

(b) 7-14 Day (Short-term) Administrative Licence Suspensions for Alcohol and/or Drug Impairment

Most Canadian jurisdictions already have an administrative licence suspension (ALS) program for drivers who have BACs of 0.08% or above, or who fail to provide breath or blood samples without a reasonable excuse. Similarly, most jurisdictions have instituted short-term roadside licence suspensions for drivers with BACs of 0.05% or higher. However, this roadside suspension usually lasts no longer than 24 hours, and only a few provinces have centralized record-keeping procedures and tiered penalties for repeat 0.05% BAC drivers.¹ Thus, for most motorists, driving with a BAC between 0.05% and 0.08% entails little more than relinquishing the wheel to a sober driver or paying for a cab ride home.² This is particularly troubling given that many police officers admit that they sometimes or frequently impose a short-term roadside suspension, rather than lay criminal charges, even if a driver’s BAC exceeds the *Criminal Code* limit of 0.08%.³ This sends drivers the dangerous message that it is acceptable to drink not insubstantial amounts of alcohol prior to driving.⁴

Consequently, MADD Canada recommends that each province and territory enact a 7-14 day ALS program for drivers with BACs of 0.05% or higher. Studies consistently demonstrate that key driving-related skills are impaired at this BAC level,⁵ and that these drivers have

¹ Update with chart

² This addresses the immediate risk posed by the driver, but not necessarily the underlying risky behaviour. Further, while a 24-hour suspension might serve as a “wake up call” to some drivers who drink, it has not been shown to have a significant general deterrent effect. See D.J. Beirness & D. Singhal, *Short-term Licence Suspensions for Drinking Drivers: An Assessment of effectiveness in Saskatchewan* (Ottawa: Traffic Injury Research Foundation, 2007) at 44-46.

³ B. Jonah *et al.*, “Front-line police officers’ practices, perceptions and attitudes about the enforcement of impaired driving laws in Canada” (1999) 31 *Accid. Anal. and Prev.* 421 at 426; and Police Services Division, *Safe Roads, Safe Communities* (Victoria: Ministry of the Attorney General, Public Safety and Regulatory Branch, 2000) at B-4.

⁴ Given current enforcement practices, a 200-pound man could consume 6 bottles of beer in 2 hours without facing a significant risk of a criminal charge. See R. Solomon & E. Chamberlain, “Calculating BACs for Dummies: The Real World Significance of Canada’s 0.08% Criminal BAC Limit for Driving” (2003) 8 *Can. Crim. L. R.* 219.

⁵ Both laboratory and field studies establish that various driving-related skills are significantly impaired at BAC levels of 0.05% or lower. Drivers with low and moderate BACs have impaired psychomotor skills, such as steering and braking, as well as impaired visual function and reaction time. However, the skills most affected by small amounts of alcohol are information processing and divided attention skills, which are crucial if drivers are to respond quickly and accurately to various traffic hazards. See for example, H. Moskowitz and D. Fiorentino, *A Review of the Literature on the Effects of Low Doses of*

significantly higher relative risks of crash than drivers with BACs of 0.00%.⁶ International jurisdictions that have introduced 0.05% BAC laws have experienced significant declines in driver impairment and alcohol-related crashes.⁷ For example, the 0.05% BAC restriction in New South Wales was estimated to have reduced fatal collisions by 8%, serious collisions by 7% and single-vehicle nighttime collisions by 11%. This translated into the prevention of 75 fatal, 605 serious and 296 single-vehicle nighttime collisions per year.⁸

The 0.05% ALS should apply to all drivers who register a BAC of 0.05% or higher on a breath, blood or urine test, or to any driver who police reasonably believe to be impaired by alcohol or drugs. The provinces need to emphasize that that this risky driving behaviour will be taken seriously. It should result in a suspension of at least 7 days for a first occurrence, with additional consequences for subsequent occurrences, as described below.

Alcohol on Driving-Related Skills (Washington: National Highway Traffic Safety Administration, 2000); H. Moskowitz *et al.*, *Driver Characteristics and Impairment at Various BACs* (Washington: National Highway Traffic Safety Administration, 2000); P. Howat, D. Sleet & I. Smith, "Alcohol and Driving: Is the 0.05% Blood Alcohol Concentration Limit Justified" (1991) 10 *Drug and Alcohol Rev.* 151; A. Liguori *et al.*, "Alcohol Effects on Mood, Equilibrium, and Simulated Driving" (1999) 23 *Alcoholism: Clinical and Experimental Research* 815; and E. Ogden & H. Moskowitz, "Effects of Alcohol and Other Drugs on Driver Performance" (2004) 5 *Traffic Inj. Prev.* 185.

⁶ See P. Zador, S. Krawchuk & R. Voas, "Alcohol-Related Relative Risk of Driver Fatalities and Driver Involvement in Fatal Crashes in Relation to Driver Age and Gender: An Update Using 1996 Data" (2000) 61 *J. Stud. Alcohol* 387; and H. Moskowitz *et al.*, "Methodological Issues and Epidemiological Studies of Alcohol Crash Risk" and R. Compton *et al.*, "Crash Risk of Alcohol Impaired Driving" in D. Mayhew and C. Dussault, eds., *Proceedings of the 16th International Conference on Alcohol, Drugs and Traffic Safety - T'2002*, CD-ROM (Montréal: Société de l'assurance automobile du Québec, 2002).

⁷ See for example, R. Shults *et al.*, "Reviews of Evidence Regarding Interventions to Reduce Alcohol-Impaired Driving" (2001) 21(4S) *Am. J. Prev. Med.* 66 at 69-71; R.E. Mann *et al.*, "The effects of introducing or lowering legal *per se* blood alcohol limits for driving: an international review" (2001) 33 *Accid. Anal. and Prev.* 569; E. Chamberlain & R. Solomon, "The Case for a 0.05% Criminal Law Blood Alcohol Concentration Limit for Driving" (2002) 8 (Suppl III) *Inj. Prev.* iii1 at iii5-iii14; Babor *et al.*, *Alcohol: No Ordinary Commodity* (New York: Oxford University Press, 2003) at 159-60; D. Morrison, M. Petticrew & H. Thomson, "What are the most effective ways of improving population health through transport interventions? Evidence from systematic reviews" (2003) 57 *J. Epidemiol. Community Health* 327 at 331; J. Grube, "Preventing Alcohol-Related Problems: Public Policy Strategies" in *Implementing Impaired Driving Countermeasures: Putting Research into Action* (Washington: Transportation Research Board, 2005) 93 at 102; and J. Fell & R. Voas, "The Effectiveness of Reducing Illegal Blood Alcohol Concentration (BAC) Limits for Driving: Evidence for Lowering the Limit to .05 BAC" (2006) 37 *J. Safety Research* 233.

⁸ J. Henstridge, R. Homel & P. Mackay, *The Long-Term Effects of Random Breath Testing in Four Australian States: A Time Series Analysis* (Canberra: Federal Office of Road Safety, 1997), Table 7.4.

The program would likely work best, but certainly not exclusively, in conjunction with testing on approved screening devices (ASDs) at sobriety checkpoints. The ASDs in most provinces are already calibrated to register a “warn” at a 0.05% BAC level. If a driver blows a “warn,” police should immediately seize his or her licence and serve the driver with a notice that the licence will be suspended for 7 or 14 days, whichever is applicable in the jurisdiction.⁹ Police should have a duty to inform the driver of the right to challenge the results of the ASD test by submitting, without delay, to a test on an approved evidentiary breath-testing instrument. If the approved instrument indicates that the driver’s BAC was below 0.05% at the time of driving,¹⁰ the driver’s licence should be returned. However, the driver should also be warned that a result of 0.08% or higher on the evidentiary breath test will result in charges under section 253(b) of the *Criminal Code*. Drivers should be able to apply in writing to have the 7-14 ALS reviewed by the provincial licensing authority, but the grounds for review should be limited to whether the driver’s BAC reading was below 0.05%.

Drivers suspended under the provincial 0.05% ALS legislation should be required to pay a licence reinstatement fee of between \$150 and \$300 to help cover the administrative costs of the program. In addition, police should be required to report the suspension and send the driver’s licence to the provincial licensing authority.¹¹ If no other suspensions or conditions have been imposed, the driver should be permitted to obtain his or her licence from the licensing authority at the end of the suspension period. A record-keeping system should be implemented, with

⁹ If a driver cannot produce his or her licence for the officer, the driver should be given two days to bring the licence to the police station. Drivers failing to surrender their licences within this period should have their licences revoked.

¹⁰ Because the driver’s BAC will decline as time passes, these confirmatory tests on approved instruments should be conducted as soon as possible. Otherwise, the driver may be able to delay the evidentiary test long enough for his or her BAC to fall below the 0.05% threshold. In Canada, it is generally accepted that an average person’s BAC declines by 0.015% per hour. Thus, an individual whose BAC was just below 0.08% would have a BAC below 0.05% after two hours. H.R. Fisher, R.I. Simpson & B.M. Kapur, “Calculation of Blood Alcohol Concentration (BAC) by Sex, Weight, Number of Drinks and Time” (1987) *Can. J. Public Health* 300 at 301.

¹¹ It is important that the driver’s licence be physically seized. Otherwise, there is a risk that the driver will be able to continue driving while suspended, with little chance of apprehension. A 2002 New Brunswick study indicated that 91% of suspended drivers stopped at a roadside checkpoint were able to produce an apparently valid licence. Police only learned of a driver’s suspension if they checked the licence with a Ministry of Transportation database. This undermines the deterrent impact of the impaired driving laws and makes it difficult to enforce driving prohibitions and suspensions. J.E.L. Malenfant, R. Van Houten & B. Jonah, “A Study to Measure the Incidence of Driving Under Suspension in the Greater Moncton Area” (2002) 34 *Accid. Anal. and Prev.* 439 at 441-42 [Malenfant].

additional fees and countermeasures applicable for repeat occurrences within a three-year period. For instance, a second 0.05% ALS should last 30 days, and the driver should be required to submit to an impaired driving assessment from a recognized agency. For a third occurrence in three years, the driver should receive a 90-day suspension and be required to install an alcohol interlock on his or her vehicle for six months. The licensing authority should keep track of all short-term licence suspensions on a driver's record, and include them on driver's abstracts for a period of ten years.

MADD Canada has been advocating for an extended 0.05% ALS since *Rating the Provinces 2003*, and has since worked with the Canadian Council of Motor Transport Administrators (CCMTA) to develop a model 0.05% ALS program, based on existing best practices in Canada. Several jurisdictions have now introduced 7-14 day ALS for drivers with BACs above 0.05%, with longer suspensions and other countermeasures for repeat offenders.¹² These provincial measures are an important component of the strategy to address impaired driving in the 0.05% to 0.08% BAC range, which poses substantial risks to road users. However, MADD Canada continues to advocate for a *Criminal Code* 0.05% BAC offence, and the provincial 0.05% ALS should not be seen as a substitute for that vital federal action.

¹² See chart