

# ILLEGAL BAC LIMITS

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The Sober Smart Driving education program is produced by the **Traffic Injury Research Foundation** with funding from **Beer Canada**. It shares knowledge and science to answer common questions about alcohol, its effects on driving skills, and impaired driving.

### How do BAC limits and penalties in Canada compare with other countries?

Most European and North American nations have a BAC limit of .05 or .08, with allowable BACs ranging from .02 to .10. A quick summary of these limits and corresponding countries are shown in the table below:

#### Lowest Allowable BAC Levels

BAC Level	Countries
.05 or lower	Australia, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, New Zealand, Norway (0.02%), Poland (0.02%), Portugal, Spain, Sweden (0.02%), Switzerland
.08 or higher	Canada, United Kingdom, United States (Utah, 0.05%)

Source: European Transport Safety Council 2019

The table below compares the administrative and criminal BAC limits and penalties that may be applied to first offenders in Canada, and penalties for a first offence in those countries with a .05 BAC limit. As this table illustrates, there is no uniform approach to penalties for first offenders and they vary on a



nation-by-nation basis. It is also worth noting that many of these countries have different BAC limits to distinguish between administrative and criminal punishments, similar to the situation in Canada.

### Penalties for a 1st Impaired Driving Offence in .05 Jurisdictions

Country	BAC	Jail/Fine	Suspension/Prohibition
Canada	.05 – administrative .08 – criminal	> jail possible at .08 > mandatory minimum fine	minimum prohibition of 1 year
Austria	.05 – administrative	> jail possible only with collision > fines increase with BAC	1 to 4 months
Belgium	.05 – administrative	> no jail possible > fines begin at .05	BAC .08-.15: 15 days – 6 months
Denmark	.05 – administrative .20 – criminal	> no jail possible until .20 > fines increase with BAC	.05 -.12 min 3 year suspension
Finland	.05 – criminal	> possible at .05, increased penalties at .12 > fines at .05	suspension 1 month – 1 year starting at .05
France	.05 – administrative .08 – criminal	> jail possible at .08 > fine at .05	3 year suspension
Germany	.05 – administrative .11 – criminal	> jail only possible at .05 if collision, .11 otherwise. > fine at .03 if collision; at .05 without	suspension at .05 increasing with BAC
Greece	.05 – administrative .11 – criminal	> jail possible at .11 > fine at .05	suspension possible at .08
Netherlands	.05 – administrative .21 – criminal	> jail possible at .21 > fine at .05	temporary/permanent ban possible
Norway	.05 – criminal	> suspended sentence possible > fine possible	suspension at .05
Portugal	.05 – administrative	> fine at .05, increasing with BAC	suspension at .05
Spain	.05 – administrative	> jail not possible > fine at .05	suspension at .05
Sweden	.05 – criminal	> jail possible at .02 > fines possible at .02	not indicated
Australian Capital Territory	.05 – administrative .08 – criminal	> jail possible at .08 > fine at .05	suspension at .05
New South Wales, AU	.05 – administrative .08 – criminal	> jail possible at .08 > fine possible at .08	prohibition possible at .08
Northern Territory, AU	.05 – criminal	> jail possible at .05 > fine possible at .05	suspension possible at .05, mandatory at .08
Queensland, AU	.05 – criminal	> jail possible at .05 > fine possible at .05	suspension at .05
South Australia, AU	.05 – administrative .08 – criminal	> jail possible at .08 > fine possible at .05	6 month suspension mandatory at .08, with longer suspension possible
Tasmania	.05 – criminal	> jail possible at .05 > fine possible at .05	6 month suspension mandatory at .05, with longer suspension possible

Victoria, AU	.05 – administrative	<ul style="list-style-type: none"> <li>&gt; no jail possible for first BAC offence</li> <li>&gt; fine possible</li> </ul>	suspension at .05
Western Australia, AU	.05 – administrative .15 – criminal	<ul style="list-style-type: none"> <li>&gt; no jail possible unless impaired; deemed at .15 to be impaired</li> <li>&gt; fine at .05</li> </ul>	suspension at .05

### Why has it been proposed that the criminal BAC limit be lowered from .08 to .05?

In the past few years there has been discussion and debate about lowering the criminal BAC limit in the Criminal Code of Canada from .08 to .05. This move has been proposed because it has been suggested it would make Canada's approach to impaired driving more consistent with the approach taken by some European countries that have reduced their criminal BAC limit to 0.05% (Fell & Voas 2014). These countries have also seen a reduction in alcohol-caused crashes, and it is believed a similar reduction could happen here if the limit was lowered (Fell & Voas 2014).

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BACs have a slightly higher crash risk as compared to non-drinking drivers (with the exception of young drivers who have a much greater crash risk even at low BACs or when sober). Although the risk of drivers with low BACs being involved in a serious crash is relatively low, such risk also varies as a function of age and gender (Zador et al. 2000; Blomberg et al. 2009; Peck et al. 2008; Voas et al. 2012). In general:

- > BACs of .03 are associated with a two to three-fold increase in crash risk;
- > BACs of .05 are associated with a six to 17 times increase in crash risk.

Although drivers with low BACs are less at risk of causing a serious crash than drivers with high BACs, they do comprise a large group of drinking drivers, so collectively they need to be deterred from drinking and driving.

It is also worth noting that many comparable nations already have a BAC of .05 as the highest permissible level that a driver can legally have in their system. Lowering the limit in Canada would result in greater uniformity across the country given that most provinces already enforce .05 for administrative purposes (Paciocco, 2002).

Conversely, there are questions about how effective this measure would be if enacted in Canada. Specifically, most provinces already have a well-established .05 administrative BAC limit. This has already caused a measurable deterrent effect. It is unknown if a further deterrent effect would be achieved if a criminal limit was implemented. Additionally, given the amount of enforcement needed to effectively ensure this limit is being followed, it is unclear if Canadian law enforcement would be able to meet this demand or if it would cause an additional strain on resources. Such strain, if not properly managed, could lead to an erosion of any deterrent effect already achieved (Robertson, Brown, Valentine, & Vanlaar, 2017).

## How would lowering the legal BAC limit to .05 impact the justice system?

Research suggests that lowering the legal limit, while it may have a positive deterrent effect, could dramatically increase the volume of impaired driving cases currently being processed through the justice system.

There are currently more than 50,000 impaired driving cases that are processed by Canadian courts on an annual basis involving BACs of .08 or higher. Approximately 1 in 880 licensed drivers are convicted of an impaired driving offence in Canada annually (Soloman, Ellis, & Zheng 2018). In recent years, roughly 60% of drivers charged with an impaired driving offense in Canada were convicted (Soloman, Ellis, & Zheng 2018). Further, 2017/2018 data reveals 34,633 impaired driving charges went to court, with 27,866 (80.5%) found guilty, 1,316 acquitted (3.8%), and 5,282 (15.3%) stayed or withdrawn (Statistics Canada 2020).

In addition, a 2008 survey revealed that there were 47,000 additional charges imposed by the provinces for BACs ranging from 0.05%-0.079%. This number does not include the number of .05 charges imposed in Ontario, Quebec or Alberta. This suggests that lowering the criminal BAC to .05 has the potential to add another 50,000-100,000 cases to the justice system, in addition to the existing 50,000 criminal cases already processed on an annual basis. Hence, lowering the criminal BAC limit has the potential to create a backlog in the court system and result in an administrative burden for individuals working within the system (e.g., law enforcement officials, Crown attorneys, judges, probation officers).

This is of particular concern in light of findings from a 2007 national survey of Crown prosecutors and defence counsel which revealed that prosecutors have a criminal caseload that is four times greater than that of defence counsel. In addition, an estimated 40% of cases go to trial and the average conviction rate for cases going to trial is just 52% (although the overall conviction rate for all cases is 78%). It also takes between nine and 14 months for cases to be resolved. This illustrates that the justice system, at the time, was having difficulty processing the volume of cases (Robertson, Vanlaar, & Simpson 2009). More recent events suggest that this has not fundamentally changed. As such, the existing pressures on courts and their inability to deal with the volume of criminal cases is not new and is well-documented, dating back to 1990 and the Askov decision which resulted in 47,000 charges being thrown out by judges in the following year (Fine 2017). More recently, the Senate Standing Committee on Legal and Constitutional Affairs reiterated the need to reduce court processing times (Senate Canada 2016); a need that was poignantly underscored by a July 2016 decision of the Supreme Court of Canada, known as *R. v. Jordan*. *R. v. Jordan* was a landmark case in Canada because it directly impacted the definition of a “reasonable time” for criminal matters to be resolved in the Canadian criminal justice system (Robertson et al., 2018). The case instituted strict timelines that criminal justice professionals must follow in order for the case to be considered by the courts. Specifically, for a provincial court the case must be resolved within 18 months from the initial charge. For superior courts, the case must be resolved within 30 months of the initial charge. If cases take longer than these timeframes, and the delay is not caused by very specific circumstances, then the delay is considered to be unreasonable. If the delay is considered unreasonable the charges against the accused will be stayed (*R. v. Jordan*).

Collectively, these data suggest that it would be very challenging for the justice system to effectively manage a significant influx of impaired driving cases and the impact of these additional cases on the system should not be underestimated (Robertson et al., 2017). The consequences of a criminal conviction and criminal record are quite profound, and individuals may be disinclined to plead guilty to lower BAC charges. This is particularly true as a criminal record can result in a driver's licence prohibition, impacts employment and restricts ability to travel to the United States or other countries, to say nothing of increased insurance costs, fines and fees. The influx of low-BAC offenders may also erode limited resources that are available to deal with repeat and persistent impaired drivers who are more often responsible for alcohol-related deaths and serious injuries.

At this time, there are no easy answers to resolve these issues. On one hand there is clear scientific evidence to support lowering the criminal BAC limit; on the other hand, there are a number of practical impediments to implementing such a change and managing its effect on the justice system. As a result, the debate about whether Canada should lower the legal BAC limit and how this can be achieved will likely continue in future.

More information can be found in a recently released report by the Traffic Injury Research Foundation, titled “**Status of Alcohol-Impaired Driving in Canada**”.

## References

Department of Justice. (2019). Impaired Driving Laws. **Full Details**

European Transport Safety Council. (2019). Blood Alcohol Content (BAC) Drink Driving Limits. Full Details

Fine, S. (June 8, 2017). Courts shaken by search for solutions to delays. Globe and Mail.

Fell, J. C., & Voas, R. B. (2014). The effectiveness of a 0.05 blood alcohol concentration (bac) limit for driving in the u nited s tates. *Addiction*, 109(6), 869-874.

Peck, R. C., Gebers, M. A., Voas, R. B., & Romano, E. (2008). The relationship between blood alcohol concentration (BAC), age, and crash risk. *Journal of safety research*, 39(3), 311-319.

R. v. Jordan, 2016 SCC 27, [2016] 1 S.C.R. 631 Most European and North American nations have a BAC limit of .05 or .08, with allowable BACs ranging from .02 to .10. Comparison of the administrative and criminal BAC limits and penalties that may be applied to first offenders in Canada, and penalties for a first offence in those countries with a .05 BAC limit. Implications for lowering the BAC within Canada are examined.

Roberston, R. D., Vanlaar, W. G. M., & Simpson, H. (2009). National Survey of Crown Prosecutors and Defence Counsel on Impaired Driving. Traffic Injury Research Foundation: Ottawa, Ontario.

Robertson, R. D., Brown, S. W., Valentine, D., & Vanlaar, W. G. M. (2018). Status of alcohol-impaired driving in Canada. Traffic Injury Research Foundation: Ottawa, Ontario.

Senate Canada. 2016. “Delaying justice is denying justice. An urgent need to address lengthy court delays in Canada.” Report of the Standing Senate Committee on Legal and Constitutional Affairs. (accessed August 12, 2016).

Soloman, R., Ellis, C., & Zheng, C. (2018). Persons charged with, and persons convicted of, an impaired driving offense: Canada, 1977-2015/16. Mothers Against Drunk Driving.

Statistics Canada. (2020). Table 35-10-0027-01 Adult criminal courts, number of cases and charges by type of decision. DOI: <https://doi.org/10.25318/3510002701-eng>

Voas, R. B., Torres, P., Romano, E., & Lacey, J. H. (2012). Alcohol-related risk of driver fatalities: an update using 2007 data. *Journal of studies on alcohol and drugs*, 73(3), 341-350.

Zador, P. L., Krawchuk, S. A., & Voas, R. B. (2000). 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. *Journal of studies on alcohol*, 61(3), 387-395.



## What does the Sober Smart Driving Education Program (SSD) contain?

The Sober Smart Driving Education Program contains facts to help Canadians learn about the risks associated with drinking and driving and encourages everyone to speak up and talk about why they choose not to drink and drive.

Key topics discussed on this site include:

- > Drinking and its effects on driving
- > Magnitude & characteristics of drinking & driving
- > Basics of the impaired driving system
- > Impaired driver programs & penalties

- > Myths & misconceptions about drinking and driving

Each of these topics contains a series of fact sheets structured in a question and answer format which are available for free download and sharing (with attribution). These resources are designed to support the education and prevention efforts of communities, schools, health and road safety professionals and advocacy organizations.

To view more fact sheets, or to get more information about alcohol, its effects on driving skills, and impaired driving, visit [SoberSmartDriving.tirf.ca](http://SoberSmartDriving.tirf.ca).



### Traffic Injury Research Foundation

The mission of the Traffic Injury Research Foundation (TIRF) is to reduce traffic-related deaths and injuries. TIRF is a national, independent, charitable road safety research institute. Since its inception in 1964, TIRF has become internationally recognized for its accomplishments in a wide range of subject areas related to identifying the causes of road crashes and developing programs and policies to address them effectively.

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