



BULLETIN!
20 November 2007

GOVERNMENT OF CANADA INTRODUCES BILL C-26

AN ACT TO AMEND THE CONTROLLED DRUGS AND SUBSTANCES ACT

AND MAKE CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

The Honourable Rob Nicholson, Minister of Justice and Attorney General of Canada, introduced legislative reforms today to bring in mandatory jail time for people who commit serious crimes of producing and selling illegal drugs.

The proposed amendments to the *Controlled Drugs and Substances Act (CDSA)* will ensure that certain serious drug offences will result in mandatory prison sentences. Currently there are no minimum penalties under the CDSA. The amendments include:

- A one-year mandatory prison sentence will be imposed for dealing drugs such as marijuana when carried out for organized crime purposes, or when a weapon or violence is involved;
- A two-year mandatory prison sentence will be imposed for dealing drugs such as cocaine, heroin or methamphetamines to youth, or for dealing those drugs near a school or an area normally frequented by youth;
- A two-year mandatory prison sentence will be imposed for the offence of running a large marijuana grow operation of at least 500 plants;
- The maximum penalty for cannabis production would increase from 7 to 14 years imprisonment; and
- Tougher penalties will be introduced for trafficking GHB and flunitrazepam (most commonly known as date-rape drugs).

The new legislation also contains an exception that allows courts not to impose the mandatory sentence if an offender successfully completes a Drug Treatment Court (DTC) program. The program works with individuals with drug-related offences – who meet certain eligibility criteria – to overcome their drug addictions and avoid future conflict with the law. It involves a blend of judicial supervision, incentives for reduced drug use, social services support, and sanctions for non-compliance.



BACKGROUNDER

Proposed New Mandatory Sentences for Serious Drug Offences Schedule 1 drugs (cocaine, heroin, methamphetamine, etc.)

OFFENCE	MANDATORY PENALTY				NOTES
		<i>w/Aggravating Factor List A 1</i>	<i>w/ Aggravating Factor List B 2</i>	<i>w/ Health and Safety Factors 3</i>	
Production	2 YEARS	n/a	n/a	3 YEARS	
Trafficking		1 YEAR	2 YEARS	n/a	
Possession for the Purpose of Trafficking		1 YEAR	2 YEARS	n/a	
Importing	1 YEAR	n/a	n/a	n/a	<i>Offence is committed for the purpose of trafficking</i>
Exporting	2 YEARS <i>(if more than 1 kg of Schedule 1 substances)</i>				
Possession For the Purpose of Exporting	1 YEAR	n/a	n/a	n/a	<i>Offence is committed for the purpose of trafficking</i>
	2 YEARS <i>(if more than 1 kg of Schedule 1 substances)</i>				

**Proposed New Mandatory Sentences
For Serious Drug Offences
Schedule Ii Drugs (Cannabis And Marijuana)**

OFFENCE	MANDATORY PENALTY				NOTES
		w/ Aggravating Factors-List A 1	w/Aggravating Factor -List B 2	w/Health and Safety Factors 3	
Trafficking		1 YEAR	2 YEARS	n/a	Offence would have to involve more than 3 kg of cannabis marijuana or cannabis resin
Possession for the Purpose of Trafficking		1 YEAR	2 YEARS	n/a	Offence would have to involve more than 3 kg of cannabis marijuana or cannabis resin
Importing	1 YEAR			n/a	Offence is committed for the purpose of trafficking
Exporting		n/a	n/a		
Possession for the Purpose of Exporting	1 YEAR			n/a	Offence is committed for the purpose of trafficking
Production - 1 – 200 plants	6 MONTHS			9 MONTHS	Offence is committed for the purpose of trafficking. Maximum penalty will be increased to 14 years imprisonment
Production - 201 – 500 plants	1 YEAR			18 MONTHS	Maximum penalty will be increased to 14 years imprisonment
Production - more than 500 plants	2 YEARS			3 YEARS	Maximum penalty will be increased to 14 years imprisonment
Production - oil or resin	1 YEAR			18 MONTHS	Offence is committed for the purpose of trafficking

Aggravating Factors List A

The aggravating factors include offences committed:

- for the benefit of organized crime;
- involving use or threat of violence;
- involved use or threat of use of weapons;
- by someone who was previously convicted (in the past 10 years) of a serious drug offence involving a Schedule I or II substance.

² Aggravating Factors List B

The aggravating factors include offences committed:

- in a prison;
- in or near a school, in or near an area normally frequented by youth or in the presence of youth;
- in concert with a youth
- in relation to a youth (e.g. selling to a youth)

³ Health and Safety Factors

- the accused used real property that belongs to a third party to commit the offence;
- the production constituted a potential security, health or safety hazard to children who were in the location where the offence was committed or in the immediate area;
- the production constituted a potential public safety hazard in a residential area;
- the accused placed or set a trap.



Backgrounder

National Anti-Drug Strategy

The National Anti-Drug Strategy is a collaborative effort involving the Department of Justice, Public Safety Canada and Health Canada and includes three action plans:

- preventing illicit drug use;
- treating those with illicit drug dependencies; and

- combating the production and distribution of illicit drugs.

Prevention

The Prevention Action Plan focuses on equipping those most impacted by the issues, as well as parents, educators, law enforcement, and communities with information and tools, as well as the capacity, to intervene to prevent illicit drug use before it happens.

The Prevention Action Plan will:

- refocus existing community-based prevention strategies, programs and services on youth;
- develop resources and tools for preventing drug use – such as tool kits for parents; educators, and health professionals, and materials for school-based awareness and prevention strategies for both elementary and secondary school students;
- launch a new, awareness campaign to discourage young people from using drugs; and
- provide assistance to communities affected by drug-related crime.

Budget 2007 announced \$10 million in new funding over two years to launch the awareness campaign. This new funding will bolster the resources the Government of Canada already invests annually in prevention activities to address illicit drug use.

Treatment

The Treatment Action Plan supports innovative and effective approaches to treating and rehabilitating individuals who pose a risk to themselves and the community.

The Treatment Action Plan will:

- promote collaboration with provinces and territories to support drug treatment services where needed (e.g. services for youth, Vancouver's Downtown Eastside).

This collaboration will include:

- improvements to the treatment system through investment in foundation pieces such as developing national benchmarks for evaluation, and data collection; and
- enhanced treatment and support for First Nations and Inuit;
- provide diversion and treatment programs that are outside the justice system for youth offenders with drug-related problems at the various stages of the criminal justice system; and
- develop new tools for the RCMP to refer youth at risk to treatment programming.

Budget 2007 announced \$32 million in new funding over two years to implement the Treatment Action Plan. This will bolster the existing resources the Government currently spends on treatment initiatives to address illicit drug use.

Enforcement

To complement drug prevention and treatment efforts, the Enforcement Action Plan bolsters law enforcement efforts and their capacity to effectively combat marihuana grow operations and synthetic drug production and distribution operations.

Specifically, the Enforcement Action Plan will:

- enhance law enforcement's ability to combat marihuana and synthetic drug production by providing additional dedicated personnel to better detect, investigate, disrupt and dismantle criminal organizations involved in the production and distribution of illicit drugs and enhance the capacity to prosecute those responsible
- enhance Canada's capacity to ensure compliance with the *Controlled Drugs and Substances Act*, particularly for precursor chemicals used in the production of illicit drugs;
- augment law enforcement's capacity to inhibit the cross-border movement of precursor chemicals and illicit drugs;
- help stem and seize the flow of illicit drug-related proceeds of crime generated by organized crime
- improve the ability to conduct joint investigations with law enforcement partners in the US; and
- ensure that strong and adequate penalties are in place for serious drug crimes;

Budget 2007 announced approximately \$22 million over two years in new funding to implement the Enforcement Action Plan as a component of the National Anti-Drug Strategy.



Backgrounder

Mandatory Prison Sentences for Serious Drug Crimes: Tougher Laws to Stop Producers and Traffickers

The use and abuse of illicit drugs is a serious problem that is increasing in Canada.

As part of the National Anti-Drug Strategy's effort to combat illicit drug production and distribution, the Government of Canada has introduced legislation that will enhance existing penalties by adding mandatory prison sentences for serious drug offences.

The proposed reforms will target drug suppliers, and will send a signal to growers and traffickers that this illicit activity will not be tolerated, especially when it involves Canada's youth. The reforms will encompass a range of illegal drugs whose use is detrimental to the health, safety and well-being of Canadians.

Canada and Illegal Drugs: A Growing Concern

The 2004 *Canadian Addiction Survey* found that the number of Canadians who reported using an injection drug at some point in their life increased to 4.1 million in 2004 from 1.7 million in 1994, pointing to significant drug trafficking activity. According to the RCMP, the number of clandestine labs seized increased to 53 in 2005 from 24 in 2000. The production capacity of the 53 labs exceeded that of all laboratories seized in previous years.

The RCMP's *Drug Situation In Canada – 2005* reports that:

- currency, firearms and cocaine are smuggled back into Canada in exchange for Canadian-grown marijuana;
- proceeds from the sale of marijuana are used to finance other criminal activities; and
- various organized crime groups are collaborating to grow and export marijuana.

A 2005 study (Dr. Darryl Plecas, University College of the Fraser Valley) noted that the number of marijuana grow operations incidents reported by police increased from 1,489 in 1997 to 4,514 in 2003, an increase of over 200% .

Large grow operations imply both future trafficking activity and exporting. Because growers use insecticides, fungicides, fertilizers and other volatile material, and frequently obtain their electricity illegally, marijuana grow operations pose a threat to public health and safety. Production of MDMA (ecstasy) is also on the rise in Canada, and the United States has expressed concern about MDMA being smuggled into the U.S. from Canada.

This increase in drug use and drug-related activity such as trafficking and production threatens Canadians' safety. These illegal activities have serious impacts on communities, such as increasing rates of petty crime, increased violence, and increased risk to law enforcement officers.

Drug Activity - The Current Law

The *Controlled Drugs and Substances Act* (CDSA) (<http://laws.justice.gc.ca/en/C-38.8/index.html>) regulates certain types of drugs and associated substances. These are

listed in Schedules I to VIII of the CDSA. The new legislation will amend the CDSA focus on drugs in Schedule I (opiates: opium, heroin, morphine, cocaine and methamphetamine), and Schedule II (cannabis-related, including marijuana).

Currently, there are no mandatory prison terms under the CDSA, but the most serious drug offences have a maximum penalty of life imprisonment.

New Laws to Crack Down on Serious Drug Crimes

Under the proposed legislation, anyone found guilty of a serious drug offence would automatically receive a mandatory term of imprisonment. For the purpose of this initiative, serious drug offences mean:

- Production;
- Trafficking;
- Possession for the purpose of trafficking (PPT);
- Importing and exporting; and
- Possession for the purpose of exporting,

The bill amends the CDSA to include mandatory prison terms for drugs listed in Schedule I, such as heroin, cocaine and methamphetamine, and in Schedule II, such as cannabis and marijuana. Generally, the mandatory sentence would apply where there is an aggravating factor. It would also be increased where the production of the drug constitutes a potential security, health or safety hazard. Also, the maximum penalty for production of Schedule II drugs, e.g., marijuana, will be increased from 7 to 14 years.

Aggravating Factors

The aggravating factors include offences committed:

- for the benefit of organized crime;
- involving use or threat of violence;
- involved use or threat of use of weapons;
- by someone who was previously convicted (in the past 10 years) of a serious drug offence involving a Schedule I or II substance.
- in a prison;
- in or near a school, in or near an area normally frequented by youth or in the presence of youth;
- in concert with a youth
- in relation to a youth (e.g. selling to a youth)

Health and Safety Factors

These include:

- the accused used real property that belongs to a third party to commit the offence;
- the production constituted a potential security, health or safety hazard to children who were in the location where the offence was committed or in the immediate area;
- the production constituted a potential public safety hazard in a residential area; and
- the accused placed or set a trap.

Also, GHB and flunitrazepam, most-commonly known as date-rape drugs, will be moved from Schedule III to Schedule I, which will provide access to higher maximum penalties for illegal activities involving these drugs.

Exemption for the Drug Treatment Court

The legislation will allow the Drug Treatment Court (DTC) to impose a penalty other than a mandatory sentence on an offender who has a previous conviction for a serious drug offence where:

- a) the offence involves no other aggravating factors; and
- b) the offender successfully completes the DTC treatment program.

By suspending the imposition of a sentence while the addicted accused person takes an approved treatment program, Drug Treatment Courts encourage the accused person to deal with the addiction that motivates their criminal behaviour. If the person successfully completes the program, the court normally imposes a suspended or reduced sentence.

The policy of drug treatment courts is to accept into their programs only those accused who are non-violent and are not involved with organized crime. Many have trafficked in small amounts of drugs to support their addiction. Over 90 per cent of these participants have prior drug convictions, most notably for trafficking and possession for the purpose of trafficking and so would be subject to a mandatory penalty. This aggravating factor would prevent many offenders from entering the drug treatment court program. Therefore, an exemption from the mandatory penalty is provided for in the legislation. This allows the court to suspend the imposition of a sentence and, if the person successfully completes the court-approved drug treatment program, it may impose a lesser sentence, as long there are no other aggravating circumstances with respect to the drug offence before the court.

A COPY OF BILL C-26 IS ATTACHED FOR YOUR REFERENCE

**The CAPB encourages you to share this Bulletin! with your
Chief of Police and Association representative.**

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