



TRANSIT POLICE

IMPAIRED DRIVING

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Office of Primary Responsibility: Inspector Operations

POLICY

[Refer to Transit Police policy: [OD170 – Police Warnings](#)]

Definitions

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

[NOTE: For ADPs served on basis of breath for alcohol, or failure or refusal, the 90 day driving prohibition takes effect immediately. In the case of a driving prohibition resulting by reason of blood analysis (testing for alcohol, drugs, or alcohol and drugs) of a person, the notice acts as a temporary driver's licence that expires seven days after the date it is served, and the 90 day driving prohibition takes effect on the expiration of the temporary driver's licence. The 7 day temporary driver's licence is to account for the delay between getting the results of toxicology and when the driver will be served.]

Approved Breath Test Analysis Instrument – An evidentiary instrument that receives and analyses breath tests pursuant to s. 320.39(c) of the *Criminal Code*.

ASD – Approved Screening Device, as set out in s. 320.39(a) of the *Criminal Code*.

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

BAC – Blood Alcohol Concentration.

BDC – Blood Drug Concentration.

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

BTA – Breath Test Analysis is an evidentiary test conducted on an "Approved Breath Test Analysis Instrument" pursuant to s. 320.39(c) of the *Criminal Code*.

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

Chief Officer – The Transit Police Chief Officer or designate.

Conveyance – A motor vehicle, a vessel, an aircraft or railway equipment, as set out in s. 320.11 of the *Criminal Code*.

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

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

Driver – For the purpose of this policy, to mean a person having care or control of a motor vehicle as set out in s. 215.41 of the *Motor Vehicle Act*, and to mean a person operating a conveyance as set out in the *Criminal Code of Canada*.

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

ICBC – Insurance Corporation of British Columbia.

IDAC – Impaired Driving Advisory Committee; a subcommittee of the British Columbia Association of Chiefs of Police – Traffic Safety Committee, which recommends guidelines and standards (consistent with BC Provincial Policing Standards) for the ASD and other breath testing equipment respecting use, maintenance and record keeping.

IRP Program – Immediate Roadside Prohibition Program under s. 215.41 of the *MVA*.

JPD – Jurisdictional Police Department.

Member – Designated Constable (all ranks), the Chief Officer or a Deputy Chief Officer of the Transit Police.

Metro Vancouver Transit Police (“Transit Police”) – The operating name of the South Coast British Columbia Transportation Authority Police Service.

MVA – BC *Motor Vehicle Act* [RSBC 1996], Chapter 318.

OCC – Operations Communication Center of the Transit Police.

Operate – In respect of a motor vehicle, to drive it or to have care or control of it, as set out in s. 320.11 of the *Criminal Code*.

Police Board – The South Coast British Columbia Transportation Authority Police Board.

PSC – Public Service Counter at Transit Police Headquarters.

RoadSafetyBC – Official name for the office of the Superintendent of Motor Vehicles for the Province of British Columbia (replaced “OSMV” in 2014).

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

SFST – Standardized Field Sobriety Test.

Statement of ASD Function – This form is called the ‘Technical Information on the Operation and Calibration of ASDs in British Columbia,’ it is automatically printed when

as ASD calibrator completes form ED6125 which is the Certificate of a Qualified Alcohol Sensor FST Calibrator. (This form replaces Transit Police Form OZ470.)

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

Zero BAC/BDC – A condition of license under the Graduated Licensing Program (“GLP”) and the remedial driving program under various sections of the *MVA*. It means that a driver with a restriction is permitted to drive only if they have no alcohol or prescribed drugs in their blood. The prescribed drugs are THC and Cocaine.

Authority

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

PROCEDURES

5. Members coming into contact with a suspected impaired driver will:
 - (1) Notify the Patrol Supervisor and OCC; and
 - (2) Proceed with impaired driving investigation in accordance with policy and the law.

APPROVED SCREENING DEVICES (ASD) & IMMEDIATE ROADSIDE PROHIBITION (IRP) PROGRAM

6. Only ASDs approved under s. 320.39(a) 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 removed from service.
7. The Transit Police ASD Program will be implemented in accordance with Transit Police SOP51, under the oversight of the Deputy Chief Officer Operations.

[Refer to Transit Police: [SOP51 – ASD Program](#)]

Investigating Member

8. S. 320.27(1)(b) of the *Criminal Code* provides that if a peace officer has in their possession an approved screening device, the peace officer may, in the course of the lawful exercise of powers under an Act of Parliament or an Act of a provincial legislature or arising at common law, by demand, require the person who is operating a motor vehicle to immediately provide the samples of breath that, in the peace officer's opinion, are necessary to enable a proper analysis to be made by means of that device.
9. ASDs may assist in apprehending alcohol drinking drivers 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.
10. The purpose of using an ASD is to detect alcohol drinking drivers with a BAC in excess of the legal limit and to establish reasonable grounds to support a demand for a breath test.
11. ASD testing is only an aid to the Member when conducting an impaired driving operation investigation. Members must also observe and record impaired driving evidence and physical symptoms of impairment.
12. The *Charter* notification need not be given to a detained driver prior to demanding and proceeding with an ASD test. [Refer to *R. v. Bernshaw* and [R. v. Thomsen \[1988\] 1 SCR 640](#)]
13. If the Member has reasonable grounds to believe that a person has operated a conveyance while the person's ability to operate was impaired to any degree 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. 38 to 70 of this policy.
14. If the Member has reasonable suspicion that the driver 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):

“I have reasonable grounds to suspect that you have, within the preceding three hours, operated a conveyance (namely (pick one) a motor vehicle, a vessel, an aircraft or railway equipment) with alcohol in your body. In accordance with the provisions of the Criminal Code, I hereby demand that you provide a sample of your breath, immediately, suitable for analysis using an approved screening device and to accompany me for the purpose of enabling such samples to be taken.”

Mandatory Breath Test

15. Pursuant to authorities within s. 320.27(2) of the *Criminal Code*, if the Member has in their possession an ASD, the Member may, by demand, require the person who is operating a motor vehicle to immediately provide the samples of breath that, in the Member’s opinion, are necessary to enable a proper analysis to be made by means of that device.
 - (1) Members are to take thorough notes on what transpired prior to the breath demand, to demonstrate that this authority is being used responsibly.
16. The Member must proceed with the ASD test forthwith, as specified in the demand.
 - (1) Where the Member 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 driver 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 \[1995\] 1 SCR. 254](#)]
 - (2) The Member must also delay an ASD test until 5 minutes after a person has finished a cigarette or had any foreign substance in their mouth (i.e., cold or hot beverage, gum).

IRP Pass

17. When the ASD test result is 50 mg% and below, and the driver is subject to Zero BAC restriction, Members will follow procedures as set forth in ss. 79 & 80 of this policy. If the driver is not subject to a Zero BAC restriction under s. 90.3 of the *MVA*, the Member will release the driver.
18. When the ASD test result is 51 mg% to 59 mg%, the Member will consider issuing a 24 Hour Prohibition if there is reason to believe that the driver’s ability to drive is affected by alcohol. Members to follow procedures as set forth in ss. 71 to 73 of this policy.

IRP Warn, Fail or Refusal

19. 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 driver that they are prohibited from driving and require the driver to surrender their Driver’s Licence;

- (2) Advise the driver that they have a right to a second test on a different ASD; and
 - (3) If requested by the driver, provide the driver with a second ASD test on a different ASD instrument.
20. When a Warn is registered, the Member will serve on the driver a 3 Day IRP, unless there is an action line on their Driver's Licence query to service a 7 or 30 Day prohibition.
21. 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. 320.28(1)(a)(i) of the *Criminal Code* and impaired driving investigation as set forth in ss. 38 to 70 of this policy.
22. The Member's subsequent action under the IRP Program will be as follows:

ASD RESULTS MATRIX

1 st ASD Test	2 nd ASD Test	Sanction
Digital Result	No further ASD test	<ul style="list-style-type: none"> • 24 Hour Prohibition, or • 12 Hour Suspension, or • No Sanction
WARN OR FAIL	Digital Result	<ul style="list-style-type: none"> • 24 Hour Prohibition, or • 12 Hour Suspension, or • No Sanction
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

23. When an IRP FAIL, IRP 30 Day Warn or a REFUSAL results, the Member MUST impound the vehicle.
24. 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.
25. When considering an impoundment under s. 24 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 driver'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 driver will or will not abide by the prohibition;

- (2) The likelihood that the driver 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 driver; and
 - (4) Any other conditions or circumstances that the Member considers relevant to the decision of whether or not to impound the vehicle.
26. All considerations with respect to the decision made by the Member under s. 25 will be documented on PRIME.
27. 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.

Processing a Refusal

28. If the driver 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 driver understands the demand;
 - (2) Provide the driver with the first verbal Notice of Prohibition as stated on the IRP information card;
 - (3) Inform the driver that they may be charged for refusing to provide a suitable breath sample under s. 320.15 of the *Criminal Code*;
 - (4) If the driver still refuses or fails to provide a breath sample:
 - a. Seize the Driver's Licence;
 - b. Complete the IRP Notice of Prohibition with "90 Day Refusal" checked; and
 - 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 driver is properly identified and meets the public interest criteria; and
 - b. Issue an ADP under s. 94.1(1)(a) of the *MVA*.
29. Where there has been an equivocal refusal by the driver to provide a breath sample, the Member will insert a new mouthpiece into the ASD and take their own sample to demonstrate that the device is capable of accepting a breath sample. The Member will record this information in their notes and report it in the RTCC or IRP.

IRP Documentation and Processing

30. Once the final IRP result is determined, the Member will complete the following forms and serve a copy on the driver:
 - (1) IRP Notice of Prohibition (MV2723); and
 - (2) VI Notice of Impoundment (MV2721) (only if vehicle is impounded).
31. The Member will also complete the following forms (not served on driver):
 - (1) IRP Report to Superintendent (MV2724); and
 - (2) VI Report to Superintendent (MV2722).
32. The Member will obtain a copy of the 'Certificate of a Qualified Alco-Sensor FST Calibrator' for each ASD used (including page 2, which provides the 'Technical Information on the Operation and Calibration of ASDs in British Columbia').

NOTE: Obtain the certificate info from K Drive: ASD Calibration Certificates folder.
33. The following documents will need to be submitted to RoadSafetyBC by fax, prior to shift end:
 - (1) The documents set out in ss. 30 to 32 of this policy;
 - (2) Certificate of a Qualified Alco-Sensor FST Calibrator;
 - (3) A copy of the PRIME Narrative; and
 - (4) Any other relevant documents to support the Member's decision to issue an IRP sanction.
34. Where a designated Transit Police subject matter expert ("SME") is available, prior to faxing RoadSafetyBC, the Member will forward the IRP documents to the SME for review.
35. After the IRP and VI forms have been served and documents submitted to RoadSafetyBC, the Member will:
 - (1) Place the seized Driver's Licence 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.
36. 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.

37. The Member will be required to complete a GO, including the “SY” text page and the Roadside Prohibition Template (under “OR” text page template). (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 driver will be role coded as a “Driver” and a CCJS status of “Value 9”.
 - (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 driver will be role coded as a “Suspect Chargeable” and a CCJS status of “S”.
 - (3) When a Refusal has resulted, use UCR codes:
 - a. 9260: 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 driver will be role coded as a “Suspect Chargeable” and a CCJS status of “S”.

BREATH TESTS AND BLOOD SAMPLES

Investigating Member

38. When the Member is proceeding under s. 320.28(1)(a)(i) of the *Criminal Code*, they will make the following demand to the driver:

“I have reasonable grounds to believe that you committed, as a result of the consumption of alcohol, an offence under s. 320 of the Criminal Code, and I hereby demand that you provide as soon as is practicable, such samples of your breath that, in the opinion of a qualified technician, are necessary to enable a proper analysis to be made by means of an approved instrument 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. Do you understand?”

39. Reasonable 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. Where physical coordination tests are being proceeded with by the Member, pursuant to s. 320.27(1)(a) of the *Criminal Code*, the Member will provide the person with the demand for physical coordination tests (SFSTs), as follows:

“I have reasonable grounds to suspect that you have, within the preceding three hours, operated a conveyance (namely (pick one) a motor vehicle, a vessel, an

aircraft or railway equipment) with alcohol or a drug in your body. In accordance with the provisions of the Criminal Code, I hereby demand that you perform, immediately, physical coordination tests and to accompany me for the purpose of performing such tests. Do you understand?"

- (1) The Member will record the results of the SFSTs on an SFST Worksheet (RCMP6521e) which is found in the Patrol Member Tool Kit/"K" Drive.
40. Under s. 320.14 of the *Criminal Code*, everyone commits an offence who:
 - a. Operates a conveyance while the person's ability to operate it is impaired to any degree by alcohol or a drug or by a combination of alcohol and a drug;
 - b. Subject to subsection (5), has, within two hours after ceasing to operate a conveyance, a BAC that is equal to or exceeds 80 mg%;
 - c. Subject to subsection (6), has, within two hours after ceasing to operate a conveyance, a BDC that is equal to or exceeds the BDC for the drug that is prescribed by regulation.
 41. Pursuant to s. 320.31(4) of the *Criminal Code* and 'presumption of blood alcohol concentration', for the purpose of paragraphs 320.14(1)(b) and (d), if the first of the samples of breath was taken, or the sample of blood was taken, more than two hours after the person ceased to operate the conveyance and the person's BAC was equal to or exceeded 20 mg%, the person's BAC within those two hours is conclusively presumed to be the concentration established in accordance with subsection (1) or (2), as the case may be, plus an additional 5 mg% for every interval of 30 minutes in excess of those two hours.
 42. Immediately after reading the breath demand, the Member is to provide that driver with the s. 10 *Charter* notification and a police caution.
 43. The Member will provide the detainee/driver 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. Although the Member may not solicit any evidence, the Member may record any observations made or any evidence that is volunteered by the detainee/driver.
 - (2) In the event the detainee/driver indicated that they wish to consult counsel and later indicates that they have changed their mind, the Member will:
 - a. Inform the person that they have 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 they wish to consult counsel. If the person informs the Member that they still do 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 \[1994\] 3 SCR 236](#)]

44. Where the Member makes a breath demand at the roadside, the Member will also invoke the 24 Hour Prohibition pursuant to s. 215 of the *MVA* and serve the prohibition roadside prior to going to take the breath samples. [Refer to [Evans v. New Westminster](#) 2018 BCSC 707.]
45. If the driver 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 driver is properly identified and meets the public interest criteria, issue an ADP under s. 94.1(1)(a) of the *MVA*; and
 - (2) Complete a RTCC recommending charges under the appropriate sections.
46. Once the BTA demand is made, the driver 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 driver to exercise their right to counsel. If the driver/detained person initially indicated that they wished to contact legal counsel and then subsequently indicated that they no longer wished to exercise the right to counsel, the Member will read the following:

Supplemental Charter Warning
"You have the right to a reasonable opportunity to contact counsel. I am obliged not to take a statement from you or ask you to participate in any process which could provide incriminating evidence until you are certain about whether you want to exercise this right. Do you understand? What do you wish to do?"
48. Upon completion of access to counsel, the investigating Member must observe the driver for at least 15 continuous minutes prior to the breath test, ensuring the driver does not drink any alcohol beverages or other liquids, and does not place anything in their mouth or burp or vomit.
 - (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.
49. After the driver has consulted with counsel and has been given a police caution, and has not indicated that they do not wish to give a statement, the Member may use this 15 minute period to attempt to gather as much information as possible concerning the driver'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 driver last ate).

50. The Member will, if the driver's lowest reading of BAC is:
- (1) 100 mg% or greater – complete a RTCC recommending that the driver be charged of operating a conveyance while impaired to any degree (s. 320.14(1)(a) of the *Criminal Code*); or 80 mg% if within two hours after ceasing to operate a conveyance (s. 320.14(1)(b) of the *Criminal Code*);
 - (2) Less than 100 mg% – recommend charges under s. 320.14(1)(a) of the *Criminal Code* only where there is physical and/or driving evidence to support prosecution;
 - (3) 50 mg% or less – terminate the s. 215 *MVA* prohibition and return driver's licence to the driver.
51. Where the driver's BAC is shown to be equal to or greater than 80 mg%, the Member may proceed by way of the *Criminal Code* and an ADP under s. 94.1(1)(a) of the *MVA*, or just an ADP.
52. 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 driver tested, prior to their release from custody.
- (1) The Member may continue the detention of a person after a breath test while the Member prepares an appearance notice, as it is in the public interest to do so. Persons are not to be detained to allow a Member to make their notes or complete internal reports or certificates. [Refer to [R. v. Madsen](#) [1994], 42 BCAC. 259 (CA)]

Evaluation and Samples of Blood — Alcohol

[Refer to “References” section for hyperlinks to resources, such as impaired driving handbook, forms and blood kit, and ADP information.]

53. S. 320.28(1) of the *Criminal Code* provides that if a peace officer has reasonable grounds to believe that a person has operated a conveyance while the person's ability to operate it was impaired to any degree by alcohol or has committed an offence under paragraph 320.14(1)(b), the peace officer may, by demand made as soon as practicable, require the person to provide, as soon as practicable:
- (1) The samples of breath that, in a qualified technician's opinion, are necessary to enable a proper analysis to be made by means of an approved instrument; or
 - (2) If the peace officer has reasonable grounds to believe that, because of their physical condition, the person may be incapable of providing a sample of breath or it would be impracticable to take one, the samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, are necessary to enable a proper analysis to be made to determine the person's BAC; and

- (3) Require the person to accompany the peace officer for the purpose of taking samples of that person's breath or blood.

Evaluation and Samples of Blood — Drugs

54. S. 320.29(1) of the *Criminal Code* provides that if a peace officer has reasonable grounds to believe that a person has operated a conveyance while the person's ability to operate it was impaired to any degree by a drug or by a combination of alcohol and a drug, or has committed an offence under paragraph 320.14(1)(c) or (d) or subsection 320.14(4), the peace officer may, by demand, made as soon as practicable, require the person to comply with the requirements of either or both of:
 - (1) To submit, as soon as practicable, to an evaluation conducted by an evaluating officer to determine whether the person's ability to operate a conveyance is impaired by a drug or by a combination of alcohol and a drug, and to accompany the peace officer for that purpose; or
 - (2) To provide, as soon as practicable, the samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, are necessary to enable a proper analysis to be made to determine the person's blood drug concentration, or the person's blood drug concentration and blood alcohol concentration, as the case may be, and to accompany the peace officer for that purpose.

Warrant for Blood Sample

55. S. 320.29(1) of the *Criminal Code* provides that a justice may issue a warrant authorizing a peace officer to require a qualified medical practitioner or a qualified technician to take the samples of a person's blood that, in the opinion of the practitioner or technician taking the samples, are necessary to enable a proper analysis to be made to determine the person's BAC or BDC, or both, if the justice is satisfied on an information on oath in Form 1, or on an information on oath submitted to the justice by telephone or other means of telecommunication, that:
 - (1) There are reasonable grounds to believe that the person has, within the preceding eight hours, operated a conveyance that was involved in an accident that resulted in bodily harm to themselves or another person or in the death of another person;
 - (2) There are reasonable grounds to suspect that the person has alcohol or a drug in their body; and
 - (3) A qualified medical practitioner is of the opinion that by reason of any physical or mental condition of the person, the person is unable to consent to the taking of samples of their blood, and the taking of samples of the person's blood will not endanger their health.
56. Pursuant to s. 320.3 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 BAC, may also be tested for BDC.

- (1) 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] 2 SCR 417 and [R. v. Collarusso](#) [1994] 1 SCR 20]

57. A search warrant must be used to obtain confidential information from hospitals and medical professionals. [Refer to [R. v. Dersch](#) [1993] 3 SCR 768]

Analysis

58. S. 320.31(2) and sub (4) of the *Criminal Code* provides that the result of an analysis made by an analyst of a sample of a person's blood is proof of their BAC or BDC at the time when the sample was taken, in the absence of evidence tending to show that the analysis was performed improperly. (Also, refer to s. 41 of this policy.)

Qualified Persons to Take Blood Samples

59. Blood samples may only be taken by a qualified medical practitioner or by a qualified technician, and only if they are satisfied that taking the sample will not endanger the person's health. (S. 320.11 of the *Criminal Code* defines who is a qualified technician.)
60. The use of hospital emergency wards and staff to obtain blood samples is restricted to those cases where a driver is taken to a hospital for medical treatment and is not able to be taken for a breath test.
61. The taking of the blood samples for impaired operation investigations is entirely under the control of the hospital staff.
 - (1) S. 320.37(1) 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 commits an offence if they have a reasonable excuse for refusing to do so.
 - (2) Members must not interfere with the primary function of emergency ward or other hospital staff.
62. The blood sample is to be placed into the approved contained within the approved Blood Sample Container Kit and then sealed. Members are to check the Kit for expiry date prior to use.

Investigating Member

63. Following arrival at a hospital emergency ward and if the conditions in s. 320.28(1)(a)(ii) are met respecting the consumption of alcohol and the inability to obtain breath samples, the Member will determine if the driver is capable of understanding the nature of a demand for blood samples.
64. If the driver is capable of understanding the demand, the Member will provide the following demand and complete the outlined processes, as applicable:

"I have reasonable grounds to believe that you committed, as a result of the consumption of alcohol, an offence under s. 320 of the Criminal Code, and I hereby demand that you provide as soon as is 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 a qualified medical practitioner or a qualified technician who is satisfied that the taking of those samples will not endanger your life or health."

- (1) Immediately after reading the demand, give the ss. 10(a) and 10(b) *Charter* warnings.
- (2) If the driver refuses to provide a blood sample:
 - a. Issue an appearance notice for refusing to comply with the demand made under s. 320.27 or s. 320.28 of the *Criminal Code* and, if sufficient evidence to support prosecution, for impaired operation;
 - b. Complete a RTCC recommending a charge under s. 320.15(1) of the *Criminal Code* (and s. 320.14 of the *Criminal Code* where appropriate); and
 - c. Issue an ADP under s. 94.1(1) of the *MVA* at the roadside.
- (3) If the driver consents to provide blood samples, the Member will:
 - a. Request that a qualified medical practitioner take two blood samples or that they 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 driver providing the samples.
- (4) If the driver is incapable of consenting to the taking of samples of their blood, and there are reasonable grounds to believe that they have committed an offence under s. 320.14(1) of the *Criminal Code* as the result of the consumption of *alcohol or a drug*, and the driver 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 driver, the Member will:
 - a. Make application for a Warrant to Obtain Blood Samples under s. 320.29(1) of the *Criminal Code* either in person or by telewarrant (Warrant applications must be sworn within eight hours of the operation or the care or control - see s. 55 of this policy);
 - 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;
 - 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;
 - 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 they 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; 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;
 - i. Request that the person who took the samples legibly initial the samples in the space provided;
 - j. Initial and seal both samples;
 - k. Make the blood samples subject of an exhibit report [for blood drug tests – place exhibit in exhibit freezer locker];
 - l. Ensure that the vial label is the only label used and that the seal does not cover any part of the label;
 - m. File a Report to a Justice; and
 - n. Complete the C414 RCMP Toxicology Analysis – Impaired Request (Transit Police Form OZ0240B), call the RCMP lab intake line to obtain authorization and specified lab info prior to forwarding the two blood samples with the completed form, and ensure that the Member notes that the samples were obtained under s. 320.29(1) of the *Criminal Code*. This will ensure that the correct Certificate of Analysis is completed.
 - i. The first sample will be analyzed by the RCMP lab. 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.
65. The Member will upon receipt of a Certificate of Analysis from the RCMP lab which certifies that the BAC in the blood sample exceeded 100 mg%:
- (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.
66. Where the driver's BAC is shown to be greater than 80 mg%, the Member will issue an ADP under s. 94.1(1)(a) of the *MVA*.
- (1) While the Notice of Driving Prohibition and Report to Superintendent must be completed by the investigating Member, the Notice itself can be served by any officer (pursuant to 94.3 of the *MVA*).

Analysis of the Second Blood Sample by an Accused

67. S. 320.27(10) of the *Criminal Code* provides that a judge of a superior court of criminal jurisdiction or a court of criminal jurisdiction shall, on the summary application of the person from whom samples of blood were taken under this

section, made within six months after the day on which the samples were taken, order the release of any sample that was retained to the person for the purpose of examination or analysis, subject to any terms that the judge considers appropriate to ensure that the sample is safeguarded and preserved for use in any proceedings in respect of which it was taken.

68. Upon an order pursuant to s. 320.27(10) of the *Criminal Code*, the Transit Police will provide the sample for the accused.
69. If no application is made under s. 320.27(10) of the *Criminal Code* within the six month period, the samples are to be retained for court purposes and the subsequent appeal period.
70. 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

71. A Member exercising their authority under the provisions of s. 215 of the *MVA* must be satisfied that:
 - (1) The person was the driver 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 grounds to believe that the driver's ability to drive a motor vehicle is affected by either alcohol and/or a drug.
72. The Member will follow this procedure on the road:
 - (1) Read the 24 Hour Roadside Prohibition to the driver 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 driver is not presently under suspension or prohibition;
 - b. If the driver 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;
 - a. In the section "Return of Driver's Licence", check off the box for "MAIL" and advise the driver that their licence will be returned by regular mail;
 - (4) Have the driver 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 driver in its entirety;

- a. Right to an ASD test or BAC test to determine BAC level if prohibition was for alcohol;
 - b. Right of review;
 - c. Notice of driving record;
- (6) If the driver requests a ASD test and a roadside screening device is utilized, the results are:
- a. 0 mg% - 50 mg% (Pass) – return the Driver’s Licence (unless a GLP);
 - b. 51 mg% - 59 mg% – continue with the 24 Hour Prohibition;
 - c. 60 mg% to 99 mg% (Warn) – serve a 3 Day IRP;
 - d. Over 99 mg% (Fail) – serve 90 Day IRP or consider a charge of impaired driving;
- (7) If the driver contests the results, they may request a breath test for alcohol impairment or SFSTs for drug impairment;
- (8) If the Member continues with the 24 Hour Prohibition;
- a. Advise the driver that their Licence will be returned by mail, if driver has not yet been informed of this earlier;
 - b. At the discretion of the Member, 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 driver will disobey the prohibition;
 - ii. Impounding a vehicle should occur when: the location of the vehicle poses a hazard to traffic; the Member 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 driver 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 driver is not the owner; allow the owner or driver 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 driver (if the vehicle was impounded); and
 - d. Leave the white and yellow copies attached (possibly green copy also);
- (9) 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 driver;
 - d. Time of the prohibition;
 - e. Name and badge number of the Member issuing the prohibition; and
- (10) Complete the back of the original copy in detail (these notes are critical to any review by the Superintendent of Motor Vehicles).

Reporting

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

- (1) Attach the Driver's Licence 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 driver's details;
- (6) Enter vehicle details including seized/towed details;
- (7) Detail on the GO the grounds for the prohibition and justification for impounding the motor vehicle; and
- (8) After completion of the file, provide a copy of the MV2634 and GO number to the designated SME to review.

Supervisor

74. 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 RSS intake basket for processing; and
 - b. Ensure that the CPIC entry was completed.

Records Personnel

75. The support clerk will:

- (1) Prepare envelope to mail back the Driver's Licence and place the Driver's Licence inside;
- (2) Complete the 'Return of Driver's Licence' portion of Notice of 24 Hour Prohibition by adding date stamp for the date that the envelope was sent out to mail;
- (3) Photocopy the back of the white ICBC copy and attach to the yellow Police copy; and

- (4) Forward the white copy of the Notice of 24 Hour Prohibition to ICBC, without delay.
76. Once the Driver's Licence has been mailed, the support clerk will make the necessary entries on PRIME and file the document, 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
 - e. In Text page:
 - i. Add information from the "Return of Driver's Licence" Form MV2634 into text confirming that the Driver's Licence was returned by mail to the driver;
[e.g., Driver's Licence #123456 belonging to "*person's name*" has been mailed to the holder on "*enter date Driver's Licence mailed*"; and
 - ii. Once text entered, hit F10 to SAVE information.
- (2) Scan the yellow Police copy (with the attached photocopy of the back of the white ICBC copy) of the Notice of 24 Hour Prohibition into the GO, and then file the hard copy in central records.

SECTION 90.3 MVA – 12 HOUR LICENCE SUSPENSION

Issuance

77. A Member exercising their authority under the provisions of s. 90.3 of the MVA must be satisfied that:
- (1) The driver holds a Driver's Licence on which a condition has been imposed under s. 25(10.1) or s. 25(10.101) of the MVA to not operate a motor vehicle, or category of motor vehicle, while having alcohol (or prescribed drug – as the case may be) in their body. (GLP drivers are prohibited from operating a motor vehicle with any presence of alcohol or a prescribed drug in their body. The prescribed drugs for this restriction are THC and Cocaine.)
 - (2) The person was the driver 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 grounds to believe that the driver has alcohol and/or drug in their body.
78. To serve a 12 Hour Licence Suspension, the Member must use an ASD to obtain a reading for alcohol and, for drugs, the Member must use an approved oral screening device. (Refer to sections on ASDs in this policy.)
79. The Member will follow this procedure on the road:
- (1) Read the 12 Hour Licence Suspension to the driver 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 driver is not presently under suspension or prohibition;
 - (3) Complete a "Notice of 12 Hour Licence Suspension" – Form MV2906;
 - a. In the section "Return of Driver's Licence", check off the box for "MAIL" and advise the driver that their licence will be returned by regular mail;
 - (4) Have driver 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 driver in its entirety;
 - (6) Serve the blue copy on the driver; 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 driver;
 - d. Time of the suspension; and
 - e. Name and badge number of the Member issuing the suspension.

Reporting

80. 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 driver's details;

- (6) While Members are not authorized to impound a driver's vehicle under s. 90.3 of the *MVA*, if the driver 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 driver may lock and park the vehicle at the scene;
 - b. The driver 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 their Licence; or
 - c. The driver may direct the removal of the vehicle being towed. The Member may assist in contacting a tow company for the driver; however, the driver 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;
- (7) Detail on the GO the grounds for the suspension; and
- (8) After completion of the file, provide a copy of the MV2906 and GO number to the designated SME to review.

Supervisor

81. 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 RSS for processing; and
 - b. Ensure that the CPIC entry was completed.

Records Personnel

82. The support clerk will:

- (1) Prepare envelope to mail back the Driver's Licence and place the Driver's Licence inside;
- (2) Complete the Return of Driver's Licence portion of Notice of 12 Hour Licence Suspension by adding date stamp for the date that the envelope was sent out to mail;
- (3) Photocopy the back of the white ICBC copy and attach to the yellow Police copy; and
- (4) Forward the white ICBC copy of the Notice of 12 Hour Licence Suspension to ICBC, without delay.

83. Once the Driver's Licence has been mailed, the support clerk will make the necessary entries on PRIME and file the document, 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 Suspension issued, enter Role # of Suspended 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
- e. In Text page:
 - i. Add information from the "Return of Driver's Licence" Form MV2906 into text confirming that the Driver's Licence was returned by mail to the driver;
[e.g., Driver's Licence #123456 belonging to "*person's name*" has been mailed to the holder on "*enter date Driver's Licence mailed*"; and
 - ii. Once text entered, hit F10 to SAVE information.

(2) Scan the yellow Police copy (with the attached photocopy of the back of the white ICBC copy) of the Notice of 12 Hour Licence Suspension into the GO, and then file the hard copy in central records.

SECTION 215(3) MVA – DRUG IMPAIRED

84. S. 215(3) of the MVA refers to when a driver is affected by a drug. Whenever possible, a Member who is prohibiting a driver under s. 215(3) of the MVA will request the assistance of a SFST or Drug Recognition Expert trained police officer to conduct the SFST battery to determine drug involvement.

85. If a 24 Hour Prohibition is issued because the driver is impaired by drugs, the driver may request and undergo physical coordination tests, unless these tests were used as part of the basis on which the Member formed reasonable grounds for the prohibition. (Unless otherwise so determined by the Superintendent of Motor Vehicles, the physical coordination tests consists of the following three SFSTs: horizontal gaze nystagmus test, walk and turn test, and one leg stand test.)

References:

[BC Administrative Driving Prohibition Amendment and Overview for Police Officers, 2019 July](#)

[BC Alco-Sensor FST Operator's Manual \[2018-12-18\]](#)

[BC Cannabis Control and Licencing Act \[SBC\] Chapter 29](#)

[BC Impaired Driving Handbook, May 2019](#)

[BC Motor Vehicle Act, \[RSBC 1996\], Chapter 318](#)

BC Motor Vehicle Amendment Act, 2018

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

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

Intox EC/IR II Manual