

# Regulatory Impact Analysis – Reducing Road Trauma and the Cost of Reoffending: Mandatory Alcohol Interlocks

## Agency disclosure statement

1. The Ministry of Transport (the Ministry) has prepared this Regulatory Impact Statement (RIS).
2. It provides an analysis of options to improve the effectiveness of New Zealand's land transport drink-drive sanctions regime in dealing with high-risk and repeat drink-drive offenders and achieve a net benefit for road safety. This work was part of a wider review of the sanctions for drink-driving (the Sanctions Review).

## Nature and extent of analysis undertaken

3. The analysis is limited to examining transport legislation, primarily the Land Transport Act 1998, which establishes the offences and penalties regime for drink-driving in New Zealand.
4. An independently reviewed cost-benefit analysis was undertaken on a range of options to increase uptake of the alcohol interlock sentence. The key findings of the preferred option from the analysis are summarised in this RIS.
5. Where possible, the Ministry has sought to estimate the impact of proposed changes to offenders and the justice sector, including the NZ Transport Agency, the courts and the prison system. For some options (increasing severity of current sanctions such as fines, prison sentences, vehicle confiscation and NZ Police administered sanctions), the level of analysis is less sophisticated than the cost-benefit analysis that focuses on interlocks. This reflects decisions to discount options on either practicality or cost grounds.

## Implementing change

6. Amendments to the Land Transport Act are required to implement the Government's agreed changes to the penalties.

## Consultation

7. This paper incorporates feedback received from stakeholders while undertaking the Sanctions Review. The public will have the opportunity to comment on the Government's agreed policy proposals as part of any select committee process.

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## Executive summary

### Context

1. The Land Transport Act 1998 (the Act) establishes the offences and penalties regime (or the sanctions regime) for drink-driving in New Zealand. The regime is complex and has a wide range of sanctions that consist of both court-imposed penalties and administrative sanctions that the NZ Police impose.
2. Court-imposed sanctions include monetary (fines and reparation payments), prison sentences, mandatory driving disqualifications, mandatory alcohol and drug assessments, vehicle confiscation, interlocks and zero alcohol licences. The court can substitute community-based sentences in place of fines, disqualifications or prison sentences. Administrative sanctions include mandatory 28-day licence suspension, and 28-day vehicle impoundments that apply to more serious recidivist offending.

### *Problem definition*

3. While road safety trends in relation to drink-driving have been improving, alcohol remains the most frequently cited contributing factor alongside speed to road deaths and serious injuries in New Zealand and the cause of significant social cost.
4. For the 4 years between 2011 and 2014, on average, crashes caused by drivers with some level of blood alcohol concentration (BAC)<sup>1</sup> resulted in 53 deaths, 304 serious injuries and 905 minor injuries, with an estimated social cost of road injuries of about \$495 million per annum (in 2014 dollars).
5. This is approximately 20 percent of the social cost of all road deaths and injuries. Over 84 percent (\$417 million) of this social cost was associated with cases where the at-fault driver had a BAC level greater than 80 milligrams (mg) of alcohol per 100 millilitres (ml) of blood (or 400 micrograms (mcg) of alcohol per litre of breath)<sup>2</sup>. Fifty percent was associated with a BAC above 150 mg per 100 ml of blood (or 750 mcg/litre of breath).
6. One of the key mechanisms for addressing this social cost is through the sanctions regime that Parliament has established for drink-drive offences, including its impact on deterring reoffending. There were nearly 21,000 drink-drive court cases in 2014. The Sanctions Review found that there are high levels of reoffending, with around half of those convicted in 2014 having at least one previous drink-drive conviction over their lifetime of driving. A further concern is the percentage of offenders who drive with high breath and blood alcohol levels.

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<sup>1</sup> This excludes crashes where drugs were also a contributing factor and crashes where alcohol was suspected but not confirmed as a contributing factor.

<sup>2</sup> These were the former blood and breath alcohol limits for adult drivers that applied prior to 1 December 2014.

7. New Zealand's regime needs a stronger focus on penalty options that deal more effectively with reoffending to reinforce recent changes to the drink-drive limits. These penalty options are also required to support the Police enforcement and publicity regimes that enhance behaviour change across the driving population as a whole through general deterrence.

### ***Regulatory Impact Analysis***

8. The policy question to be addressed is whether the current drink-drive sanctions regime minimises the harm caused by drink-driving, particularly repeat drink-driving, at reasonable cost to society.
9. There were a number of options considered. These included:

#### Preferred option

Option 1: Making the alcohol interlock sentence mandatory for the current eligible pool of offenders, with the addition of offenders subject to a mandatory alcohol assessment under section 65 of the Act (section 65) and a partial subsidy

#### Other options considered and not preferred

Option 2: Status quo

Option 3: Maintain the discretionary alcohol interlock sentence but remove the 3-month disqualification period and the availability of limited licences

Option 4: Have discretionary alcohol interlock licences with partial Crown funding

Option 5: Expanding the eligibility criteria for section 65 mandatory alcohol assessments

Option 6: Increasing the level of fines and prison sentences

Option 7: Strengthening the use of vehicle confiscation for repeat drink-driving offences

Option 8: Expanding the use of administrative sanctions applied by the Police

### ***Cost-benefit analysis***

10. The estimated net present value over the 20-year period between 2017 and 2036 of the preferred option is \$620 million with a national benefit-cost ratio<sup>3</sup> of 4.7. The estimated reduction in alcohol-related trauma per annum is around 8 fatalities, 43 serious injuries and 128 minor and serious injuries. There would be an average of 4,250 additional interlocks fitted per annum.

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<sup>3</sup> Estimate of the ratio of total benefits to total costs resulting from the policy change.

## Problem definition

### *What is the problem?*

11. The harm caused by drink-driving, particularly repeat drink-driving, to society.

### *What is the size of the problem?*

12. Road safety trends in relation to drink-driving have been improving. Nonetheless, alcohol remains jointly the most frequently cited contributing factor (alongside speed or driving too fast for conditions) to road deaths and serious injuries in New Zealand and the cause of significant social cost.
13. For the 4 years between 2011 and 2014, on average, crashes caused by drivers with some level of BAC<sup>4</sup> resulted in 53 deaths, 304 serious injuries and 905 minor injuries. The estimated social cost of road injuries is \$495 million per annum (in 2014 dollars).
14. This is approximately 20 percent of the social cost of all road deaths and injuries. Over 84 percent (\$417 million) of this social cost was associated with cases where the at-fault driver had a BAC level greater than 80 milligrams (mg) of alcohol per 100 millilitres (ml) of blood (or 400 mcg/litre of breath)<sup>5</sup>. Fifty percent was associated with a BAC above 150 mg per 100 ml of blood (or 750 mcg/litre of breath).
15. In 2014, there were nearly 21,000 drink-driving offence cases prosecuted in the courts. Of these, there were 10,094 repeat offenders, which is just under half of all drink-drive offending for that year. The courts tend to impose sentences on repeat drivers that are more expensive for the Crown, such as custodial, home detention and other community sentences.
16. In 2014, the courts imposed the following sentences on 9,562 repeat drink-drivers:
  - 692 custodial sentences (7 percent)
  - 618 home detention sentences (6 percent)
  - 5,416 other community sentences (57 percent)
  - 2,836 fines (30 percent).

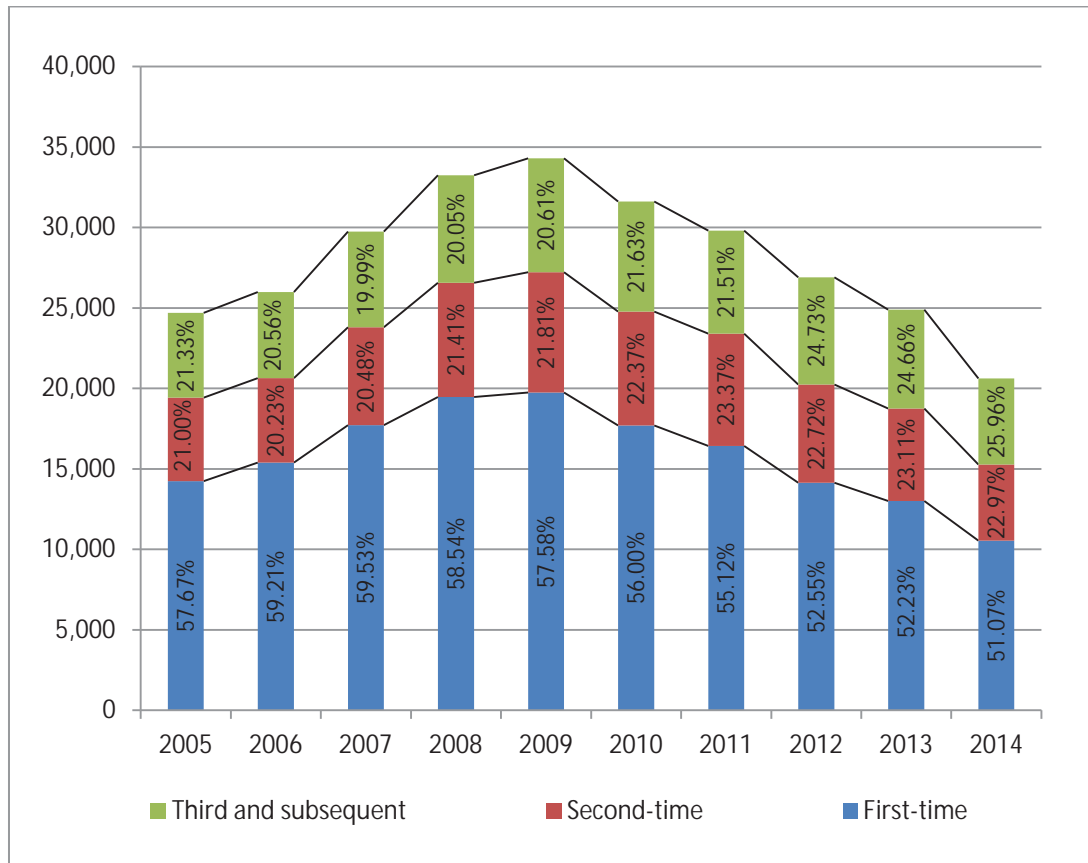
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<sup>4</sup> This excludes crashes where drugs were also a contributing factor and crashes where alcohol was suspected but not confirmed as a contributing factor.

<sup>5</sup> These were the former blood and breath alcohol limits for adult drivers that applied prior to 1 December 2014.

17. Even though overall rates of offending have been decreasing, the proportion of repeat offenders has also been increasing, as shown in Figure 1 below.

**Figure 1: Drink-drive cases by number of drink-drive offences over the lifetime of the person's driving, 2005-2014**



18. In 2014, 23.2 percent of the cases had one previous drink-drive conviction over the lifetime of their driving, and 25.8 percent had more than one previous conviction, as shown in Table 1 below:

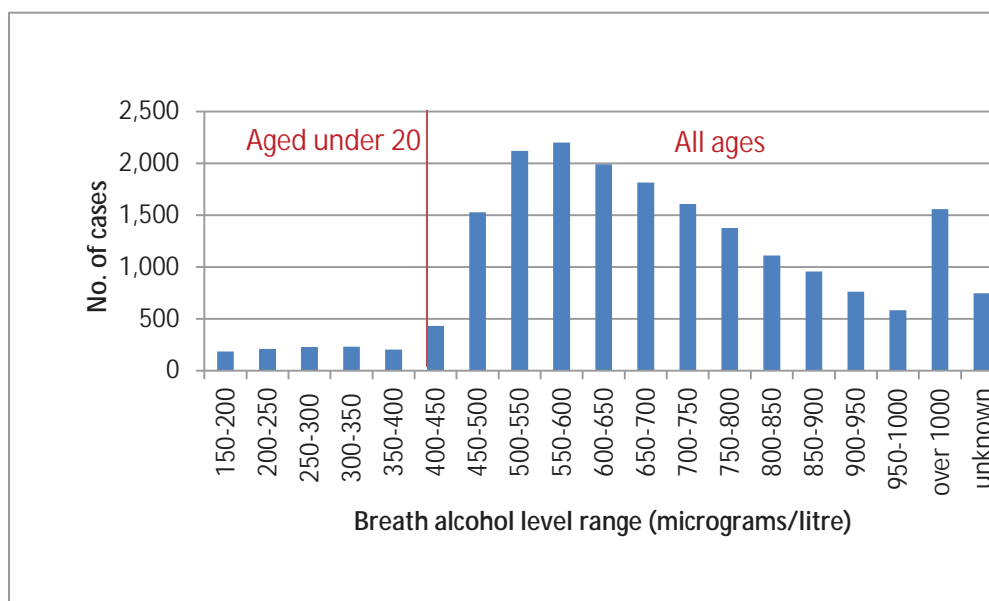
**Table 1: Drink-drive cases in 2014 by the number of previous convictions over the lifetime of the person's driving**

No. of previous drink-drive convictions*	No. of cases	Percentage of cases
0	10,535	51.0
1	4,738	23.2
2	2,582	12.5
3	1,313	6.4
4	665	3.2
5+	796	3.7
<b>Total</b>	<b>20,629</b>	<b>100.0</b>

19. A further concern is the percentage of offenders who drive with high breath and blood alcohol levels.

20. The distribution of court-based offences involving the specified breath alcohol level ranges in 2014 is shown in Figure 2 below. Offences in the ranges below 400 mcg/litre of breath<sup>6</sup> (shown to the left of the vertical red line) relate to drivers, under the age of 20 years, who were prosecuted in court for low-level offences exceeding 150 mcg/litre of breath<sup>7</sup>. Those offences to the right of the red line, apply to those cases where drivers of all ages exceeded the former breath alcohol limit of 400 mcg/litre of breath that applied to drivers aged 20 years and over prior to 1 December 2014.

**Figure 2: Breath alcohol levels of drivers for court-based offences in 2014**



21. Half of the cases where there is a known breath alcohol level fall within the range of 450 mcg to 700 mcg/litre of breath. In 42 percent of the cases, breath alcohol levels exceeded 700 mcg/litre of breath, including 8 percent that exceeded 1,000 mcg/litre of breath (four times the new adult breath alcohol limit of 250 mcg/litre of breath).

## **Government decisions and links to other Government initiatives related to reducing road trauma**

22. The analysis for the preferred option for reducing road trauma is underpinned by Government decisions and links to other initiatives.

### ***Government decisions***

23. In 2011, Parliament reduced the legal drink-drive limits to zero for young drivers under the age of 20 years.

<sup>6</sup> Or an equivalent blood alcohol level of 80 mg /100 ml of blood.

<sup>7</sup> For drivers under the age of 20 years, infringements apply for breath alcohol levels at or below 150 mcg /litre or the equivalent blood alcohol level at or below 30 mg/100 ml.

24. In December 2013, the Government agreed that the Ministry should lead a range of work looking at the drink-drive sanctions regime [CAB Min (13) 38/3 refers]. Specifically, Cabinet:
- a) Directed the Ministry, in consultation with the justice sector agencies, to review the penalties for offences over 80 mg of alcohol per 100 ml of blood (or 400 mcg/litre of breath), along with other measures such as rehabilitation and monitoring of offenders.
  - b) Agreed that the Ministry and the Ministry of Justice, in consultation with the Police, review the vehicle impoundment and confiscation provisions for blood and breath alcohol offences as a part of the review.
25. On 1 December 2014, Parliament lowered the legal drink-drive limits for adult drivers aged 20 and over from a BAC of 80 mg/100 ml of blood to 50 mg/100 ml. It made an equivalent reduction in the breath alcohol limit (from 400 mcg/litre of breath to 250 mcg/litre of breath). The penalty for an offence above the new 50 mg/100 ml, but below the criminal limit of 80 mg/100 ml<sup>8</sup>, is an infringement fee of \$200 and 50 demerit points; it does not result in a criminal conviction.
26. The new adult drink-drive limits are likely to suppress excessive alcohol consumption levels by those who intend to drink and drive afterwards. Over time, a general reduction in drink-driving is expected. There is evidence of this impact on youth drink-driving, with a 70 percent reduction in drink-drive court cases involving drivers aged under 20. However, some of this impact may be due to reduced driving of this group due to other factors such as the increase in the minimum driving age from 15 to 16 years in 2011.

### ***Safer Journeys - link to other Government initiatives***

27. Safer Journeys identified alcohol and drug-impaired driving as an area of high concern.
28. In March 2010, the Government released Safer Journeys - New Zealand's Road Safety Strategy 2010-2020. Safer Journeys established a vision of a "safe road system increasingly free of death and serious injury" and adopted the 'Safe System' approach to achieve this.
29. A Safe System approach looks across the road system to achieve safe roads and roadsides, safe vehicles, safe speeds and safe road use. This approach recognises that even responsible people sometimes make mistakes and poor decisions when travelling on the roads. This initiative looks to implement policies that proactively mitigate the risk of a crash and reduce the severity of consequences in the event of a crash.

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<sup>8</sup> 80 mg/100 ml of blood (or 400 mcg/litre of breath) was also the previous legal limit.

## Current sanctions regime in New Zealand and their impact

### ***Background***

30. This section provides the context and background to the current sanctions available to the courts. A range of options considered for improving the effectiveness of New Zealand's drink-drive alcohol sanctions are informed by the evidence of the impact of current sanctions.
31. The penalties available at present are discussed below. These are:
- a) Imprisonment, fines, and mandatory disqualifications
  - b) Vehicle confiscation
  - c) Section 65 mandatory alcohol and drug assessments
  - d) Alcohol interlocks
  - e) Administrative sanctions (mandatory licence suspension and vehicle impoundment).

### ***Imprisonment, fines and mandatory disqualifications***

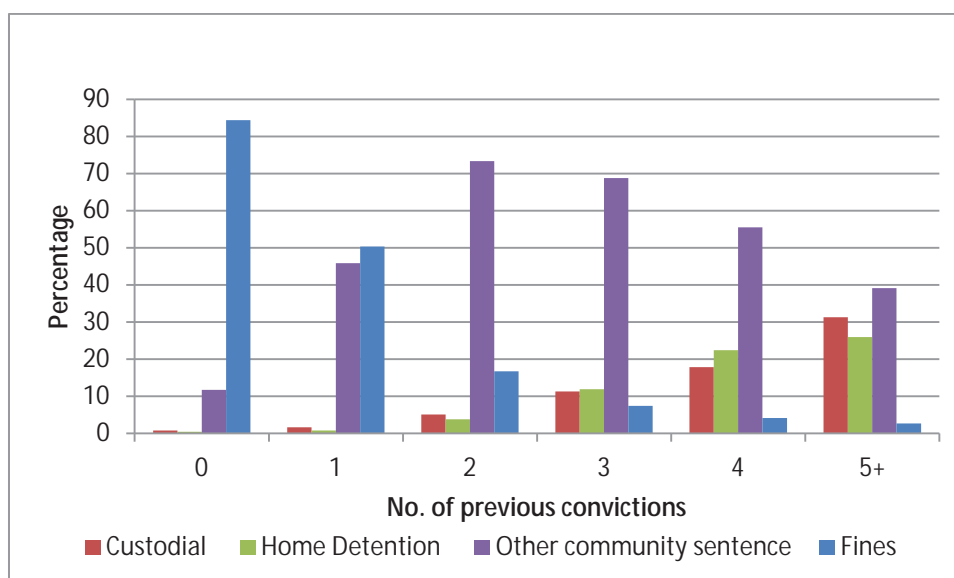
32. The courts are able to impose prison sentences or fines for the majority of drink-drive offences. They may also substitute a community-based sentence in place of a prison sentence or a fine. Regardless of a court's decision on prison sentences, fines or community sentences, it must impose a mandatory driving disqualification of at least the minimum period specified for that offence in the Act.
33. Fines were most often used for first-time offenders. As the number of previous drink-drive convictions increases, the use of fines declines and the use of imprisonment (custodial sentences), home detention and other community sentences becomes more prevalent.
34. Figure 3 below shows the percentage of types of sentences imposed in 2014 by previous convictions<sup>9</sup>.

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<sup>9</sup> The graph does not include all sentence types so the percentages will not add to 100 percent.



**Figure 3: Percentage of types of sentences imposed in 2014 by previous convictions**



Source: Ministry of Justice

35. Table 2 below shows the average fines imposed at each level of severity. The average size of the fines increased for offenders who had more previous drink-drive convictions.

**Table 2: Number of fines and average fines imposed in 2014 for adult drivers by the number of previous convictions**

No. of previous drink-drive convictions	No. of fines imposed	Average fines imposed (\$)
0	6,377	\$618
1	2,138	\$766
2	409	\$911
3	93	\$1,013
4	26	\$1,088
5+	20	\$1,120

Source: Ministry of Justice

36. Information suggests that the courts are not sentencing offenders at or near the maximum of the sentences available to them. In the case of fines, the maximum available fine for a first or second offence is \$4,500 but Table 2 shows the average fine in 2014 for a first time offender was \$618 and, for a second time offender (with 1 previous conviction), the average fine was \$766. For offenders with a third or subsequent offence, the maximum fine is \$6,000 but the average fine imposed in 2014 was just over \$1000. As previous offences increase, the courts are less inclined to use fines as the primary sentence. Instead, they are more likely to impose community sentences or other sentences, such as home detention and custodial sentences (see Figure 3).

37. The average length of a prison sentence imposed ranges from 6 months for those who had three previous drink-drive convictions to 10.8 months for those with five or more previous convictions. These are well within the maximum available prison sentence of 2 years for third or subsequent drink-drive offences specified in the Act.

### **Vehicle confiscation**

38. Under the Sentencing Act 2002, the courts can permanently confiscate vehicles that were used to commit a range of serious driving offences, including drink-driving. Confiscation is discretionary for a first offence and mandatory for a second or subsequent offence within 4 years.

39. The courts seize confiscated vehicles and sell them at public auction. Various monies (including vehicle impoundment fees for a previous impoundment, the court's seizure costs, any unpaid fines and reparations, monies owed on the vehicle to third parties such as finance companies) are removed from the proceeds of the sale. Any remainder is then returned to the vehicle's owner. This addresses the disparity in the severity of the sanction that would otherwise arise between the owners of high value versus low value vehicles.

40. In 2014, just over 4,000 cases had one or more previous drink-drive convictions falling within the 4-year period. Table 3 below shows the vehicle confiscation orders imposed in 2014. Only 2.3 percent of drink-drive cases resulted in a vehicle confiscation order. This order is used rarely in cases where there are no previous drink-drive convictions and only applied for around 4 percent of drink-drive cases where the offender has one or more previous drink-drive convictions over their lifetime of driving.

**Table 3: Vehicle confiscation orders imposed in 2014**

<b>No. of previous drink-drive convictions</b>	<b>No. of vehicle confiscation orders</b>	<b>Percentage of drink-drive convictions</b>
0	29	0.3
1	197	4.3
2	112	4.5
3	52	4.1
4	26	4.1
5+	30	4.0
<b>Total</b>	<b>446</b>	<b>2.3</b>

Source: Ministry of Justice

41. Reasons for the low percentage of vehicle confiscation orders are:

- The Sentencing Act 2002 requires an offender qualifying for a mandatory vehicle confiscation order to own or have a financial interest in the vehicle, which may not be the case (stolen or borrowed vehicles would not meet this condition).
- The courts to take into account the impact of extreme hardship on the offender in relation to their ability to maintain employment, and undue hardship on others who may depend on the vehicle, for example, family members who may depend on the use of the vehicle.
- Vehicles that have been damaged in a crash are ineligible for confiscation.

### ***Section 65 mandatory alcohol and drug assessments***

42. Section 65 is a mandatory sentence imposed by the courts on offenders who have two or more drink-driving convictions within five years:

- at least one of the convictions involves a very high BAC level<sup>10</sup> or a non-compliance offence<sup>11</sup>; or
- three or more drink or drug-driving convictions within five years.

43. An offender sentenced under section 65 is disqualified indefinitely from holding or obtaining a driver licence. They are also ordered by the court to attend an approved alcohol and drug assessment centre. After the offender has served at least 1 year and 1 day of their indefinite disqualification, they can apply to the NZ Transport Agency (Transport Agency) to have the indefinite disqualification removed. Removal of the indefinite disqualification is at the discretion of the Transport Agency, and then only if a satisfactory assessment report is received from the assessment centre.

44. The section 65 process provides a gateway through which repeat drink-drivers who may have substance misuse or dependency issues are directed to assessment. However, the minimum disqualification requirement of 1 year and 1 day, and the lack of monitoring and enforcement of the section 65 order, provides inadequate incentives for offenders to attend the assessment centres in a timely manner<sup>12</sup>. The consequence for non-attendance is that the person remains disqualified.

45. On average, the courts impose around 1,800 section 65 orders every year. Information provided by the Transport Agency indicates that the average length of indefinite disqualifications under section 65 is about 4.6 years. Without monitoring, offenders can continue to drink and drive while disqualified, posing significant risks to themselves and others.

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<sup>10</sup> A BAC exceeding 200 mg/100 ml of blood or 1,000 mcg/litre of breath.

<sup>11</sup> for example, refusing to permit a blood specimen to be taken.

<sup>12</sup> There is no offence in statute for failing to attend the assessment centre.

46. Between 2010 and 2014, 850 (39 percent<sup>13</sup>) of the 2,175 drivers that received a section 65 order in 2010 were caught and convicted of driving while disqualified, and 7 percent of these were caught on at least five occasions during this period. During the same period, 9,215 drivers received an indefinite disqualification and 4,507 had an indefinite disqualification removed.

### ***Alcohol interlocks***

#### Discretionary sentence

47. The alcohol interlock sentence is a discretionary sentence imposed by the courts. This sentence is an alternative for the standard disqualification that would otherwise apply. The alcohol interlock sentence was introduced under section 65A of the Act and has been in force since 10 September 2012. It applies to first-time offenders with high alcohol levels (at or exceeding 160 mg/100 ml of blood or at or exceeding 800 mcg/litre of breath) and repeat drink-drivers convicted more than once within 5 years.
48. The alcohol interlock is a breath-testing device that is hardwired into the ignition system of a vehicle. The driver must undergo a breath alcohol test before the vehicle can be started. The driver cannot start the vehicle if the analysed result is over the pre-set breath alcohol level<sup>14</sup>. The interlock regime aims to reduce drink-driving by preventing people driving their vehicle if they have consumed any alcohol at all.
49. The alcohol interlock sentence requires the driver to undergo additional breath tests at random intervals (that is, rolling re-tests). This minimises opportunities for an intoxicated driver to get another sober person to start the vehicle. It also ensures that the driver does not start their journey sober but continues to drink while driving.

#### Alcohol interlock sentence requirements

50. At present, the following steps apply to an offender receiving an alcohol interlock sentence:
- a) The offender must first serve a mandatory 3-month disqualification period before they can apply to the Transport Agency for an alcohol interlock licence. The alcohol interlock licence specifies that the offender can only drive a motor vehicle to which an interlock is fitted.
  - b) The alcohol interlock licence holder approaches one of the two approved interlock providers and arranges to have the interlock installed in their vehicle.
  - c) The alcohol interlock licence holder is required to have the alcohol interlock licence for a minimum period of 12 months before they can apply to exit the Alcohol Interlock Programme (the Programme) meaning that the interlock can be removed from their vehicle.

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<sup>13</sup> The number of these who have had assessments are unknown.  
<sup>14</sup> In the New Zealand programme, the device is set at zero.

- d) The criteria for exiting the Programme are either a 6-month violation-free<sup>15</sup> period, or a 3-month violation-free period combined with a satisfactory alcohol and drug assessment.
- e) Upon exiting the Programme, the offender is then subject to a 3-year zero alcohol licence before can apply to reinstate their original licence.

51. Interlocks are currently funded on an ‘offender-pays’ basis. The driver licensing fees associated with the interlock are about \$330. In addition to these fees, the sentenced offender pays the cost of fitting and leasing an interlock for 12 months. The total cost ranges from \$2,400 to \$2,700 for the 12-month period (see Table 4 below).

**Table 4: Financial cost of interlocks for 12 months (to the nearest \$)**

	Unit cost (\$)	Cost for 12 months (\$)
<b>Licensing cost</b>		
Alcohol interlock licence application fee	200	200
Zero alcohol licence application fee	66	66
Reinstatement for standard licence	66	66
<b>Cost of the device</b>		
Device installation fee (one-off)	150-175	150-175
Device rental fee (per month)	150-175	1,800-2,100
Device removal fee (one-off)	100-135	100- 135
<b>Total</b>		<b>2,382 - 2,742</b>

- 52. The sentence uptake and fitment of interlocks has been very low since the introduction of the Programme in September 2012.
- 53. As at 31 December 2014, the court imposed 595 alcohol interlock sentences out of the potential pool of over 20,000 eligible offenders in the past two years of the regime being in effect. This is an average sentence uptake of about 3 percent or 4 percent, excluding section 65 offenders. Only 411 of the 595 offenders receiving the sentence have had an interlock fitted (average fitment rate about 76.5 percent).

<sup>15</sup> Violations include failed tests administered by the interlock, tampering with or attempting to circumvent the device, failing at least two re-tests administered by the device and failing at least two times to present the vehicle for a scheduled inspection.

54. A review of the international literature shows that interlocks can reduce drink-drive reoffending by an average of 60 percent while the device is fitted. This effect dissipates once they are removed<sup>16</sup>: The recidivism rate was lower for those who have used the interlock compared to those who had not used the interlock by about 3 percent on average. Further details are provided in Appendix 1. Nonetheless, the current low uptake of interlocks is constraining New Zealand's ability to achieve the full potential of safety benefits from the Programme.

#### Barriers to the uptake and fitting of interlocks

55. Based on the above information, potential barriers to the uptake and fitment of interlocks include:
- a) The alcohol interlock sentence is discretionary and is used as an alternative to a mandatory disqualification of at least 6 months that would apply to first or second time offenders, or a minimum of at least one year for a third or subsequent offending.
  - b) The financial cost of applying for an alcohol interlock licence and its fitment over the 12-month period is onerous. When sentencing offenders, the court is required to take into consideration a number of factors under the Sentencing Act 2002 including the personal circumstances of the offender.
  - c) Programme participants, on an average, take 18 months to exit the Programme<sup>17</sup>, adding to the cost of the offender of participating in the Programme.
  - d) The need for the offender to serve the mandatory 3-month disqualification before the offender can apply for an alcohol interlock licence.
  - e) At the end of the 3-month disqualification (and before the offender applies for an alcohol interlock licence), the offender's licence status changes to a licence of no effect, meaning they are an unlicensed driver. If an offender is caught driving as an unlicensed driver, the penalty is lower than if they are caught driving while disqualified<sup>18</sup>. The behaviours of some offenders indicate that they may seek the alcohol interlock sentence without any real intention of applying for an alcohol interlock licence or having an interlock fitted to their vehicle.

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<sup>16</sup> Bailey, T.J., Lindsay, V.L., & Royals, J. (2013), "Alcohol ignition interlock schemes: Best practice review", *CASR Report Series* 119, November 2013, South Australia: Centre for Automotive Safety Research, The University of Adelaide.  
Elder, R.W., Voas, R., Beirness, D., Shults, R. A., Sleet, D.A., Nichols, J.L., & Compton, R. (2011), "Effectiveness of ignition interlocks for preventing alcohol-impaired driving and alcohol-related crashes: A community guide systematic review", *American Journal of Preventive Medicine* 40(3), 362-376.  
Marques, P.R., & Voas, R.B. (2010), "Key features for ignition interlock programmes", Washington DC: National Highway Traffic Safety Administration.

<sup>17</sup> Information provided by the Transport Agency

<sup>18</sup> The penalty for driving unlicensed is usually a \$400 infringement fee and the driver is forbidden to drive until they obtain a licence. By comparison, the penalties for driving while disqualified for a first or second offence are a fine not exceeding \$4,500, or a prison sentence not exceeding 3 months and a disqualification from driving of at least 6 months.

- f) Courts issue limited licences, under certain conditions, to disqualified drivers to permit limited driving, usually for the purposes of retaining employment. The cost for obtaining a limited licence is about \$1,000 on average, which is less expensive than the interlock and driver licensing costs. A small number of first-time offenders, eligible for an alcohol interlock sentence, can apply for a limited licence if they did not receive the alcohol interlock sentence and instead received the alternative mandatory disqualification of at least 6 months.
- g) There is a 28-day stand-down period before an offender can apply for a limited licence, compared to the mandatory 3-month disqualification for those receiving the alcohol interlock sentence. As a result, the option of a limited licence sentence acts as a disincentive for seeking the alcohol interlock sentence.
- h) Uncertainty among the judiciary as to whether the alcohol interlock sentence should take priority over other alternative penalties, in particular the mandatory disqualification.

56. Due to the short time that the Programme has been in force, and the low numbers of offenders receiving the alcohol interlock sentence, it is not yet possible to establish the reoffending rate for these drivers once their interlock has been removed.

***Administrative sanctions (mandatory licence suspension and vehicle impoundment)***

57. Mandatory licence suspension and vehicle impoundment are administrative sanctions, which allow the Police to take immediate action when an offence is detected. When applied to drink-drivers, these sanctions have the three key elements of an effective deterrent – ‘certainty, severity and swiftness’.

58. The administrative sanctions are applied to drink-drivers as part of a ‘three strikes’ regime (see Table 5 below). They each last for a 28-day period on detection of a qualifying offence and do not replace the court prosecutions for the offence.

**Table 5: Three strikes regime for drink-drive offences**

<b>Three Strikes regime</b>	<b>Criteria</b>	<b>Sanctions</b>
First offence	Breath alcohol level exceeds 650 mcg/litre of breath or 130 mg/100 ml of blood, or driver refuses a blood test	Mandatory licence suspension (28 days)
Second or subsequent offence within four years	Breath alcohol exceeds 400 mcg/litre of breath or 80 mg/100 ml of blood or driver refuses a blood test	Mandatory licence suspension (28 days)
Third or subsequent offence within four years	Breath alcohol exceeds 400 mcg/litre breath or 80 mg/100 ml of blood or driver refuses a blood test	Mandatory licence suspension (28 days) and vehicle impoundment (28 days)

59. During the period of 2010 to 2014, the Police imposed over 55,000 mandatory licence suspensions for drink-drive offences – on average around 11,000 suspensions per annum. Since 2011, the number of mandatory suspensions has fallen by between 770 and 1,300 suspensions per year. Other law changes, including the introduction of the zero alcohol limit for young drivers, may have had an influence on the decreasing rate.
60. Using the Police's estimates, which are based on the offences detected that qualify for vehicle impoundment, over 25,000 vehicles were impounded in 2014. About 1,600 of these were impounded for third or subsequent drink-drive offences within four years. Most of the vehicle impoundments related to driver licensing offences such as driving while disqualified, driving on a suspended or revoked licence, and unlicensed drivers driving while forbidden.
61. Impounding vehicles driven by disqualified drivers indirectly targets drink-drivers since many disqualified drivers would have obtained their disqualifications because of drink-drive offences. The impoundment sanction is applied to those who continue to drive in defiance of their disqualification order.

## **Regulatory Impact Analysis**

62. This regulatory impact analysis is limited to examining the transport legislation, primarily the Act, which addresses drink-driving. Therefore, the options assessed included extending the use of alcohol interlocks, extending the use of mandatory section 65 alcohol assessments, increasing the length of available prison sentences for certain offenders, and extending the use of administrative sanctions.
63. An independently reviewed cost-benefit analysis was undertaken on a number of options. This analysis is based on more rigorous modelling and greater clarity of the assumptions for improving the reliability of the key findings. The key findings are summarised in this RIS.

### ***Policy objective***

64. The regulatory impact analysis addresses the problem of whether the current drink-drive sanctions regime minimises the harm caused by drink-driving, particularly repeat drink-driving, at reasonable cost to society.
65. The key policy levers are:
  - the level of fines
  - the length of prison sentences for certain offenders
  - mandatory minimum disqualification periods
  - vehicle-based sanctions and mandatory licence suspension
  - the discretionary alcohol interlock sentence
  - mandatory section 65 alcohol and drug assessments.



## ***Policy options***

66. The following options were considered to address the policy objective:

### Preferred option

Option 1: Making the alcohol interlock sentence mandatory for the current eligible pool of offenders, with the addition of offenders subject to a mandatory alcohol assessment (section 65) and a partial subsidy

### Other options considered and not preferred

Option 2: Status quo

Option 3: Maintain the discretionary alcohol interlock sentence but remove the 3-month disqualification period and the availability of limited licenses

Option 4: Discretionary alcohol interlock licences with a partial Crown subsidy

Option 5: Expanding the eligibility criteria for section 65 mandatory alcohol assessments

Option 6: Increasing the level of fines and prison sentences

Option 7: Strengthening the use of vehicle confiscation for repeat drink-driving offences

Option 8: Expanding the use of administrative sanctions applied by the Police.

## ***Criteria for assessing the options***

67. The options were assessed against the following criteria:

- a) *Road safety impact* – the likelihood and magnitude of the policy option achieving a reduction in harm and social cost, measured by taking into account the risk and consequences of an alcohol-related crash
- b) *Cost effectiveness* – the costs incurred by government agencies, the private sector and individuals and the extent to which these costs are proportionate to the benefits expected
- c) *Public acceptability* – an assessment of whether the public is likely to accept a particular policy option.

68. The cost-benefit analysis takes into account the first two criteria. The public acceptability criterion was considered in the light of the outcome of the stakeholder workshop was held in May 2015. This criterion helps to determine the range of options analysed.

### ***Scope of the policy options analysis***

69. As the scope of the review was restricted to sanctions relating to drink-driving, the Ministry has not assessed options relating to:

- a) *Alcohol availability* (for example, the sale and supply restrictions). The Government has recently implemented changes through alcohol reform legislation.
- b) *Police enforcement*. The high volume of random roadside alcohol breath tests conducted by the Police each year has helped reduce the number of drink-drive offences through creating general deterrence across the whole driving population. Its main impact on deterrence is to increase public perceptions of the risk of being caught if they drink and drive. The Ministry considers Police enforcement to be a tool that enhances the effectiveness of changes to the drink-drive sanctions regime. The new adult drink-drive limit is expected to deliver greater general deterrence at the current enforcement level. As such, the relative level of enforcement has not been considered as an option.
- c) *High-profile media advertising*. The Ministry considers high-profile media advertising to be a tool, which gives effect to the drink-driving policies in place. It is likely to be more effective when it accompanies Police enforcement campaigns and any changes to the drink-driving regime. As such, the relative level of investment in advertising has not been considered as an option but as an implementation issue for the preferred option is implemented.

### ***Options analysis for alcohol interlocks***

Option 1: Preferred – Mandate the alcohol interlock sentence for the current eligible pool of offenders and repeat drink-drivers subject to section 65 assessment

70. The Ministry's preferred option is to:

- a) make the alcohol interlock sentence mandatory for offenders meeting the existing qualifying offence criteria (a second or subsequent drink-drive offence within a 5 year period; or a breath alcohol level of 800 mcg/litre or higher, or a blood alcohol level of 160 mg/100 ml or higher) – there would be very few exceptions
- b) extend eligibility for the mandatory sentence to drink-drivers who are required to undergo a section 65 alcohol assessment to the mandatory interlock sentence
- c) remove the mandatory 3-month disqualification before the offender is entitled to apply for an alcohol interlock licence

- d) assess any changes arising from the Sanctions Review for their effectiveness (including whether the mandatory interlock sentence should be extended to further groups of offenders) once 3 years of data is available after the changes come into force
  - e) provide a partial Crown subsidy towards the cost of the alcohol interlock sentence to increase the uptake of interlocks
  - f) exclude first-time offenders who qualify for an alcohol interlock sentence due to high alcohol levels from being able to apply for a limited licence if they were to qualify for an exception from the mandatory interlock sentence.
71. The key feature of a mandatory regime is the courts would have to impose the sentence on offenders and there would be few exceptions<sup>19</sup>, such as whether the offender had access to a vehicle. There would be no hardship exception since this would result in many offenders receiving this exception. This could undermine the road safety benefits of the proposed approach.
72. The cost-benefit analysis forecasts that the uptake of the alcohol interlock sentence and the use of interlocks will increase well above current levels. International experience in interlock policy implementation shows higher interlock uptake in jurisdictions with mandatory interlocks, for instance, 15 percent in Florida between 2005 and 2008, 32 percent uptake rate in New Mexico between 2006 and 2008<sup>20</sup>.
73. Under the proposed mandatory alcohol interlock sentence, offenders will:
- be disqualified until they apply for an alcohol interlock licence and have an interlock fitted to their vehicle
  - not have to first serve a mandatory 3-month disqualification period
  - no longer be able to apply for a limited licence (where previously available) if they qualify for an exception and receive a mandatory disqualification instead.
74. The Ministry's research report on high-risk drivers indicates that drivers with a BAC level above 120 mg per 100 ml of blood are considered high-risk drink-drivers. Expanding the mandatory alcohol interlock sentence to this group of offenders can help control their high-risk behaviour and prevent them from repeat drink-driving. This expansion will also enable the interlock policy to keep up with the recent change to the legal adult drink-drive limits.

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<sup>19</sup> Permitted exceptions could (for example) include where an interlock service centre is not located in the vicinity of the person's usual place of residence, or the offender has a medical condition that may prevent them being able activate an interlock.

<sup>20</sup> Marques, P.R., & Voas, R.B. (2010), "Key features for ignition interlock programmes", Washington DC: National Highway Traffic Safety Administration.

75. Based on data from the Ministry of Justice, the eligibility criteria for the alcohol interlock sentence currently covers around one-third of all drink-drive cases in 2014 (excluding those subject to section 65). Expanding the use of the sentence to include first-time offenders with a BAC between 120 mg and 160 mg/100 ml of blood (or between 600 mcg and 800 mcg/litre of breath) would increase this share by a further 21 to 22 percent.

#### Benefits of a mandatory alcohol interlock sentencing

76. The road safety benefits of mandating the alcohol interlock sentence are:
- a) Fitment of interlocks will increase significantly as the volume of offenders receiving the alcohol interlock sentence increases. This will force more repeat and high-risk drink-drivers to change their behaviour and prevent them repeat drink-driving while the device is fitted. Mandating the alcohol interlock sentence will therefore help maximise the safety benefit from fitting an interlock by offenders in the eligible pool.
  - b) The existing 3-year zero alcohol licence helps reinforce the habit of sober driving after the interlock is removed from the vehicle. It is expected that at least a portion of the additional volume of offenders exiting the Programme under a mandatory model will continue to apply. These offenders will be subject to a zero alcohol limit, and some of them may have long-term behavioural change thereafter.
  - c) Helps reduce the pool of disqualified drivers and prevent drink-driving for those who use an interlock. The justice sector could benefit from a reduction in court time dealing with driving while disqualified and repeat drink-drive cases, and a reduction in the number and the costs of sentences for repeat or serious drink-drive offences.
  - d) Has a positive impact on the mobility of the offenders. With the current 3-month mandatory disqualification period removed, offenders who have interlocks fitted right after conviction can benefit from being able to continue driving and remain connected to the society, including being able to retain employment. There will also be an improvement in mobility for those offenders who would have otherwise received a disqualification of at least 6 months for a first or second offence, or more than one year for a third or subsequent offence under the current regime.
  - e) Effective use of the section 65 mandatory assessments could contribute to a reduction in reoffending through addressing the underlying cause of repeat drink-driving. Since section 65 of the Act already provides a mechanism for identifying and rehabilitating those people, managing repeat drink-drivers subject to section 65 through the Programme could deliver the following benefits:

- An incentive and gateway to address their underlying cause for their repeat drink-driving early. Integrating the Programme with rehabilitation measures helps to reinforce behavioural change - this is also recommended by best practice reviews<sup>21</sup> of the Programme.
- A more effective approach than simply an “unmonitored” indefinite disqualification in deterring the risky behaviour of those repeat drink-drivers at the harder end of the spectrum.

#### Cost-benefit analysis of preferred option

77. A detailed cost-benefit analysis has been undertaken on the different policy options to increase the uptake of the Programme. Based on a 20-year evaluation period between 2017 and 2036, the estimated net present value (NPV) of mandating the alcohol interlock sentence for the current eligible pool of offenders (excluding those subject to section 65) is \$203 million with a national benefit-cost ratio (BCR) of 2.7.
78. Compared to the status quo, mandating the alcohol interlock sentence for the current eligible pool of offenders is estimated to increase interlock fitment to an average of around 1,800 per annum. The average number of alcohol-related road casualties saved is estimated to be around 3 fatalities and 72 injuries (serious and minor) per annum.
79. In developing the preferred option, the cost-benefit analysis explored expanding the mandatory alcohol interlock sentence to the following groups:
- a) First-time offenders who have a blood alcohol level between 120 mg and 160 mg/100 ml of blood (or between 600 mcg and 800 mcg/litre of breath).
  - b) Repeat drink-drivers who are subject to mandatory section 65 alcohol and drug assessment orders to go through the Programme as a part of the process.
80. The cost-benefit analysis estimates that the number of alcohol-related road casualties saved would be around:
- a) if first-time offenders with BAC between 120 mg and 160 mg/100 ml of blood (or between 600 mcg and 800 mcg/litre of breath) are included in the eligible pool, 5 fatalities and 118 serious and minor injuries per annum or
  - b) if repeat drink-drivers subject to the section 65 mandatory alcohol assessments are included, 5 fatalities and 123 serious and minor injuries per annum.

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<sup>21</sup> Marques and Voas, 2010, for example.

81. Table 6 below summarises the estimated benefits, costs, NPVs and the associated BCRs for adding the two groups discussed above.

**Table 6: Estimated impact of expanding the mandatory alcohol interlock sentence to some first-time offenders and section 65 offenders**

Groups added	First-time offenders with BAC 120-160 mg/100 ml	Repeat drink-drive offenders subject to section 65 alcohol assessments
<b>Estimated benefits and costs over 20 years (\$m)</b>		
<b>Benefits</b>		
Net reduction in social cost of road crashes	432.2	447.8
Net reduction in cost to NZ Police <sup>22</sup>	34.0	25.4
Net reduction in cost to Justice	3.2	2.2
Net reduction in cost to Corrections	73.1	57.7
<b>Total benefits in present value \$m</b>	<b>542.1</b>	<b>533.2</b>
<b>Costs</b>		
Reduction in mobility	138.9	99.9
Administrative costs to NZ Transport Agency <sup>23</sup>	11.0	8.8
Additional costs to the offenders <sup>24</sup>	88.0	69.4
Additional costs to the Crown <sup>25</sup>	1.1	0.9
<b>Total costs in present value \$m</b>	<b>239.0</b>	<b>178.9</b>
<b>NPV (2017-2036) \$m</b>	<b>303.2</b>	<b>354.3</b>
<b>BCR</b>	<b>2.3</b>	<b>3.0</b>

82. Estimating the additional uptake and the road safety benefits resulting from a change in the interlock policy requires further information about offenders' behavioural responses. Due the lack of information on the demographic, geographic and economic profile of the affected offenders, the analysis has made conservative assumptions that implicitly take account of this lack of information. The estimates of road safety benefits are conservative and informed by the cost-benefit analysis.
83. Under a set of conservative assumptions, the cost-benefit analysis shows that expanding the scope of the mandatory alcohol interlock sentence will meet the policy objectives, but including section 65 repeat drink-drivers in the pool will be more cost-effective. Adding section 65 offenders is estimated to increase by an additional 2,600 (approximately) interlocks fitted per annum on average compared to the status quo. The increase in the volume of additional fitment would improve the benefits gained from changed behavioural response of offenders.

<sup>22</sup> Net cost savings to the Police mainly from reduction in repeat drink-drive offending and driving-while-disqualified offences.

<sup>23</sup> Increase in the administrative cost to the Transport Agency associated with handling additional volume of offenders going through the Alcohol Interlock Programme.

<sup>24</sup> Additional cost of alcohol interlocks and alcohol assessments to offenders.

<sup>25</sup> Additional cost of assessments to be paid by the Crown.

84. While expanding the Programme to include more first-time offenders can result in a greater benefit to road safety, the Ministry believes it is more practical at this stage to focus on increasing the uptake under the current eligibility criteria with the addition of section 65 offenders. However, given the results of the cost-benefit analysis, the Ministry recommends the merits and practicalities of extending the eligibility criteria be investigated once 3 years of data has been collected after the new regime comes into force. The effectiveness of all changes could be reviewed at this time.

#### Mandatory alcohol interlock sentencing – issues and their mitigation

85. The policy issues that need to be mitigated under the preferred mandatory alcohol interlock policy are:
- a) Offenders' ability to meet the cost of interlocks and associated driver licensing costs.
  - b) An inability to cancel the alcohol interlock sentence due to changes in personal circumstances.

#### Offenders' ability to meet the cost of interlocks

86. The cost of interlocks and associated driver licensing costs are a key barrier to the uptake of the Programme. Overseas jurisdictions have found that this cost is a barrier to uptake. A pool of offenders who are eligible for interlocks may not be able to afford to enter or complete the mandatory Programme.
87. The Ministry of Justice provided information on the personal income levels of those convicted of the most common drink-drive offences<sup>26</sup>. These were cases between January 2011 and 31 March 2012, where the drink-drive charge had the most serious sentence. Income relates to the previous 12 months before conviction. It includes wages and salaries, benefit payments, ACC payments, pensions, student allowance payments, paid parental leave, and self-employment<sup>27</sup>.
88. This analysis is not a perfect match for those in the eligible pool for a mandatory alcohol interlock sentence. It provides indicative information about the personal income levels of the general pool of convicted drink-drivers some of whom would qualify for the alcohol interlock sentence. Those convicted of the aggravated drink-drive offence (third or subsequent offence) are more likely to be in this group. Around half of the offenders in this group had a personal income of \$20,000 or less. The personal income profiles are similar for those with a first or second drink-drive offence - around half have a personal income of \$20,000 or less (see Table 7 below). There is no information available on the incomes of offenders who have received the alcohol interlock sentence to date.

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<sup>26</sup> Data source: Integrated Data Infrastructure (IDI) of Statistics New Zealand.

<sup>27</sup> It does not include household income (from spouse or others in the household) and only includes income of adults (aged 17+ years).



**Table 7: Personal income level of offenders convicted for drink-drive as the most serious offence between January 2011 and 31 March 2012**

<b>Income (personal) Convicted cases</b>	<b>Drink-driving (1<sup>st</sup> or 2<sup>nd</sup> offence) No of cases and (%)</b>	<b>Aggravated drink-driving (3<sup>rd</sup> or subsequent offence) No of cases and (%)</b>
<\$10k	4779 (21%)	1005 (16%)
\$10<\$20k	5946 (27%)	2211 (35%)
\$20<\$30k	3546 (16%)	870 (14%)
\$30<\$40k	3177 (14%)	861 (13%)
\$40<\$60k	3195 (14%)	1023 (16%)
\$60k<\$100k	1344 (6%)	369 (6%)
\$100+k	381 (2%)	63 (1%)
<b>Total</b>	<b>22,368 (100%)</b>	<b>6402 (100%)</b>

89. The affordability issue may affect adversely both road safety and justice-related objectives. The alcohol interlock sentence cannot meet its road safety objectives unless the offender has the device fitted to their vehicle and drives only that vehicle. Offenders could remain disqualified until they could afford to enter and complete the Programme, and may drive while disqualified and while intoxicated in the meantime.
90. The Ministry has investigated various avenues to address the affordability issue and recommends three key mitigations to the affordability issue:
- a) Maintaining the provider subsidy scheme
  - b) Providing partial Crown funding
  - c) Allowing the alcohol interlock sentence to be cancelled.

#### Provider subsidy scheme

91. Currently, interlock providers are required to operate a financial assistance scheme as part of their contractual obligations with the Transport Agency. Under this assistance scheme, offenders who hold a community services cards are eligible for a small discount on the monthly rental as well as on installation and removal fees. Without sufficient numbers of participants in the Programme, this scheme is unlikely to operate effectively. However, under a mandatory model, numbers would increase significantly so the scheme could be more viable.
92. The discounts they get from Smart Start Interlocks are as follows:
- Device installation fee \$175 reduced to \$150 (saving of \$25)
  - Monthly service fee \$175 reduced to \$145 (saving of \$30 per month – over 12 months this would be a saving of \$360)
  - Device removal fee - \$135 reduced to \$100 (saving of \$35).
93. The holder of a Community Services Card would save \$420 on the interlock costs over a 12-month period.



94. The Ministry recommends continuing with the current financial assistance scheme under the proposed mandatory model. The new regime should also be monitored closely for any barriers that limit uptake. The scheme should also be reviewed to ensure it is fit for purpose.

#### Partial Crown subsidy

95. To balance the need for the Programme to deliver its potential road safety benefits against the above risk, the Ministry recommends a partial Crown subsidy. The Ministry has estimated the costs and benefits, in 20-year present values, of providing a 35 percent Crown subsidy<sup>28</sup>. The main items<sup>29</sup> are summarised in Table 8 below.

**Table 8: Estimated costs and benefits (present values) over 20 years**

Item	Sub-option with 35 percent Crown subsidy
<b>Costs</b>	
Cost of Crown subsidy	\$36.4 m
Cost of interlocks to offenders	\$64.8 m
Administrative costs to NZTA	\$13.2 m
<b>Benefits</b>	
Reduction in social cost of road trauma	\$641.8 m
Cost savings to NZ Police	\$44.0 m
Cost savings to Justice	\$3.9 m
Cost savings to Corrections	\$99.2 m

Note: This table excludes cost of alcohol assessment (to Crown and individuals), time costs and mobility impacts on offenders

96. Table 8 indicates that a partial Crown subsidy would have significant financial implications for the Government. These costs may be offset by reducing the need for the other expensive sentences that drink-drive offenders currently receive.
97. Overall, the addition of a partial Crown subsidy strongly enhances the proposed mandatory scheme. Increased safety benefits are driven by a higher number of interlocks fitted. It is estimated that the addition of a subsidy would result in 4,250 extra interlocks being fitted each year.
98. The Department of Corrections has obtained funding to establish a trial in which it will pay to have interlocks fitted for 100 drink-drive offenders who would be eligible for a community-based sentence. The trial started in October 2015, with the final referrals to the pilot scheme expected by October 2016. The Department of Corrections anticipates that final data from the trial will be available by the end of November 2017. There may be some preliminary results before then. The Department will use this information to inform its decisions about future initiatives that involve provision of interlocks.

<sup>28</sup> The cost of Crown subsidy is based on an average fitment duration of 18 months

<sup>29</sup> Other items include cost of assessments to offenders and the Crown, mobility impacts and additional administrative costs to the Transport Agency.

99. As this trial will operate within the current legislative framework, it will provide useful data on the effectiveness of subsidising interlocks and on the extent to which other barriers to uptake still apply.

#### Cancelling the alcohol interlock sentence due to changes in personal circumstances

100. Under the current alcohol interlock sentence, if an offender is unable to complete this sentence due to a change in personal circumstances, they remain subject to the sentence indefinitely. The mandatory sentence could exacerbate this situation.
101. The Ministry recommends that this risk be mitigated. An offender should be allowed to apply to the court to have the mandatory alcohol interlock sentence cancelled if the offender's circumstances change significantly. The court could substitute the cancelled sentence with another sentence.
102. Regardless of whether or not the court chooses to substitute with an alternate sentence, the court will not be able to cancel the zero alcohol licence that would normally take effect at the end of the alcohol interlock sentence.

#### ***Other options considered but not preferred***

103. Other options to reduce the harm of drink-driving were also considered.

#### Option 2: Status quo

104. Continuing with the status quo is likely to result in on-going high levels of reoffending. Half of those convicted of a drink-drive offence are likely to be convicted of at least one further drink-drive offence within their lifetime of driving. Some drivers will have multiple further convictions. For those offenders for whom drink-driving is an established pattern of behaviour, the traditional sanctions are unlikely to act as an effective deterrent to reoffending.
105. Although the Programme was introduced to reduce reoffending by preventing drink-driving and reinforcing the behaviour of sober driving, the Programme is underperforming at the current low level of uptake. There is a potential risk of the Programme collapsing if the low uptake persists and the alcohol interlock providers subsequently withdraw their services.
106. High rates of reoffending rate will continue to impose significant costs to the Police and the criminal justice system and pose serious on-going risks to road safety.
107. This option does not respond effectively to reducing harm and social cost. The current penalty regime is an expensive option for Government.

### Option 3: Discretionary alcohol interlock sentence with the 3-month disqualification and the loophole of limited licences removed

108. Removing the 3-month disqualification period and the availability of limited licences to first-time offenders eligible for the alcohol interlock sentence were the minimum interventions that the Ministry considered for encouraging more use of the discretionary sentence by the courts. These interventions address some of the in-built features (other than the cost of interlocks) that make the alcohol interlock sentence an underused sentence.
109. Offenders who receive the alcohol interlock sentence would remain disqualified until they apply for and obtain an alcohol interlock licence. This effectively allows an offender to get an interlock fitted right after conviction if they receive the sentence. This is consistent with the international best practice showing that admittance to an interlock programme soon after convicted can help increase the rate of interlock fitment<sup>30</sup>.
110. This change would remove the 'gap' that currently applies between the end of the 3-month disqualification and the time when the offender applies for an alcohol interlock licence. During this 'gap' period, the person's licence is of 'no effect' (that is, they are an unlicensed driver). As an unlicensed driver, they are subject to lower penalties for driving unlicensed than those that apply for driving while disqualified or breaching the conditions of an alcohol interlock licence).
111. First-time offenders who are eligible for both the alcohol interlock sentence and limited licences would not be encouraged to try to avoid the alcohol interlock sentence in favour of a disqualification and a limited licence. A limited licence allows them to drive, albeit under restricted conditions.
112. However, it is uncertain whether these interventions alone can provide a significant increase in the use of the discretionary alcohol interlock sentence, especially with the cost barrier unaddressed. The cost-benefit analysis has estimated that this option could result in an average interlock fitment of 89 per annum and a negative net impact on road safety.
113. This option would not provide a clear direction to the courts on the use of the interlock sentence and would not significantly increase uptake as a result. Further, it would not address the affordability barrier. As a result, it does not meet the criteria against which these options were assessed.

### Option 4: Discretionary alcohol interlock sentences with a partial Crown subsidy

114. As the cost of the interlock is a barrier, the Ministry also considered a partial Crown subsidy towards the cost of interlocks (along with the two interventions discussed above).

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<sup>30</sup> Marques and Voas' (2010) best practice review based on New Mexico's experience.

115. The Ministry's cost-benefit analysis showed that a subsidy of this nature would have a positive impact on road safety by lifting interlock uptake. The courts might be more likely to impose an alcohol interlock sentence because affordability would be less of an issue.
116. However, the risk associated with this option is that uptake rates would remain dependent on the way that the courts exercised their discretion. Compared to a mandatory approach, there would be a risk that uptake may not increase to the levels forecast.

#### Option 5: Expanding the eligibility criteria for section 65 mandatory alcohol assessments

117. Section 65 of the Act provides a method to direct some serious repeat drink-drivers to alcohol and drug assessment and treatment if required. Effective use of the section 65 mandatory assessments can help reduce reoffending through addressing the underlying cause of repeat drink-driving.
118. The Ministry considered the merits of extending the qualifying criteria of section 65 for reducing reoffending. Extending the threshold to capture all repeat drink-drivers and those caught at a high BAC level may facilitate better identification of drink-drivers with alcohol misuse/dependency problems and thus enable early intervention.
119. However, the following issues have been raised with the current operation of section 65:
- a) There are inadequate incentives for offenders to attend the assessment centres in a timely manner during the disqualification period. The consequence for non-attendance is that the person remains disqualified.
  - b) The current assessment guidelines need updating to better reflect best clinical practice
  - c) The Transport Agency has raised concerns about the quality of some of the assessment reports it receives from some assessment centres
  - d) The criteria for approving assessment centres need revision
  - e) Issues raised by assessment centres about the funding arrangements for assessments. The legislation only provides for payment of one assessment per section 65 order regardless of how many assessments the person needs. There have been questions about who pays for education programmes. Some programmes are publicly funded. These programmes are not available in all areas of the country
  - f) The Ministry of Health is currently reviewing the assessment guidelines to ensure they are fit for purpose – it is also reviewing the criteria for approving assessment centres and has commissioned an audit of assessment reports provided to the Transport Agency.

120. Any extension of the qualifying offence criteria of section 65 assessments would increase the cost to the Crown for the Crown-funded assessment fee and costs to the Transport Agency to process the assessment reports for the additional people. There would be additional costs to the health sector for treatment for those requiring it.
121. The section 65 process provides one gateway to direct repeat drink-drivers, who may have substance misuse or dependency issues, to assessment and treatment. It is worth noting that the section 65 process is not the only pathway by which the courts can direct offenders, including drink-drivers, to assessment and treatment.
122. Information provided by the Ministry of Justice indicates that each year around 4,000 drink-drivers obtain a sentence with an alcohol or drug condition for counselling or treatment. In 2014, the courts imposed sentences with an alcohol or drug assessment or treatment condition in 3,816 cases. Of these, 847 cases (22 percent) also obtained a section 65 order. This suggests that the courts are imposing sentences with alcohol and drug counselling or treatment conditions in cases where the offender does not qualify for a section 65 order. The Ministry of Justice advises that alcohol and drug clinicians are present in some courts to assist with this process.
123. At present, there is insufficient information on the impact on harm reduction or cost efficiency if the eligibility criteria for section 65 assessments were expanded. Therefore, the Ministry recommends that issues with the current assessment process be resolved before considering extending qualifying criteria for section 65 alcohol assessments.

#### Option 6: Increasing the level of fines and prison sentences

124. Higher levels of fines and prison sentences applying to drink-driving offenders across the sanctions regime were considered as a means of deterring people from reoffending by sending a strong message that drink-driving behaviour will attract a serious penalty. Some members of the public would support a move to signal the risk posed by drivers who repeatedly drink and drive.
125. In 2014, the average size of the fines imposed by the courts was \$618 for adult drink-drivers who had no previous convictions. Where fines were used, the courts imposed higher average fines on offenders who had more previous drink-drive convictions. For example, the average size of the fine was \$911 for adult offenders who had two previous convictions.
126. The sizes of the average fines imposed are well within the maximum levels specified in the law (\$4,500 for a first or second drink-drive offence and \$6,000 for a third or subsequent offence). Therefore, there is little justification for increasing the maximum levels of fines specified in the Act.
127. The courts are more likely to use other types of sentences (other than fines) for offenders with multiple previous drink-drive convictions. For those offenders with a larger number of previous convictions, the courts tended to impose community-based sentences, home detention and custodial sentences as the main sentence.

128. There is also no evidence to suggest that the courts are imposing prison sentences at or near to the top end of the ranges that are currently available to them. For instance, the average length of a prison sentence imposed ranges from 6 months for those who had three previous drink-drive convictions to 10.8 months for those with five or more previous convictions. These are well within the maximum available prison sentence of 2 years for third or subsequent drink-drive offences specified in the Act.
129. While sanctions need to be credible in order to signal the community's unwillingness to tolerate behaviour it considers unacceptable, there are likely to be limits as to how far a sanctions regime can go with sanctions such as imprisonment and fines.
130. A commonly held belief is that if a sanction does not appear to deter people from offending, then an increase to level of the sanction will have a greater deterrent impact. This fails to take account of other factors that may influence deterrence (for example, public perceptions of the risk of being caught). If perceptions of the risk of being caught are low, the severity of sanction is less relevant since people do not believe that it will apply to them.
131. Due to the large number of repeat offenders who are prosecuted and convicted each year for drink-drive offences (over 10,000 cases in 2014), the Crown costs of increasing prison sentences are likely to be significant. The RIS undertaken in 2013 on the proposal to lower the adult drink-drive limits (Safer Journeys: lowering the legal alcohol limits for driving) provided preliminary estimates of the cost of strengthening penalties for third or subsequent drink-drive offences. This was estimated at \$365 million over 4 years if the maximum prison sentence was increased from 2 to 3 years. If the maximum prison sentence for first and second drink-drive offences was increased from 3 months to 1 year, a preliminary estimate of the cost increase was \$23.6 million over 4 years.
132. Based on the information above, the Ministry does not recommend increasing the severity of fines and prison sentences, as they are unlikely to achieve the objectives of the criteria used for assessing the options. The high costs are unlikely to be offset by significant reductions in reoffending rates.

#### Option 7: Strengthening the use of vehicle confiscation for repeat drink-driving offences

133. Strengthening the use of vehicle confiscation for repeat drink-driving offences was considered as a means to prevent the driver from reoffending because their vehicle is permanently seized by the court.
134. As vehicle confiscation is already mandatory for specified repeat offences within 4 years including drink and drug-driving, there is little scope to strengthen the legislative provisions. Such a move would carry an associated risk of adverse consequences for people other than the offender. An example would be cases where the vehicle's owner is not the offender. The Ministry will discuss opportunities for possible administrative improvements with the Police and the Ministry of Justice.
135. If the alcohol interlock sentence becomes mandatory, the court should not have to confiscate a vehicle.



136. This option is not recommended as it provides little scope for further reduction in harm through legislative means, and it has the potential for unintended social costs.

#### Option 8: Expanding the use of administrative sanctions applied by the Police

137. Expanding the use of administrative sanctions such as the 28-day mandatory licence suspension and 28-day vehicle impoundment was considered as a means to reducing reoffending by sending a strong deterrent message to the public.
138. The main purpose of the mandatory licence suspension and vehicle impoundment regimes is to allow the Police to take immediate action to remove unsafe drivers from the driving environment. When applied to drink-drivers, these sanctions have the three key elements of an effective deterrent sanction — ‘certainty, severity and swiftness’.
139. During the period of 2010 to 2014, the Police imposed over 55,000 mandatory licence suspensions for drink-drive offences — on average around 11,000 suspensions per annum. Since 2011, the number of mandatory suspensions has fallen by between 770 and 1,300 suspensions per year. This may have been influenced by other law changes including the introduction of the zero alcohol limit for young drivers.
140. The Ministry does not consider that the mandatory licence suspension regime needs to be extended as it is already sanctioning a significant number of drivers. The 28-day period is set at an appropriate level of severity for an administrative sanction. There are questions about the acceptability of further extending an administrative sanction applied outside the immediate jurisdiction of the courts, and before the person has been convicted of an offence. It is likely to raise consistency issues with the New Zealand Bill of Rights Act 1990, such as the right to be presumed innocent.
141. The Police do not collate centralised statistics on vehicle impoundments. Estimates based on offences that qualify for vehicle impoundments indicate there were over 25,000 vehicles impounded in 2014 for various driving offences. These numbers are similar to the estimates in previous years.
142. Most of the estimated number of vehicle impoundments occurred for driver licensing offences (such as driving while disqualified, driving on a suspended or revoked licence, and unlicensed drivers driving while forbidden). The estimates for third or subsequent drink-drive offences within 4 years and alcohol interlock licence condition breaches are lower. However, a significant number of drink-drivers may have already qualified for the vehicle impoundment if they have been caught driving while disqualified
143. In the past, towage and storage providers have raised concerns about the levels of towage and storage fees they are paid for impounded vehicles. They consider that these fees are insufficient to cover their costs. There were also concerns about low value vehicles that are unclaimed at the end of the impoundment period. At the time, this was estimated to be as high as 30 percent of impounded vehicles in some areas. In 2012, Cabinet considered a proposal to increase the regulated towage and storage fees for impounded vehicles but declined to adjust these fees.

144. Any move to expand the vehicle impoundment regime also carries risk. The number of vehicles impounded each year for repeat drink-drive offences is uncertain. As a result, it is difficult to assess the road safety impact or cost effectiveness of extending this sanction, including the capacity of the regime to expand significantly beyond its current levels. This would also raise consistency issues with the New Zealand Bill of Rights Act 1990 for similar reasons. An extension to the impoundment period would also exacerbate the problem of unclaimed vehicles.
145. The Ministry does not recommend this option as it raises a number of issues related to the New Zealand Bill of Rights Act 1990 and it is not clear if expanding the sanctions currently used by the Police will be improve reoffending rates.

## Conclusions and recommendations

146. There is a clear road safety benefit from introducing a mandatory alcohol interlock sentence for offenders under the current eligibility criteria in section 65A of the Act, and repeat drink-drivers with section 65 mandatory alcohol assessment orders. The Ministry recommends that a mandatory regime be introduced.
147. The estimated benefits of a mandatory regime are enhanced by including a partial subsidy. There is information to suggest that many repeat offenders will be unable to afford the cost of maintaining an interlock on their vehicle. As a result, there is a risk that a number of these low-income offenders would be unable to complete the sentence would remain indefinitely disqualified. The consequence of this that they are likely to continue driving while disqualified and potentially while intoxicated. Finance assistance would reduce this risk.
148. With a 35 percent subsidy in place, the net benefit over 20 years of the mandatory regime is estimated at \$620 million. This assumes an average additional uptake of around 4,250 interlocks per annum. This option has a national BCR<sup>31</sup> of 4.7. The Ministry estimates the reduction in alcohol-related trauma per annum to be around 8 fatalities, 43 serious injuries and 128 minor injuries. As a result, the Ministry's preferred option, Option 1, includes this subsidy. The Ministry notes that the actual amount of the subsidy and the details of any subsequent financial assistance scheme need to be developed. For example, whether any subsidy scheme should be applied universally to all offenders receiving the sentence or whether this assistance should be means-tested. The cost-benefit analysis assumes a universal subsidy.
149. Changes to other sanctions were considered to target drivers with a high BAC level and repeat drink-drivers. However, given the costs and risks involved in any proposed increase in the level of court-imposed sanctions, such as increasing maximum prison terms, and the likely limited impacts on reducing reoffending, the Ministry finds limited scope for strengthening of these sanctions.

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<sup>31</sup> An estimate of the ratio of total benefits to total costs resulting from the policy change.



150. There is also limited scope for strengthening administrative sanctions, especially due to uncertainty over the potential impacts of such sanctions, such as storage capacity for impounded vehicles. There is also a question on the extent to which such sanctions, that are applied outside the immediate jurisdiction of the courts, can be strengthened without undermining justice principles.
151. The Ministry also notes that the cost-benefit modelling undertaken suggests that there would be additional benefits in extending the mandatory alcohol interlock sentence to a broader range of drink-drivers. The modelling assessed lowering the threshold for first time offenders from 160 to 120 mg/100 ml of blood. However, the Ministry has not recommended this extension to be part of this package at this time. It would place extra demands on the appropriate management of the regime. Consequently, the Ministry recommends that the Government review eligibility once three years' worth of data is available on the impacts of the new regime.

## **Consultation**

152. The Ministry convened a workshop for stakeholders in May 2015. The purpose of the workshop was to discuss general policy directions for the Sanctions Review. This was attended by government agencies and a range of stakeholder interest groups, including the NZ Automobile Association, alcohol and drug assessment and treatment providers, and the two interlock providers.
153. The general themes that came out of the workshop included no support for strengthening current penalties for drink-driving, such as fines and prison sentences. There was strong support for making greater use of interlock sentences and rehabilitation initiatives.
154. Following the workshop, written submissions were received from two attendees at workshop. These were the NZ Automobile Association and Gerald Waters from Researching Impaired Driving in New Zealand. The written submissions were consistent with the general themes that were raised the workshop,
155. There will be a further opportunity for stakeholders to express their views on the Government's preferred policy proposals as part of any select committee process.

## **Implementation**

156. Proposals agreed by Cabinet are expected to be included in the Land Transport Amendment Bill, which is in Government's 2016 legislative programme.
157. Changes endorsed by Parliament would be expected to take effect at least 6 months after the Amendment Act receives Royal Assent. This allows the relevant agencies sufficient time to prepare for the changes.

158. There would need to be a comprehensive publicity campaign prior to the changes, which would be conducted by the Transport Agency. Introducing the mandatory interlock sentence would require a review of the current administration processes carried by the Transport Agency, given the expected increase in volume. Extra staff may be required, and the contracts with the interlock providers may need to change.

### **Monitoring, evaluation and review**

159. The Ministry recommends that it and the Transport Agency monitor closely the impacts of any changes to the interlock policy to assess any barriers to uptake.
160. After the legislation has been in force and 3 years of data are available, the Ministry will provide a report to the Minister of Transport on the effectiveness of the proposed measures. This report should include the impact of the changes and the desirability of extending the mandatory interlock sentence to cover drivers deemed as high-risk (offenders apprehended with a blood alcohol level of 120 mg per 100 ml of blood or more).
161. Drink-driving is the most monitored area of road safety statistics in the public domain and the impacts of the proposed changes are also likely to be subject to high media and public scrutiny.

# Appendix 1

## Findings on the effectiveness of alcohol interlock from the international literature

Jurisdiction	Eligibility	Findings on effectiveness	
		With interlocks	After removal
<b>New Mexico</b> (since 1999)	All driving while intoxicated (DWI) offenders (except those who have committed vehicular homicide or great bodily injury by vehicle)	<p>First-time offenders recidivism rate (Source: Roth et al., 2007a):</p> <ul style="list-style-type: none"> <li>• Interlock group 2.6%</li> <li>• Non-interlock group 7.1% (63% lower)</li> </ul> <p>Repeat offenders recidivism rate (Source: Roth et al., 2007b):</p> <ul style="list-style-type: none"> <li>• Interlock group 2.5%</li> <li>• Non-interlock group 8.1% (69% lower)</li> </ul>	<p>First-time offenders recidivism rate (Source: Roth et al., 2007a)</p> <ul style="list-style-type: none"> <li>• Interlock group 4.8%</li> <li>• Non-interlock group 6.7%</li> <li>• Recidivism rate 3% lower than the non-interlock group over 3 years</li> </ul> <p>Repeat offenders recidivism rate (Source: Roth et al., 2007b):</p> <ul style="list-style-type: none"> <li>• Recidivism rate 4% lower than the non-interlock group over 3 years</li> </ul>
<b>California</b> (since 1986)	<p>First-time offenders</p> <p>Repeat offenders</p>	<p><b>Recidivism rate:</b></p> <ul style="list-style-type: none"> <li>• Interlock group 3.9%</li> <li>• Non-interlock group 5.9%</li> </ul> <p><b>(or 34% reduction)</b></p> <p><b>(source: EMT, 1990)</b></p>	<b>NA</b>
<b>Alberta</b> (since 1990)	<p>First-time offenders</p> <p>Repeat offenders</p>	<p>Offending rate compared to no interlocks by offender type:</p> <ul style="list-style-type: none"> <li>• First-time: 95% lower</li> <li>• Second-time: 89% lower</li> <li>• Re-arrest rate: 89% lower</li> </ul> <p>(Source: Voas et al., 1999)</p>	<p>Re-arrest rate after removal of interlocks by offender type:</p> <ul style="list-style-type: none"> <li>• First-time 9% lower</li> <li>• Second-time 4% lower</li> </ul> <p>(Source: Voas et al., 1999)</p>
<b>Quebec</b> (since December 1997)	All DWI offenders	<p><i>First-time offenders re-arrest rate:</i></p> <ul style="list-style-type: none"> <li>• Interlock group &lt;0.05%</li> <li>• Non-interlock group 2%</li> </ul> <p><i>Second-time offenders re-arrest rate:</i></p> <ul style="list-style-type: none"> <li>• Interlock group &lt;2%</li> <li>• Non-interlock group 6%</li> </ul> <p>(Source: Vezina, 2002)</p>	<p>Re-arrest rate (24 months since removal):</p> <ul style="list-style-type: none"> <li>• Interlock group 4%</li> <li>• Non-interlock group 5%</li> </ul> <p>(Source: Vezina, 2002)</p>

<b>Sweden (since 1999)</b>	First-time and repeat offenders	Re-arrest rates (p.a.):	Re-arrest rates after removal:
	Those demonstrate alcohol/substance abuse ineligible	• With interlock 0%	• Interlock group 1.8%
		• No interlock 4.4%	• Non-interlock group 4%
		Injury crash rates (p.a.):	Injury crash rates:
	• With interlock 0%	• Interlock group 0.9%	
	• No interlock 0.6%	• Non-interlock group 0.6%	
	(Source Bjerre, 2005)	(Source: Bjerre, 2005)	