



STRENGTHENING IMPAIRED DRIVING LAWS

On April 13th, 2017, the Government of Canada introduced legislation that would strengthen impaired driving laws and help ensure the public is better protected from both alcohol and drug-impaired driving. This legislation would also help to better deter and detect drug-impaired driving.

ADDRESSING DRUG-IMPAIRED DRIVING

Impaired driving is the leading criminal cause of death and injury in Canada, and drug-impaired driving is increasing. As the Government of Canada moves towards legalizing and strictly regulating cannabis, there is a need to strengthen our impaired driving laws to better address drug-impaired driving.

CURRENT LAWS

The *Criminal Code* currently prohibits driving while impaired by any drug. Police officers are currently able to conduct standardized field sobriety tests (SFST) if they suspect a driver has a drug in their body.

In addition, blood tests must currently be overseen by a doctor, which is time consuming and often requires transportation to a hospital.

PENALTIES

Current penalties for drug-impaired driving range from **\$1,000 fine on a first offence to 120 days of imprisonment on a third or subsequent offence**. Drug-impaired driving that results in death could result in life imprisonment.

PROPOSED LEGISLATION

MAKING TESTING AND PROSECUTION EASIER

The new legislation would allow for the following:

- Police would be able to demand an oral fluid sample at the roadside if they suspect a driver has a drug in their body. This would be similar to the current method of testing for alcohol at the roadside with an approved screening device.
- Qualified technicians would be able to take blood samples from a driver without a doctor's oversight, allowing for testing

sooner after a person is pulled over. Accurate and timely testing that reflects the degree of impairment is important for successful prosecutions, because it allows the police to capture evidence of impairment relatively closely to the time that the person is pulled over and relieves a burden on the healthcare system.

- Police officers would be able to provide opinion evidence in court as to whether they believe a driver was impaired by a drug at the time of testing, without the need for an expert witness in each trial. This will mean that cases are prosecuted more efficiently and more successfully.

LEGAL DRUG LIMITS

Under the new legislation, legal limits for drugs would be set by regulation.

For THC, the proposed levels would be:

- 2 nanograms (ng) but less than 5ng per 1 millilitre (ml) of blood for the summary conviction offence
- 5 ng or more per 1 ml of blood for the drug-only hybrid offence
- 2.5 ng or more per 1 ml of blood combined with 50 mg or more of alcohol per 100 ml of blood for the drugs-with-alcohol offence

Levels for some other impairing drugs would be set at detectable levels. This includes LSD, 6-MAM (a metabolite of heroin), Ketamine, Phencyclidine (PCP), and Psilocybin/Psilocin (magic mushrooms). Scientific advice indicates that these drugs are incompatible with safe driving at any level.



STRENGTHENING LAWS AGAINST ALCOHOL-IMPAIRED DRIVING

Impaired driving is a serious offence, and a great danger to public safety. Proposed legislation aims to strengthen Canada's laws against impaired driving by reforming the entire impaired driving regime within the *Criminal Code*.

ENABLING MORE ROADSIDE SCREENING

Under the current law, police officers must suspect a driver has alcohol in his or her body before they administer any roadside testing. Under the proposed legislation, police officers who have an approved screening device on hand would be able to test any driver they lawfully stop, even if the officer does not suspect the driver has alcohol in his or her body.

PENALTIES

Currently, the mandatory minimum penalties for impaired driving (that does not result in injury or death) are as follows:

- **First offence:** \$1,000 fine
- **Second offence:** imprisonment for 30 days
- **Third and all subsequent offences:** imprisonment for 120 days

First offenders

The current mandatory minimum penalty for a first offence (that does not result in injury or death) is a **\$1,000 fine**.

Under the proposed legislation, the amount of the fine would change, depending on the blood-alcohol content:

Blood-alcohol content (per 100ml of blood)	Fine
80 to 119mg	\$1,000
120 to 159mg	\$1,500
160mg or more	\$2,000

If a first offender refuses testing, they would be subject to a minimum fine of \$2,000.

Repeat offenders

Under the proposed law, mandatory minimum prison sentences

for repeat offences (that do not result in injury or death) would remain the same as they are now (**30 days for second offence; 120 days for third and subsequent offences**), though maximum penalties would increase:

Current maximum sentence	Proposed maximum sentence
18 months on summary conviction	2 years less a day on summary conviction
5 years on indictment	10 years on indictment

Offences causing bodily harm

Offences causing bodily harm would be made hybrid offences, allowing the Crown to decide whether to proceed summarily where the injuries are less severe (for example, a broken arm). This will also help reduce court delays.

Maximum sentences for offences causing bodily harm would range from **2 years less a day (summary) to 14 years (indictable)**.

Dangerous driving offences causing death

Under the new law, the maximum penalty for dangerous driving causing death would increase from **14 years to life imprisonment**. This is consistent with the maximum penalty for other transportation offences involving death.

Reducing wait times for ignition interlock devices

Currently, offenders are able to reduce the period of the prohibition from driving if they use a vehicle equipped with an ignition interlock device under a provincial program. During this time, they are able to drive anywhere in Canada.

Ignition interlock programs have been shown to reduce recidivism and save lives. The proposed legislation would reduce the amount of time an offender must wait before entering a provincial ignition interlock device program as follows:

- **First offence:** no wait, previously was 3 months
- **Second offence:** three (3) month wait, previously was 6 months
- **Third offence and subsequent offences:** six (6) month wait, previously was 12 months



REMOVING THE *BOLUS* DRINKING DEFENCE

Under the current law, drivers are able to argue that alcohol they consumed just before driving was not fully absorbed, therefore, they were not over the legal limit when driving. This is known as the bolus drinking defence.

The proposed law would remove this defence because it would be illegal to be over the limit within two hours of driving.

LIMITING THE INTERVENING DRINKING DEFENCE

Under the current law, a driver may claim they consumed alcohol after driving but before testing and this alcohol is what put them over the legal limit at the time of testing.

The new law would only allow for this defence in a situation where a driver drank after driving and had no reason to expect a demand by the police for testing.

CROWN DISCLOSURE

The proposed legislation would clarify what evidence the Crown must provide the defence in relation to breath testing on a breathalyzer at the police station. The Crown would only be required to disclose information that is scientifically relevant, such as the result of calibration checks and any messages produced by the breathalyzer. Defence could apply for further disclosure relating to breath testing and would obtain it if they satisfy the court that the material sought is relevant.

