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LEGISLATIVE SUMMARY



Bill C-70: **An Act to amend the Controlled Drugs and Substances** **Act and to make related amendments to other Acts**

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Robin MacKay

Legal and Social Affairs Division
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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.

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

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(Legislative Summary)

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CONTENTS

1	BACKGROUND.....	1
1.1	The Current Law	1
2	DESCRIPTION AND ANALYSIS	2
2.1	Possession, Production, Sale, Import or Transport of a Substance (Clause 7)	2
2.2	Amendments to the Schedules of the <i>Controlled Drugs and Substances Act</i> (Clauses 36 and 38)	3
2.3	Amendments to the Disposition of Property Provisions (Clauses 2 and 10 to 25)	3
2.4	Enhanced Powers of Inspectors (Clause 27)	5
2.5	Administrative Monetary Penalties (Clause 29)	6
2.6	Ministerial Orders and Regulations (Clauses 31 to 35)	7
2.7	Related Amendments (Clauses 41 to 59)	8

LEGISLATIVE SUMMARY OF BILL C-70: AN ACT TO AMEND THE CONTROLLED DRUGS AND SUBSTANCES ACT AND TO MAKE RELATED AMENDMENTS TO OTHER ACTS

1 BACKGROUND

Bill C-70, An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts (short title: Protection of Communities from the Evolving Dangerous Drug Trade Act) was introduced in the House of Commons by the Minister of Health on 11 June 2015.¹ The bill amends the *Controlled Drugs and Substances Act*² (CDSA) to, among other things:

- provide the Minister of Health with the authority to temporarily add potentially dangerous substances to a schedule to the Act;
- expand the offence of possession, production, sale or importation so that it includes transport and applies to anything that is intended to be used in the production or trafficking of any controlled substance; this offence includes precursors, which are synthetic and natural substances that can be used to create other drugs;
- streamline the disposition of seized, found or otherwise acquired controlled substances, precursors and chemical and non-chemical offence-related property;
- add an administrative monetary penalties scheme; and
- expand the regulation-making authority respecting information so that it applies to the collection, use, retention, disclosure and disposal of information.

The bill also makes related amendments to the *Criminal Code*³ and the *Seized Property Management Act*.⁴

1.1 THE CURRENT LAW

The CDSA regulates certain types of drugs and associated substances, which are listed in Schedules I to VIII of the Act. The offences in the Act include possession, “double doctoring,”⁵ trafficking, importing and exporting, and production of substances included in the schedules. The punishment for these offences depends on which schedule applies to the drug in question; however, there are mandatory prison terms under the CDSA, and the most serious drug offences have a maximum penalty of life imprisonment.

Schedule I of the CDSA includes the drugs that are commonly thought of as the most “dangerous,” e.g., opium, cocaine and methamphetamine. Schedule II lists cannabis and its derivatives, while Schedule III includes lysergic acid diethylamide (LSD), psilocybin, and mescaline. Schedule IV includes barbiturates, benzodiazepines, and anabolic steroids, while Schedule V lists a single drug – propylhexedrine. Schedule VI is a list of precursors, including ephedrine, potassium permanganate, sulphuric acid, and toluene. Finally, Schedules VII and VIII list specific amounts of

cannabis resin and cannabis (marijuana) with reference to the possession and trafficking offences.

The CDSA is designed to meet Canada's obligations under several international protocols. Three international conventions on illicit drugs cover cannabis, cocaine, heroin, other psychoactive substances and their precursors: the *Single Convention on Narcotic Drugs, 1961*,⁶ the *Convention on Psychotropic Substances, 1971*,⁷ and the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988*.⁸ The 1961 Single Convention calls for states to limit the production of and trade in prohibited substances to the quantity needed to meet their medical and scientific needs. Each state is expected to implement domestic legislative and regulatory measures to establish the controls necessary within its own territory to fulfill the commitments of the Convention. Under the 1971 Convention, psychoactive substances (such as THC in marijuana) are to be subjected to controls similar to those that apply under the 1961 Single Convention. The 1988 Convention calls on parties to take action to control the illicit cultivation, production and distribution of drugs of abuse.

Canada's drug laws do not prohibit all possession or use of controlled drugs and substances. Thus, the *Narcotic Control Regulations*⁹ allow for the distribution of narcotic drugs by pharmacists, medical practitioners and hospitals and outline the records that must be kept to account for their distribution. For example, pursuant to section 53(3) of the Regulations, a medical practitioner may administer methadone, if he or she has an exemption under section 56 of the CDSA with respect to this drug. Section 56 of the CDSA gives the power to the Minister of Health to exempt any person or controlled substance from the application of the CDSA if the exemption is necessary for a medical or scientific purpose or is otherwise in the public interest. The minister may also issue a licence to cultivate, gather or produce opium poppy or marijuana for scientific purposes.¹⁰

2 DESCRIPTION AND ANALYSIS

Bill C-70 contains 61 clauses. The following discussion highlights the more substantive aspects of the bill; it does not review every clause.

2.1 POSSESSION, PRODUCTION, SALE, IMPORT OR TRANSPORT OF A SUBSTANCE (CLAUSE 7)

Section 7.1 of the CDSA deals with the offence of possessing, producing, selling or importing anything with the knowledge that it will be used to produce or traffic in methamphetamine.¹¹ The maximum penalty for the section 7.1 offence is imprisonment for ten years less a day.

Clause 7 of Bill C-70 amends section 7.1 of the CDSA in a number of ways. For the first time, it includes the transport of substances in the offence and specifies that there be an *intention* to produce or traffic in what is now called a "controlled substance" (as opposed to simply knowledge that this will occur). Further, the offence is no longer restricted to methamphetamines. A "controlled substance" is defined in section 2(1) of the CDSA as a substance included in Schedule I, II, III, IV

or V. The punishment for this offence is changed from a solely indictable offence to a hybrid offence (one that can be punished as an indictable or a summary conviction offence). The punishment is also now tied to the type of controlled substance being produced or trafficked. The maximum punishment of ten years' imprisonment is kept for indictable offences in relation to Schedule I, II, III or V substances (18 months on summary conviction), but there is a lesser maximum punishment of three years' imprisonment for an indictable offence in relation to a Schedule IV substance (12 months on summary conviction).

2.2 AMENDMENTS TO THE SCHEDULES OF THE *CONTROLLED DRUGS AND SUBSTANCES ACT* (CLAUSES 36 AND 38)

Clause 38 of Bill C-70 has the effect of eliminating all substances from Schedule V of the CDSA. Clause 36 then provides the means by which substances can be added to Schedule V. New section 60.1 of the CDSA will allow the Minister of Health to add, by order, any item to Schedule V for up to one year, or to extend that period for up to another year, if the minister has reasonable grounds to believe that the item:

- poses a significant risk to public health or safety; or
- may pose a risk to public health or safety and is being imported into Canada or distributed in Canada with no legitimate purpose.

The minister can also order the deletion of any item from Schedule V.

The addition and deletion of items from Schedule V by ministerial order is more expeditious than the traditional regulation-making process for Schedules I to IV and VI to VIII as set out in section 60 of the CDSA. The backgrounder to the bill states that this process will allow for a quicker response to emerging drugs.¹² The change to the process for adding items to Schedule V is significant for the many other amendments in Bill C-70 that make reference to it: the bill amends section 5 of the CDSA ("Trafficking in substance"), section 6 ("Importing and Exporting"), section 7 ("Production of substance"), and section 10 ("Purpose of sentencing") to add a reference to the items that may be found in the new Schedule V.

2.3 AMENDMENTS TO THE DISPOSITION OF PROPERTY PROVISIONS (CLAUSES 2 AND 10 TO 25)

The current CDSA provisions dealing with offence-related property are divided in two. Part II ("Enforcement") consists of sections 11 to 13 ("Search, Seizure and Detention"), sections 14 to 15 ("Restraint Orders") and sections 16 to 22 ("Forfeiture of Offence-related Property"), while Part III deals with the "Disposal of Controlled Substances." As the headings imply, Part II deals with all types of property considered to be related to the offence, while Part III deals specifically with the means to dispose of controlled substances that have been seized. Section 13 of the CDSA states that sections 489.1 and 490 of the *Criminal Code* apply to offence-related property but not to controlled substances that have been seized; those are dealt with under the provisions of the CDSA and its regulations. Section 489.1 of the *Criminal Code* deals with the disposition of property seized by a peace officer, while

section 490 sets out the procedure to follow when seized items are brought before a court or a report is made and further detention of items is requested. The forfeiture of offence-related property, however, remains governed by sections 16 to 22 of the CDSA.

A similar division of seized property is maintained in the amended CDSA. Clause 2 of Bill C-70 sets out a new definition of “chemical offence-related property” as offence-related property that is a chemical or a precursor. There is also a new category of “non-chemical offence-related property.”

Under the amended CDSA, Part II (“Enforcement”) is shortened to sections 11 to (new) 12.1. The new section sets out detailed reporting requirements when any law enforcement officer acquires a controlled substance, a precursor or chemical offence-related property.

A new Part III to the CDSA, entitled “Disposition,” begins with an amended section 13, which specifies that the *Criminal Code* sections dealing with restitution and detention of seized property apply to non-chemical offence-related property, while the CDSA and its regulations apply to seized property that is a controlled substance, a precursor or chemical offence-related property. Division I of this Part (sections 14 to 22) sets out the ways to deal with non-chemical offence-related property, while Division II (sections 23 to 29) deals with the treatment of controlled substances, precursors and chemical offence-related property.

Section 14 of the current CDSA provides for restraint orders, which are orders by a court prohibiting any person from dealing with offence-related property otherwise than in the manner specified in the order. Bill C-70 restricts restraint orders to non-chemical offence-related property. Section 14.1 of the current CDSA provides for management orders, that is, orders by a judge for someone to take control of and manage offence-related property. The powers of the property manager explicitly include the power to make a sale of property that is perishable or rapidly depreciating and the power to destroy property that has little or no value. In the renumbered section 15.1, Bill C-70 adds to this list a power to have property (other than real property) forfeited to the state. The person managing offence-related property must give notice specifying a period of 60 days within which a person may apply to the court asserting his or her interest in the property. If no such application is made, the property in issue is forfeited.

Sections 16 to 22 of the current CDSA provide for the forfeiture of offence-related property upon conviction for a designated substance offence.¹³ These sections are amended by Bill C-70 in the following ways:

- These forfeiture provisions now apply only to non-chemical offence-related property. This will be the case for *in rem* forfeitures as well. *In rem* forfeitures apply where an accused has been charged with (but not convicted of) a designated substance offence and has died or absconded.
- Forfeiture is now available when there is a discharge under section 730 of the *Criminal Code*¹⁴ and not solely upon a conviction.

- The special forfeiture provisions in section 19.1 of the CDSA that apply to dwelling-houses now apply in cases of discharges under section 730 of the *Criminal Code* as well as convictions. It is now clearly stated that a reasonable notice period should be given before any forfeiture, to enable a member of the immediate family of the person charged, convicted or discharged who resides in the dwelling-house to make himself or herself known to the court.
- Section 20 of the CDSA is amended to state that anyone who, under section 730 of the *Criminal Code*, has been discharged of the designated substance offence in relation to which property has been forfeited may not apply to have that property returned to him or her.

Sections 24 to 29 of the current CDSA deal with the disposal of controlled substances. Section 24 provides for an application to be made to a court for an order that a seized substance be returned. If the court is satisfied that the applicant is legally entitled to possession of the controlled substance and that it is not needed in any legal proceeding, then it is to be returned to the applicant. Under section 25, if no application for the return of a controlled substance is made within 60 days of seizure, and it is not required for any legal proceeding, it is to be delivered to the minister to be disposed of in accordance with the regulations. Under section 26, if the minister has reasonable grounds to believe that a seized controlled substance constitutes a potential security, public health or safety hazard, he or she may apply to the court for an order that the substance be forfeited to the Crown. Section 27 provides for the disposal of a controlled substance at the conclusion of legal proceedings, while section 28 allows for the disposal of such substances with the consent of the lawful owner.

Clauses 23 to 25 of Bill C-70 amend sections 24 to 29 of the CDSA to create Division 2 of Part III concerning controlled substances, precursors, and chemical offence-related property. New section 23 of the CDSA reflects the wording of section 489.1 of the *Criminal Code*. This provision specifies that where the lawful possession of seized property is not at issue and the continued detention of the property is not required for the purposes of any legal proceeding, it shall be returned to the lawful owner. The other amendments in this section of the bill extend the disposition measures beyond controlled substances to encompass precursors and chemical offence-related property. In the case of property whose storage or handling poses a risk to health or safety (new section 26), the circle of those persons legally able to dispose of it is expanded beyond the minister to include a peace officer or a person prescribed by regulation, presumably in order to facilitate the disposal of dangerous substances. New section 29 of the CDSA requires a detailed report of the disposition of a controlled substance, a precursor or chemical offence-related property to be sent to the minister within 30 days of the disposition. This kind of reporting is currently required for property seized pursuant to a warrant. Under section 489.1 of the *Criminal Code*, a report using Form 5.2 must be made to the justice who issued the warrant in question.

2.4 ENHANCED POWERS OF INSPECTORS (CLAUSE 27)

Part IV of the CDSA ("Administration and Compliance" [sections 30 to 32]) sets out the powers of inspectors designated by the minister to enforce the Act, as well as

offences relating to inspection. Under section 31 of the CDSA, an inspector may search a place of business of any person authorized to deal in a controlled substance or a precursor and seize materials and may also search a dwelling-place with the consent of the occupant or, if entry is refused, under the authority of a warrant. In addition to the offence of obstructing an inspector, section 32 of the CDSA makes it an offence to make a false or misleading statement to an inspector or to remove, alter or interfere with anything seized or detained by an inspector.

Clause 27 of Bill C-70 amends section 31 of the CDSA to specify that an inspector may enter a vehicle to ensure compliance with the Act and may order it to be seized or its movement restricted. Inspectors are also now able to order a person to start or stop an activity and to have persons found in an inspected place identify themselves. Section 31(2) of the CDSA is replaced by section 31(1.1), which sets out the reasons an inspector may enter a place, including a place where an authorized activity was taking place but the licence has now expired. A warrant to enter a dwelling-place must now make reference to these conditions of entry.

2.5 ADMINISTRATIVE MONETARY PENALTIES (CLAUSE 29)

Part V of the CDSA (“Administrative Orders for Contraventions of Designated Regulations” [sections 33 to 43]) sets out the procedure by which the minister can deal with suspected contraventions of designated regulations by serving a notice to appear.¹⁵ In cases where the contravention poses a substantial risk of immediate danger to the health or safety of any person, the minister may, without notice, make an interim order prohibiting any activity that would otherwise be permitted under a licence, permit or authorization. A notice to appear and any interim order are sent by the minister to an adjudicator, who is to hear the matter expeditiously. Where the adjudicator determines that a person has contravened the designated regulation, he or she must notify the person of the opportunity to make representations to the minister.

After considering the adjudicator’s determination and any representations from the person, the minister may make an order either to prohibit activities or to subject them to conditions; in order to do this, the minister may suspend, cancel or amend any licence, permit or authorization granted to the person. It is an offence to contravene an order or an interim order under Part V of the CDSA. Section 46 of the Act indicates that this is a hybrid offence punishable as an indictable offence by up to three years’ imprisonment and/or a maximum fine of \$5,000, or as a summary conviction offence punishable by up to six months’ imprisonment and/or a maximum fine of \$1,000.

Bill C-70 changes the title of Part V to “Administrative Monetary Penalties.” This Part now creates a streamlined means of prosecuting violations of the CDSA and its regulations that does not rely on the criminal process. New section 34 provides for the designation of each violation of the Act or regulations as a minor, serious or very serious violation. The maximum penalty for a violation is increased to \$30,000. New section 35 sets out factors to be taken into account when determining a penalty (unless there is a fixed penalty), including the offending person’s history of compliance with the provisions of the Act or regulations, any harm to public health or

safety that resulted or could have resulted from the violation, and whether the person made reasonable efforts to mitigate or reverse the violation's effects.

New section 38 of the CDSA amends the penalty structure for violations of designated regulations. If the person named in a notice of violation pays the amount of the penalty, he or she is deemed to have committed the offence in question, and the proceedings in respect of the violation are ended. Instead of paying the penalty, the person named in the notice of violation may, if the penalty is \$5,000 or more, enter into a compliance agreement with the minister to adhere to the order to which the violation relates or request a review by the minister of the acts or omissions that constitute the alleged violation or the amount of the penalty. If the person named in the notice does not pay the penalty or exercise the option of entering into a compliance agreement or requesting a review, he or she is deemed to have committed the violation identified in the notice.

Under new section 39 of the CDSA, the successful completion of a compliance agreement ends any legal proceedings for a violation of a designated regulation and can lead to the reduction, in whole or in part, of the penalty for the violation. Failure to abide by the terms of a compliance agreement can lead to a doubling of the penalty or a forfeiting of any security that had been offered as part of the agreement. Under new section 41 of the CDSA, a ministerial review can result in a finding that there has been no violation of a designated regulation or in a correction of the amount of the penalty imposed. Once the confirmed or corrected penalty has been paid, any legal proceedings in respect of the violation are ended.

New sections 43.1 to 43.91 of the CDSA set out certain rules concerning violations. Although common law principles will apply to furnish justifications or excuses for violations¹⁶ (new section 43.1(2)), a person named in a notice of violation has no defence by reason that he or she exercised due diligence to prevent the violation or reasonably and honestly believed in the existence of facts that, if true, would exonerate him or her (new section 43.1(1)). New section 43.4 holds a corporate defendant liable if an employee or agent of that company committed a violation while acting in the course of his or her employment or scope of his or her authority. New section 43.7 indicates that proceedings in respect of a violation must begin within six months of the facts constituting the alleged violation becoming known by the minister.

2.6 MINISTERIAL ORDERS AND REGULATIONS (CLAUSES 31 TO 35)

Part VI of the CDSA ("General") contains a number of miscellaneous provisions dealing with, among other things, "Offence and Punishment" (section 46), "Evidence and Procedure" (sections 47 to 54), "Regulations, Exemptions and Disqualifications" (sections 55 to 59), and "Amendments to Schedules" (section 60).

A new section 45.1, entitled "Ministerial Orders," is added to the CDSA by Bill C-70. This section gives the minister the power to issue orders requiring a person authorized to deal with controlled substances or precursors to verify compliance with the Act or regulations or to address an issue of public health or safety. The minister may also order such a person to remedy any non-compliance with the Act or

regulations. Again, this seems to be the creation of a procedure to deal expeditiously with public health issues. Such orders can be reviewed at the request of the person who was ordered to provide information or to take measures.

Three amendments of note are made to the regulatory powers set out in section 55 of the CDSA. The first is that explicit reference is made to the tamper-resistant properties that certain controlled substances or classes of controlled substances must have. The second is that references to law enforcement activities now make a specific reference to military police. The third is an elaboration of the “incorporation by reference” of external documents into regulations. Under the amendment, when a technical, explanatory or procedural document is incorporated into regulations by means of a reference, this is done on a dynamic or rolling basis, such that the document continues to be incorporated as it is amended from time to time.

2.7 RELATED AMENDMENTS (CLAUSES 41 TO 59)

Bill C-70 amends the provisions of the *Criminal Code* dealing with the seizure and restraint of property (section 83.13) to accord with the new language for restraint and management orders in the CDSA. For example, the provisions for the forfeiture of seized property will be very similar. Similarly, the management order provisions in section 462.331 of the *Criminal Code* is amended to accord with management orders under the CDSA, including a provision that property shall be (rather than “may be”) destroyed if a court is satisfied that it has little or no financial or other value. A similar amendment is made to section 490.81 of the *Criminal Code* management orders. Both management order sections will be amended to facilitate the forfeiture of property.

The *Seized Property Management Act* authorizes the Minister of Public Works and Government Services to manage certain property seized in connection with designated offences, seized pursuant to a warrant, restrained pursuant to a restraint order, or forfeited to the Crown. Where property is forfeited and disposed of, the Act provides authority for the sharing of the proceeds. As is the case in other parts of Bill C-70, section 7(2.4) of the *Seized Property Management Act* is being amended to require that seized property be destroyed if a court is satisfied that it has little or no financial or other value. A new section 7(2.5) allows seized property to be forfeited where notice is given and no one asserts an interest in the property within a 60-day period.

NOTES

1. [Bill C-70: An Act to amend the Controlled Drugs and Substances Act and to make related amendments to other Acts](#), 2nd Session, 41st Parliament.
2. [Controlled Drugs and Substances Act](#), S.C. 1996, c. 19.
3. [Criminal Code](#), R.S.C. 1985, c. C-46.
4. [Seized Property Management Act](#), S.C. 1993, c. 37.

5. “Double doctoring” refers to obtaining any substance in Schedules I, II, III or IV from one doctor without disclosing the acquisition of that substance from another doctor within the previous 30 days.
6. See United Nations, [*Single Convention on Narcotic Drugs, 1961, As amended by the 1972 Protocol amending the Single Convention on Narcotic Drugs, 1961*](#). The Single Convention came into force for Canada on 13 December 1964, while the Protocol came into force on 4 September 1976.
7. See United Nations, [*Convention on Psychotropic Substances, 1971*](#). This Convention came into force for Canada on 9 December 1988.
8. See United Nations, [*United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychoactive Substances, 1988*](#). This Convention came into force for Canada on 11 November 1990.
9. [*Narcotic Control Regulations*](#), C.R.C., c. 1041.
10. *Ibid.*, s. 67.
11. In addition to methamphetamine, there is a reference in section 7.1 to “subitem 1(9) of Schedule III.” Item 1 of Schedule III of the *Controlled Drugs and Substances Act* (CDSA), however, was repealed by section 45 of the *Safe Streets and Communities Act*, S.C. 2012, c. 1. This item (amphetamines) is now listed as item 19 in Schedule I of the CDSA.
12. Government of Canada, “[Key Features of the Protection of Communities from the Evolving Dangerous Drug Trade Act](#),” Backgrounder, June 2015.
13. A “designated substance offence” is defined in section 2 of the CDSA as an offence under Part I, except section 4(1). This includes the offences of “double doctoring,” trafficking, importing and exporting, and production, but not simple possession.
14. Under section 730 of the *Criminal Code*, an accused may receive either an absolute or conditional discharge, rather than being convicted of an offence. This sentencing option is available if no minimum punishment for the offence is prescribed and the maximum punishment is less than 14 years’ imprisonment. The result of a discharge is that the accused will not have a criminal record in connection with the offence in question.
15. A notice to appear is an official notice telling an accused person that he or she must appear in court at a specific time and place to respond to a criminal charge. If the accused does not come to court when the document requires, a warrant may be issued for his or her arrest, and he or she could be charged with another offence (failing to appear).
16. One example of a common law defence is that of necessity. This defence may apply when an accused person alleges that he or she did not act voluntarily but only under an immediate threat that left him or her with no reasonable legal alternative to acting as he or she did. Another example of a common law defence is that of due diligence. Under this defence, an accused person may try to prove that he or she did everything reasonably possible to avoid the harm for which he or she has been charged.