



RoadSafetyBC

**RoadSafetyBC
Ministry of Justice**

**Guidelines for Referrals
to Remedial Programs**

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RoadSafetyBC
Po Box 9254 Stn Prov Govt
Victoria, BC, V8W 9J2

www.pssg.gov.bc.ca/osmv

1.0 Background

Section (s) 25.1 of the *Motor Vehicle Act* (MVA) provides the Superintendent with authority to refer a driver to remedial programs if the Superintendent determines that:

- A person's driving record is unsatisfactory; and/or
- With respect to the person's driving skills, fitness or ability to drive and operate a motor vehicle, it is in the public interest to make a referral.

Section 117 of the MVA gives the Superintendent authority to delegate powers, duties, or functions to staff of RoadSafetyBC.

The following guidelines are for use by the Superintendent, or delegate, to determine if a driver will benefit from a referral to a remedial program. The remedial programs are designed to protect public safety and help drivers to separate their alcohol and/or drug use from their driving. The guidelines are designed to assist staff in ensuring that the remedial purpose of section 25.1 of the MVA is fulfilled and public safety is protected. The Superintendent, or delegate, must ensure that the requirements for procedural fairness are fulfilled in the exercise of delegated discretion under the MVA. The guidelines are not binding rules and the Superintendent, or delegate, must consider all relevant evidence in the circumstances of each individual case in order to determine whether the referral is warranted.

The Superintendent, or delegate, refer drivers to remedial programs by taking into account all relevant considerations, including those outlined in this document, the legislation, the facts of each driver's case, and the principles of administrative fairness. A review of the driving record may be triggered by specific drug or alcohol related driving events, or patterns of events. The Superintendent, or delegate, must make the decision whether to make a referral to remedial programs on the basis of the specific information about each driver that is before the staff member. For example, where there is evidence that the driver has a disability that will prevent effective participation in the Ignition Interlock Program (IIP), that information must be considered when making a referral decision.

Where the sanction is:

- 2 or more of any combination of Criminal Code of Canada (CCC) convictions, MVA offences or 90-day alcohol related driving prohibitions within the last 5 years;
- 1 CCC conviction, MVA offence or 90-day alcohol related driving prohibition and 1 or more alcohol related driving prohibition of less than 90 days, within the last 5 years;
- 3 or more alcohol related driving prohibitions, including prohibitions of less than 90 days, within the last 5 years; or
- Where the driver has previously completed a remedial program and receives a subsequent alcohol related prohibition

the referral will generally be to both the Remedial Driver Program (RDP) and IIP unless evidence shows that remediation is not required in the driver's circumstances. In these cases, the serious nature of the driving event or the pattern of alcohol related driving indicates that there is a high likelihood that remediation is warranted. However, each driver's circumstances must be considered.

Where the sanction is a single alcohol-related CCC conviction or MVA offence, a 90 day Immediate Roadside Prohibition (IRP) or Administrative Driving Prohibition (ADP) the referral will generally be to RDP with an initial assessment conducted by the service provider to inform the Superintendent as to the level of risk presented by the driver. Where the initial assessment conducted by the service provider indicates a high risk, the Superintendent, or delegate, will also consider whether a referral to IIP is warranted, taking into account all other relevant information before the staff member. In conducting the initial assessment, the service provider may consider a client's driving history and circumstances beyond the last 5 years.

Drivers can also be referred to remedial programs when the Superintendent, or delegate, forms the opinion that a referral to remedial programs is in the public interest with respect to the person's driving skills, fitness, or ability to drive.

1.1 General Considerations

In determining if a driver should be referred to a remedial program, the Superintendent, or delegate, should consider all of the following records, actions or documents (if they exist):

- Any of the following on the driver's driving record:
 - all administrative alcohol or drug related driving sanctions within the last 5 years;
 - all alcohol or drug related driving CCC convictions within the last 5 years; and
 - documentation from previous remedial programs within the last 5 years;
- The driver's RDP initial assessment (which may include consideration of a client's driving history and circumstances beyond the last 5 years), when applicable; and
- All other relevant information before the staff member.

Note: Drivers who receive a CCC conviction may also have been given a 24 hour ADP at the same time. This event should only be considered as one drinking and driving sanction. Administrative consequences related to the same event should not be "double counted" in considering a referral.

1.2 Guiding Considerations

In assessing the above, staff should consider whether the alcohol or drug related driving behaviour poses a public safety risk that could be addressed through remedial programs.

The Superintendent, or delegate, should consider all relevant information before them including:

- The seriousness, type, and number of alcohol or drug related suspensions, prohibitions, or offences within the last 5 years;
- Assessment of risk for further alcohol related driving incidents;
- The RDP initial assessment (which may include consideration of a client's driving history and circumstances beyond the last 5 years);
- Previous participation in RDP and/or IIP;
- Participation in a graduated licensing program;
- Participation in other remedial programs; and
- Participation in similar or equivalent programs in other provinces.

Note: If a person has received one 'Fail' IRP prior to November 30, 2011 it should not be considered as evidence that the driver had a Blood Alcohol Level (BAC) of not less than 80 milligrams of alcohol in 100 millilitres of blood and should not form the basis for a referral to remedial programs, despite that the prohibition remains on the driving record. As well, such prohibitions should not be used, in conjunction with other information, as evidence of a pattern of driving while affected by alcohol. However, participation and completion of RDP where that referral was based upon review of the driving record arising from one of these 'Fail' IRPs may be considered in making a referral to remedial programs based on a subsequent driving event.

1.3 Referrals to the RDP and IIP

Drivers are referred to the RDP and/or IIP when the person's driving record is unsatisfactory or where, with respect to the person's driving skills, fitness or ability to drive and operate a motor vehicle, it is in the public interest for the person to attend or participate in one or more remedial programs.

An alcohol or drug related driving conviction under the CCC or MVA, a 90 day administrative driving prohibition (IRP or ADP), or 3 or more 24 hour or 3, 7 or 30 day driving prohibitions ("multiple alcohol or drug related driving events") are evidence of the severity and/or pattern of alcohol or drug related driving behaviour that may warrant remedial intervention. The RDP serves to support remediation of the driver's driving behaviour through education and counselling programs and assist with the separation of their alcohol and/or drug use from their driving. The IIP serves to protect public safety by monitoring a driver to ensure their behaviour is and continues to be remediated and serves to reinforce the remedial benefits of the education and/or counselling programs.

Drivers who are convicted of CCC or MVA offences may appeal their convictions through the judicial system. Drivers who receive an administrative driving prohibition may request an administrative review of that prohibition under the MVA and may also seek Judicial Review (JR) of the initial review decision. For referrals to remedial programs, drivers may apply to the Superintendent for a reconsideration of the decision to refer them to RDP and/or IIP. If a referral is the result of a driving prohibition that is the subject of a JR, the referral must be deferred until the JR is settled.

The following sections outline guidelines for referring drivers to the RDP and/or IIP. The guidelines provide policy guidance for decision making and the Superintendent, or delegate, must consider all relevant evidence in the circumstances of each individual case in order to determine whether a referral is warranted.

1.3.1 Referrals to RDP and IIP based on Multiple Drug or Alcohol Related Driving Events

Drivers who receive:

- Any combination of 2 or more CCC convictions, MVA offences and/or 90-day alcohol related driving prohibitions within the last 5 years;
- 1 CCC conviction, MVA offence or 90-day alcohol related driving prohibition and 1 or more alcohol related driving prohibitions of less than 90 days, within the last 5 years;
- 3 or more alcohol related driving prohibitions, including prohibitions of less than 90 days, within the last 5 years; or
- Where the driver has previously completed remedial programs and receives a subsequent alcohol related prohibition within the last 5 years

are considered by the Superintendent to present a high risk to public safety. Unless there is evidence that shows that the remedial purpose of section 25.1 will not be served by the referrals, these drivers will generally be referred to both RDP and IIP. In some cases the referral will also include the requirement that the RDP must be completed before the driver can re-apply for their interlock restricted driver's licence. These drivers can seek reconsideration of the referral to one or both programs if they feel that the decision is unreasonable or that the Superintendent has not considered all relevant information in making the referral.

Drivers convicted of an offence under section 224 or 226 of the MVA are prohibited from driving a motor vehicle for 12 months. Drivers convicted of offences under section 253, 254 and 255 of the CCC are prohibited from driving, and their driver's licence is automatically suspended as follows:

- For the first conviction – minimum of one year
- For the second conviction within a 10 year period – three years
- For three or more convictions –Indefinite Licence Suspension (ILS). Drivers in the ILS program must wait a minimum of five years and complete RDP before they can reapply for a driver's licence.

The Superintendent, or delegate, must review the driver's driving record to confirm if the MVA offences or CCC convictions were alcohol-related. As a guideline, if this criterion is met, staff may consider referring the driver to both the RDP and IIP on the basis of the severity of the multiple driving events that led to the MVA or CCC convictions. However, before making any referral staff must review all evidence and determine if a referral is appropriate for each individual case.

24-Hour Driving Prohibition

Under section 215 of the MVA, police officers can prohibit drivers from driving for a period of 24 hours if the police officer has reasonable and probable grounds to believe that the driver's ability to operate a vehicle is affected by alcohol or drugs. A 24-hour driving prohibition results in an immediate ban of driving privileges. If considered necessary, police also have the discretion to impound the driver's vehicle. 24 hour prohibitions may be issued on their own, at the same time as one of the CCC or MVA charges, or at the same time as a 90 day ADP. Where the 24 hour prohibition is issued in conjunction with other sanctions for the same driving event, it will not be considered as a separate event for the purposes of making remedial referral decisions.

Immediate Roadside Prohibitions (IRP) - WARNS

Drivers found to be in the "warn" range (a Blood Alcohol Content (BAC) of not less than 50 milligrams of alcohol in 100 millilitres of blood) face the following sanctions:

- 3-day driving prohibition for a first sanction in the warn range;
- 7-day driving prohibition for a second sanction in the warn range within five years; or
- 30-day driving prohibition for a third, and any subsequent sanctions in the warn range within five years.

Pattern of Driving While Affected by Drugs or Alcohol

Drivers with a pattern of driving while affected by drugs or alcohol are considered by the Superintendent to pose a high risk to public safety and therefore generally require remedial programs. Staff will consider referring a driver to the RDP and IIP if the driver has a pattern of driving while affected by alcohol that includes:

- Any combination of 2 or more CCC convictions, MVA offences and/or 90-day alcohol related driving prohibitions within the last 5 years;
- 1 CCC conviction, MVA offence or 90-day alcohol related driving prohibition and 1 or more alcohol related driving prohibitions of less than 90 days, within the last 5 years;
- 3 or more alcohol related driving prohibitions, including prohibitions of less than 90 days, within the last 5 years; or
- Where the driver has previously completed remedial programs and receives a subsequent alcohol related prohibition within the last 5 years.

Note: If any of the events on the driving record are drug related, as opposed to alcohol related, the IIP may serve no remedial purpose and the staff should consider whether the IIP will serve a remedial purpose in that driver's case.

The Superintendent, or delegate, must review the driver's driving record to confirm if:

- The driver's history of alcohol or drug related sanctions shows an unsatisfactory driving record, or evidence that, in light of the person's driving skills, fitness or ability to drive and operate a motor vehicle, it is in the public interest to make a referral;
- Prohibitions served for the same alcohol or drug related driving event are considered one event:
 - E.g., a 24 hour prohibition may be served with an ADP, in this case both sanctions are considered as part of the same driving event and therefore, cannot be counted separately for the purposes of establishing a pattern of driving while affected by drugs or alcohol; and
- The sanctions are alcohol-related as opposed to drug-related.

As a guideline, if the criteria are met the Superintendent, or delegate, should consider referring the driver to both the RDP and IIP on the basis of the public safety risk associated with the driver's pattern of driving while affected by drugs or alcohol. However, before making any referral, staff must review all evidence and determine if a referral is appropriate for each individual case.

1.3.2 Referrals to RDP based on a single 90 day driving prohibition, alcohol-related CCC conviction, or MVA offence

It is an offence for a driver to operate a motor vehicle when impaired, or when the concentration of alcohol in the blood exceeds 80 milligrams of alcohol per 100 millilitres of blood, as set out under Sections 224 of the MVA and sections 253 and 255 of the CCC. It is also an offence for a driver to refuse to provide a blood or breath sample when demand is made by a police officer, as set out under Sections 225 and 226 of the MVA and section 254 and 255 of the CCC.

In addition, drivers may receive either of the following alcohol related administrative driving prohibitions:

Administrative Driving Prohibition (ADP)

A 90-day ADP may be issued by police officers to drivers who have a blood alcohol level in excess of 80 milligrams of alcohol in 100 millilitres of blood or who fail or refuse to comply with the demand for breath or blood alcohol test. The prohibition is separate from any CCC charges that may result from the same incident, but for referral purposes, they must be counted as a single incident. An ADP results from breath or blood testing on an evidentiary instrument and the prohibition starts 21-days from the date the driver receives the Notice of Driving Prohibition.

Immediate Roadside Prohibitions (IRP) - FAILS/REFUSALS

A 90-day IRP may be issued by police officers to drivers at the roadside who produce a FAIL result on an Approved Screening Device (ASD) or who refuse or fail to provide a breath sample. The prohibition is effective immediately and is served with a mandatory 30-day vehicle impoundment.

Note: If a person has received one 'Fail' IRP prior to November 30, 2011 it should not be considered as evidence that the driver was over 0.08 and should not form the basis for a referral to remedial programs, despite that the prohibition remains on the driving record. As well, such prohibitions should not be used, in conjunction with other information, as evidence of a pattern of driving while affected by alcohol. However, participation and completion of RDP where that referral was based upon review of the driving record arising from one of these 'Fail' IRPs may be considered in making a referral to remedial programs based on a subsequent driving event.

A single alcohol-related CCC conviction, MVA offence, a 90 day ADP or IRP prohibition is generally considered to be evidence that the driving record is unsatisfactory and that it is in the public interest to refer the driver for remediation, and a referral to RDP is likely warranted unless other evidence shows that the referral is not reasonable. The driver will have an opportunity to seek reconsideration of the referral to RDP.

Once in the RDP, the driver will undergo an initial assessment conducted by the service provider that results in a report to the Superintendent indicating the level of risk the driver poses of continuing to use drugs or alcohol while driving. In conducting the initial assessment, the service provider may consider a client's driving history and circumstances beyond the last 5 years. The Superintendent, or delegate, reviews the initial assessment report and any other relevant information to determine whether a referral to IIP is appropriate in the circumstances of the driver's case.

1.3.3 Referrals to IIP based on a single alcohol-related CCC conviction, MVA offence or 90 day Driving Prohibition

As noted above, once a driver has registered for the RDP with the service provider will conduct an initial assessment. In conducting the initial assessment, the service provider may consider a client's driving history and circumstances beyond the last 5 years. This assessment is used by the RDP service provider to determine whether the counselling or education stream of RDP is appropriate for the driver. Based on the assessment, the RDP service provider will also send a report to the Superintendent for review which, in concert with their driving record and all other relevant information,

will be used to determine if the driver poses a risk to public safety that warrants referral to the IIP. In determining if a driver should be referred to IIP, the following should be considered:

- The seriousness, type, and number of alcohol related suspensions, prohibitions, or offences on the driver’s driving record;
- The RDP initial assessment report (which may include consideration of a client’s driving history and circumstances beyond the last 5 years);
- Any relevant information with respect to the impact of the IIP referral on the driver;
- Whether the driver has been referred to remedial programs on previous occasions; and
- If the driver is a participant of a graduated licensing program.

The Superintendent, or delegate, must consider all of the relevant information before him or her in order to determine if the driver’s remediation program should include referral to the IIP.

1.3.4 Referral to RDP and/or IIP: Remedial Programs for those who receive Prohibitions or Convictions after completing RDP

If a driver is sanctioned for an alcohol or drug related driving event within five years of the completion of a remedial program, as a guide, staff should consider whether the driver should be referred to additional remedial programs. For greater clarity, the ‘completion date of the remedial program’ is the date of the letter to the driver in which the Superintendent or delegate communicates the decision that the driver completed the remedial program to the Superintendent’s or delegate’s satisfaction. This letter is generally sent out within 30 days of RoadSafetyBC’s receipt of the Post Intervention Assessment from the RDP service provider. The following table is intended as a guideline only; the Superintendent, or delegate, must determine an appropriate referral based on the individual facts of the case.

	Driver Circumstance	Additional Remedial Programs
1	Driver has completed RDP within the last 5 years	Driver will generally be referred to RDP and IIP.
2	Driver has completed RDP and IIP within the last 5 years	Driver will generally be referred to RDP and IIP. IIP term may be increased.
3	Driver has been referred to RDP, but not yet completed	Driver will generally also be referred to IIP. RDP Service Provider should be notified.
4	Driver is currently participating in IIP	Driver’s IIP term will generally be extended.
5	Driver has committed multiple additional alcohol related driving sanctions, prohibitions or offences	Driver may be referred to IIP for a longer term.
6	Driver has committed multiple additional drug related driving sanctions, prohibitions or offences	Driver will generally be referred to RDP only, with licence not allowed until satisfactory completion of the RDP.

1.3.5 Other Referrals to the RDP

There are circumstances not represented in previous sections in which drivers may be referred to RDP based on their history of alcohol or drug related driving events. Referrals are evidence-based and result from a review of the driver's driving history and may also be supported by other reports indicating driving while affected by drugs or alcohol such as the following:

- Evidence of significant alcohol or drug abuse/addiction from authorized medical reports or unsolicited reports from reliable sources;
- Authorized reports from medical professionals indicating significant alcohol or drug addiction or a significant history of substance abuse;
- Participation in other alcohol assessment or remediation programs in the past in conjunction with additional drug or alcohol related driving events;
- Driver non-compliance with previous program requirements (i.e. program violations); and/or
- Evidence of involvement in motor vehicle accidents, where alcohol or drugs was a factor.

Evidence related to the frequency of alcohol or drug related driving events should also be considered in assessing the remediation required for a specific driver. For example:

- Evidence that the number of alcohol or drug related driving incidents have increased in frequency;
- Evidence that the driver has been consistently driving while affected by alcohol or drugs over a long period of time; and/or
- Evidence that the driver was assigned to and recently completed RDP and has engaged in further drug or alcohol related driving events.

1.4 Referral Letter

If the Superintendent, or delegate, determines that a driver will benefit from remedial intervention, a letter is sent instructing the driver of the remedial requirements and the options for seeking reconsideration. The letter includes reference to the review of the driving record and lists the driving events which form the basis for the determination that the driving record is unsatisfactory or that it is in the public interest to make a referral to remedial programs. The letter will also set out the important facts upon which the referral is based, the evidence upon which those facts are based, and the decision that is supported by those facts. The letter will clarify for the driver the basis for the decision to make the referral.

2 Transition

These Guidelines come into effect on Friday, November 1, 2013.

Update made December 23, 2014 to replace OSMV with RoadSafetyBC

Appendix A: Common Alcohol and Drug Related Driving Events that Trigger Assessment

The following table provides guidance regarding common driving events that will give rise to review of the driving record and possible associated referrals to remedial programs.

Sanction		RDP	IIP	DL Status
1 CCC conviction, MVA offence or 90-day alcohol related driving prohibition and 1 or more alcohol related driving sanction of less than 90 days, within the last 5 years;		Likely appropriate	Likely appropriate	Licence Not Allowed (Licence allowed with IIP once RDP & Prohibition completed)
3 or more alcohol related driving prohibitions including prohibitions of less than 90 days, within the last 5 years	Sanctions must be on or after Feb 1, 2009 for IIP referral	Likely appropriate	Likely appropriate	Licence Allowed
2 alcohol or drug related sanctions under 90 days within the last 5 years	Class 7 Driver	Review Further	Review Further	Action as applicable
	All other DL classes ¹	Likely not appropriate	Likely not appropriate	If IIP referral made, licence Allowed with IIP
1 alcohol-related CCC, MVA offence or 90 day Prohib (IRP or ADP)		Likely appropriate	Initial Assessment to inform IIP referral decision.	Licence Allowed with IIP and RDP (See Initial Assessment Guidelines below)
Initial Assessment Guidelines for 1 alcohol-related CCC, MVA offence or 90 day Prohib (IRP or ADP) (In conducting the initial assessment, the service provider may consider a client's driving history and circumstances beyond the last 5 years)	Referred: RDP Assessed High Risk		Likely appropriate (Adj. Discretion)	Licence Allowed with IIP
	Referred: RDP Assessed Medium Risk		Maybe (Adj. Discretion)	If "Yes": Licence Allowed with IIP If "No": No further action
	Referred: RDP Assessed Low Risk		Likely no (Adj. Discretion)	N/A

¹ RoadSafetyBC is typically not notified of these for non-GLP drivers and typically does not take action on them.

Appendix B: Common Drug Related Driving Events that Trigger Assessment

The following table provides guidance regarding common driving events that will give rise to review of the driving record and may form the basis for associated referrals to remedial programs. IIP is generally not an appropriate referral as the ignition interlock device only measures driver alcohol levels and not other drug levels.

Sanctions		RDP	DL Status
1 CCC or MVA conviction		Likely appropriate	Licence Not Allowed (Licence allowed once RDP and prohibition are complete)
3 Admin alcohol or drug sanctions within the last 5 years	At least 2 must be drug sanctions	Likely appropriate	DL allowed

Appendix C: Important Program Dates and Past Policy Shifts

Date	Policy Shift
June 15, 2005	RDP and IIP begin in British Columbia
February 1, 2009	Ignition Interlock becomes part of remediation for drivers who receive CCC or MVA convictions, 3 administrative sanctions (24 hour prohibitions at the time), and 2 ADPs
September 20, 2010	IRP begins, referrals to RDP and IIP considered for FAILS, REFUSALS and 30 day WARNS
	RDP and IIP referrals for 1 ADP
April 12, 2013	Enhanced referral and review process for remedial programs introduced
	Drivers with CCC and MVA convictions are considered for referral to both RDP and IIP
	Drivers with multiple (3+) alcohol or drug related sanctions within the last 5 years considered for referral to both RDP and IIP
	Drivers with a single 90 day IRP or ADP considered for referral to RDP and undergo initial assessment
	Drivers with a single 90 day IRP or ADP are considered for referral to IIP separately on basis of initial assessment and Driving Record
Sept 3, 2013	Procedure for dealing with single alcohol-related CCCs and MVA offences aligned with existing procedures for single 90-day prohibitions (ADP & IRP).
Oct. 24, 2013	Drivers with multiple (3+) alcohol related sanctions within the last 5 years considered for referral to both RDP and IIP. Drug-related sanctions not generally considered for IIP.
Nov 1, 2013	These Guidelines into effect on Friday, November 1, 2013.