes). Many countries allow mandatory oral fluid screening for drugs as well.

In 1995, the United States Department of Transportation implemented a program of mandatory alcohol testing for operators of large commercial motor vehicles that included pre-employment testing, random testing, reasonable suspicion testing and post-accident testing. If a driver is randomly selected for testing, they must report to the test site immediately before, during or after their shift. Despite the reported success of this program,¹² no state has introduced random or mandatory breath testing for operators of private vehicles. Most states conduct high profile “sobriety checkpoints” as a means to enhance deterrence and reduce crashes. There are, however, 11 states that do not allow alcohol checkpoints.¹³ As well, the grounds for requesting a breath test are typically more stringent than mere “suspicion.” Moreover, although most states already have “implied consent” laws, breath test refusal remains a significant issue.^{14,15} Implied consent laws state that, as a condition of driver licensing, drivers agree to provide a sample for alcohol testing when requested by the police. Such laws, however, are not equivalent to MAS. A police officer must still have reasonable grounds to require a preliminary breath test. In fact, implied consent laws actually serve to provide the driver with a choice – that is, refuse the test and face certain licence suspension or submit to the test, possibly fail, and face criminal prosecution.

Options

A consideration of MAS or mandatory breath testing would be incomplete without a discussion of potential alternatives. If the primary effect of MAS is to increase the perceived and actual probability of detection, this increase can be accomplished by enhancing the frequency and intensity of alcohol checkpoints (known in different provinces as Reduce Impaired Driving Everywhere [R.I.D.E.], CounterAttack, CheckStop). Although efforts have been made to expand checkpoints beyond the traditional Christmas season, the probability of a driver encountering a checkpoint remains relatively small. Increasing the number of checkpoints would undoubtedly be beneficial, but the increase would need to be substantial to achieve significant benefits.

More checkpoints, however, fail to address the issue of drivers with alcohol in their bodies escaping detection. More effective checkpoints would require enhanced training for police officers in the detection of impaired drivers. Although most people can identify a severely intoxicated individual, the signs and symptoms associated with low to moderate levels of alcohol consumption can be more subtle. Training programs are available to enhance officers’ ability to recognize, identify and articulate indicators of alcohol use among drivers.[†] Combining more intensive alcohol checkpoints with enhanced officer training could improve the effectiveness of existing checkpoint programs.

The use of passive alcohol sensors is another option to assist officers in detecting drinking drivers.¹⁶ The technology has been available for many years and is essentially the same as that employed in ASDs, albeit in a different package. These portable, hand-held instruments detect the presence of alcohol in the ambient air surrounding the driver, but do not require the driver to blow directly into the device. The mere presence of alcohol in the vicinity of the driver’s face could be deemed

[†] An example is the Advanced Roadside Impaired Driving Enforcement (ARIDE) program available from the National Highway Traffic Safety Administration, Washington.



sufficient to provide the officer with the reasonable suspicion of alcohol in the body. Passive sensors are in use by many police departments in the United States, where they are considered an aid in the detection of alcohol as “an extension of the officer’s nose.” The procedure is virtually transparent to the driver and only takes a few seconds. A passive sensor would not be considered to provide direct evidence of alcohol use, only a reasonable suspicion sufficient to proceed with further testing.

Passive alcohol sensors might help with issues associated with mandatory breath tests. Although they have been shown to work,¹⁷ the passive sensor would be a second piece of alcohol detection equipment that the officer must carry and be trained to use. Technical and performance standards would need to be developed and the devices would need to be evaluated against the standards and approved for use.

Another option is to mandate breath tests for all drivers involved in a crash, regardless of severity. As part of the investigation of the crash, drivers involved would be required to provide a breath sample even if they are deemed not to be at fault. This approach could also be expanded to include drivers cited for a traffic violation. There is no evidence of the effectiveness of any of these latter options.

Of all the available alternatives, MAS would appear to offer the most expeditious and effective approach for enhancing deterrence and reducing the magnitude of the alcohol-crash problem in Canada. In the current climate of enhanced security in many aspects of daily life, MAS should present only a minor personal inconvenience for the sake of enhanced road safety for all. It is, however, critical that MAS be subject to a comprehensive process and impact evaluation to ensure it is operating efficiently and is effective in achieving its anticipated objectives.

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