Legislative Summary **LS-477E**

BILL C-32: AN ACT TO AMEND THE CRIMINAL CODE (DRUGS AND IMPAIRED DRIVING)

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LEGISLATIVE HISTORY OF BILL C-32

HOUSE OF COMMONS		SENATE	
Bill Stage	**Date**	**Bill Stage**	**Date**
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Second Reading:		Second Reading:	
Committee Report:		Committee Report:	
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Third Reading:		Third Reading:	

Royal Assent:

Statutes of Canada

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print.**

Legislative history by Peter Niemczak

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BILL C-32: AN ACT TO AMEND THE CRIMINAL CODE (DRUGS AND IMPAIRED DRIVING)*

Introduced in the House of Commons on 26 April 2004, and referred on 3 May to Committee for study before second reading, Bill C-32 proposes amendments to the *Criminal Code*(1) and other Acts intended to strengthen the enforcement of drug-impaired driving offences in Canada. Currently, section 253(a) of the *Criminal Code* makes it an offence to drive while one's ability to operate a vehicle is impaired by alcohol or a drug, or a combination of alcohol and a drug. While section 253(b) contains a further offence for driving while one's blood-alcohol level is over the legal alcohol limit, no similar drug limit offence exists. Thus, although drug-impaired driving is a criminal offence, police have few legally designated means of controlling that offence. Police currently rely on non-quantifiable symptoms of drug-impairment, such as erratic driving behaviour and witness testimony. Drug tests are admissible as evidence in court only if the driver participates voluntarily.

Bill C-32 expands drug enforcement capabilities by giving police the authority to demand physical sobriety tests and bodily fluid samples for section 253(a) investigations. Such tests will look for impairment by illegal, over-the-counter, and prescription drugs. As a first step, police officers will be authorized to administer Standardized Field Sobriety Tests (SFST) at the roadside if the officer has a reasonable suspicion that the driver has a drug in his or her body. SFST involves physical sobriety evaluations such as divided attention tests that evaluate the driver's ability to multitask. If the driver fails, the officer will then have reasonable grounds to believe that a drug-impaired driving offence has been committed, and can escort the driver to a police station for administration of a Drug Recognition Expert (DRE) evaluation involving a

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* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

(1) R.S.C. 1985, c. C-46, as amended.

combination of interviews and physical observations. Should the DRE officer identify that a specific family of drugs is causing impairment, Bill C-32 allows officers to take a saliva, urine, or blood sample. Charges will not be laid without confirmation of preliminary DRE results through a toxicology report, but the results of such tests can then be used as evidence in drug-impaired driving prosecutions. Finally, a driver's refusal to comply with an officer's request for a physical sobriety or bodily fluid sample test constitutes a criminal offence punishable under the same provisions that are currently applicable for refusing to perform an alcohol breath or blood test.

Bill C-32 is companion legislation to Bill C-10, An Act to amend the Contraventions Act and the Controlled Drugs and Substances Act, in which it is proposed to decriminalize possession of small amounts of marijuana (less than 15 grams).

BACKGROUND

A. Parliamentary and Government Studies

Parliament considered the issue of drug-impaired driving in May 1999, when the House of Commons Standing Committee on Justice and Human Rights released its report entitled *Toward Eliminating Impaired Driving*.[2] In this report, the Committee recognized that drugs play a contributory role in some fatal motor vehicle accidents, and that the extent of drug-impaired driving has been underestimated because police have no easy means to test for drugs under the current legislation. The Committee asserted a clear need to implement better measures for detecting drug-impaired driving and for obtaining the evidence necessary for successful prosecution.

However, the Committee pointed out several obstacles to achieving this goal. For example, the *Criminal Code* requires that police have "reasonable and probable grounds" to suspect impairment before they can administer testing; the Committee noted that Parliament would have to provide clear guidance on the scope of "reasonable and probable grounds" if refusal to comply with testing was to become a criminal offence. As well, there was an apparent lack of a single non-invasive test for detecting the presence of drugs that could impair a driver. Ultimately, a blood sample would probably be required. The Committee approved of DRE

(2) Report 21, *Toward Eliminating Impaired Driving*, May 1999, available at: http://www.parl.gc.ca/InfoComDoc/36/1/JURI/Studies/Reports/jurirp21-e.htm.

testing, but commented that the provinces have ultimate control of training in this area. As well, the Committee emphasized the need to consider the Charter implications of any drug testing, as the proposed tests might be more intrusive and time-consuming than those used to detect alcohol impairment.

The Committee made two recommendations on drug-impaired driving. The first was that section 256 of the *Criminal Code* be amended to allow a justice to authorize the taking of a blood sample to test for the presence of alcohol or drugs, based on reasonable and probable grounds that an impaired driving offence has been committed. As well, the Committee recommended that the Minister of Justice consult with the provinces and territories to develop legislative proposals for obtaining better evidence against suspected drug-impaired drivers.

In September 2002, the Senate Special Committee on Illegal Drugs issued a report entitled *Cannabis: Our Position for a Canadian Public Policy*.[3] This report found that between 5% and 12% of drivers may drive while under the influence of cannabis. Emphasizing the use of cannabis among young drivers, the report stated that this percentage increases to over 20% for men under 25. The Committee stated that cannabis alone, particularly in low doses, has little effect on the skills involved in driving and thus is not, in itself, a traffic risk. However, although cannabis use often leads to a more cautious style of driving, it still has a negative impact on decision time and trajectory, making it difficult for drivers to stay in their lanes. In addition, a significant percentage of impaired drivers test positive for both cannabis and alcohol together, and the effects of cannabis when combined with alcohol are more significant than for alcohol alone.

The Senate Committee also pointed out that there is no reliable, non-intrusive, rapid roadside testing method for drugs. Blood is the best medium for testing for cannabis; urine cannot screen for recent use; saliva could work, but no rapid commercial tests are reliable enough. However, the visual recognition method used by police had yielded satisfactory results in the past. The Committee emphasized that it was essential to conduct further studies in order to develop a rapid testing tool, and to learn more about the driving habits of cannabis users.

As a final recommendation with regard to the need to prohibit drug-impaired driving, the Committee suggested two amendments to the *Criminal Code*: lowering the permitted alcohol level to 40 milligrams of alcohol per 100 millilitres of blood when combined with drugs, especially cannabis; and admitting evidence from expert police officers trained in detecting persons operating vehicles under the influence of drugs.

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(3) *Cannabis: Our Position for a Canadian Public Policy*, September 2002, available at: http://www.parl.gc.ca/common/Committee_SenRep.asp?Language=E&Parl=37&Ses=1&comm_id=85.

Responding to the Standing Committee on Justice and Human Rights' 1999 recommendations, the Department of Justice's Working Group on Impaired Driving consulted extensively with provinces and territories on the issue, and published the *Drug-Impaired Driving: Consultation Document*(4) in October 2003. In reaction to apparent concerns that many drug-impaired drivers were not voluntarily participating in testing under the current regime, the Working Group emphasized the need for a legislated system that would allow police to demand that drivers suspected of being impaired submit to testing.

The Working Group outlined two main options. The first of these was to set a legal limit on drugs in the body. However, it recognized that a zero limit might not be appropriate, as it would catch drivers who had cannabis in their system from weeks earlier and who were not currently impaired.

The second option was to legislate in relation to the ability of police officers to demand drug tests. Essentially outlining the scheme established in Bill C-32, with some exceptions, the Working Group suggested that a certified SFST officer could demand a physical sobriety test, or take a saliva or sweat sample at the roadside, based on a reasonable suspicion of drug-impairment. Failure on these tests would constitute reasonable grounds to conduct a DRE evaluation at a police station. The police could then demand a confirmatory bodily fluid sample (blood, urine, saliva) based on a reasonable belief that the driver had committed a section 253(a) offence involving a drug or a combination of drugs and alcohol in the previous three hours. Both the DRE and sample test results would be admissible in evidence, and refusal to submit to such tests would constitute an offence under the *Criminal Code*.

However, the Working Group also emphasized that because of Charter rights sensitivities, legislators would have to give serious consideration to current *Criminal Code* provisions permitting demands for evidential breath or DNA samples that have already survived Charter challenges. Legislators would also have to consider the point in the process at which a suspect must be given information on his or her right to counsel.

The House of Commons Special Committee on the Non-medical Use of Drugs (Bill C-38) published the most recent parliamentary report involving drug-impaired driving in the fall of 2003.(5) It briefly called for Parliament to develop a strategy to address the issue of drug-impaired driving following a review of what is now Bill C-10.

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(4) *Drug-Impaired Driving: Consultation Document*, October 2003, available at: http://www.justice.gc.ca/en/cons/did/toc.html.

(5) Report 1, Bill C-38, An Act to Amend the Contraventions Act and the Controlled Drugs and Substances Act, available at: http://www.parl.gc.ca/committee/CommitteePublication.aspx?SourceID=66174.

B. National and International Measures

Although DRE testing has not yet been implemented through the *Criminal Code*, this form of testing is already widely used in most U.S. states, Australia, New Zealand, and some European countries. Even in Canada, police forces are already using DRE testing in Quebec, British Columbia, and Manitoba, although only in cases where the driver participates voluntarily. The tests have survived court challenges in British Columbia, and at the United States Supreme Court.(6)

Even without legislated testing under the *Criminal Code*, the federal government has already taken numerous steps towards bolstering DRE testing by police. Announced in May 2003, Canada's renewed Drug Strategy allocated $910,000 in new funding over five years towards DRE and put in place a National DRE Coordinator both to work with law enforcement agencies across the country and to develop an operational framework for DRE in Canada. Currently there are 73 certified DRE-trained officers in Canada, and a further 38 are in the process of becoming certified. As well, the RCMP has reallocated $4.1 million to get a National DRE Program under way. The RCMP has stated its commitment to working with provincial, regional, and municipal police services to assist in building the capacity for training DRE officers and instructors.(7)

DESCRIPTION AND ANALYSIS

A. Clarification and Definition

Clauses 3 and 4 of Bill C-32 provide some preliminary clarification to support the new drug-impaired driving provisions in the *Criminal Code*. Clause 3 renumbers the primary impaired driving provision, section 253, as section 253(1), and adds a new subsection clarifying that the phrase "impairment by alcohol or a drug" includes impairment by a combination of alcohol and a drug.

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(6) Department of Justice, Press Release, "Government of Canada Introduces Measures to Strengthen Investigations of Drug-Impaired Driving," 26 April 2004, available at: www.justice.gc.ca/en/news/nr/2004/doc_31162.html.

(7) *Ibid.*

Clauses 4(1) and (2) amend the definitions contained in section 254(1) by expanding the scope of their application to include new provisions laid out in Bill C-32, and to add a definition of "evaluating officer" as a peace officer who is qualified under the regulations to conduct DRE evaluations.

B. New Section 254 – Drug Testing Provisions

The basis of the new testing system for drug-impaired driving is laid out in clause 4(3), which clarifies and expands the language used in sections 254(2) to (6) of the *Criminal Code*.

Section 254(2) now contains the first phase of testing for drug-impaired driving (SFST), stating that where a roadside peace officer has a reasonable suspicion that a driver has alcohol or a drug in his or her body, the officer may require the driver to, as soon as is reasonable in the circumstances, a) perform an SFST physical coordination test as prescribed by the regulations to determine whether further drug tests must be undertaken, and b) in the case of alcohol, provide a breath sample.

Emphasizing that all steps must be taken "as soon as is reasonable in the circumstances," the updated section 254(3) mirrors its predecessor by providing that a peace officer may demand a breath or blood sample where the officer has reasonable grounds to believe that a person has been driving while impaired by alcohol within the last three hours.

Sections 254(3.1) to (3.3) are entirely new. Section 254(3.1) contains the second phase of testing for drug-impaired driving (DRE), which will generally follow when a suspect fails the SFST. As soon as is reasonable in the circumstances, a peace officer who reasonably believes that a person has been driving while impaired by a drug, or a combination of alcohol and a drug, within the preceding three hours may demand that the driver submit to a DRE[8] conducted by a DRE officer at a police station.

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(8) Left to be implemented by regulations, the exact requirements of the DRE evaluation are not laid out in Bill C-32. The evaluation is a standardized procedure carried out by DRE-certified officers that determines impairment by drugs, or a combination of drugs and alcohol, but does not distinguish between over-the-counter, prescription, and illegal drugs. These tests can identify depressants, inhalants, PCP, cannabis, stimulants, hallucinogens, and narcotics. They involve a breath test to rule out alcohol, an interview of the arresting officer, an eye examination, divided attention tests, an examination of vital signs and typical injection sites, and an interview of the subject. For more information, see the Department of Justice Backgrounder, "Drug Recognition Expert Testing," 26 April 2004, available at: www.justice.gc.ca/en/news/fs/2004/doc_31166.html.

Complementing these provisions, section 254(3.2) states that, as soon as is reasonable in the circumstances, a DRE officer may demand a breath sample where the officer has reasonable grounds to suspect that the driver has alcohol in his or her body and the roadside peace officer did not request a test under sections 254(2) or (3).

Section 254(3.3) contains the final phase of testing for drug-impaired driving – a bodily fluid sample. As soon as is reasonable in the circumstances upon completion of the DRE evaluation, if the DRE officer has reasonable grounds to believe that the driver's ability to operate a vehicle is impaired by a drug or a combination of alcohol and a drug, the DRE officer may demand that the driver provide a saliva, urine, or blood sample.

Finally, sections 254(4) to (6) are simply reiterated or clarified to encompass the new provisions. Most notably, section 254(4) states that samples of blood may be taken only by a medical practitioner or technician who is satisfied that taking samples would not cause injury to the individual. Clause 8 of the bill updates the former section 257(2) to ensure that neither the physician nor the technician will be guilty of a criminal offence or liable at civil law for taking a blood sample under sections 254(3) or (3.3) when this is reasonably and necessarily done.

Because the precise specifications for the tests laid out in section 254 are not outlined in the *Criminal Code*, clause 5 of Bill C-32 adds section 254.1, allowing the Governor in Council to make regulations on the qualifications and training of DRE officers, prescribing SFST physical coordination tests, and prescribing DRE tests and procedures.

C. Punishment

Clause 6 of Bill C-32 clarifies language concerning the punishment laid out in section 255 in order to incorporate the new drug-impaired driving provisions. As before, sections 255(2) and (3) hold that an alcohol- or drug-impaired driving offence under section 253(1)(a) that causes bodily harm is punishable by up to 10 years' imprisonment. Where such offences cause death, the offender is liable to imprisonment for life.

As in the earlier section 254(5) "refusal to comply" offence dealing solely with alcohol-related testing, refusal by a driver to comply with drug tests is now also a criminal offence. Section 255(4) holds that a person convicted under section 253 or 254(5) is deemed to be convicted for a subsequent offence if they have already been convicted under these provisions. As before, the punishment and prohibition on driving will increase with each subsequent offence.

D. Technical and Evidentiary Requirements

Clauses 7 and 9 clarify the language in sections 256(5) and 258 so as to incorporate the new drug-impaired driving provisions. Again emphasizing the phrase “as soon as is reasonable in the circumstances,” clause 7 updates section 256(5), which still holds that when a section 256(1) warrant to obtain a blood sample is executed, the peace officer shall give a copy to the person from whom the samples were taken.

Clauses 9 and 10 deal with the ability of prosecutors to use test results as evidence in court proceedings. Charges will not be laid unless a toxicology report confirms preliminary DRE evaluations. Clarifying the language on procedure and evidence, clauses 9(1) to (7) update sections 258(1)(c), (d), and (h) to incorporate the new drug testing provisions and to ensure that the results of such tests can be used as evidence in drug-impaired driving prosecutions, as is currently the case with alcohol-impaired driving prosecutions. Essentially, the results of analyses of breath, blood, urine, or other bodily fluid samples may be admitted in evidence even if the accused was not warned prior to the taking of the sample that he or she need not consent to the procedure, nor that the result might be used in evidence. No person, however, is required to give a sample of urine or other bodily substance except as required under section 254, and evidence of a failure to give such a sample is not admissible at trial nor may it be made the subject of comment at trial. Where the technical requirements laid out in sections 258(1)(c) and (d) are met for section 254(3) samples (with new emphasis on taking the sample as soon as is reasonable in the circumstances), evidence of the results of that analysis is, in the absence of evidence to the contrary, proof of a drug or alcohol in the system at the time of the offence. If a sample of the accused’s blood has been taken under sections 254(3), 254(3.3), or 256, or with the accused’s consent, the certificate of a qualified medical practitioner is evidence of the facts set out in it without proof of signature of the official character of the person signing the certificate.

Clarifying the language in sections 258(2) to (5) to incorporate the new drug testing provisions, clause 9(8) of the bill provides that unless a person is required to give a sample under sections 254(2)(b), (3), (3.2), or (3.3), evidence of failure to give a sample is not admissible at trial, nor may it be made the subject of comment at trial. Evidence of failure to comply with a demand to give a sample under section 254 is admissible as evidence at trial in respect of a section 253(1)(a) offence, and the court may draw an adverse inference from such failure to comply. If, at the time a sample is taken, an additional sample is taken and retained, a

judge may release one sample for testing if so requested by the accused, subject to any necessary conditions to ensure that the sample is preserved for use in proceedings in respect of which the sample was taken. Finally, a sample of the accused's blood taken to test alcohol concentration under section 254(3) or 256, or with the accused's consent, may be tested to determine any concentration of drugs in the blood.

Clause 10 of the bill adds a new provision to the *Criminal Code* concerning the unauthorized use of samples. New section 258.1(1) states that samples taken under sections 254(2)(b), (3), (3.2) or (3.3), or 256, or with the consent of the accused, may be used only for the analyses referred to in those provisions. Sections 258.1(2) to (3) hold that the results of tests and sample analysis taken under sections 254(2) to (3.3), or 256, or with consent of accused, may be disclosed or used only in the course of a section 253 investigation, or in a proceeding for an offence under section 253, under the *Aeronautics Act*, or concerning the use of drugs or alcohol under the *Railway Safety Act*. However, the results may be disclosed if made anonymously. Section 258.1(4) creates a summary conviction offence for anyone who contravenes section 258.1.

E. Accommodation of Bill C-10

Clauses 1, 2 and 11 of Bill C-32 make amendments to the *Criminal Code* to accommodate changes made to the *Controlled Drugs and Substances Act* (CDSA) under Bill C-10. The target of these amendments is generally the new section 7(3)(a), described in clause 6(2) of Bill C-10 as the offence of producing cannabis from not more than three plants.

Clause 1 amends section 109(1)(c) of the *Criminal Code* to hold that the court shall impose a mandatory prohibition on weapons possession where a person is convicted or discharged of a drug trafficking or production offence under sections 5 to 7 of the CDSA, except for the offence of producing cannabis from not more than three plants.

Clause 2 excludes the production of cannabis from not more than three plants from section (d)(iii) of the definition of "offence" in section 183, interpreting the Invasion of Privacy part of the *Criminal Code*.

The bail provisions outlined in section 515 of the *Criminal Code* are amended by clause 11. Section 515(4.1) now holds that the court shall impose a mandatory prohibition on weapons possession when releasing an accused on conditional bail when the accused is charged

with a drug trafficking or production offence under sections 5 to 7 of the CDSA, unless the judge considers that such measures are not necessary for public safety. Clause 11 excludes the production of cannabis from not more than three plants from the category of offences subject to such a prohibition. Under section 515(6)(d), where an accused is charged with an offence punishable by imprisonment for life under sections 5 to 7 of the CDSA, or conspiring to commit such an offence, the judge shall not release the accused on bail unless the accused can prove that detention is not justified.

F. Related Amendments

A number of further amendments to related legislation are also necessary to accommodate changes made under Bill C-10 to the CDSA. Again, the target of these amendments is generally the new section 7(3)(a). Clause 12 of Bill C-32 amends the *Firearms Act*. Section 5(2)(a)(iv) of that Act holds that in determining whether an individual is eligible to hold a firearms licence, the officer shall consider whether the person has been convicted or discharged of a drug trafficking or production offence under sections 5 to 7 of the CDSA; clause 12 excludes the production of cannabis from not more than three plants from the category of such offences.

Clauses 13 and 14 amend the *National Defence Act*. Section 147.1(1)(c) of that Act holds that a court martial shall consider whether it is necessary or desirable to impose a prohibition on weapons possession where a person is convicted of a drug trafficking or production offence under sections 5 to 7 of the CDSA; clause 13 excludes the production of cannabis from not more than three plants from the category of such offences. The definition of "designated offence" in section 153 is also amended to include all drug trafficking or production offences under sections 5 to 7 of the CDSA where punishable by imprisonment for life.

Finally, clause 15 amends the *Youth Criminal Justice Act*. Section 4(c) of the Schedule to that Act is amended to exclude the offence of producing cannabis from not more than three plants under the CDSA.

G. Consequential Amendments

The changes to the *Criminal Code* made by Bill C-32 also necessitate consequential amendments to other legislation to incorporate the new drug testing provisions.

Clause 16 amends the *Aeronautics Act*. Section 8.6 of that Act is amended to state that a sample relating to the presence of alcohol or a drug in the body obtained under the *Criminal Code* is admissible in *Aeronautics Act* proceedings. The provisions of section 258 of the *Criminal Code*, except section 258(1)(a), apply with any necessary modifications.

Clause 18 amends the *Railway Safety Act*. Section 41(7) of that Act is amended to state that a sample relating to the presence of alcohol or a drug in the body obtained under the *Criminal Code* is admissible in *Railway Safety Act* proceedings involving contraventions respecting the use of alcohol or a drug. The provisions of section 258 of the *Criminal Code* apply with any necessary modifications.

Clause 17 amends the *Customs Act*. Section 163.5(2) of that Act is amended to grant a customs officer the powers of a peace officer under sections 254 and 256 of the *Criminal Code*. If a blood or breath sample, or DRE testing, is required, a person may be required to accompany a peace officer for that purpose.

H. Coming Into Force

Clauses 19 and 20 are aimed at coordinating the timing of Bill C-32 amendments with those contained in Bill C-10A, *An Act to amend the Criminal Code (firearms) and the Firearms Act*, and Bill C-7, the *Public Safety Act, 2002*.

Finally, clause 21 provides that Bill C-32 will come into force on a day or days to be fixed by order of the Governor in Council. However, clauses 1, 2, and 11 to 15 will come into force when section 7(3)(a) of the CDSA, as enacted by clause 6(2) of Bill C-10, comes into force.

COMMENTARY

While all parties rose to speak in support of Bill C-32 in the House of Commons on 3 May 2004, many members also expressed concern with some aspects of the proposed legislation. Members of the public have also expressed some concerns.

In support of Bill C-32, it appears to be clear that drug users are disproportionately involved in fatal accidents. A study released by the Société de l'assurance automobile du Québec determined that more than 30% of fatal accidents in Quebec involved drugs or a combination of drugs and alcohol.(9) A significant proportion of Canadians have also admitted to driving within a few hours of consuming drugs. Toronto's Centre for Addiction and Mental Health released a study that found that more teens (about 20%) admit to using cannabis and driving than the 13.8% that admit to drinking and driving.(10) Polls have also shown that close to 20% of Canadian drivers have taken the wheel within two hours of taking a potentially impairing drug – whether over-the-counter, prescription, or illegal. The Centre for Addiction and Mental Health found that 3% of adult motorists report having driven a vehicle within an hour of using cannabis. This figure doubles to 6% among those between 16 and 34.(11)

One of the critical problems with introducing measures to combat drug-impaired driving is that there is no scientific consensus on threshold drug concentration levels in the body that cause impairment, making driving hazardous. Unlike the breathalyser test used for alcohol, there is no objective test to measure drug impairment. Ultimately, there is no measurable link between driving impairment and drug quantity. Added to this is the fact that traces of some drugs can remain in the body for weeks, making it difficult to evaluate impairment or even recent use. For example, tetrahydrocannabinol (the active ingredient in cannabis) can be detected in the body for up to four weeks, although its impairing effects do not last. Because there is no scientifically proven threshold, Bill C-32 does not propose a "legal limit" like section 253(b) for drunk driving. Some critics argue that because there is no threshold, drug-impaired driving prosecutions will be thrown out in court. Others argue, however, that it is precisely because there is no clear drug limit that DRE testing is needed.(12)

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(9) Department of Justice, Press Release, 26 April 2004.

(10) Lisa Lisle, "High Time for Change in Impaired Attitudes," *Ottawa Sun*, 2 May 2004, p. 14. See also: Canada Safety Council, "Drivers on Pot – Issues and Options," 24 July 2003, available at: http://www.safety-council.org/info/traffic/impaired/pot.html; Edward M. Adlaf, Robert E Mann, and Angela Paglia, "Drinking, cannabis use and driving among Ontario students," *Canadian Medical Association Journal*, Vol. 168, No. 5, March 2003, pp. 565-566.

(11) Department of Justice, "Backgrounder: Strengthening Drug-Impaired Driving Investigations," 26 April 2004, available at: www.justice.gc.ca/en/news/fs/2004/doc_31164.html; "Roadside Drug Tests," *Toronto Star*, 1 May 2004, p. H06.

(12) Department of Justice, *Drug-Impaired Driving: Consultation Document*, October 2003; Tonda MacCharles, "Drugged Drivers Targeted," *Toronto Star*, 27 April 2004, p. A01; Janice Tibbetts, "Driver Refusing Drug Test will Face $600 Fine," *Montreal Gazette*, 27 April 2004, p. A14; Emile Therien, "Don't Criminalize Drug-Driving," *Globe and Mail* [Toronto], 28 April 2004; Lisle (2004); Mindelle Jacobs, "Drugged Drivers Highway Hazard," *The London Free Press*, 4 May 2004, p. A7.

The Department of Justice states that preliminary DRE examination results have proven to be more than 80% effective, while the U.S. National Institute of Highway Traffic Safety found DRE analyses to be accurate 98% of time. As well, DRE testing can rule out drug impairment in drivers who have a medical condition, such as a neurological injury, and get these drivers medical attention. Ultimately, the argument is that Bill C-32 will help to secure more convictions for drug-impaired driving. Currently, such convictions are rare, and British Columbia, Manitoba, Alberta, and Saskatchewan are the only provinces with registered convictions. DRE testing under Bill C-32 will also help to minimize false arrests.(13)

Some commentators have expressed concern that Bill C-32's new *Criminal Code* provisions will give the police too much power, leading to the potential for abuse of power, invasion of privacy, or discrimination. Critics argue that these enhanced enforcement measures will spawn court challenges on the basis of illegal search and seizure, arbitrary detention, and the right to counsel. The Department of Justice counters that this new legislation allows police the same powers as they already have to deal with drunk drivers. Those provisions have stood up to Charter scrutiny, partially because of the standard need for "reasonable grounds" of belief before demanding a test, and partially because of section 1 of the Charter, which places a reasonable limit on the right to be free from search and seizure.(14)

Finally, critics point to the onus that will fall on the provinces if this legislation is passed. If these new measures come into force, it will be up to the provinces to pay for related police training. The federal government and RCMP allotted funds for DRE training in 2003 and have no plans to provide additional funding. DRE standards are laid down by the International Association of Chiefs of Police. To obtain DRE certification, an officer must pass eight exams and two practical tests, including performing 12 DRE evaluations on four different classes of drugs that are subsequently confirmed by toxicology results.(15)

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(13) Department of Justice, Backgrounder, "Drug Recognition Expert Testing"; Lisle (2004).

(14) MacCharles (2004); Kim Lunman, "Ottawa Moves Let Police Test Drivers for Drug Impairment," *Globe and Mail* [Toronto], 27 April 2004, p. A4; Jacobs (2004).

(15) Department of Justice, Backgrounder, "Drug Recognition Expert Testing"; MacCharles (2004); Canadian Professional Police Association, "New Drug-Impaired Driving Bill 'A First Step in the Right Direction,'" 28 April 2004; Janice Tibbetts, "Roadside Drug Checks May Come With Pot Bill," *National Post*, 23 February 2004, p. A4.