



## TRANSIT POLICE

# IMPAIRED DRIVING

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## POLICY

### Definitions

ADP – Administrative Driving Prohibition under Section 94.1(1) of the MVA.

Approved Breath Test Analysis Instrument – An evidentiary instrument that receives and analyses breath tests pursuant to Section 254(1) of the Criminal Code.

ASD – Approved Screening Device, as set out in Section 254(1) of the Criminal Code.

ASD Coordinator – One or more persons designated by the Chief Officer to manage the Transit Police ASD Program.

BTA Operator – A person designated by the Attorney General of British Columbia and who is qualified annually to conduct BTA tests.

BTA Test – Breath Test Analysis is an evidentiary test conducted on an “Approved Breath Test Analysis Instrument” pursuant to Section 254(1) of the Criminal Code.

BTAC – Breath Test Advisory Committee; a subcommittee of the British Columbia Association of Chiefs of Police – Traffic Safety Committee which sets standards for the ASD and other breath testing equipment respecting use, maintenance and record keeping.

Charter – Canadian Charter of Rights and Freedoms, Constitutional Act, 1982, c. 11(U.K.), Schedule B.

Criminal Code – Criminal Code of Canada [RSC 1985, c. C-46].

Chief Officer – The Transit Police Chief Officer or designate.

Designated Constables – The Transit Police police officers appointed by the Police Board.

GO – General Occurrence Report on the Police Records Information Management Environment (PRIME).

ICBC – Insurance Corporation of British Columbia.

IRP Program – Immediate Roadside Prohibition Program under Section 215.25 of the MVA.

JPD – Jurisdictional Police Department.

Member – Designated Constable, the Chief Officer or a Deputy Chief Officer of the Transit Police.

MVA – British Columbia Motor Vehicle Act [RSBC 1996], Chapter 318.

PSC – Public Service Counter at Transit Police Headquarters.

RoadSafetyBC – Effective, May 30, 2014, the official name for the office of the Superintendent of Motor Vehicles for the Province of British Columbia (replaces use of “OSMV”).

RSS – Record Services Section within the Transit Police Support Services Division, which includes operation of the PSC.

Statement of ASD Function – A document produced by the RCMP Forensic Laboratory that describes the function, attributes, and limitations of the ASD. This document is sent along with a Certificate of Calibration to RoadSafetyBC (Transit Police Form OZ470) for every ASD test on each ASD.

Transit Police – The South Coast British Columbia Transportation Authority Police Service.

VI – Vehicle Impoundment under Section 215.46 and Section 251 of the MVA.

Zero BAC – A condition of license under the graduated licensing program and the remedial driving program under various sections of the MVA. It means that an operator with a restriction is permitted to drive only if he/she has no alcohol in their blood.

## **Authority**

1. Members will conduct impaired operation investigations pursuant to the Criminal Code and MVA, and the policies and procedures of RoadSafetyBC and Police Board, as amended from time to time.

## **General**

2. The Transit Police will operate a roadside ASD Program and trained Members may conduct ASD tests in compliance with the laws and related regulations and directives.
3. Members will:
  1. assume full investigation responsibility for IRPs and 12 Hour and 24 Hour Roadside Prohibitions pursuant to the MVA that they initiate; and

2. conduct Impaired Driving investigations under the Criminal Code, including conducting of BTA Tests and blood tests when required. Members will process.
4. The Transit Police will maintain an ASD program that will conform to the practices and procedures established by the BTAC, as amended from time to time.

## PROCEDURES

5. Members coming into contact with a suspected impaired operator will:
  1. notify the Patrol Supervisor; and
  2. proceed with impaired investigation in accordance with policy and the laws.

## APPROVED SCREEING DEVICES (ASD) & IMMEDIATE ROADSIDE PROHIBITION (IRP) PROGRAM

6. S. 254(2) of the Criminal Code provides that when a peace officer has a **reasonable suspicion** that the operator or a person in care or control of an aircraft, a motor vehicle, or a vessel, has alcohol in his or her body, a demand for a sample of that person's breath can be made for analysis in an ASD.
7. ASDs may assist in apprehending alcohol drinking operators who exhibit minimal symptoms of impairment because they have low blood alcohol levels or because they have a high tolerance of alcohol and do not exhibit typical symptoms.
8. The purpose of using an ASD is to detect alcohol drinking operators with a blood alcohol concentration in excess of the legal limit and to establish reasonable and probable grounds to support a demand for a breath test.
9. ASD testing is only an aid to the Member when conducting an impaired operation investigation. Members must also observe and record impaired driving evidence and physical symptoms of impairment.
10. There is no requirement for a Member to enquire of a suspected impaired operator when he/she last consumed liquor. However, the suspect may volunteer that information either spontaneously or in response to a query of the Member.
  1. Where the police officer is aware of circumstances that would result in the presence of mouth alcohol during testing, rendering the results of the ASD unreliable, the ASD test must be delayed for 15 minutes, or if discovered after the ASD test, disregard those results and redo the test. (Keep the operator under observation to ensure that there is no possibility of undetected consumption of alcohol, or regurgitation or vomiting that could affect the test result.)  
[Refer to **R. v. Bernshaw** (Unreported, SCC 23748, January 27, 1995) (SCC)]

11. The Charter notification need not be given to a detained operator prior to demanding and proceeding with an ASD test. [Refer to *R. v. Bernshaw* (Unreported, SCC 23748, January 27, 1995) (SCC) and *R. v. Thomsen*, (1988) 1 SCR 640]
12. Only ASDs approved under s. 254 of the Criminal Code will be used by the Transit Police.
  1. Only Members who have successfully completed the ASD Operator's Course and received orientation training on a specific model of ASD may operate that model of ASD.
  2. Only Members who are trained to calibrate a specific model of ASD may perform that calibration.
  3. Malfunctions or unusual test results should be reported immediately to the ASD Coordinator and the ASD be removed from service.
13. The Transit Police ASD Program will be implemented in accordance with the Transit Police Standard Operating Procedure SOP51, under the oversight of the Deputy Chief Officer Operations.

**[Refer to: SOP51 – ASD Program]**

#### **Member**

14. If the Member has **reasonable and probable grounds to believe** that the operator or person in care or control of an aircraft, motor vehicle, or vessel, whether or not that vehicle is in motion, **is impaired by alcohol**, the Member will make a demand for a BTA test rather than an ASD demand, and proceed with a Criminal Code investigation for impaired driving, following procedures set out in ss. 35 to 75 of this policy.
15. If the Member has only **reasonable grounds** that the operator or person in care or control of an aircraft, motor vehicle, or vessel, whether or not that vehicle is in motion, has alcohol in their body, the Member will make the following demand for an ASD test (or demand as otherwise amended by Crown Counsel from time to time):

**“In accordance with the provisions of the Criminal Code, I hereby demand that you provide a sample of your breath, forthwith, suitable for analysis using an approved screening device.”**
16. The Member must proceed with the ASD test forthwith, as specified in the demand.
  1. Where the Police Officer is aware of circumstances that would result in the presence of mouth alcohol during testing, rendering the results of the ASD unreliable, the ASD test must be delayed for 15 minutes, or if discovered after the ASD test, disregard those results and redo the test. (Keep the operator under observation to ensure that there is no possibility of undetected consumption of alcohol, or regurgitation or vomiting that could affect the test result.)

**IRP Pass**

17. When the ASD test result is 49 mg% and below, and the operator is subject to Zero BAC restriction, Members will follow procedures as set forth in ss. 85 & 86 of this policy. If the operator is not subject to a Zero BAC restriction under Section 90.3 of the MVA, the Member will release the operator.
18. When the ASD test result is 50 mg% to 59 mg%, the Member will consider issuing a 24 Hour Prohibition if there is reason to believe that the operator’s ability to drive is affected by alcohol. Members to follow procedures as set forth in ss. 76 through 79 of this policy.

**IRP Warn or Fail**

19. When a Warn or Fail is registered on the ASD, or the operator refuses to provide a breath sample on an ASD upon lawful demand, the Member will proceed under the IRP Program unless the Member determines to take action pursuant to the Criminal Code.
  1. When a Fail result is registered after the first ASD test, the Member will need to consider whether to continue under the IRP Program or to proceed with a Breathalyzer demand under s. 254(3) of the Criminal Code and impaired driving investigation as set forth in ss. 35 to 75 of this policy.
20. Upon proceeding under the IRP Program with a Warn or Fail result, the Member will (with the assistance of an official IRP Program card):
  1. advise the operator that he/she is prohibited from driving and require the operator to surrender their Driver’s Licence;
  2. advise the operator that he/she has a right to a second test on a different ASD; and
  3. if requested by the operator, provide the operator with a second ASD on a different ASD instrument.
21. The Member’s subsequent action under the IRP Program will be as follows:

**ASD RESULTS MATRIX**

1 <sup>st</sup> ASD Test	2 <sup>nd</sup> ASD Test	Sanction
Digital Result	No further ASD test	<ul style="list-style-type: none"> <li>• 24 Hour Prohibition, or</li> <li>• 12 Hour Suspension, or</li> <li>• No Sanction</li> </ul>
WARN OR FAIL	Digital Result	<ul style="list-style-type: none"> <li>• 24 Hour Prohibition, or</li> <li>• 12 Hour Suspension, or</li> <li>• No Sanction</li> </ul>
WARN	Declined or/Did not provide	WARN IRP
WARN	WARN	WARN IRP
WARN	FAIL	WARN IRP
FAIL	WARN	WARN IRP

FAIL	Declined or/Did not provide	FAIL IRP
FAIL	FAIL	FAIL IRP
Failed to provide	N/A	REFUSAL IRP
REFUSAL	N/A	REFUSAL IRP

- 22. When an IRP FAIL, IRP 30 Day warning or a REFUSAL results, the Member MUST impound the vehicle.
- 23. When an IRP WARN with either a 3 day or 7 day sanction results, the Member may impound the vehicle for either 3 days or 7 days as the case may be.
- 24. When considering an impoundment under s. 23 of this policy the Member will consider the risk associated with not impounding the vehicle and decide accordingly. Consideration will be given to:
  - 1. the operator's level of cooperation and appreciation for the issue of impaired driving which includes but is not limited to:
    - a. previous driving record,
    - b. comments made to the Member that suggest the operator will or will not abide by the prohibition;
  - 2. the likelihood that the operator will drive contrary to the prohibition based on circumstances such as living in a remote location without transportation alternatives;
  - 3. the availability of a sober and responsible alternate operator; and
  - 4. any other conditions or circumstances that the Member considers relevant to the decision of whether or not to impound the vehicle.
- 25. All considerations with respect to the decision made by the Member under s. 24 will be documented on PRIME.
- 26. Where VI is occurring, the Member will request a tow truck and provide the tow truck driver the completed Impound Lot Operators (I.L.O.) copy of the MV2721.

**IRP Program – Refusal**

- 27. If the operator refuses to comply with the demand for an ASD test, the Member will:
  - 1. ensure the ASD is available to receive a sample and the operator understands the demand;
  - 2. provide the operator with the first verbal Notice of Prohibition as stated on the IRP information card;
  - 3. inform the operator that he/she may be charged for refusing to provide a suitable breath sample under s. 254(5) of the Criminal Code;

4. if the operator still refuses or fails to provide a breath sample:
  - a. seize the Driver's Licence;
  - b. complete the IRP Notice of Prohibition with "90 Days Refusal" checked;
  - c. proceed with 30-day VI;
5. OR alternately, where the Member has determined there are aggravating circumstances and public interest considerations, proceed instead with charge under the Criminal Code;
  - a. issue an Appearance Notice for refusing to comply with the demand provided that the operator is properly identified and meets the public interest criteria;
  - b. issue an ADP under s. 94.1(1) of the MVA; and if the Member has reasonable and probable grounds to believe that the operator's ability to drive a motor vehicle is affected by alcohol, invoke a 24 Hour Prohibition under s. 215 of the MVA (Temporary Driving Prohibition).

### **IRP Documentation and Processing**

28. Once the final IRP result is determined, the Member will complete the following forms and serve a copy on the operator:
  1. IRP Notice of Prohibition (MV2723);
  2. VI Notice of Impoundment (MV2721) (only if vehicle is impounded).
29. The Member will also complete the following forms (not served on operator):
  1. IRP Report to Superintendent (MV2724); and
  2. VI Report to Superintendent (MV2722).
30. The Member will obtain a copy of the Certificate of ASD Calibration for each ASD used.
31. The following documents will be submitted to RoadSafetyBC by fax or other electronic means prior to shift end:
  1. the documents set out in ss. 28, 29 and 30;
  2. Statement of ASD Function;
  3. a copy of the PRIME Narrative (optional); and
  4. any other relevant documents to support the Member's decision to issue an IRP sanction.

32. Once the IRP and VI forms have been served and documents submitted electronically to RoadSafetyBC, the Member will:
  1. place the seized Driver's License in an envelope and attach the envelope to the white copies of the MV2723 and MV2724, and if completed, the MV2721 and MV2722; and
  2. place white copies in the assigned RSS In Basket for records processing.
33. The RSS will scan the documents to the GO, shred all original documents except the Notice of Prohibition (MV2723), attach the Driver's Licence to the MV2723, and mail the Driver's Licence and MV2723 to RoadSafetyBC. Where there is no Driver's Licence to attach, the RSS will destroy the MV2723 after scanning to the GO.
34. The Member will be required to complete a GO, including the Roadside Prohibition Template with the text type "SY" in the GO (Members may complete an additional narrative text page to further explain the incident if necessary).
  1. When a Warn has resulted, use the applicable UCR code:
    - a. 8120-41: 215ALCOH IRP WARN-3DAY; or
    - b. 8120-42: 215ALCOH IRP WARN-7DAY; or
    - c. 8120-43: 215ALCOH IRP WARN-30DAY;
    - d. 8110-90: VI-Vehicle Impoundment; and
    - e. the operator will be role coded as a "Driver" and a CCJS status of "B" – founded not cleared chosen.
  2. When a Fail has resulted, use UCR codes:
    - a. 9230-2: Drive Over .08;
    - b. 8120-44: 215ALCOH IRP FAIL ASD-90DAY;
    - c. 8110-90: VI-Vehicle Impoundment; and
    - d. the operator will be role coded as a "Suspect Chargeable" and a CCJS status of "O" – departmental discretion chosen.
  3. When a Refusal has resulted, use UCR codes:
    - a. 9240-2 FAIL/REFUSE TO PROVIDE BREATH;
    - b. 9230-2: Drive Over .08;
    - c. 8120-45: ALCOH IRP REFUSE ASD-90DAY;
    - d. 8110-90: VI-Vehicle Impoundment; and
    - e. the operator will be role coded as a "Suspect Chargeable" and a CCJS status of "O" – departmental discretion chosen.

## BREATH TESTS

35. S. 254(3) of the Criminal Code provides that when a peace officer on **reasonable and probable ground believes** that a person is committing or at any time within the preceding three hours has committed an offence under s. 253 of the Criminal Code, the peace officer may make a demand to that person, forthwith, or as soon as is possible, to provide samples of that person's breath, or where certain conditions exist, a sample of that person's blood.

36. Reasonable and probable grounds for a breath demand may be obtained from a number of different sources, including observations of driving, observations of physical symptoms displayed by a person, results of an ASD test or a combination of these indicators.
1. The operational requirements of s. 215 of the MVA provide a basis for the administration of physical co-ordination testing prior to reading a person his/her s. 10(b) Charter Rights. Although the person is detained when asked to perform physical co-ordination tests, this is considered a reasonable limit on the person's s. 10 Charter Rights. However, the evidence obtained in this fashion is not likely to be accepted as evidence of impairment at any subsequent criminal trial. [**R. v. Bonin** (1989) 47 CCC (3d) 230 (BCCA)]
  2. Record observations of a suspected impaired operator.
37. A peace officer is only required to **form a belief** that an impaired operation offence has been committed within the preceding three hours. [Refer to **R. v. Deruelle** (1991) 15 C.R. (4<sup>th</sup>) 215 (SCC)]
1. The demand may be made even after the three hour period has expired but it must be made forthwith as soon as is practicable.
38. S. 258(6) of the Criminal Code stipulates that the qualified technician may be subpoenaed by the accused only with leave from the court.
39. Pursuant to s. 258(1) of the Criminal Code, where the first of the breath samples is obtained within **two hours of the time of driving**, the results of the lowest of the analyses of these samples is presumed to be the concentration of alcohol that the operator had in his or her blood at the time of the operation ("the presumption").

### Investigator

40. When conducting an impaired operation investigation, the Member will attempt to gather as much evidence of impairment as possible, including: observations of driving, observations of physical symptoms displayed by an operator, evidence from a civilian, or any available combination these or other indicators.
1. If the Member intends to request that an operator perform physical coordination tests at the roadside, in order to improve the likelihood of the test results tests being admitted in evidence at trial, the Member should:
    - a. advise the operator that he/she is being detained for investigation of the offence of impaired driving;
    - b. provide a s. 10(b) Charter warning prior to requesting they perform any tests;
    - c. advise that he/she are under no obligation to perform the tests and that any evidence obtained from the tests may be given in evidence; and
    - d. where the operator, after being provided with an s. 10(b) Charter warning, indicates that he/she wishes to consult with counsel or does not wish to perform roadside tests, *do not proceed with physical coordination tests at the roadside.*

2. ASD testing is the only **legally compellable** procedure that the Member may impose upon an operator in an impaired operation investigation.
  3. The Member must not delay giving an ASD or BTA demand once they have sufficient grounds. The Member should continue to make and record observations, but physical tests that result in delay of the administration of an ASD or BTA test will be held inadmissible.
41. If the Member has reasonable and probable grounds to believe that an operator of an aircraft, motor vehicle, or vessel (including care or control) is impaired by alcohol, or has committed the offence within the preceding three hours, the Member to make the following demand:
- “I have reasonable and probable grounds to believe that you are committing, or within the preceding three hours have, as a result of the consumption of alcohol, committed an offence under s. 253 of the Criminal Code of Canada, and I hereby demand that you provide now, or as soon as practicable, such samples of your breath as are necessary to enable a proper analysis to be made to determine the concentration, if any, of alcohol in your blood and to accompany me for the purpose of enabling such samples to be taken.”**
42. Immediately after reading the breath demand, the Member is to provide that operator with the s. 10 Charter notification and a police caution.
43. The Member will provide the detainee/operator with a reasonable opportunity to consult counsel.
1. Once a person has indicated that they wish to consult with counsel, the Member must not solicit statements or request that the person participate in any sobriety tests, including breath tests, until such time as the right to counsel has been exercised or abandoned.
    - a. A person’s right to counsel takes priority over the two hour presumption in s. 258(1)(c)(ii) of the Criminal Code.
    - b. Although the Member may not solicit any evidence, the Member may record any observations made or any evidence which is volunteered by the detainee/operator.
  2. In the event the detainee/operator indicated that he/she she wishes to consult counsel and later indicates that he/she has changed his/her mind, the Member will:
    - a. inform the person that he/she has the right to a reasonable opportunity to contact counsel;
    - b. inform the person that the police are obliged to not elicit any incriminating evidence from that person; and
    - c. ask that person whether he/she wishes to consult counsel. If the person informs the Member that he/she still does not wish to consult counsel, consider that person to have waived the right to counsel and proceed with the breath test and record any statement the person wishes to make.

[Refer to ***R. v. Prosper*** (Unreported, SCC #23178, September 29, 1994)(SCC)]

44. Where the Member makes a breath demand at the roadside, also invoke the 24 Hour Prohibition pursuant to s. 215 of the MVA.
45. If the operator refuses to or fails to comply with the breath demand, the Member will:
  1. issue an Appearance Notice for refusing to comply with the demand provided that the operator is properly identified and meets the public interest criteria, issue an ADP under s. 94.1(1) of the MVA, and a 24 Hour Prohibition under s. 215 of the MVA; and
  2. complete a RTCC recommending charges under the appropriate sections.
46. Once the BTA demand is made, the operator will be searched, secured, and transported to the nearest BTA instrument and BTA operator without delay.
47. A police building where the BTA tests are to occur is usually the first opportunity for the operator to exercise his/her right to counsel. Even if the operator has waived his/her right to counsel, it is a good practice to repeat the offer of access to counsel once again.
48. Upon completion of access to counsel, the investigating Member must commence a 20 minute "face to face" observation of the operator to ensure that no burping, belching, or regurgitation occurs, and that no substances are placed in the operator's mouth.
49. An operator requesting a drink of water should be provided with water if available.
  1. Any interruption of the "face to face" observation, including but not limited to access to counsel or the use of the washroom, requires the "face to face" observation to be restarted.
50. If the operator does burp, belch or regurgitate, the BTA operator should be consulted for procedural advice.
51. After the operator has consulted with counsel and has been given a police caution and has not indicated that he/she does not wish to give a statement, the Member may use this 20 minute period attempt to gather as much information as possible concerning the operator's drinking pattern leading up to the offence, including the time of the last drink, time(s) of consumption, quantities, and types of beverages consumed. Also, attempt to determine what and when the operator last ate.
52. If the operator's **lowest reading** of blood alcohol concentration is:
  1. 100 mg/100 ml or greater - complete a RTCC recommending that the operator be charged under s. 253(b) of the Criminal Code, or both ss. 253(a) and 253(b) where there is physical and/or driving evidence to also support the impaired operation offence;
  2. less than 100 mg/100 ml - recommend charges under s. 253(a) of the Criminal Code **only** where there is physical and/or driving evidence to support prosecution;

3. 50 mg/100 ml or less - terminate the s. 215 MVA prohibition and return operator's licence to the operator.
53. Where the operator's blood alcohol concentration is shown to be greater than 80 mg/100 ml, the Member may proceed by way of the Criminal Code and an ADP under s. 94.1(1) of the MVA, or just an ADP.
54. After the Member receives the Certificate of a Qualified Technician, the Member is to complete the Notice of Intention portion and serve a true copy on the operator tested prior to his or her release from custody.
1. The Member may continue the detention of a person after a breath test while the Member prepares an appearance notice and/or the 24 Hour Prohibition, as it is in the public interest to do so. Persons are not to be detained to allow a Member to make his or her notes or complete internal reports or certificates. [Refer to **R. v. Madsen** (1994) 89 CCC (4th) 501 (BCCA)]

## BLOOD SAMPLES

55. S. 254(3) of the Criminal Code provides that when a peace officer on **reasonable and probable grounds believes** that a person is committing or at any time within the preceding **three hours** has committed, **as a result of the consumption of alcohol**, an offence under s. 253 of the Criminal Code and the person is incapable of providing or it would be impractical to obtain samples of that person's breath (e.g., the person requires immediate medical attention making it impractical to obtain breath), the peace officer may make a demand to that person to provide samples of his/her blood.
1. There is no provision for demanding blood samples from an operator who is **drug-impaired only** and *is capable of consenting* to provide blood samples.
  2. Pursuant to s. 258(5) of the Criminal Code, a sample of blood obtained by way of a blood demand or a warrant, for the purpose of determining the concentration of alcohol in the blood, may also be tested for the presence of drugs.
56. A peace officer need only **form a belief** that an impaired operation offence has been committed within the preceding three hours. The demand may be made even after the three hour period has expired. The Member must, however, make the blood demand **forthwith and soon as is practicable** after he/she has formed the belief that the person committed an impaired operation offence.
57. S. 256 of the Criminal Code authorizes a justice to grant a Warrant to Obtain Blood Samples when the conditions in s. 256(1) are met. The Warrant to Obtain Blood Samples may only be granted where:
1. the person has committed an offence under s. 253 of the Criminal Code **within the preceding four hours;**
    - a. the impairment may be as a result of the consumption of alcohol or a drug;

- b. the person was involved in an accident resulting in the death of another person or in bodily harm to himself or herself or to another person;
  - c. a physician is of the opinion that the person is physically or mentally unable to consent to the taking of the blood sample; and
  - d. the physician is also of the opinion that the taking of the blood samples would not endanger the life or health of the person.
58. Pursuant to s. 258(5) of the Criminal Code, a sample of blood obtained by way of a blood demand or a warrant for the purpose of determining the concentration of alcohol in the blood, may also be tested for the presence of drugs.
59. A police seizure of blood not pursuant to a demand and without a warrant may result in a breach of s. 8 of the Charter. [Refer to *R. v. Dymont* (1988) 45 CCC (3d) 244(SCC) and *R. v. Collarusso* (1994) 87 CCC (3d) 193 (SCC)]
60. A search warrant must be used to obtain confidential information from hospitals and medical professionals. [Refer to *R. v. Dersch* (1994) 85 CCC (3d) 1 (SCC)]
61. S. 258 (1)(d) of the Criminal Code provides that evidence of the results of analysis of the blood (i.e. Certificate of Analysis), except where there is evidence to the contrary, is evidence of the concentration of alcohol in the blood of the accused at the time of the offence, where:
  1. the blood samples are taken within **two hours** of the offence; and
  2. the accused was served notice that:
    - a. he/she is charged with an impaired operation offence;
    - b. the Crown has had a sample of the accused blood analyzed; and
    - c. a second sample was taken from the accused and that sample is available for testing by or on behalf of the accused. [Refer to *R. v. Egger* (1993) 21 C.R. (4th) 186 (SCC)]
62. If the blood samples were taken more than two hours after the time of operation or care or control, an expert witness from the Alcohol Section, Forensic Laboratory Vancouver (FLV), will be required for court.
  1. Do not serve a Certificate of Analysis on the accused in these situations.
63. Blood Samples may only be taken by a qualified medical practitioner or by a qualified technician under the direction of the qualified medical practitioner.
64. Persons designated by the Attorney General as being "qualified technicians" for the purpose of taking blood samples are:
  1. Registered Nurses within the meaning of the Nurses (Registered) Act, RSBC 1979 c.302;
  2. Certified members of the Canadian Society of Laboratory Technologists;
  3. Certified Laboratory Assistants of the Canadian Society of Laboratory Technologists; or

4. Persons who are employed by a hospital and who in the normal course of employment take blood samples.
65. The use of hospital emergency wards and staff to obtain blood samples is restricted to those cases where an operator is taken to a hospital for medical treatment and is not able to be taken for a breath test.
66. The taking of the blood samples for impaired operation investigations is entirely under the control of the hospital staff.
1. S. 257 of the Criminal Code makes it clear that neither a qualified medical practitioner nor a qualified technician who refuses to take a blood sample or who refuses to have a blood sample taken pursuant to either s. 254 or s. 25 Criminal Code commits an offence.
  2. Members must not interfere with the primary function of emergency ward or other hospital staff.
67. Members are to check the Approved Blood Sample Container Kit for expiry date prior to use.
1. Kits may be used past their expiry date where the use of the sample tubes is successful. FLV advises that the expiry date refers to the vacuum in the tubes, not to the chemical stabilizers.
  2. Although use of the Approved Blood Sample Container Kit is preferred, alternative procedures may be used to take the blood samples provided:
    - a. a non-alcohol swab is used;
    - b. the syringe is kept away from any alcohol solution;
    - c. a vial such as a Becton-Dickinson 3200 P.S., 10 ml size, containing 20 mg of potassium oxalate and 25 mg of sodium fluoride is used; and
    - d. two vials of blood are taken.

### Investigator

68. Following arrival at a hospital emergency ward and if the conditions in s. 254(3) are met respecting the consumption of alcohol and the inability to obtain breath samples, the Member to determine if the operator is capable of understanding the nature of a demand for blood samples.
69. If the operator **is capable of understanding the demand:**

The Member to read the following demand: "**I have reasonable and probable grounds to believe that you are committing, or within the preceding three hours have, as a result of the consumption of alcohol, committed an offence under Section 253 of the Criminal Code, and I hereby demand that you provide now, or as soon as practicable, such samples of your blood as are necessary to enable a proper analysis to be made to determine the concentration, if any, of alcohol in your blood. Samples of your blood will be taken by, or under the**

**direction of, a qualified medical practitioner who is satisfied that the taking of those samples will not endanger you or your health."**

1. Immediately after reading the demand, give the ss. 10(a) and 10(b) Charter warnings.
2. If the operator **refuses** to provide a blood sample:
  - a. issue an appearance notice for refusing to comply with the demand and, if sufficient evidence to support prosecution, for impaired operation;
  - b. complete a RTCC recommending a charge under s. 254(5) of the Criminal Code (and s. 253(a) of the Criminal Code where appropriate); and
  - c. issue an ADP under s. 94.1(1) of the MVA and a 24 Hour Prohibition under s. 215 of the MVA.
3. If the operator **consents** to provide blood samples, the Member will:
  - a. request that a qualified medical practitioner take two blood samples or that he/she direct that a qualified technician take two blood samples;
  - b. complete the appropriate certificate(s);
  - c. review the certificate(s) with the qualified medical practitioner or qualified technician and have the certificates signed; and
  - d. serve the certificates on the operator providing the samples.
4. If the operator is **incapable of consenting** to the taking of samples of his or her blood, **and** there are reasonable and probable grounds to believe that he/she has committed an offence under s. 253 of the Criminal Code as the result of the consumption of *alcohol or a drug*, **and** the operator was involved in an accident resulting in injury or death, **and** the taking of blood samples would not endanger the life or health of the operator, the Member will:
  - a. make application for a Warrant to Obtain Blood Samples under s. 256(1) of the Criminal Code either in person or by telewarrant;
    - i. Warrant applications must be made within four hours of the operation or the care or control;
  - b. after a Warrant to Obtain Blood Samples has been issued, advise the qualified medical practitioner that the warrant has been obtained;
  - c. provide an Approved Blood Sample Container Kit or use the alternative procedure outlined at s. 67;
  - d. serve a copy of the Warrant to Obtain Blood Samples on the person from whom the blood samples were taken as soon as practicable (refer to s. 256(5) of the Criminal Code);
  - e. complete the Certificate of a Qualified Medical Practitioner Who Caused Blood Samples to be Taken or the Certificate of the Qualified Technician Who Took Blood Samples and ensure they contains the notices that:
    - i. the accused is charged with an impaired operation offence;
    - ii. the Crown has had a sample of the accused blood analyzed; and
    - iii. second sample was taken and that sample is available for testing by or on behalf of the accused;
  - f. review these certificates with the qualified medical practitioner or qualified technician and request that he/she sign the appropriate certificate;
  - g. serve the documents on the person from whom blood was taken;

Processing Seized Blood Exhibits

- h. take possession of the blood samples directly from the person who took them in order to minimize the number of witnesses required for court;
  - i. label and mark samples #1 and #2, and legibly **print** the following information on the labels of the two samples: first and last name of person from whom the samples were taken; and date and time;
  - j. request that the person who took the samples legibly initial the samples in the space provided;
  - k. initial and seal both samples;
  - l. make the blood samples subject of an exhibit report;
  - m. ensure that the vial label is the only label used and that the seal does not cover any part of the label;
  - n. file a Report to a Justice;
  - o. forward the two blood samples to FLV with Request for Analysis, and ensure that the Member notes that the samples were obtained under s. 254(3) of the Criminal Code. This will ensure that the correct Certificate of Analysis is completed.
    - i. The first sample will be analyzed by FLV. This vial will be returned with a Certificate (for proof of continuity for court purposes if applicable). The second sample will be returned with the first sample.
70. The Member will upon receipt of a Certificate of Analysis from the FLV which certifies that the concentration of alcohol in the blood sample exceeded 100 mgs alcohol in 100 ml of blood:
- 1. serve the person from whom the blood was taken with a copy of the Certificate of Analysis, Notice of Intention to Produce Certificate and an Appearance Notice compelling attendance at court in approximately three weeks; and
  - 2. complete and forward a RTCC.

71. Where the operator's blood alcohol concentration is shown to be greater than 80 mg /100 ml, the Member will issue an ADP under s. 94.1(1) of the MVA.

**Analysis of the Second Blood Sample by an Accused**

72. S. 258(4) of the Criminal Code provides that, within three months from the time the samples were first taken, an accused may make application to the court to obtain one of the samples.
73. If an application under s. 258(4) of the Criminal Code is received for the sample, the Transit Police will provide the sample to the accused.
74. If no application is made under s. 258(4) of the Criminal Code within the three month period, the samples are to be retained for court purposes and the subsequent appeal period.
75. At the conclusion of the appeal period, the Transit Police is to obtain an Order for Forfeiture of Things Seized and destroy the blood samples.

**SECTION 215 MVA – 24 HOUR ROADSIDE PROHIBITION****Issuance**

76. A Member exercising their authority under the provisions of s. 215 of the MVA must be satisfied that:

1. the person was the operator of a motor vehicle, which includes a person having care or control of a motor vehicle on a highway or industrial road whether or not the motor vehicle is in motion; and
2. the Member has reasonable and probable grounds to believe that the operator's ability to drive a motor vehicle is affected by either alcohol and/or a drug.

77. The Member will follow this procedure on the road:

1. read the 24 Hour Roadside Prohibition to the operator from the warning card;
2. seize the Driver's Licence;
  - a. the Member requesting the surrender of a Driver's Licence is responsible for verifying that the name and address on the Driver's Licence are correct, and that the operator is not presently under suspension or prohibition;
  - b. if the operator refuses or fails to surrender the Driver's Licence, the Licence is still considered to be under prohibition for the period of 24 hours;
3. complete a Notice of 24 Hour Prohibition and Report to ICBC - Form MV2634;
4. have the operator sign the acknowledgment of the Notice of Driving Prohibition;
5. read the back of the Driver's copy of the prohibition notice (blue copy) to the operator in its entirety;
  - a. right to a blood alcohol test to determine blood alcohol level if prohibition was for alcohol;
  - b. right of review;
  - c. notice of driving record;
6. if the operator requests a breath test and a roadside screening device is utilized and the results are:
  - a. Pass - return the Driver's Licence;
  - b. Warning - continue with the 24 Hour Prohibition;
  - c. Fail - continue with the 24 Hour Prohibition and consider a charge of impaired driving;
7. if the Member continues with the 24 Hour Prohibition;
  - a. advise the operator that his/her Licence will be retained at the PSC for pickup only by the operator, for a period of 7 days;
  - b. at the discretion of the investigating officer, impound the vehicle;
    - i. if the vehicle is parked in a safe manner or if there is another person present who is capable of operating the vehicle, there is no need to impound the vehicle unless the Member believes that the operator will disobey the prohibition;

- ii. impounding a vehicle should occur when: the location of the vehicle poses a hazard to traffic; the investigator has reasonable grounds to believe that the subject of the prohibition will attempt to operate the vehicle prior to the expiration of the prohibition period; or if the operator has a history for previous prohibitions;
    - iii. when impounding a vehicle, the Member will: take reasonable steps to notify the owner of the vehicle of the impoundment and any costs incurred, if the operator is not the owner; allow the owner or operator of the vehicle to remove any property in or on the vehicle; and ensure all occupants are transferred to a safe place where they can arrange for transportation;
    - iv. no person shall permit the vehicle to be removed from impound before the 24 hour period has expired, unless authorized by a peace officer or court;
  - c. supply the green copy of the form to the tow truck operator (if the vehicle was impounded);
  - d. leave the white and yellow copies attached (possibly green copy also);
8. provide the following information to the OCC to facilitate a CPIC entry:
  - a. location of the vehicle;
  - b. make, color and Licence number of the vehicle;
  - c. Driver's Licence number and name of the prohibited operator;
  - d. time of the prohibition;
  - e. name and badge number of the Member issuing the prohibition;
9. complete the back of the original copy in detail (these notes are critical to any review by the Superintendent of Motor Vehicles); and
10. If an operator attends to the PSC or otherwise notifies the issuing Member that he/she is in possession of a medical certificate, signed by physician, confirming that he/she is no longer above 49 mg%, the Driver's Licence will be returned and the CPIC entry removed. In this situation, the 24 Hour Prohibition document is still forwarded to ICBC and placed on the operator's record.

## Reporting

78. The Member will follow this procedure prior to the end of their shift:

1. attach the Driver's Licence (in envelope) to the two copies of Form MV2634 (DO NOT STAPLE THE DRIVER'S LICENCE);
2. submit Form MV2634 to their Supervisor for review;
3. create a GO;
4. enter the Notice of 24 Hour Prohibition control number (less alpha character) in "event to event" link;
5. enter operator's details;
6. enter vehicle details including seized/towed details; and

7. detail on the GO the grounds for the prohibition and justification for impounding the motor vehicle.

### **Supervisor**

79. The Member's Supervisor will:

1. review the Notice of 24 Hour Prohibition with special scrutiny of the documentation on the back of the ICBC Copy; and
2. review the GO,
  - a. if satisfied with the Notice of 24 Hour Prohibition, submit the Notice of 24 Hour Prohibition with the Driver's Licence attached to the PSC for processing; and
  - b. ensure that the CPIC entry was completed.

### **Records Personnel**

80. If a person arrives at the PSC to pick up his/her Driver's Licence and the PSC support clerk is satisfied that the person is the holder of the Driver's Licence, the clerk will:

1. have the person sign the bottom of the Notice of 24 Hour Prohibition acknowledging the return of the Licence and give the person their Licence;
2. complete the Return of Driver's Licence portion of Notice of 24 Hour Prohibition;
3. photocopy the back of the white copy and attach to the yellow copy; and
4. forward the white copy of the Notice of 24 Hour Prohibition to ICBC without delay.

81. If a person arrives at the PSC to pick up his/her Driver's Licence and the PSC support clerk is suspicious that the person may be under the influence of alcohol or a drug, the clerk will NOT RETURN THE LICENCE and immediately contact a Member.

82. If the person does not attend to pick up his/her Driver's Licence within 7 days, the PSC support clerk will:

1. complete the return of Driver's Licence portion of the Notice of 24 Hour Prohibition;
2. photocopy the back of the white ICBC Copy and attach to the yellow Police Copy; and
3. forward the Driver's Licence along with the white copy of the Notice of 24 Hour Prohibition to ICBC without delay.

83. Once the Driver's Licence has been returned to the holder or forwarded to ICBC, the PSC support clerk will make the necessary entries on PRIME as follows:

1. In GO:
  - a. enter CR Text page advising of the disposition of the Driver's Licence;
  - b. select Text from the Ring Menu;
  - c. press F5 to add new text;
  - d. enter the following:
    - i. **Type:** CR (Concluding Remarks),
    - ii. **Author:** Personnel's GV#,
    - iii. **Date:** F10 to enter today's date,
    - iv. **Role:** link to Person Prohibition issued  
enter Role # of Prohibited Driver and Sequence #,  
(e.g., Role 5 Seq#1, will link this to Driver #1 listed on entity)  
page
    - v. **Subject:** enter "Return of DL",
    - vi. **Hit enter:** Text editor will engage; and
  
2. In Text:
  - a. add information from the "Return of Driver's Licence" Form MV2634, into text confirming that the Driver's Licence was returned to operator or mailed to ICBC; and  
  
 [e.g., Driver's Licence #123456 belonging to "*person's name*" has been mailed to ICBC, attached to original Notice of 24 Hour Prohibition on "*enter date Driver's Licence mailed.*"  
OR  
 [e.g., Driver's Licence #123456 belonging to "*person's name*" was picked up on "*enter date.*" "*Person's Name*" supplied confirming identification.]
  - b. once text entered, hit F10 to SAVE information.

84. The PSC support clerk will forward the yellow Police Copy (with the attached photocopy of the back of the white ICBC Copy) of the Notice of 24 Hour Prohibition to Court Liaison for scanning into the GO.

1. Once the Notice of 24 Hour Prohibition is scanned into PRIME, Court Liaison will destroy the yellow Police Copy.

## SECTION 90.3 MVA – 12 HOUR LICENCE SUSPENSION

### Issuance

85. A Member exercising their authority under the provisions of s. 90.3 of the MVA must be satisfied that:

1. the operator holds a Driver's Licence on which a condition has been imposed under s. 25(10.1) of the MVA – "must not operate of a motor vehicle, or category of motor vehicle, while having alcohol in his or her body;"

2. the person was the operator of a motor vehicle, which includes a person having care or control of a motor vehicle on a highway or industrial road whether or not the motor vehicle is in motion; and
3. the Member has reasonable and probable grounds to believe that the operator has alcohol in his or her body.

86. The Member will follow this procedure on the road:

1. read the 12 Hour Licence Suspension to the operator from the warning card;
2. seize the Driver's Licence;
  - a. the Member requesting the surrender of a Driver's Licence is responsible for verifying that the name and address on the Driver's Licence are correct;
3. complete a "Notice of 12 Hour Licence Suspension" -- Form MV2906;
4. have operator sign the acknowledgment of the Notice of 12 Hour Licence Suspension;
5. read the back of the Driver's copy of the suspension notice (blue copy) to the operator in its entirety;
6. serve the blue copy on the operator, and;
7. provide the following information to the OCC to facilitate a CPIC entry:
  - a. location of the vehicle;
  - b. make, color and Licence number of the vehicle;
  - c. Driver's Licence number and name of the suspended operator;
  - d. time of the suspension; and
  - e. name and badge number of the Member issuing the suspension.

## Reporting

87. The Member will follow this procedure prior to the end of their shift:

1. attach the Driver's Licence to the two remaining copies of Form MV2906 (DO NOT STAPLE THE DRIVERS LICENCE);
2. submit Form MV2906 to their Supervisor for review;
3. create a GO;
4. enter the Notice of 12 Hour Licence Suspension control number (less alpha character) in "event to event" link;
5. enter operator's details;
6. while Members are not authorized to impound an operator's vehicle under s. 90.3 of the MVA, if the operator abandons the vehicle, the Member may have

the authority to tow the vehicle under municipal by-laws of other sections of the MVA. If towed, enter the details. Members will consider the following:

- a. if the vehicle does not pose a safety hazard, does not interfere with traffic and will not violate parking regulations, the operator may lock and park the vehicle at the scene;
- b. the operator may ask a qualified person to drive the vehicle provided that the person is sober and would not be driving contrary to any restriction of prohibitions of his/her Licence; or
- c. the operator may direct the removal of the vehicle being towed. The Member may assist in contacting a tow company for the operator however; the operator must understand that they are responsible for the costs of the tow. The tow will, in all respects, be considered a "private tow" should it present a traffic hazard; and

7. detail on the GO the grounds for the suspension.

### **Supervisor**

88. The Member's Supervisor will:

1. review the Notice of 12 Hour Licence Suspension; and
2. review the GO;
  - a. if satisfied with the 12 Hour Licence Suspension, submit the Notice of 12 Hour Licence Suspension with the Driver's Licence attached to the PSC for processing; and
  - b. ensure that CPIC entry was completed.

### **Records Personnel**

89. If a person arrives at the PSC to pickup up his/her Driver's Licence and the PSC support clerk is satisfied that the person is the holder of the Driver's Licence, the Clerk will:

1. have the person sign the bottom of the Notice of 12 Hour Licence Suspension acknowledging the return of the Licence and give the person his/her Licence;
2. complete the Return of Driver's Licence portion of Notice of 12 Hour Licence Suspension; and
3. forward the white copy of the Notice of 12 Hour Licence Suspension to ICBC without delay.

90. If a person arrives at the PSC to pick up his/her Driver's Licence and the PSC support clerk is suspicious that the person may be under the influence of alcohol or a drug, the clerk will NOT RETURN THE LICENCE and immediately contact a Member.

91. If the operator does not attend to pick up his/her Driver's Licence within 7 days, the PSC support clerk will:

1. complete the return of Driver's Licence portion of the Notice of 12 Hour Licence Suspension; and
  2. forward the Driver's Licence along with the white copy of the Notice of 12 Hour Licence Suspension to ICBC without delay.
92. Once the Driver's Licence has been returned to the holder or forwarded to ICBC, the PSC support clerk will make the necessary entries on PRIME as follows:

1. In General Occurrence:
  - a. enter CR Text page advising of the disposition of the Driver's Licence,
  - b. select Text from the Ring Menu,
  - c. press F5 to add new text,
  - d. enter the following:
    - i. **Type:** CR (Concluding Remarks),
    - ii. **Author:** Personnel's GV#,
    - iii. **Date:** F10 to enter today's date,
    - iv. **Role:** link to Person Prohibition issued  
 enter Role # of Prohibited Driver and Sequence #,  
 (e.g., Role 5 Seq#1, will link this to Driver #1 listed on entity)  
 page
    - v. **Subject:** enter "Return of DL",
    - vi. **Hit enter:** Text editor will engage, and
2. In Text:
  - a. add information from the "Return of Driver's Licence" on Form MV2906, into text confirming that the Driver's Licence was returned to operator or mailed to ICBC;
 

[e.g., Driver's Licence #123456 belonging to "*Person's Name*" has been mailed to ICBC, attached to original Notice of 12 Hour Licence Suspension on "*enter date Driver's Licence mailed.*"

OR

[e.g., Driver's Licence #123456 belonging to "*Person's Name*" was picked up on "*enter date.*" "*Person's Name*" supplied confirming identification.]
  - b. once text entered, hit F10 to SAVE information.

93. The PSC support clerk will forward the yellow Police Copy of the Notice of 12 Hour Licence Suspension to Court Liaison for scanning into the GO.

1. Once the Notice of 12 Hour Licence Suspension is scanned into PRIME, Court Liaison will destroy the yellow Police Copy.

### **SECTION 215(3) MVA – DRUG IMPAIRED**

94. S. 215(3) of the MVA refers to when an operator is affected by a drug. Whenever possible, a Member who is prohibiting an operator under s. 215(3) of the MVA will request the assistance of a Standardized Field Sobriety Test (SFST) or Drug

Recognition Expert (DRE) trained police officer to conduct the SFST battery to determine drug involvement.

95. If a prohibition is issued because the operator is impaired by drugs, the operator has a right to not accept the prohibition and attempt to satisfy the Member having charge of the matter that their ability to drive a motor vehicle is not affected by a drug other than alcohol. If the Member is so satisfied, the prohibition from driving is terminated and the CPIC entry will be removed.

### **References**

British Columbia Motor Vehicle Act, [RSBC 1996], Chapter 318

*Canadian Charter of Rights and Freedoms, Constitutional Act, 1982, c. 11(U.K.), Schedule B*

Criminal Code of Canada [RSC 1985, c. C-46]