



Federal Laws on Cannabis and Impaired Driving

CARSP Conference, June, 2018

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Overview of the Legislation

The proposed Cannabis Act (C-45) will:

- ▶ Set the general criminal framework for cannabis, identifying what activities are legal and what activities remain prohibited
- ▶ Provide for licensing and oversight of legal cannabis supply chain that
 - Gives Minister of Health authority to license productions, import/export and sale;
 - Recognizes provincial and territorial authorization of sale of cannabis
- Set federal regulatory standards to protect public health and public safety



Purpose of Cannabis Act

- Protect health of young persons by restricting access to cannabis;
- Protect young persons from inducements to use cannabis;
- Provide for licit production of cannabis to reduce illicit activities;
- Deter illicit activities with cannabis through appropriate sanctions and enforcement measures;
- Reduce burden on criminal justice system in relation to cannabis;
- Provide access to quality-controlled supply of cannabis;
- Enhance public awareness of health risks with cannabis use;
- Limit promotion or sponsorship;
- Similar to tobacco legislation for labelling and smoking limitations;
- Ticketing options for minor infractions;
- Health Canada responsible for licensing and permits for growing;
- Seed to sale records tracking;
- Inspections and Administrative Monetary Penalties (AMPs).



Cannabis Act

- Those over 18 of age can have 30 grams of licit dried cannabis or equivalent in public place
- Criminal offence to distribute with or to youth
- Household limit of 4, subject to provincial regulation
- Adults would be permitted to make their own cannabis products (e.g., edibles, creams), with some processing restrictions (e.g., no use of organic solvents)
- Youth possession up to 5 grams non-criminal then Youth Criminal Justice Act
- Promotion is limited to where not seen by youth and brand identification
- These are minimums and provinces and territories can strengthen



C-46 Amends the Criminal Code (offences relating to conveyances)

- Drug-impaired driving has been criminal offence since 1925;
- Since 2008, police have been authorized to demand: (1) standard field sobriety tests (SFST) at roadside; and (2) drug recognition evaluation (DRE) at station
- Many jurisdictions have administrative programs for addressing a drug impaired driver
- Allows for Mandatory Breath Testing of Drivers by Police
- Modifies the per se limit from over 80 to 80 and over



C-46 Purpose and Objectives

The Bill has two main parts:

Part 1

- Amend *Criminal Code* to create new offences and authorize police to use new investigative tools in order to better detect drivers who operate motor vehicle while impaired by cannabis and other drugs.
- Three new offences of having a prohibited blood drug concentration (BDC) within two hours of driving:
 - A straight summary conviction offence for drivers with low BDC. Summary conviction: 2 ng but less than 5 ng THC/mL of blood, no repeating;
 - A hybrid offence for drivers with impairing BDC, drug alone: 5 ng or more THC/mL of blood;
 - A hybrid offence for drivers with low BDC in combination with a low blood alcohol concentration (BAC). drug and alcohol: 2.5 ng or more THC/mL of blood combined with a BAC of 50 or more.
- Could apply to other impairing drugs;
- Concentrations are not contained in the Bill, but would be set by regulation



C-46 Purpose and Objectives

Part 2

- Repeals all transportation offence provisions and replaces them with a new Part that:
- Modernizes and simplifies the provisions
- Makes the offences and penalties coherent
- Eliminates or restricts some common law defences that reward risk-taking behaviour
- Raises some maximum penalties and minimum penalties for high blood alcohol concentrations (BAC)
- Authorizes mandatory alcohol screening by police with ASD
- Simplifies proof of BAC to reflect improvements in technology
- Clarifies disclosure requirements with respect to proving BAC



Recognition and Declarations

- Operating a conveyance is **privilege** that is subject to certain limits in interests of public safety that include licensing, the observance of rules and **sobriety**;
- The protection of society is well served by deterring persons from operating conveyances dangerously or while impaired;
- An approved instrument produces reliable and accurate readings of blood alcohol concentration;
- **An evaluation conducted by evaluating officer is reliable method of determining whether person's ability to operate conveyance is impaired by drug.**



Drug Screening

- *Criminal Code* would be amended to authorize police to use roadside drug screeners approved by the Attorney General of Canada:
 - Demand would be made based upon “reasonable suspicion of drugs in the body” (e.g., red eyes, smell of drugs).
 - Oral fluid screeners would detect THC, cocaine, and methamphetamine.
 - An oral fluid sample that tests positive would confirm the presence of the drug and would be indicative of recent drug use.
 - The offence of having a prohibited Blood Drug Concentration (BDC) must be proven by analysis of a blood sample.
- The Drugs and Driving Committee has developed evaluation standards and is reviewing submissions from manufacturers to determine which devices will be tested to determine whether they can be recommended to the Attorney General of Canada for approval.



Penalties – Part 1

Hybrid Offences

- 1st Offence: Minimum penalty of \$1,000 and maximum penalty of 18 months on summary conviction **or** 5 years on indictment, prohibition 1 to 3 years;
- 2nd Offence: Minimum penalty of 30 days and maximum penalty of 18 months on summary conviction and 5 years on indictment, prohibition 2 to 5 years;
- 3rd Offence: Minimum penalty of 120 days and maximum penalty of 18 months on summary conviction and 5 years on indictment, prohibition 3 years to lifetime.

Summary conviction offence

- Maximum fine \$1,000, discretionary prohibition of up to 1 year.



Prohibitions – Impaired and Refusal

- Mandatory prohibitions are unchanged
 - 1st offence: 1 to 3 years
 - 2nd offence: 3 to 5 years
 - 3rd offence: 3 years to life
- Ineligibility for interlock reduced:
 - 1st offence: 3 months – no minimum
 - 2nd offence: 6 months – 3 months
 - 3rd offence: 1 year – 6 months
- Court, with consent of Crown, can delay sentencing allowing offender to attend treatment program approved by jurisdictions
 - must prohibit person from driving during treatment
 - cannot grant discharge

Next Steps

- C-45 is at Senate review, due to be completed by June 7, 2018
- Clause by Clause consideration of C-46 began May 23rd, 2018

Key milestones

- Royal Assent
- Health Canada will need approximately 12 weeks to finish regulations
- Bill C-46 Part I comes into force on Royal Assent
- Bill C-46 Part II comes into force 180 days post Royal Assent
- Drug Screeners need to be tested and approved by Attorney General of Canada
- Additional police training on SFST, DRE and new screening devices with supporting funds from Public Safety Canada