

VICTIMS AND SURVIVORS OF IMPAIRED DRIVING AND CANADA'S PAROLE PROCESS

“There is never justice. Too much hope and expectation are placed on that word. It doesn't change what has happened; no one wins.” Victim/survivor of impaired driver.

MADD Canada's mission is to stop impaired driving and to support victims of this violent crime. As the only anti-impaired driving organization in Canada that offers support to victims and survivors of impaired driving, MADD Canada staff and Victims Services Volunteers offer services to thousands of victims and survivors of impaired driving every year. MADD Canada first began offering support twenty-seven years ago and hundreds of volunteers have been trained since that time

Countless victims and survivors of impaired driving across the country have benefited from the services MADD Canada provides, which may include emotional support, court accompaniment, support preparing Victim Impact Statements, support groups and an annual National Conference for Victims of Impaired Driving.¹

Every day, on average, up to of four people are killed and tens of thousands more are injured in crashes where alcohol and/or drugs were present. Impaired driving remains one of the leading causes of criminal death in Canada. Some of those who survive crashes suffer life-altering injuries that may affect their quality of life, their ability to work and their psychological well-being. The financial costs of impaired driving is estimated to be \$20 billion per year. MADD Canada estimates the social costs of an impaired driving related death is over \$13 million, and the average costs per injury is \$44,000 although the cost of injuries can vary widely.

Despite the number of people impacted by impaired driving, the costs involved and the serious nature of the crime, the impact of the loss and/or injury is not recognized in the same way that serious violent crimes are, and victims/survivors of impaired driving are not given the same attention. The view of the impact of impaired driving on victims and survivors is consistent with the approach taken by the criminal process – it is a justice focus, not a harm focus.

Victims and survivors of impaired driving are excluded from some government programs. They may be less likely than other victims of violent crimes to be offered services. Few resources are dedicated to understanding the impact of impaired driving. Victimologists, for example, focus on homicide, gender based violence and terrorism. Victimology textbooks rarely if ever mention impaired driving, choosing rather to focus on crimes, like homicide, where the offender intends to kill or injure.

Victims and survivors of impaired driving often express concerns that the justice system does not take impaired driving seriously. They perceive sentences for an impaired driving causing death or serious injury are too “light” and do not reflect the seriousness of the crime. For example, the range of sentence for an impaired driving causing death conviction is 4-6 years, depending on

¹ MADD Canada developed one of the first death notification training for first responders that has been used to train thousands of first responders and victim services staff and volunteers across the country. This training has been developed into an online program available for first responders.

aggravating and mitigating factors. The sentence of first-degree murder is life without parole for 25 years; for second-degree murder, it is life without parole for 10-25 years. The appropriateness of sentences for impaired driving aside, what is significant is how victims and survivors perceive and process those penalties.

Beyond the perception of the penalty, the sentence length determines when the offender will be eligible for various forms of conditional release.² The shorter the sentence, the earlier someone can apply for parole. The impact of parole and the engagement of victims in the parole process is probably the least understood aspect of victims' participation in the criminal justice system. Despite the rapid increase of "rights" in terms of the parole process, academics have ignored conditional release in terms of victims and survivors' experiences.

This project focused on how victims and survivors of impaired driving interact with and experience the conditional release process so soon after the sentencing of the offender. The paper will include the perspective of both family members who have lost someone and those who have been injured in crashes.³ The paper will focus briefly on the impact of impaired driving on victims and survivors and how a justice approach, compared to a harm-based approach, can affect victims and survivors. The paper will then review the findings of our outreach.

IMPACT OF IMPAIRED DRIVING

Research with respect to victims and survivors of impaired driving is limited and has historically not been prioritized despite being one of the leading causes of criminal death and injury in Canada. Despite the seriousness of the crime, it is still viewed by many as an "accident."

"To date, there is very limited research available that speaks to the impact on individuals that have had a family member die as a result of impaired driving. As such, literature pertaining to the impact on individuals who have experienced a sudden traumatic death, such as a homicide, were sought acknowledging the body of literature supporting the notion that the experience of sudden traumatic death by survivors, whether by homicide or has very little difference in terms of grief response."⁴

The existing research suggests that grief resulting from a death because of a crime like impaired driving is comparable to the grief resulting from homicide. One study found that, "Surviving family members of criminal homicide and of alcohol-related vehicular homicide victims were more similar than they were different with respect to their experiences with the criminal justice

² Despite the perception of sentencing that victims and survivors may have, sentences have slowly increased over the last decade. As a result, more and more of the victims and survivors who come to MADD Canada for support and assistance are asking about attending federal parole hearings, submitting victim statements and requesting information about the offender.

³ There is more feedback from people who have lost someone to an impaired driver because they make up the majority of people that MADD Canada supports but also because they usually result in a federal prison sentence whereas sentences for injury cases vary widely depending on the severity of the injury.

⁴ Nicholas A. Jones, Jody Burnett and Robert Mills, "Understanding the Effects of impaired Driving in Saskatchewan," Community Safety Knowledge Alliance, June 2018. p. 8.

system, their satisfaction with their treatment by the criminal justice system, and the impact of the homicide upon their lives.”⁵

A report by the Community Knowledge Safety Alliance states, “a literature review on death-related road trauma conducted by Lord (2010) noted that the impact or harms families experienced following a road trauma is “very similar” to that of a homicide (p. 3). These identified harms highlighted the significant emotional, mental, social, and financial impacts on family members as well as the challenges experienced when dealing with the criminal justice system. The review also cites literature that emphasizes the need for specific clinical supports to attend to the vast needs of individuals and families impacted by road trauma, including initial crisis response as well as after care post incident, both short and long term.”⁶

Sprang says, “...is believed that the nature and course of bereavement after a drunk-driving fatality is complicated by the traumatic mode of death.”⁷ She goes on to say, “The unnecessary and violent nature of the death of drunk-driving victims intensifies the psychological response to trauma surviving family members experience.”⁸

Families of those killed in impaired driving crashes are at higher risk for depression, PTSD and health problems. Distress can last up to 4 to 7 years after the death of a loved one.⁹

Physical injuries in impaired driving crashes can range from minor to life altering. MADD Canada works with victims and survivors who have lost limbs, suffered serious brain injuries, lose mobility, lose the ability to communicate and live shorter lives. Injuries can affect employment, relationships and can have significant financial implications.

Injured victims, even when the injuries are minor, may be at higher risk for PTSD, depression, etc. These individuals are very unlikely to be offered victim services in many jurisdictions.

A factor that is consistently identified in research regarding the impact of violent crime is that the death/injury was caused by the actions of someone else. For victims and survivors of impaired driving, one of the most painful aspects of impaired driving related deaths and injuries for victims and survivors is that the crime is so preventable.

The criminal justice process can worsen the trauma of the loss or injury. Research has shown that the criminal justice system can have a negative outcome for victims and survivors and be a source of secondary victimization. In many cases, they are involved with the criminal justice system for years, which can be a difficult and painful process. Impaired driving offences are among the most heavily litigated in the criminal justice system. Even if an accused pleads guilty,

⁵ Dean G, Kilpatrick, A Amick and H S Resnick. “Impact of Homicide on Surviving Family Members,” National Institute of Justice, 1990. <https://www.ojp.gov/pdffiles1/Digitization/130823NCJRS.pdf>

⁶ Nicholas A. Jones, Jody Burnett and Robert Mills, “Understanding the Effects of impaired Driving in Saskatchewan,” Community Safety Knowledge Alliance, June 2018., p.9

⁷ Ginny Sprang. “PTSD in Surviving Family Members of Drunk Driving Episodes,” in *Families in Society: The Journal of Contemporary Human Services*, 1997. p. 632

⁸ Ginny Sprang. “PTSD in Surviving Family Members of Drunk Driving Episodes,” in *Families in Society: The Journal of Contemporary Human Services*, 1997. p. 632

⁹ Janice Harris Lord, “Real MADD: How to Help Road Trauma Survivors,” Grief Matters Autumn 2010, p.5.

it can take a year to resolve. If the case goes to trial, 2 to 3 years is not uncommon. Families may then have to deal with a separate civil law process depending on the situation. “Many researchers agree that the grieving process can be delayed, disrupted or distorted by the demands of the criminal justice proceedings, and that once these are concluded, feelings which had been put on hold may start to take over.”¹⁰

THE JUSTICE BASED APPROACH TO IMPAIRED DRIVING

In the criminal justice system, impaired driving causing death and murder are treated very differently, just as attempted murder and impaired driving causing injury are considered different crimes. While that may make sense from a justice perspective, research is clear that the impact of impaired driving causing death is similar to homicide and even “minor” crashes can cause PTSD.

“Two conceptual distinctions must be made when examining a family member’s biopsychosocial response to the death of a loved one caused by a drunk driver: the issue of accident versus a crime and the issue of a crime versus a social problem...Societal messages that minimize the death by calling it an accident may minimize the significance of the event in the survivor’s mind.”¹¹

This justice-based approach is seen not only in the justice system, but in what supports and services are offered to victims and survivors of impaired driving as well. Victim services tend to focus on violent crimes, specifically domestic violence, sexual assault and homicide. As a result, many victims and survivors of impaired driving do not access government-funded services. Some provincial governments classify impaired driving victims and survivors as victims of “tragic circumstances,” not victims of violence for the purpose of funding and services. Less than 1% of victims and survivors of crime offered support in Ontario were impacted by impaired driving and that is not unique to Ontario.

The message that victims and survivors of impaired driving continually receive is that their loss or injuries are not as serious as homicides or intentional assaults because they are more like car accidents. Some research has found that the use of the word “accident” to describe a crash caused by an impaired driver may “impede the recovery of crash victims by preventing them from assigning blame and working through emotions related to the trauma.”¹²

“The message the surviving family members receive is that drunk driving is a less significant crime than other crimes.”¹³ Therefore, their suffering is less significant as well.

¹⁰ Debra Clothier. “The Impact of Crime as Victims Embark Upon Recovery,” p.21; <https://paladinservice.co.uk/wp-content/uploads/2013/10/Priti-Patel-MP-2013-Rebalancing-the-Scales-prioritising-victims-in-the-Criminal-Justice-System.pdf>

¹¹ Ginny Sprang “PTSD in Surviving Family Members of Drunk Driving Episodes,” in *Families in Society: The Journal of Contemporary Human Services*, 1997. p. 633

¹² AE Stewart, Lord JH, “Motor Vehicle crash versus accident: a change in terminology is necessary,” *J Trauma Stress*, 2002 Aug; 15 (4): 333-5.

¹³ Ginny Sprang. “PTSD in Surviving Family Members of Drunk Driving Episodes,” in *Families in Society: The Journal of Contemporary Human Services*, 1997. p. 633

This justice-based approach focuses on the motivations of the offender, not on the impact of the crime. In other words, because the impaired driving does not intend to kill or hurt anyone, the impact of his/her actions cannot be as serious. It is an approach based on what governments are willing to offer, not on what victims and survivors of a serious crime need. “The death of a loved one to road trauma is often discounted because no-one involved intended for it to happen. However, the aftermath for family members is very similar to that following a murder.”¹⁴

MADD Canada contends that the impact on the victim or survivor and their family of impaired driving is not determined by the intent of the offender. It has many of the same factors as other violent crimes - the crash is sudden and unpredictable; the results may be severe – death or serious injury; the crash can affect their view of the world and sense of safety.

THE PROJECT

The purpose of the project was to improve our understanding of the lived experience of victims and survivors who are facing a conditional release process soon after a sentencing process. It is not to gather their views on sentencing or the conditional release process.

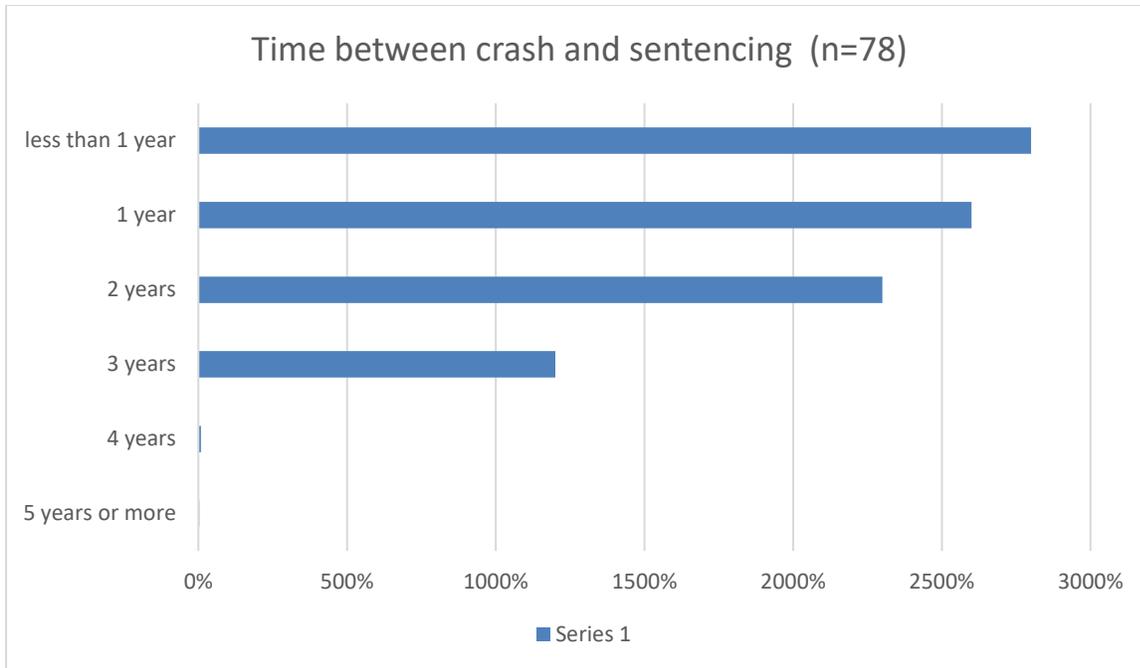
Almost 100 individuals from across Canada¹⁵ participated in a survey MADD Canada distributed. MADD Canada held two online roundtable discussions with victims and survivors of impaired driving with approximately 20 participants (also from across Canada). We held several one on one interviews with victims and survivors as well. All of this gave us a better understanding of how victims and survivors of impaired driving interact with the parole process and what the impact is. In conducting our research, we also learned why people choose to engage, or not engage, in the conditional release process.

Most of those who participated in our survey were people who lost a loved one to an impaired driver. In most cases, offenders were sentenced to less than 5 years.¹⁶ Most cases took one to two years between the crash and the sentence.

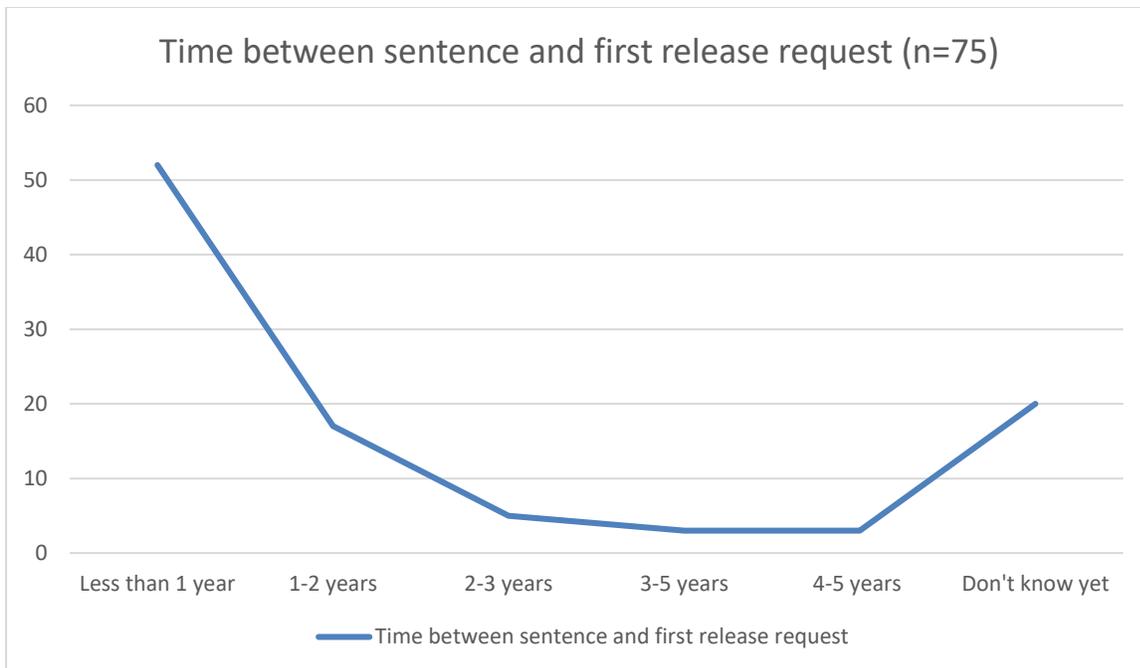
¹⁴ Janice Harris Lord, “Real MADD: How to Help Road Trauma Survivors,” Grief Matters Autumn 2010, p.4.

¹⁵ The bulk of the respondents were from Ontario, followed by the Western Region, Atlantic Region and Quebec.

¹⁶ Not all cases result in a conviction, not all offenders have been sentenced yet, etc.

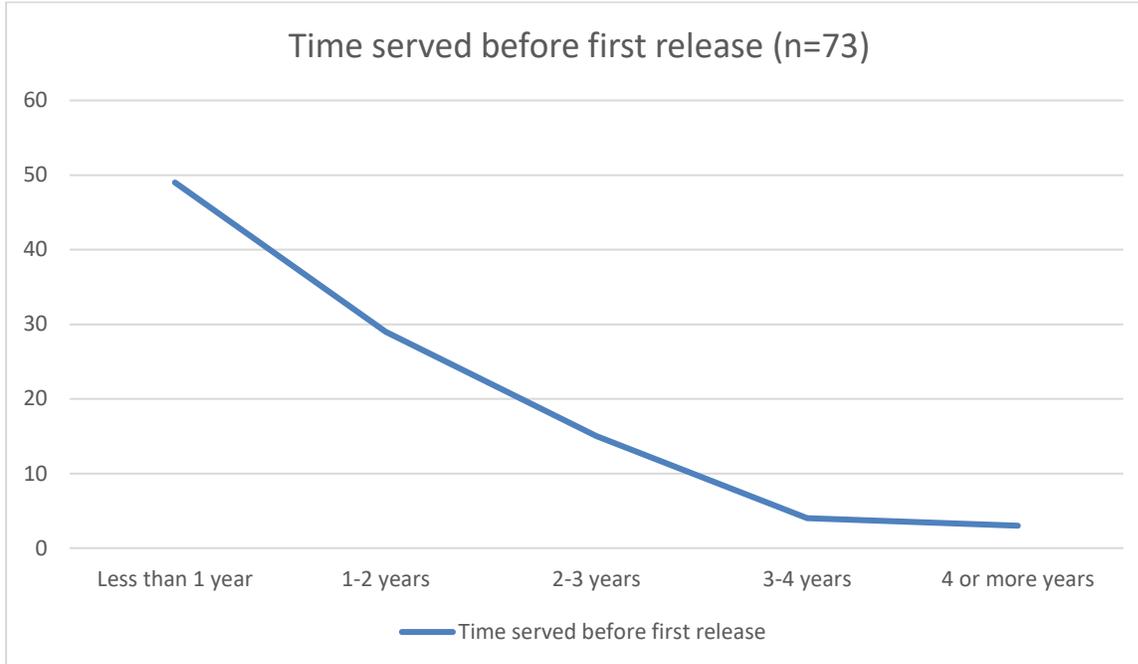


In most cases, the offender was eligible for conditional release in less than 2 years.¹⁷



¹⁷ On average, if an offender received a 5-year sentence (60 months), he/she would be eligible to apply for full parole after 20 months and day parole after 14 months. Offenders can apply for escorted passes at anytime.

Most offenders spent less than 2 years in prison before being released.



The purpose of this project was not to examine how victim and survivors feel about sentences or parole decisions but the length of time between the crash and the sentence, and the sentence and release, are relevant to the impact of the parole process on victims and survivors. Virtually everyone we spoke to in our roundtables, interviews, and those who left comments for the survey felt that conditional release came too soon and that this had a negative impact on their recovery/grief process.

The impact of engaging in the release process

While the project focused on conditional release, we spoke to one family where the offender, who had killed several people in an impaired driving crash, was transferred to a Healing Lodge (minimum security prison) very soon after being sentenced and began receiving Escorted Temporary Absences (ETAs) soon after. They felt like there had been no time between the sentencing and her gaining access to the community.¹⁸

One mother said if it had been longer before the offender could apply for parole, it would not make the loss any less painful but it would give her more time to settle and to work on herself and deal with the loss without the offender intruding in their lives.

¹⁸ Many of the people we heard from also involved cases where offenders were sent to minimum-security prisons but the term “healing lodge” was particularly upsetting for many. Some were confused by the term and did not believe it was a federal correctional institution.

Another mother said the entire process was an emotional rollercoaster and she thought that once the offender was sentenced, she would have a bit of time to process everything. However, it seemed like no time had passed and the offender was applying for release.

One man said that the “scabs” had not even begun to heal until they were ripped off again with the release process. He said victims need more time to heal before the justice system intrudes in their lives again.

Everyone seemed to agree that victims and survivors needed time to breathe or to catch their breath. People tend not to begin to grieve until the trial is over so they felt they had just begun their grieving when the offender was asking to be released. One person felt victims should get at least a year before the offender is able to apply for anything.

The impact of waiting for the next date or hearing

Some people also spoke about the impact of writing another statement, this time for parole, so soon after writing one for sentencing. They did not think officials understand how difficult it is to write one statement, let alone be asked to revisit their pain every time the offenders applies for release.

Victims and survivors talked about the devastation of getting the notice that the offender was eligible to apply for release, then waited to see if the offender would apply or not. If the offender did not apply, they waited for the next call for the next potential release. If the offender did apply, then they waited to the date and then the hearing/decision. Depending on what happened, they waited again to see if the offender would apply again or appeal a negative decision. They described a constant tension of waiting to see what would happen next and the impact of feeling like this since the crash. They felt like there was no break or relief.

Wanting to be free of the offender

One person described a sense of relief when the offender was released. She knew that unless the offender violated their conditions or re-offended, the prison portion of the sentence was over. She explained a sense of freedom that there would be no more hearings, no more statements and she would finally focus on how her loved one lived, now how she died. This did not mean that she felt good about the process - just relief from it.

Some people did talk about looking forward to the day when they did not have to think about the offender so much, although others said they did not think they could ever stop thinking about the person who caused so much pain in their lives.¹⁹ The pain of the loss or the daily struggle with injuries are constant reminders for people.

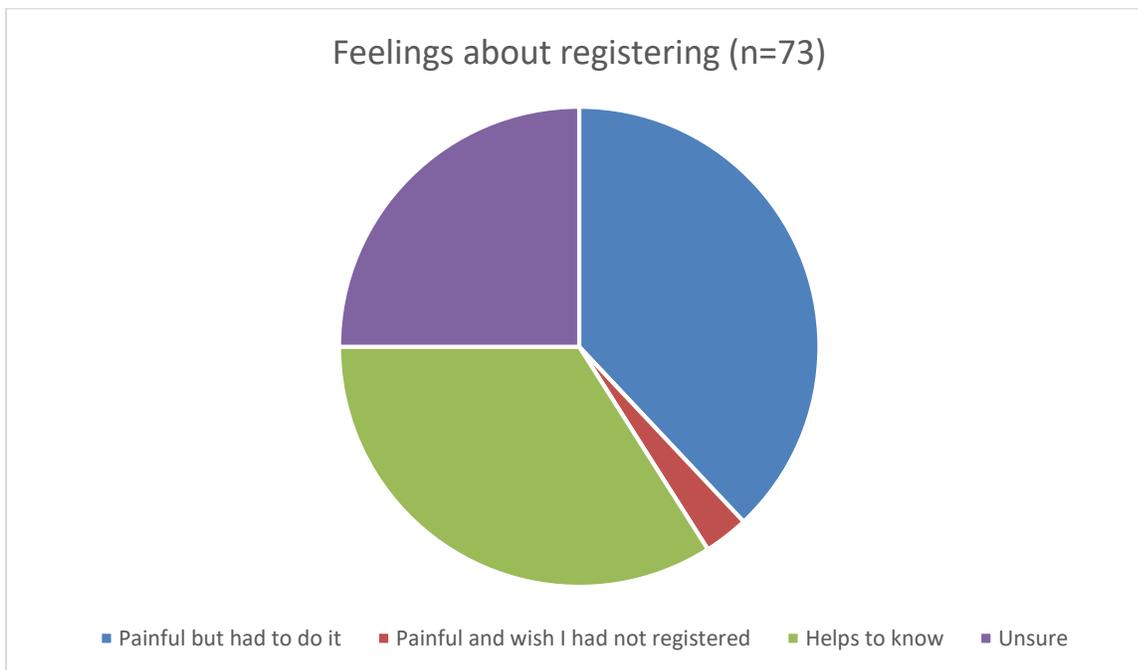
¹⁹ Depending on what province people live in and what options they have in terms of civil suits, many will be engaged with a civil suit long after the sentencing and in some cases, even after the offender is released from prison.

Was it worth it to engage?

The sense of wanting the offender out of their lives was shared by others, but at the same time they chose to engage in a process that would continue their relationship with their offender; a process where he would keep “coming back into their lives.” For many, the decision to engage in parole was almost like a burden they felt obligated to carry. They explained that they knew it would be a painful process and that it was. Few spoke of any personal benefits of registering – it was mainly more frustration and hurt. Many felt obligated to register in memory of their loved one (if they had lost someone); they needed to speak for them; to represent them.

Others said they did not want the offender to forget what they did or the pain and trauma they caused. Most wanted the offender to spend as long as possible in prison and thought their participation might contribute to that, (most felt it had not). Some wanted to make the offender’s life as difficult as possible.

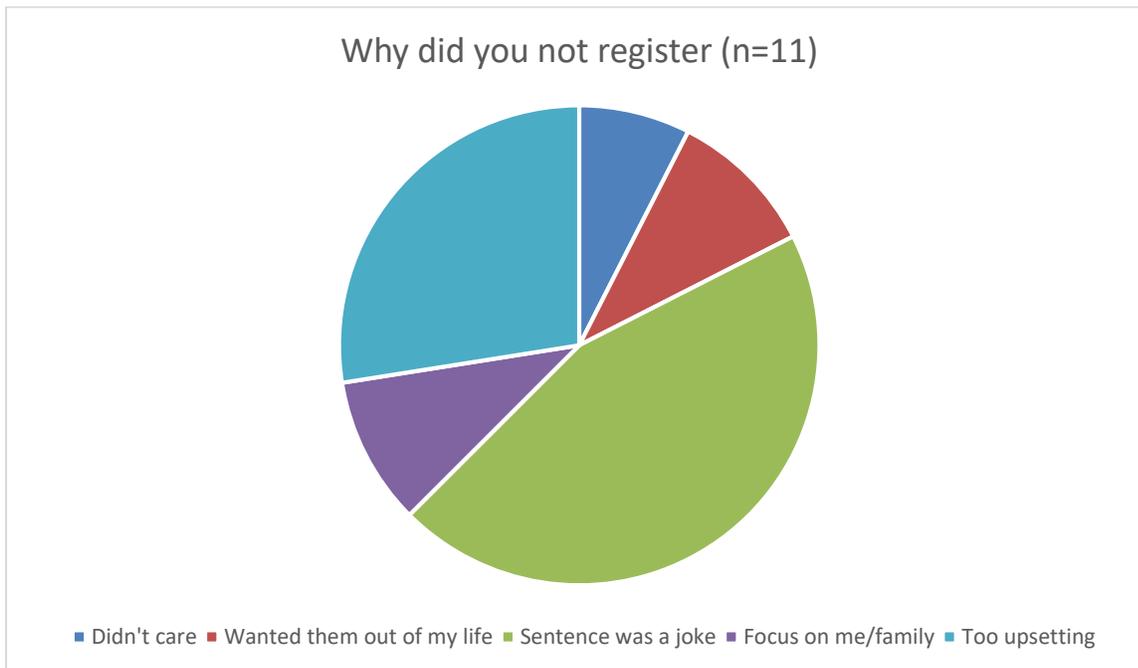
Most people were glad they registered to receive information about the offender even though they acknowledged it was a painful process, and some wondered whether it was “good for them.” Some spoke about feeling empowered in receiving the information about the offender. Even though it was difficult, they felt better knowing than not knowing. They also said receiving the information allowed them to answer questions for other family members.



The decision not to register

We did communicate with a few people who chose not to register/engage with the release process. They felt, like others, the sentence was too light but they thought it was better for them not to engage in the parole process. They did not see how it would help, they wanted to focus on themselves, and they felt their loved one would have wanted that for them. Another man said, after the guilty verdict, he was not going to waste any energy on the offender.

Those that chose not to register, although a smaller group, did not regret their decision. Their reasons for not registering were about the need to focus on themselves and not the offender. One man said he did not care about the offender



CONCLUSION AND RECOMMENDATIONS

This qualitative research project was limited by the number of people MADD Canada was able to engage, which was somewhat impacted by the pandemic. It also reflects only the views of those victims and survivors who have sought services from MADD Canada.

Our intention was to understand how victims and survivors of impaired driving experience the conditional release process, which we feel we were able to do. However, in doing so, we raised other questions about why people engage in the process knowing it will be painful, the contradictory feelings of wanting the offender out of their lives yet participating in a process that continually brings the offender back into their lives, etc.

The timing of hearings is a significant issue for victims and survivors as they feel like they do not get a chance to breathe after the sentencing hearing. This then leads to the request to prepare another Victim Statement, possibly several statements, which is a painful and difficult process in

and of itself. In some cases, there appears to be a negative impact for victims and survivors being involved in the parole process, but it is one they are willing to pay and most do not regret their decision.

Although we did not discuss options for participating in parole hearings, it is clear how important it is for many victims and survivors of impaired drivers. Therefore, we believe it is important that victims and survivors be given options in terms of how they wish to participate. Victims and survivors should have the option to attend hearing in person (when it is safe to do so) and the Parole Board of Canada should maintain the ability for victims and survivors to attend via audio or video conferencing once the pandemic is under control.

Our findings should inform the understanding of officials working in the parole and corrections system as well as those providing support. It should lead to more research that focuses on victims and survivors and their interaction with the parole process so we can continue to understand the motivation of victims and survivors to improve our responses to their needs.

Recommendations:

Recommendations are difficult to develop because victims and survivors of impaired driving argue sentences should be longer, thereby delaying the conditional release of offenders. Many felt if they had more time, the release of the offender might not be as painful. While sentences have increased in the last decade, they are not likely to increase dramatically.

There is value, however, in understanding the perspective of victims and survivors of impaired driving so those officials who work with them appreciate their perception of the criminal justice system response and its impact on their recovery.

1. More research should be done on the experience victims/survivors have when they register with CSC/PBC, participate in hearings, etc. to determine the benefits and costs of engagement.
2. More research should be done on victims/survivors who present victim statements to determine if they feel it was a helpful process. This should include understanding their expectations in terms of what impact their statements would have had compared to what their perceptions were of what impact they did have.
3. Existing training for CSC/PBC staff should incorporate the lessons learned regarding the complexity of the choice of victims and survivors of impaired driving to engage with the parole process and in terms of the impact of the crime versus the perception of how the justice system views it.
4. Existing training for CSC/PBC staff should incorporate an understanding of the difference between a harms based approach versus a justice-based approach to impaired driving offences.