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BULLETIN!

LEGISLATIVE UPDATE
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The Government of Canada has recently introduced the following legislation:

C32 An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts.

On November 21, 2006, The Honourable Vic Toews, Q.C., Minister of Justice and Attorney General of Canada introduced legislative reforms to strengthen the laws against alcohol- and drug-impaired drivers.

The proposed reforms to the *Criminal Code* include:

Increasing Penalties

- Drivers will be charged if in possession of an illicit drug;
- Drivers with blood alcohol levels exceeding .08 will face a life sentence penalty in the case of causing death, and a maximum 10-year sentence in the case of causing bodily harm; and
- Impaired drivers will face higher mandatory minimum penalties. For a first offence, a fine will increase from $600 to $1,000. For a second offence, sentencing increases from 14 days to 30 days. For a third offence, sentencing increases from 90 days to 120 days.

Providing More Tools For Police

- Police will be able to demand that a person suspected of driving while impaired by alcohol or a drug participate in a sobriety test at the roadside; and
- Police will be able to demand that a person suspected of driving while

impaired by a drug participate in physical tests and bodily fluid sample tests.

Sharply Limiting Witnesses' Evidence

- The proposed legislation will aid in the prosecution of driving while impaired by alcohol. By restricting the use of "evidence to the contrary" (also known as the "two-beer" defence) in court, these reforms will help limit impaired drivers to scientifically valid defences.

BACKGROUNDER to Bill C-32

Alcohol- and Drug-Impaired Driving
Strengthening Investigation, Enforcement and Prosecution

Alcohol- and drug-impaired driving is an extremely serious problem in Canada. While impaired driving is already a *Criminal Code* offence that can result in severe penalties, Canada 's New Government has introduced legislation that will help make it easier to investigate and prosecute impaired driving offences, whether the impairment is due to alcohol or drugs. The proposed reforms will tighten legislation in order to ensure that only scientifically-valid defences are allowed. The reforms will also increase minimum penalties for convicted drivers.

Serious Effects of Impaired Driving

In 2003, alcohol and/or drugs were involved in 1,257 fatalities, 47,181 injuries and 161,299 property-damage-only crashes involving 245,174 vehicles. The total financial and social cost of these losses was estimated to be as high as $10.95 billion. (G. Mercer, *Estimating the Presence of Alcohol and Drug Impairment in Traffic Crashes and their Costs to Canadians: 1999 to 2003).*

Incidents of drug-impaired driving have been on the increase. The Ontario Drug Use Survey in 2003 found that close to 20% of high school drivers in the province reported driving within one hour of using cannabis at least once in the preceding year.

Detecting Impaired Drivers - the Current Laws

Driving while impaired by alcohol or a drug is a criminal offence that can result in severe penalties – the maximum penalty is life imprisonment when the offence causes the death of another person. Under paragraph 253(a) of the *Criminal Code*, it is an offence for anyone to operate a motor vehicle, vessel, aircraft or railway equipment while his or her ability to operate it is impaired by alcohol or a drug.

Currently, for section 253(a) drug-impaired driving investigations, officers usually rely upon symptoms of impairment and driving behaviour, as well as witness testimony. There is no authority in the *Criminal Code* for police to demand physical sobriety tests or bodily fluid samples for these section 253(a) impaired driving investigations. However, if a driver voluntarily participates in physical sobriety tests or provides samples of bodily fluids, the evidence is admissible to support the *Criminal Code* charge.

New Laws to Help Police Investigate Impaired Driving Offences

The proposed reforms would improve investigations of *Criminal Code* drug-impaired driving offences by authorizing police to demand:

1. Standardized Field Sobriety Tests (SFST), administered at the roadside, when there is a reasonable suspicion that a driver has a drug in the body.
2. Drug Recognition Expert (DRE) evaluations, when a police officer believes a drug-impaired driving offence was committed. This includes a situation where the driver fails the SFST. The DRE evaluations are administered at the police station.
3. A sample of bodily fluid, should the DRE officer identify that the impairment was caused by a class of certain drugs.

Refusal to comply with these demands would be a criminal offence, punishable by the same *Criminal Code* penalties for refusing a demand for an alcohol breath test.

DRE testing is currently used across Canada, but only when the driver voluntarily participates.

Creating New *Criminal Code* Offences for Alcohol- and Drug-Impaired Driving

The proposed legislative changes will also work to further deter drug-impaired driving, by making it an offence under the *Criminal Code* to be in care or control of a vehicle while in possession of a controlled substance under the *Controlled Drugs and Substances Act.* These include drugs listed in Schedule 1 (cocaine, methamphetamine, heroin), Schedule 2 (cannabis) and Schedule 3 (amphetamines). See http://laws.justice.gc.ca/en/C-38.8/229687.html#rid-229690 This offence may be tried by summary conviction or by indictment and will be punishable by a maximum of 5 years (on indictment) and a mandatory driving prohibition.

A new offence of being "over 80" and causing an accident that results in bodily harm will carry a maximum sentence of 10 years and life imprisonment for causing an accident resulting in death.

"Over 80" refers to 80mg of alcohol in 100ml of blood, or a .08 blood alcohol concentration (BAC) level. A person with alcohol in their blood above this level poses a risk of causing a fatal crash, a risk that increases exponentially as the BAC increases.

Tougher Minimum Penalties for Impaired Drivers

The proposed changes to the impaired driving legislation will increase the minimum fine for the **first offence** of impaired driving from the current $600 to $**1,000**. The last fine increase took place in 1999. The minimum mandatory imprisonment term for a **second offence** of impaired driving will increase from 14 to **30 days**, and the term for a **third offence** will rise to from 90 to **120 days**.

Limiting "Evidence to the Contrary" (the 'Two-Beer Defense')

In recent decades, drivers charged with impaired driving were able to avoid conviction for being over 80 by calling on witnesses, often friends, to give sworn testimony that the accused drank small amounts of alcohol ("only two beers"), which would not be enough to make their BAC over 80. This "two beer" defense had the effect of invalidating the presumption that BAC readings of approved instruments equaled the driver's BAC at the time of driving, despite the fact that those instruments were rigorously tested with no indication of improper operation or malfunctioning.

The proposed legislative changes will restrict challenges to the BAC result. Evidence for challenges can include evidence that the machine was not functioning properly or was not operated properly. In addition, the Alcohol Test Record, which is printed by the breath test machine and confirms that it is in good working order, will be admitted as evidence.

C-35 An Act to amend the Criminal Code (reverse onus in bail hearings for firearm-related offences)

On November 23, 2006, the Honourable Vic Toews, introduced amendments to the Criminal Code to provide a "reverse onus" in bail hearings for offenses involving firearms.

The reforms will require those accused of serious crimes involving firearms to provide sufficient justification to be granted bail while awaiting trial. Currently, it is up to Crown prosecutors to prove that the accused should not be granted bail, either because they represent a threat to society, they may flee to avoid prosecution or to maintain the public's confidence in the administration of justice.

BACKGROUNDER: BAIL REFORMS FOR FIREARMS OFFENDERS

The Government of Canada is introducing reforms to the Criminal Code to ensure that bail provisions better protect the public from gun violence.

In order to limit the opportunity for people charged with serious offences involving firearms to re-offend while out on bail, the bail reform amendments would shift the onus to the accused to demonstrate why they should be granted bail.

Protecting Canadians from the threat of firearms offences through reverse onus

Proposed changes to the bail provisions of the Criminal Code will provide a reverse onus if an accused is charged with:

- any one of eight serious offences committed with a firearm -- attempted murder, robbery, discharging a firearm with intent, aggravated sexual assault, kidnapping, hostage-taking, or extortion;

- any indictable offence involving firearms or other regulated weapons if committed while under a weapons prohibition order;

- firearm trafficking, possession for the purpose of trafficking or firearm smuggling

More Instances Where the Court May Deny Bail

In addition to the reverse onus provisions, the bail scheme will be further toughened by

requiring the court to specifically consider: (a) the fact that a firearm was allegedly used in the commission of the offence or (b) the fact that the accused faces a minimum penalty of three-years or more imprisonment when they are deciding whether the accused should be released or detained until the trial.

The Current Bail Regime

The presumption of innocence and the right not to be denied bail without just cause are rights protected under the Charter of Rights and Freedoms. While liberty pending trial is the basic presumption, bail can be denied in order to:

- ensure that the accused does not flee from justice -- primary ground

- protect the public if there is a substantial likelihood that the accused will re-offend -- secondary ground

- maintain confidence in the administration of justice -- tertiary ground.

Although the prosecutor usually bears the onus of demonstrating why an accused should be denied bail, sometimes it falls to the accused to have to demonstrate that detaining him/her is not justified. The onus shifts to the accused:

- if they are charged with an indictable offence committed while already released on another indictable offence;

- if they fail to appear in court or allegedly breach a release condition;

- for certain organized crime, terrorism or security of information offences;

- for drug trafficking, smuggling, or drug-producing offences; or,

- if they are not ordinarily a resident of Canada.