

BILL C-46

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First Reading

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Royal Assent

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STATUTES OF CANADA 2018

CHAPTER 21

An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts

ASSENTED TO

JUNE 21, 2018

BILL C-46

SUMMARY

Part 1 amends the provisions of the *Criminal Code* that deal with offences and procedures relating to drug-impaired driving. Among other things, the amendments

- (a) enact new criminal offences for driving with a blood drug concentration that is equal to or higher than the permitted concentration;
- (b) authorize the Governor in Council to establish blood drug concentrations; and

(c) authorize peace officers who suspect a driver has a drug in their body to demand that the driver provide a sample of a bodily substance for analysis by drug screening equipment that is approved by the Attorney General of Canada.

Part 2 repeals the provisions of the *Criminal Code* that deal with offences and procedures relating to conveyances, including those provisions enacted by Part 1, and replaces them with provisions in a new Part of the *Criminal Code* that, among other things,

- (a) re-enact and modernize offences and procedures relating to conveyances;
- (b) authorize mandatory roadside screening for alcohol;
- (c) establish the requirements to prove a person's blood alcohol concentration; and
- (d) increase certain maximum penalties and certain minimum fines.

Part 3 contains coordinating amendments and the coming into force provision.

Available on the House of Commons website at the following address:
www.ourcommons.ca

64-65-66-67 ELIZABETH II

CHAPTER 21

An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts

[Assented to 21st June, 2018]

Preamble

Whereas dangerous driving and impaired driving injure or kill thousands of people in Canada every year;

Whereas dangerous driving and impaired driving are unacceptable at all times and in all circumstances;

Whereas it is important to deter persons from driving while impaired by alcohol or drugs;

Whereas it is important that law enforcement officers be better equipped to detect instances of alcohol-impaired or drug-impaired driving and exercise investigative powers in a manner that is consistent with the *Canadian Charter of Rights and Freedoms*;

Whereas it is important to simplify the law relating to the proof of blood alcohol concentration;

Whereas it is important to protect the public from the dangers posed by consuming large quantities of alcohol immediately before driving;

Whereas it is important to deter persons from consuming alcohol or drugs after driving in circumstances where they have a reasonable expectation that they would be required to provide a sample of breath or blood;

Whereas it is important that federal and provincial laws work together to promote the safe operation of motor vehicles;

And whereas the Parliament of Canada is committed to adopting a precautionary approach in relation to driving and the consumption of drugs, and to deterring the commission of offences relating to the operation of conveyances, particularly dangerous driving and impaired driving;

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

PART 1

Offences Relating to Transportation — Drugs

R.S., c. C-46

Amendments to the Criminal Code

1 Section 253 of the *Criminal Code* is amended by adding the following after subsection (2):

Operation while impaired — blood drug concentration

(3) Subject to subsection (4), everyone commits an offence who has within two hours after ceasing to operate a motor vehicle or vessel or after ceasing to operate or to assist in the operation of an aircraft or of railway equipment or after ceasing to have the care or control of a motor vehicle, vessel, aircraft or railway equipment

(a) a blood drug concentration that is equal to or exceeds the blood drug concentration for the drug that is prescribed by regulation;

(b) a blood drug concentration that is equal to or exceeds the blood drug concentration for the drug that is prescribed by regulation and that is less than the concentration prescribed for the purposes of paragraph (a); or

(c) a blood alcohol concentration and a blood drug concentration that is equal to or exceeds the blood alcohol concentration and the blood drug concentration for the drug that are prescribed by regulation for instances where alcohol and that drug are combined.

Exception

(4) No person commits an offence under subsection (3) if

(a) they consumed the drug or the alcohol or both after ceasing to operate a motor vehicle or vessel, or after ceasing to operate or assist in the operation of an aircraft or railway equipment or after ceasing to have the care or control of a motor vehicle, a vessel, an aircraft or railway equipment; and

(b) after ceasing the activities described in paragraph (a), they had no reasonable expectation that they would be required to provide a sample of a bodily substance.

2 The Act is amended by adding the following after section 253:

Regulations

253.1 The Governor in Council may make regulations

- (a) prescribing the blood drug concentration for a drug for the purposes of paragraph 253(3)(a);
- (b) prescribing the blood drug concentration for a drug for the purposes of paragraph 253(3)(b); and
- (c) prescribing a blood alcohol concentration and a blood drug concentration for a drug for the purposes of paragraph 253(3)(c).

R.S., c. 27 (1st Supp.), s. 36

3 (1) The definitions *approved container*, *approved instrument* and *approved screening device* in subsection 254(1) of the Act are replaced by the following:

approved container means a container of a kind that is approved by order of the Attorney General of Canada under paragraph 254.01(d); (*contenant approuvé*)

approved instrument means an instrument of a kind that is approved by order of the Attorney General of Canada under paragraph 254.01(c); (*alcootest approuvé*)

approved screening device means a device of a kind that is approved by order of the Attorney General of Canada under paragraph 254.01(a); (*appareil de détection approuvé*)

(2) Subsection 254(1) of the Act is amended by adding the following in alphabetical order:

approved drug screening equipment means equipment of a kind that is approved by order of the Attorney General of Canada under paragraph 254.01(b); (*matériel de détection des drogues approuvé*)

2008, c. 6, s. 19(3)

(3) The portion of subsection 254(2) of the Act before paragraph (a) is replaced by the following:

Testing for presence of alcohol or a drug

(2) If a peace officer has reasonable grounds to suspect that a person has alcohol or a drug in their body and that the person has, within the preceding three hours, operated a motor vehicle or vessel, operated or assisted in the operation of an aircraft or railway equipment or had the care or control of a motor vehicle, a vessel, an aircraft or railway equipment, the peace officer may, by demand, require the person to comply with the requirements of either or both of paragraphs (a) and (c), in the case of a drug, or with the requirements of either or both of paragraphs (a) and (b), in the case of alcohol:

(4) Subsection 254(2) of the Act is amended by striking out "and" at the end of paragraph (a), by adding "and" at the end of paragraph (b) and by adding the following after paragraph (b):

- (c) to forthwith provide a sample of a bodily substance that, in the peace officer's opinion, is necessary to enable a proper analysis to be made by means of approved drug screening equipment and to accompany the peace officer for that purpose.

2008, c. 6, s. 19(3)

(5) Subsection 254(3.1) of the Act is replaced by the following:

Evaluation and samples

(3.1) If a peace officer has reasonable grounds to believe that a person is committing, or at any time within the preceding three hours has committed, an offence under paragraph 253(1) (a) as a result of the consumption of a drug or of a combination of alcohol and a drug, or has committed an offence under subsection 253(3), the peace officer may, by demand made as soon as practicable, require the person

(a) to submit, as soon as practicable, to an evaluation conducted by an evaluating officer to determine whether the person's ability to operate a motor vehicle, a vessel, an aircraft or railway equipment is impaired by a drug or by a combination of alcohol and a drug, and to accompany the peace officer for that purpose; or

(b) to provide, as soon as practicable, the samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, are necessary to enable a proper analysis to be made to determine the person's blood drug concentration, or the person's blood drug concentration and blood alcohol concentration, as the case may be, and to accompany the peace officer for that purpose.

2008, c. 6, s. 19(3)

(6) Subsection 254(3.3) of the Act is replaced by the following:

Testing for presence of alcohol

(3.3) If the evaluating officer has reasonable grounds to suspect that the person has alcohol in their body and if a demand was not made under subsection (3), the evaluating officer may, by demand made as soon as practicable, require the person to provide, as soon as practicable, a sample of breath that, in the evaluating officer's opinion, will enable a proper analysis to be made by means of an approved instrument.

2008, c. 6, s. 19(3)

(7) The portion of subsection 254(3.4) of the Act before paragraph (a) is replaced by the following:

Samples of bodily substances

(3.4) If, on completion of the evaluation, the evaluating officer has reasonable grounds to believe that the person's ability to operate a motor vehicle, a vessel, an aircraft or railway equipment is impaired by a drug or by a combination of alcohol and a drug, the evaluating officer may, by demand made as soon as practicable, require the person to provide, as soon as practicable,

2008, c. 6, s. 19(3)

(8) Subsection 254(4) of the Act is replaced by the following:

Admissibility of evaluating officer's opinion

(3.5) An evaluating officer's opinion relating to the impairment, by a drug of a type that they identified, or by a combination of alcohol and that drug, of a person's ability to operate a motor vehicle, vessel, aircraft or railway equipment is admissible in evidence without qualifying the evaluating officer as an expert.

Presumption — drug

(3.6) If the analysis of a sample provided under paragraph (3.4)(b) demonstrates that the person has a drug in their body that is of a type that the evaluating officer has identified as impairing the person's ability to operate a motor vehicle, vessel, aircraft or railway equipment, that drug—or, if the person has also consumed alcohol, the combination of alcohol and that drug—is presumed, in the absence of evidence to the contrary, to be the drug, or the combination of alcohol and that drug, that was present in the person's body at the time when the person operated the motor vehicle, vessel, aircraft or railway equipment and, on proof of the person's impairment, to have been the cause of that impairment.

Condition

(4) Samples of blood may be taken from a person under subsection (3) or (3.4) only by a qualified medical practitioner, or a qualified technician, who is satisfied that taking the samples would not endanger the person's life or health.

4 The Act is amended by adding the following after section 254:

Approval — Attorney General of Canada

254.01 The Attorney General of Canada may, by order, approve

- (a)** a device that is designed to ascertain the presence of alcohol in a person's blood;
- (b)** equipment that is designed to ascertain the presence of a drug in a person's body;
- (c)** an instrument that is designed to receive and make an analysis of a sample of a person's breath to determine their blood alcohol concentration; and
- (d)** a container that is designed to receive a sample of a person's blood for analysis.

R.S., c. 27 (1st Supp.), s. 36

5 (1) The portion of subsection 255(1) of the Act before paragraph (a) is replaced by the following:

Punishment

255 (1) Everyone who commits an offence under subsection 253(1), paragraph 253(3)(a) or (c) or section 254 is guilty of an indictable offence or an offence punishable on summary conviction and is liable,

(2) Section 255 of the Act is amended by adding the following after subsection (1):

Summary conviction

(1.1) Everyone who commits an offence under paragraph 253(3)(b) is guilty of an offence punishable on summary conviction and is liable to a fine of not more than \$1,000.

2008, c. 6, s. 21(3)

(3) Subsection 255(2.1) of the Act is replaced by the following:

Blood concentration equal to or over legal limit — bodily harm

(2.1) Everyone who, while committing an offence under paragraph 253(1)(b) or (3)(a) or (c), causes an accident resulting in bodily harm to another person is guilty of an indictable offence and is liable to imprisonment for a term of not more than 10 years.

2008, c. 6, s. 21(3)

(4) Subsection 255(3.1) of the Act is replaced by the following:

Blood concentration equal to or over legal limit – death

(3.1) Everyone who, while committing an offence under paragraph 253(1)(b) or (3)(a) or (c), causes an accident resulting in the death of another person is guilty of an indictable offence and is liable to imprisonment for life.

2008, c. 6, s. 21(4)

(5) The portion of subsection 255(4) of the Act before paragraph (a) is replaced by the following:

Previous convictions

(4) A person who is convicted of an offence committed under section 253, except paragraph 253(3)(b), or under subsection 254(5) is, for the purposes of this Act, deemed to be convicted for a second or subsequent offence, as the case may be, if they have previously been convicted of

2008, c. 6, s. 23

6 Subsection 257(2) of the Act is replaced by the following:

No criminal or civil liability

(2) No qualified medical practitioner, and no qualified technician, who takes a sample of blood from a person under section 254 or 256 incurs any criminal or civil liability for doing anything necessary to take the sample that was done with reasonable care and skill.

2008, c. 6, s. 24(5)

7 (1) The portion of paragraph 258(1)(d) of the Act before subparagraph (i) is replaced by the following:

(d) if a sample of the accused's blood has been taken under section 254 or 256 or with the accused's consent, evidence of the result of the analysis of that sample is conclusive proof, in the absence of evidence tending to show that the analysis was performed improperly, that the concentration of alcohol in the accused's blood both at the time when the sample was taken and at the time when the offence was alleged to have been committed was the concentration determined by the analysis or, if more than one sample was analyzed and the results of the analyses are the same, the concentration determined by the analyses and, if the results of the analyses are different, the lowest of the concentrations determined by the analyses, provided that

2008, c. 6, s. 24(5)

(2) Subparagraph 258(1)(d)(iii) of the Act is replaced by the following:

(iii) both samples referred to in subparagraph (i) were taken by a qualified medical practitioner or a qualified technician,

2008, c. 6, s. 24(5)

(3) The portion of paragraph 258(1)(d) of the English version of the Act after subparagraph (v) is repealed.

R.S., c. 27 (1st Supp.), s. 36

(4) Subparagraphs 258(1)(h)(ii) and (iii) of the Act are replaced by the following:

(ii) a certificate of a qualified technician stating

(A) that they took the sample and before the sample was taken they were of the opinion that taking it would not endanger the accused's life or health and,

(B) the facts referred to in clauses (i)(B) to (D)

2008, c. 6, s. 24(9)

(5) Subsection 258(2) of the Act is replaced by the following:

Evidence of failure to give sample

(2) Unless a person is required to give a sample of a bodily substance under paragraph 254(2)(b) or (c) or subsection 254(3), (3.3) or (3.4), evidence that they failed or refused to give a sample for analysis for the purposes of this section or that a sample was not taken is not admissible and the failure, refusal or fact that a sample was not taken shall not be the subject of comment by any person in the proceedings.

2008, c. 6, s. 24(9)

(6) Subsection 258(5) of the Act is replaced by the following:

Testing of blood — alcohol and drugs

(5) Samples of an accused's blood taken or obtained in the course of an investigation of an offence under section 253 may be analyzed to determine the accused's blood alcohol concentration or blood drug concentration, or both.

2008, c. 6, s. 25

8 (1) Subsection 258.1(1) of the Act is replaced by the following:

Unauthorized use of bodily substance

258.1 (1) Subject to subsection (3) and subsections 258(4) and (5), no person shall use a bodily substance taken under paragraph 254(2)(b) or (c), subsection 254(3), (3.1), (3.3) or (3.4) or section 256 or with the consent of the person from whom it was taken after a request by a peace officer or medical samples that are provided by consent and subsequently seized under a warrant, except for the purpose of an analysis that is referred to in that provision or for which the consent is given.

2008, c. 6, s. 25

(2) The portion of subsection 258.1(2) of the Act before paragraph (a) is replaced by the following:

Unauthorized use or disclosure of results

(2) Subject to subsections (3) and (4), no person shall use, disclose or allow the disclosure of the results of physical coordination tests under paragraph 254(2)(a), the results of an evaluation under paragraph 254(3.1)(a), the results of the analysis of a bodily substance taken under paragraph 254(2)(b) or (c), subsection 254(3), (3.3) or (3.4) or section 256 or

with the consent of the person from whom it was taken after a request by a peace officer, or the results of the analysis of medical samples that are provided by consent and subsequently seized under a warrant, except

2008, c. 6, s. 26(1)

9 (1) The portion of subsection 259(1) of the Act before paragraph (a) is replaced by the following:

Mandatory order of prohibition

259 (1) If an offender is convicted of an offence committed under section 253, other than an offence under paragraph 253(3)(b), or under section 254 or this section or discharged under section 730 of an offence committed under section 253, other than an offence under subsection 253(3)(b), and, at the time the offence was committed or, in the case of an offence committed under section 254, within the three hours preceding that time, was operating or had the care or control of a motor vehicle, vessel or aircraft or of railway equipment or was assisting in the operation of an aircraft or of railway equipment, the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel or an aircraft or railway equipment, as the case may be,

(2) Section 259 of the Act is amended by adding the following after subsection (1):

Discretionary order of prohibition

(1.01) If an offender is convicted of an offence committed under paragraph 253(3)(b) or discharged under section 730 of such an offence and, at the time the offence was committed, was operating or had the care or control of a motor vehicle, vessel or aircraft or of railway equipment or was assisting in the operation of an aircraft or of railway equipment, the court that sentences the offender may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating a motor vehicle on any street, road, highway or other public place, or from operating a vessel or an aircraft or railway equipment, as the case may be, during a period of not more than one year.

R.S., c. 27 (1st Supp.), s. 36

(3) Subsection 259(3) of the Act is replaced by the following:

Saving

(3) No order made under subsection (1), (1.01) or (2) shall operate to prevent any person from acting as master, mate or engineer of a vessel that is required to carry officers holding certificates as master, mate or engineer.

2006, c. 14, s. 3(3)

(4) Subsection 259(5) of the Act is replaced by the following:

Definition of *disqualification*

(5) For the purposes of this section, *disqualification* means

(a) a prohibition from operating a motor vehicle, vessel or aircraft or any railway equipment ordered under any of subsections (1), (1.01), (2) and (3.1) to (3.4); or

(b) in respect of a conviction or discharge under section 730 of any offence referred to in any of subsections (1), (1.01), (2) and (3.1) to (3.4), a disqualification or any other form of legal restriction of the right or privilege to operate a motor vehicle, vessel or aircraft imposed

(i) in the case of a motor vehicle, under the law of a province, and

(ii) in the case of a vessel or an aircraft, under an Act of Parliament.

Transitional Provision

Approved instrument, approved screening device, approved container

10 Any approved instrument, approved screening device or approved container approved under subsection 254(1) of the *Criminal Code*, as it read immediately before the day on which subsection 3(1) of this Act comes into force, is deemed to be approved as an approved instrument, approved screening device or approved container, respectively, under section 254.01 of the *Criminal Code* as enacted by section 4 of this Act.

R.S., c. 1 (2nd Supp.)

Consequential Amendment to the Customs Act

2008, c. 6, s. 59

11 Subsection 163.5(2) of the *Customs Act* is replaced by the following:

Impaired driving offences

(2) A designated officer who is at a customs office performing the normal duties of an officer or is acting in accordance with section 99.1 has the powers and obligations of a peace officer under sections 254 and 256 of the *Criminal Code*. If, by demand, they require a person to provide samples of blood or breath under subsection 254(3) of that Act, or to submit to an evaluation or to provide samples of blood under subsection 254(3.1) of that Act, they may also require the person to accompany a peace officer referred to in paragraph (c) of the definition *peace officer* in section 2 of that Act, for that purpose.

PART 2

Offences Relating to Conveyances — Alcohol and Drugs

R.S., c. C-46

Amendments to the Criminal Code

2006, c. 14, s. 1

12 The definition *street racing* in section 2 of the *Criminal Code* is repealed.

R.S., c. 27 (1st Supp.), s. 33; R.S., c. 32 (4th Supp.), s. 56

13 The definitions *aircraft*, *operate* and *vessel* in section 214 of the Act are repealed.

14 The heading before section 249 and sections 249 to 261 of the Act are repealed.

15 The Act is amended by adding the following after section 320.1:

PART VIII.1

Offences Relating to Conveyances

Interpretation

Definitions

320.11 The following definitions apply in this Part.

analyst means a person who is, or a person who is a member of a class of persons that is, designated by the Attorney General under subparagraph 320.4(b)(ii) or paragraph 320.4(c). (*analyste*)

approved container means a container that is designed to receive a sample of a person's blood for analysis and that is approved by the Attorney General of Canada under paragraph 320.39(d). (*contenant approuvé*)

approved drug screening equipment means equipment that is designed to ascertain the presence of a drug in a person's body and that is approved by the Attorney General of Canada under paragraph 320.39(b). (*matériel de détection des drogues approuvé*)

approved instrument means an instrument that is designed to receive and make an analysis of a sample of a person's breath to determine their blood alcohol concentration and that is approved by the Attorney General of Canada under paragraph 320.39(c). (*éthylomètre approuvé*)

approved screening device means a device that is designed to ascertain the presence of alcohol in a person's blood and that is approved by the Attorney General of Canada under paragraph 320.39(a). (*appareil de détection approuvé*)

conveyance means a motor vehicle, a vessel, an aircraft or railway equipment. (*moyen de transport*)

evaluating officer means a peace officer who has the qualifications prescribed by regulation that are required in order to act as an evaluating officer. (*agent évaluateur*)

operate means

(a) in respect of a motor vehicle, to drive it or to have care or control of it;

(b) in respect of a vessel or aircraft, to navigate it, to assist in its navigation or to have care or control of it; and

(c) in respect of railway equipment, to participate in the direct control of its motion, or to have care or control of it as a member of the equipment's crew, as a person who acts in lieu of a member of the equipment's crew by remote control, or otherwise. (*conduire*)

qualified medical practitioner means a person who is qualified under provincial law to practise medicine. (*médecin qualifié*)

qualified technician means

(a) in respect of breath samples, a person who is designated by the Attorney General under paragraph 320.4(a); and

(b) in respect of blood samples, a person who is, or a person who is a member of a class of persons that is, designated by the Attorney General under subparagraph 320.4(b)(i). (*technicien qualifié*)

vessel includes a hovercraft. (*bateau*)

Recognition and Declaration

Recognition and declaration

320.12 It is recognized and declared that

(a) operating a conveyance is a privilege that is subject to certain limits in the interests of public safety that include licensing, the observance of rules and sobriety;

(b) the protection of society is well served by deterring persons from operating conveyances dangerously or while their ability to operate them is impaired by alcohol or a drug, because that conduct poses a threat to the life, health and safety of Canadians;

(c) the analysis of a sample of a person's breath by means of an approved instrument produces reliable and accurate readings of blood alcohol concentration; and

(d) an evaluation conducted by an evaluating officer is a reliable method of determining whether a person's ability to operate a conveyance is impaired by a drug or by a combination of alcohol and a drug.

Offences and Punishment

Dangerous operation

320.13 (1) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public.

Operation causing bodily harm

(2) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public and, as a result, causes bodily harm to another person.

Operation causing death

(3) Everyone commits an offence who operates a conveyance in a manner that, having regard to all of the circumstances, is dangerous to the public and, as a result, causes the death of another person.

Operation while impaired

320.14 (1) Everyone commits an offence who

(a) operates a conveyance while the person's ability to operate it is impaired to any degree by alcohol or a drug or by a combination of alcohol and a drug;

(b) subject to subsection (5), has, within two hours after ceasing to operate a conveyance, a blood alcohol concentration that is equal to or exceeds 80 mg of alcohol in 100 mL of blood;

(c) subject to subsection (6), has, within two hours after ceasing to operate a conveyance, a blood drug concentration that is equal to or exceeds the blood drug concentration for the drug that is prescribed by regulation; or

(d) subject to subsection (7), has, within two hours after ceasing to operate a conveyance, a blood alcohol concentration and a blood drug concentration that is equal to or exceeds the blood alcohol concentration and the blood drug concentration for the drug that are prescribed by regulation for instances where alcohol and that drug are combined.

Operation causing bodily harm

(2) Everyone commits an offence who commits an offence under subsection (1) and who, while operating the conveyance, causes bodily harm to another person.

Operation causing death

(3) Everyone commits an offence who commits an offence under subsection (1) and who, while operating the conveyance, causes the death of another person.

Operation — low blood drug concentration

(4) Subject to subsection (6), everyone commits an offence who has, within two hours after ceasing to operate a conveyance, a blood drug concentration that is equal to or exceeds the blood drug concentration for the drug that is prescribed by regulation and that is less than the concentration prescribed for the purposes of paragraph (1)(c).

Exception — alcohol

(5) No person commits an offence under paragraph (1)(b) if

(a) they consumed alcohol after ceasing to operate the conveyance;

(b) after ceasing to operate the conveyance, they had no reasonable expectation that they would be required to provide a sample of breath or blood; and

(c) their alcohol consumption is consistent with their blood alcohol concentration as determined in accordance with subsection 320.31(1) or (2) and with their having had, at the time when they were operating the conveyance, a blood alcohol concentration that was less than 80 mg of alcohol in 100 mL of blood.

Exception — drugs

(6) No person commits an offence under paragraph (1)(c) or subsection (4) if

(a) they consumed the drug after ceasing to operate the conveyance; and

(b) after ceasing to operate the conveyance, they had no reasonable expectation that they would be required to provide a sample of a bodily substance.

Exception – combination of alcohol and drug

(7) No person commits an offence under paragraph (1)(d) if

(a) they consumed the drug or the alcohol or both after ceasing to operate the conveyance;

(b) after ceasing to operate the conveyance, they had no reasonable expectation that they would be required to provide a sample of a bodily substance; and

(c) their alcohol consumption is consistent with their blood alcohol concentration as determined in accordance with subsection 320.31(1) or (2) and with their having had, at the time when they were operating the conveyance, a blood alcohol concentration less than the blood alcohol concentration established under paragraph 320.38(c).

Failure or refusal to comply with demand

320.15 (1) Everyone commits an offence who, knowing that a demand has been made, fails or refuses to comply, without reasonable excuse, with a demand made under section 320.27 or 320.28.

Accident resulting in bodily harm

(2) Everyone commits an offence who commits an offence under subsection (1) and who, at the time of the failure or refusal, knows that, or is reckless as to whether, they were involved in an accident that resulted in bodily harm to another person.

Accident resulting in death

(3) Everyone commits an offence who commits an offence under subsection (1) and who, at the time of the failure or refusal, knows that, or is reckless as to whether, they were involved in an accident that resulted in the death of another person or in bodily harm to another person whose death ensues.

Only one conviction

(4) A person who is convicted of an offence under this section is not to be convicted of another offence under this section with respect to the same transaction.

Failure to stop after accident

320.16 (1) Everyone commits an offence who operates a conveyance and who at the time of operating the conveyance knows that, or is reckless as to whether, the conveyance has been involved in an accident with a person or another conveyance and who fails, without reasonable excuse, to stop the conveyance, give their name and address and, if any person has been injured or appears to require assistance, offer assistance.

Accident resulting in bodily harm

(2) Everyone commits an offence who commits an offence under subsection (1) and who at the time of committing the offence knows that, or is reckless as to whether, the accident resulted in bodily harm to another person.

Accident resulting in death

(3) Everyone commits an offence who commits an offence under subsection (1) and who, at the time of committing the offence, knows that, or is reckless as to whether, the accident resulted in the death of another person or in bodily harm to another person whose death ensues.

Flight from peace officer

320.17 Everyone commits an offence who operates a motor vehicle or vessel while being pursued by a peace officer and who fails, without reasonable excuse, to stop the motor vehicle or vessel as soon as is reasonable in the circumstances.

Operation while prohibited

320.18 (1) Everyone commits an offence who operates a conveyance while prohibited from doing so

(a) by an order made under this Act; or

(b) by any other form of legal restriction imposed under any other Act of Parliament or under provincial law in respect of a conviction under this Act or a discharge under section 730.

Exception

(2) No person commits an offence under subsection (1) arising out of the operation of a motor vehicle if they are registered in an alcohol ignition interlock device program established under the law of the province in which they reside and they comply with the conditions of the program.

Punishment

320.19 (1) Everyone who commits an offence under subsection 320.14(1) or 320.15(1) is liable on conviction on indictment or on summary conviction

(a) to the following minimum punishment, namely,

(i) for a first offence, a fine of \$1,000,

(ii) for a second offence, imprisonment for a term of 30 days, and

(iii) for each subsequent offence, imprisonment for a term of 120 days;

(b) if the offence is prosecuted by indictment, to imprisonment for a term of not more than 10 years; and

(c) if the offence is punishable on summary conviction, to imprisonment for a term of not more than two years less a day.

Summary conviction

(2) Everyone who commits an offence under subsection 320.14(4) is liable on summary conviction to a fine of not more than \$1,000.

Minimum fines for high blood alcohol concentrations

(3) Despite subparagraph (1)(a)(i), everyone who commits an offence under paragraph 320.14(1)(b) is liable, for a first offence, to

(a) a fine of not less than \$1,500, if the person's blood alcohol concentration is equal to or exceeds 120 mg of alcohol in 100 mL of blood but is less than 160 mg of alcohol in 100 mL of blood; and

(b) a fine of not less than \$2,000, if the person's blood alcohol concentration is equal to or exceeds 160 mg of alcohol in 100 mL of blood.

Minimum fine — subsection 320.15(1)

(4) Despite subparagraph (1)(a)(i), everyone who commits an offence under subsection 320.15(1) is liable, for a first offence, to a fine of not less than \$2,000.

Punishment — dangerous operation and other offences

(5) Everyone who commits an offence under subsection 320.13(1) or 320.16(1), section 320.17 or subsection 320.18(1) is liable

(a) on conviction on indictment, to imprisonment for a term of not more than 10 years; or

(b) on summary conviction, to imprisonment for a term of not more than two years less a day.

Punishment in case of bodily harm

320.2 Everyone who commits an offence under subsection 320.13(2), 320.14(2), 320.15(2) or 320.16(2) is liable on conviction on indictment or on summary conviction

(a) to the following minimum punishment, namely,

(i) for a first offence, a fine of \$1,000,

(ii) for a second offence, imprisonment for a term of 30 days, and

(iii) for each subsequent offence, imprisonment for a term of 120 days;

(b) if the offence is prosecuted by indictment, to imprisonment for a term of not more than 14 years; and

(c) if the offence is punishable on summary conviction, to imprisonment for a term of not more than two years less a day.

Punishment in case of death

320.21 Everyone who commits an offence under subsection 320.13(3), 320.14(3), 320.15(3) or 320.16(3) is liable on conviction on indictment to imprisonment for life and to a minimum punishment of,

(a) for a first offence, a fine of \$1,000;

(b) for a second offence, imprisonment for a term of 30 days; and

(c) for each subsequent offence, imprisonment for a term of 120 days.

Aggravating circumstances for sentencing purposes

320.22 A court imposing a sentence for an offence under any of sections 320.13 to 320.18 shall consider, in addition to any other aggravating circumstances, the following:

- (a) the commission of the offence resulted in bodily harm to, or the death of, more than one person;
- (b) the offender was operating a motor vehicle in a race with at least one other motor vehicle or in a contest of speed, on a street, road or highway or in another public place;
- (c) a person under the age of 16 years was a passenger in the conveyance operated by the offender;
- (d) the offender was being remunerated for operating the conveyance;
- (e) the offender's blood alcohol concentration at the time of committing the offence was equal to or exceeded 120 mg of alcohol in 100 mL of blood;
- (f) the offender was operating a large motor vehicle; and
- (g) the offender was not permitted, under a federal or provincial Act, to operate the conveyance.

Delay of sentencing

320.23 (1) The court may, with the consent of the prosecutor and the offender, and after considering the interests of justice, delay sentencing of an offender who has been found guilty of an offence under subsection 320.14(1) or 320.15(1) to allow the offender to attend a treatment program approved by the province in which the offender resides. If the court delays sentencing, it shall make an order prohibiting the offender from operating, before sentencing, the type of conveyance in question, in which case subsections 320.24(6) to (9) apply.

Exception to minimum punishment

(2) If the offender successfully completes the treatment program, the court is not required to impose the minimum punishment under section 320.19 or to make a prohibition order under section 320.24, but it shall not direct a discharge under section 730.

Mandatory prohibition order

320.24 (1) If an offender is found guilty of an offence under subsection 320.14(1) or 320.15(1), the court that sentences the offender shall, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating the type of conveyance in question during a period to be determined in accordance with subsection (2).

Prohibition period

(2) The prohibition period is

- (a) for a first offence, not less than one year and not more than three years, plus the entire period to which the offender is sentenced to imprisonment;

(b) for a second offence, not less than two years and not more than 10 years, plus the entire period to which the offender is sentenced to imprisonment; and

(c) for each subsequent offence, not less than three years, plus the entire period to which the offender is sentenced to imprisonment.

Discretionary order of prohibition — low blood drug concentration

(3) If an offender is found guilty of an offence under subsection 320.14(4), the court that sentences the offender may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating the type of conveyance in question during a period of not more than one year.

Discretionary order of prohibition — other offences

(4) If an offender is found guilty of an offence under section 320.13, subsection 320.14(2) or (3), 320.15(2) or (3) or under any of sections 320.16 to 320.18, the court that sentences the offender may, in addition to any other punishment that may be imposed for that offence, make an order prohibiting the offender from operating the type of conveyance in question during a period to be determined in accordance with subsection (5).

Prohibition period

(5) The prohibition period is

(a) if the offender is liable to imprisonment for life in respect of that offence, of any duration that the court considers appropriate, plus the entire period to which the offender is sentenced to imprisonment;

(b) if the offender is liable to imprisonment for more than five years but less than life in respect of that offence, not more than 10 years, plus the entire period to which the offender is sentenced to imprisonment; and

(c) in any other case, not more than three years, plus the entire period to which the offender is sentenced to imprisonment.

Effect of order

(5.1) Subject to subsection (9), a prohibition order takes effect on the day that it is made.

Obligation of court

(6) A court that makes a prohibition order under this section shall cause the order to be read by or to the offender or a copy of the order to be given to the offender.

Validity of prohibition order not affected

(7) A failure to comply with subsection (6) does not affect the validity of the prohibition order.

Application — public place

(8) A prohibition order in respect of a motor vehicle applies only to its operation on a street, road or highway or in any other public place.

Consecutive prohibition periods

(9) If the offender is, at the time of the commission of the offence, subject to an order made under this Act prohibiting the offender from operating a conveyance, a court that makes a prohibition order under this section that prohibits the offender from operating the same type of conveyance may order that the prohibition order be served consecutively to that order.

Minimum absolute prohibition period

(10) A person may not be registered in an alcohol ignition interlock device program referred to in subsection 320.18(2) until the expiry of

- (a)** in the case of a first offence, a period, if any, that may be fixed by order of the court;
- (b)** in the case of a second offence, a period of three months after the day on which the sentence is imposed or any longer period that may be fixed by order of the court; and
- (c)** in the case of a subsequent offence, a period of six months after the day on which the sentence is imposed or any longer period that may be fixed by order of the court.

Stay of order pending appeal

320.25 (1) Subject to subsection (2), if an appeal is taken against a conviction or sentence for an offence under any of sections 320.13 to 320.18, a judge of the court to which the appeal is taken may direct that the prohibition order under section 320.24 arising out of the conviction shall, on any conditions that the judge imposes, be stayed pending the final disposition of the appeal or until otherwise ordered by that court.

Appeals to Supreme Court of Canada

(2) In the case of an appeal to the Supreme Court of Canada, a direction may be made only by a judge of the court from which the appeal was taken.

Effect of conditions

(3) The imposition of conditions on a stay of a prohibition order does not operate to decrease the prohibition period provided in the prohibition order.

Earlier and subsequent offences

320.26 In determining, for the purpose of imposing a sentence for an offence under subsection 320.14(1) or 320.15(1), whether the offence is a second, third or subsequent offence, any of the following offences for which the offender was previously convicted is considered to be an earlier offence:

- (a)** an offence under any of subsections 320.14(1) to (3) or section 320.15; or
- (b)** an offence under any of sections 253, 254 and 255, as those sections read from time to time before the day on which this section comes into force.

Investigative Matters

Testing for presence of alcohol or drug

320.27 (1) If a peace officer has reasonable grounds to suspect that a person has alcohol or a drug in their body and that the person has, within the preceding three hours, operated a conveyance, the peace officer may, by demand, require the person to comply with the

requirements of either or both of paragraphs (a) and (b) in the case of alcohol or with the requirements of either or both of paragraphs (a) and (c) in the case of a drug:

(a) to immediately perform the physical coordination tests prescribed by regulation and to accompany the peace officer for that purpose;

(b) to immediately provide the samples of breath that, in the peace officer's opinion, are necessary to enable a proper analysis to be made by means of an approved screening device and to accompany the peace officer for that purpose;

(c) to immediately provide the samples of a bodily substance that, in the peace officer's opinion, are necessary to enable a proper analysis to be made by means of approved drug screening equipment and to accompany the peace officer for that purpose.

Mandatory alcohol screening

(2) If a peace officer has in his or her possession an approved screening device, the peace officer may, in the course of the lawful exercise of powers under an Act of Parliament or an Act of a provincial legislature or arising at common law, by demand, require the person who is operating a motor vehicle to immediately provide the samples of breath that, in the peace officer's opinion, are necessary to enable a proper analysis to be made by means of that device and to accompany the peace officer for that purpose.

Samples of breath or blood – alcohol

320.28 (1) If a peace officer has reasonable grounds to believe that a person has operated a conveyance while the person's ability to operate it was impaired to any degree by alcohol or has committed an offence under paragraph 320.14(1)(b), the peace officer may, by demand made as soon as practicable,

(a) require the person to provide, as soon as practicable,

(i) the samples of breath that, in a qualified technician's opinion, are necessary to enable a proper analysis to be made by means of an approved instrument, or

(ii) if the peace officer has reasonable grounds to believe that, because of their physical condition, the person may be incapable of providing a sample of breath or it would be impracticable to take one, the samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, are necessary to enable a proper analysis to be made to determine the person's blood alcohol concentration; and

(b) require the person to accompany the peace officer for the purpose of taking samples of that person's breath or blood.

Evaluation and samples of blood – drugs

(2) If a peace officer has reasonable grounds to believe that a person has operated a conveyance while the person's ability to operate it was impaired to any degree by a drug or by a combination of alcohol and a drug, or has committed an offence under paragraph 320.14(1)(c) or (d) or subsection 320.14(4), the peace officer may, by demand, made as soon as practicable, require the person to comply with the requirements of either or both of paragraphs (a) and (b):

(a) to submit, as soon as practicable, to an evaluation conducted by an evaluating officer to determine whether the person's ability to operate a conveyance is impaired by a drug or by a combination of alcohol and a drug, and to accompany the peace officer for that purpose; or

(b) to provide, as soon as practicable, the samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, are necessary to enable a proper analysis to be made to determine the person's blood drug concentration, or the person's blood drug concentration and blood alcohol concentration, as the case may be, and to accompany the peace officer for that purpose.

Samples of breath — alcohol

(3) An evaluating officer who has reasonable grounds to suspect that a person has alcohol in their body may, if a demand was not made under subsection (1), by demand made as soon as practicable, require the person to provide, as soon as practicable, the samples of breath that, in a qualified technician's opinion, are necessary to enable a proper analysis to be made by means of an approved instrument.

Samples of bodily substances

(4) If, on completion of the evaluation, the evaluating officer has reasonable grounds to believe that one or more of the types of drugs set out in subsection (5)—or that a combination of alcohol and one or more of those types of drugs—is impairing the person's ability to operate a conveyance, the evaluating officer shall identify the type or types of drugs in question and may, by demand made as soon as practicable, require the person to provide, as soon as practicable,

(a) a sample of oral fluid or urine that, in the evaluating officer's opinion, is necessary to enable a proper analysis to be made to ascertain the presence in the person's body of one or more of the types of drugs set out in subsection (5); or

(b) the samples of blood that, in the opinion of the qualified medical practitioner or qualified technician taking the samples, are necessary to enable a proper analysis to be made to ascertain the presence in the person's body of one or more of the types of drugs set out in subsection (5) or to determine the person's blood drug concentration for one or more of those types of drugs.

Types of drugs

(5) For the purpose of subsection (4), the types of drugs are the following:

- (a) a depressant;
- (b) an inhalant;
- (c) a dissociative anaesthetic;
- (d) cannabis;
- (e) a stimulant;
- (f) a hallucinogen; or
- (g) a narcotic analgesic.

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Condition

(6) A sample of blood may be taken from a person under this section only by a qualified medical practitioner or a qualified technician, and only if they are satisfied that taking the sample would not endanger the person's health.

Approved containers

(7) A sample of blood shall be received into an approved container that shall be subsequently sealed.

Retained sample

(8) A person who takes samples of blood under this section shall cause one of the samples to be retained for the purpose of analysis by or on behalf of the person from whom the blood samples were taken.

Validity of analysis not affected

(9) A failure to comply with subsection (7) or (8) does not by itself affect the validity of the taking of the sample or of an analysis made of the sample.

Release of retained sample

(10) A judge of a superior court of criminal jurisdiction or a court of criminal jurisdiction shall, on the summary application of the person from whom samples of blood were taken under this section, made within six months after the day on which the samples were taken, order the release of any sample that was retained to the person for the purpose of examination or analysis, subject to any terms that the judge considers appropriate to ensure that the sample is safeguarded and preserved for use in any proceedings in respect of which it was taken.

Warrants to obtain blood samples

320.29 (1) A justice may issue a warrant authorizing a peace officer to require a qualified medical practitioner or a qualified technician to take the samples of a person's blood that, in the opinion of the practitioner or technician taking the samples, are necessary to enable a proper analysis to be made to determine the person's blood alcohol concentration or blood drug concentration, or both, if the justice is satisfied, on an information on oath in Form 1 or on an information on oath submitted to the justice by telephone or other means of telecommunication, that

(a) there are reasonable grounds to believe that the person has, within the preceding eight hours, operated a conveyance that was involved in an accident that resulted in bodily harm to themselves or another person or in the death of another person;

(b) there are reasonable grounds to suspect that the person has alcohol or a drug in their body; and

(c) a qualified medical practitioner is of the opinion that

(i) by reason of any physical or mental condition of the person, the person is unable to consent to the taking of samples of their blood, and

(ii) the taking of samples of the person's blood will not endanger their health.

Form

(2) A warrant issued under subsection (1) may be in Form 5 or 5.1, varied to suit the case.

Procedure — telephone or other means of telecommunication

(3) Section 487.1 applies, with any modifications that the circumstances require, in respect of an application for a warrant that is submitted by telephone or other means of telecommunication.

Duration of warrant

(4) Samples of blood may be taken from a person under a warrant issued under subsection (1) only during the time that a qualified medical practitioner is satisfied that the conditions referred to in subparagraphs (1)(c)(i) and (ii) continue to exist.

Copy or facsimile to person

(5) If a warrant issued under subsection (1) is executed, the peace officer shall, as soon as practicable, give a copy of it — or, in the case of a warrant issued by telephone or other means of telecommunication, a facsimile — to the person from whom the samples of blood are taken.

Taking of samples

(6) Subsections 320.28(7) to (10) apply with respect to the taking of samples of blood under this section.

Testing blood — drug or alcohol

320.3 Samples of a person's blood that are taken for the purposes of this Part may be analyzed to determine the person's blood alcohol concentration or blood drug concentration, or both.

Evidentiary Matters

Breath samples

320.31 (1) If samples of a person's breath have been received into an approved instrument operated by a qualified technician, the results of the analyses of the samples are conclusive proof of the person's blood alcohol concentration at the time when the analyses were made if the results of the analyses are the same — or, if the results of the analyses are different, the lowest of the results is conclusive proof of the person's blood alcohol concentration at the time when the analyses were made — if

- (a) before each sample was taken, the qualified technician conducted a system blank test the result of which is not more than 10 mg of alcohol in 100 mL of blood and a system calibration check the result of which is within 10% of the target value of an alcohol standard that is certified by an analyst;
- (b) there was an interval of at least 15 minutes between the times when the samples were taken; and
- (c) the results of the analyses, rounded down to the nearest multiple of 10 mg, did not differ by more than 20 mg of alcohol in 100 mL of blood.

Blood samples — concentration when sample taken

(2) The result of an analysis made by an analyst of a sample of a person's blood is proof of their blood alcohol concentration or their blood drug concentration, as the case may be, at the time when the sample was taken in the absence of evidence tending to show that the analysis was performed improperly.

Evidence not included

(3) Evidence of the following does not constitute evidence tending to show that an analysis of a sample of a person's blood was performed improperly:

- (a) the amount of alcohol or a drug that they consumed;
- (b) the rate at which the alcohol or the drug would have been absorbed or eliminated by their body; or
- (c) a calculation based on the evidence referred to in paragraphs (a) and (b) of what their blood alcohol concentration or blood drug concentration would have been at the time the sample was taken.

Presumption — blood alcohol concentration

(4) For the purpose of paragraphs 320.14(1)(b) and (d), if the first of the samples of breath was taken, or the sample of blood was taken, more than two hours after the person ceased to operate the conveyance and the person's blood alcohol concentration was equal to or exceeded 20 mg of alcohol in 100 mL of blood, the person's blood alcohol concentration within those two hours is conclusively presumed to be the concentration established in accordance with subsection (1) or (2), as the case may be, plus an additional 5 mg of alcohol in 100 mL of blood for every interval of 30 minutes in excess of those two hours.

Admissibility of evaluating officer's opinion

(5) An evaluating officer's opinion relating to the impairment, by a type of drug that they identified, or by a combination of alcohol and that type of drug, of a person's ability to operate a conveyance is admissible in evidence without qualifying the evaluating officer as an expert.

Presumption — drug

(6) If the analysis of a sample provided under subsection 320.28(4) demonstrates that the person has a drug in their body that is of a type that the evaluating officer has identified as impairing the person's ability to operate a conveyance, that drug — or, if the person has also consumed alcohol, the combination of alcohol and that drug — is presumed, in the absence of evidence to the contrary, to be the drug, or the combination of alcohol and that drug, that was present in the person's body at the time when the person operated the conveyance and, on proof of the person's impairment, to have been the cause of that impairment.

Admissibility of result of analysis

(7) The result of an analysis of a sample of a person's breath, blood, urine, sweat or other bodily substance that they were not required to provide under this Part may be admitted in evidence even if the person was not warned before they provided the sample that they were not required to do so or that the result of the analysis of the sample might be used in evidence.

Evidence of failure to provide sample

(8) Unless a person is required to provide a sample of a bodily substance under this Part, evidence that they failed or refused to provide a sample for analysis or that a sample was not taken is not admissible and the failure, refusal or fact that a sample was not taken shall not be the subject of comment by any person in any proceedings under this Part.

Admissibility of statement

(9) A statement made by a person to a peace officer, including a statement compelled under a provincial Act, is admissible in evidence for the purpose of justifying a demand made under section 320.27 or 320.28.

Evidence of failure to comply with demand

(10) In any proceedings in respect of an offence under section 320.14, evidence that the accused, without reasonable excuse, failed or refused to comply with a demand made under section 320.27 or 320.28 is admissible and the court may draw an inference adverse to the accused from that evidence.

Certificates

320.32 (1) A certificate of an analyst, qualified medical practitioner or qualified technician made under this Part is evidence of the facts alleged in the certificate without proof of the signature or the official character of the person who signed the certificate.

Notice of intention to produce certificate

(2) No certificate shall be received in evidence unless the party intending to produce it has, before the trial, given to the other party reasonable notice of their intention to produce it and a copy of the certificate.

Attendance and cross-examination

(3) A party against whom the certificate is produced may apply to the court for an order requiring the attendance of the person who signed the certificate for the purposes of cross-examination.

Form and content of application

(4) The application shall be made in writing and set out the likely relevance of the proposed cross-examination with respect to the facts alleged in the certificate. A copy of the application shall be given to the prosecutor at least 30 days before the day on which the application is to be heard.

Time of hearing

(5) The hearing of the application shall be held at least 30 days before the day on which the trial is to be held.

Certificate admissible in evidence

(6) In proceedings in respect of an offence under subsection 320.18(1), the following certificates are evidence of the facts alleged in them without proof of the signature or official character of the person who signed them:

(a) a certificate setting out with reasonable particularity that the person named in it is prohibited from operating a motor vehicle in the province specified in the certificate, signed by the person who is responsible for the registration of motor vehicles in that province or any person authorized by the responsible person to sign it; and

(b) a certificate setting out with reasonable particularity that the person named in it is prohibited from operating a conveyance other than a motor vehicle, signed by the Minister of Transport or any person authorized by him or her to sign it.

Onus

(7) If it is proved that a prohibition under paragraph 320.18(1)(b) has been imposed on a person and that notice of the prohibition has been mailed to them at their last known address, that person is, beginning on the tenth day after the day on which the notice is mailed, in the absence of evidence to the contrary, presumed to have received the notice and to have knowledge of the prohibition, of the date of its commencement and of its duration.

Printout from approved instrument

320.33 A document that is printed out from an approved instrument and signed by a qualified technician who certifies it to be the printout produced by the approved instrument when it made an analysis of a sample of a person's breath is evidence of the facts alleged in the document without proof of the signature or official character of the person who signed it.

Disclosure of information

320.34 (1) In proceedings in respect of an offence under section 320.14, the prosecutor shall disclose to the accused, with respect to any samples of breath that the accused provided under section 320.28, information sufficient to determine whether the conditions set out in paragraphs 320.31(1)(a) to (c) have been met, namely:

(a) the results of the system blank tests;

(b) the results of the system calibration checks;

(c) any error or exception messages produced by the approved instrument at the time the samples were taken;

(d) the results of the analysis of the accused's breath samples; and

(e) a certificate of an analyst stating that the sample of an alcohol standard that is identified in the certificate is suitable for use with an approved instrument.

Application for further disclosure

(2) The accused may apply to the court for a hearing to determine whether further information should be disclosed.

Form and content of application

(3) The application shall be in writing and set out detailed particulars of the information that the accused seeks to have disclosed and the likely relevance of that information to determining whether the approved instrument was in proper working order. A copy of the application shall be given to the prosecutor at least 30 days before the day on which the application is to be heard.

Time of hearing

(4) The hearing of the application shall be held at least 30 days before the day on which the trial is to be held.

For greater certainty

(5) For greater certainty, nothing in this section limits the disclosure to which the accused may otherwise be entitled.

Presumption of operation

320.35 In proceedings in respect of an offence under section 320.14 or 320.15, if it is proved that the accused occupied the seat or position ordinarily occupied by a person who operates a conveyance, the accused is presumed to have been operating the conveyance unless they establish that they did not occupy that seat or position for the purpose of setting the conveyance in motion.

General Provisions

Unauthorized use of bodily substance

320.36 (1) No person shall use a bodily substance obtained under this Part for any purpose other than for an analysis under this Part.

Unauthorized use or disclosure of results

(2) No person shall use, disclose or allow the disclosure of the results obtained under this Part of any evaluation, physical coordination test or analysis of a bodily substance, except for the purpose of the administration or enforcement of a federal or provincial Act related to drugs and/or alcohol and/or to the operation of a motor vehicle, vessel, aircraft or railway equipment.

Exception

(3) The results of an evaluation, test or analysis referred to in subsection (2) may be disclosed to the person to whom they relate, and may be disclosed to any other person if the results are made anonymous and the disclosure is made for statistical or research purposes.

Offence

(4) Everyone who contravenes subsection (1) or (2) commits an offence punishable on summary conviction.

Refusal to take sample

320.37 (1) No qualified medical practitioner or qualified technician shall be found guilty of an offence by reason only of their refusal to take a sample of blood from a person for the purposes of this Part if they have a reasonable excuse for refusing to do so.

No liability

(2) No qualified medical practitioner, and no qualified technician, who takes a sample of blood from a person under this Part incurs any liability for doing anything necessary to take the sample that was done with reasonable care and skill.

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Regulations

320.38 The Governor in Council may make regulations

- (a) prescribing the qualifications required for a peace officer to act as an evaluating officer and respecting the training of evaluating officers;
- (b) prescribing the blood drug concentration for a drug for the purpose of paragraph 320.14(1)(c);
- (c) prescribing a blood alcohol concentration and a blood drug concentration for a drug for the purposes of paragraph 320.14(1)(d);
- (d) prescribing the blood drug concentration for a drug for the purpose of subsection 320.14(4);
- (e) prescribing the physical coordination tests to be conducted under paragraph 320.27(1)(a); and
- (f) prescribing the tests to be conducted and procedures to be followed during an evaluation under paragraph 320.28(2)(a) and the forms to be used in recording the results of the evaluation.

Approval — Attorney General of Canada

320.39 The Attorney General of Canada may, by order, approve

- (a) a device that is designed to ascertain the presence of alcohol in a person's blood;
- (b) equipment that is designed to ascertain the presence of a drug in a person's body;
- (c) an instrument that is designed to receive and make an analysis of a sample of a person's breath to determine their blood alcohol concentration; and
- (d) a container that is designed to receive a sample of a person's blood for analysis.

Designation — Attorney General

320.4 The Attorney General may designate

- (a) a person as qualified, for the purposes of this Part, to operate an approved instrument;
- (b) a person or class of persons as qualified, for the purposes of this Part,
 - (i) to take samples of blood, or
 - (ii) to analyze samples of bodily substances; and
- (c) a person or class of persons as qualified, for the purposes of this Part, to certify that an alcohol standard is suitable for use with an approved instrument.

R.S., c. 1 (4th Supp.), s. 15(2)

16 Subsection 335(2) of the Act is replaced by the following:

Definition of *vessel*

(2) For the purposes of subsection (1), *vessel* has the same meaning as in section 320.11.

1992, c. 1, s. 58(1) (Sch. 1, s. 7)

17 Subsection 461(3) of the Act is replaced by the following:

Notice of intention to produce certificate

(3) No certificate shall be received in evidence unless the party intending to produce it has, before the trial, given to the other party reasonable notice of their intention and a copy of the certificate.

Attendance and cross-examination

(4) A party against whom the certificate is produced may, with leave of the court, require the attendance of the person who signed the certificate for the purposes of cross-examination.

2005, c. 25, s. 1(7)

18 (1) Subparagraph (c)(iv) of the definition *secondary designated offence* in section 487.04 of the Act is repealed.

(2) Paragraph (c) of the definition *secondary designated offence* in section 487.04 of the Act is amended by adding the following after subparagraph (viii.1):

(viii.2) subsection 320.16(1) (failure to stop after accident),

(3) The definition *secondary designated offence* in section 487.04 of the Act is amended by striking out "and" at the end of paragraph (d) and by adding the following after that paragraph:

(d.1) an offence under section 252, as it read from time to time before the day on which section 14 of *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts* comes into force;

(d.2) an offence under any of sections 249, 249.1, 249.2, 249.3, 249.4, 253, 254 and 255, as they read from time to time before the day on which section 14 of *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts* comes into force, that may be prosecuted by indictment or, for section 487.051 to apply, is prosecuted by indictment; and

2007, c. 22, s. 8(5)

(4) Subparagraph (e)(ii) of the definition *secondary designated offence* in section 487.04 of the Act is replaced by the following:

(ii) an offence referred to in any of paragraphs (c) to (d.2); (*infraction secondaire*)

1992, c. 1, s. 58(1) (Sch. I, s. 9(1))

19 (1) Subsection 487.1(1) of the Act is replaced by the following:

Telewarrants

487.1 (1) If a peace officer believes that an indictable offence has been committed and that it would be impracticable to appear personally before a justice to make an application for a warrant in accordance with section 487, the peace officer may submit an information on oath by telephone or other means of telecommunication to a justice designated for the purpose by the chief judge of the provincial court having jurisdiction in the matter.

R.S., c. 27 (1st Supp.), s. 69; 1992, c. 1, s. 58(1) (Sch. I, s. 9(2)), s. 59 (Sch. I, s. 18) (E); 1994, c. 44, s. 37(4)

(2) Subsection 487.1(5) of the Act is replaced by the following:

Issuing warrant

(5) A justice referred to in subsection (1) may issue a warrant to a peace officer conferring the same authority respecting search and seizure as may be conferred by a warrant issued under subsection 487(1) if the justice is satisfied that an information submitted by telephone or other means of telecommunication

(a) is in respect of an indictable offence and conforms to the requirements of subsection (4);

(b) discloses reasonable grounds for dispensing with an information presented personally and in writing; and

(c) discloses reasonable grounds in accordance with paragraph 487(1)(a), (b) or (c), as the case may be, for the issuance of a warrant in respect of an indictable offence.

The justice may require that the warrant be executed within the period that he or she may order.

1992, c. 1, s. 58(1) (Sch. I, s. 9(3))

(3) Subsections 487.1(7) and (8) of the Act are replaced by the following:

Providing facsimile

(7) A peace officer who executes a warrant issued by telephone or other means of telecommunication shall, before or as soon as practicable after entering the place or premises to be searched, give a facsimile of the warrant to any person who is present and ostensibly in control of the place or premises.

Affixing facsimile

(8) A peace officer who, in any unoccupied place or premises, executes a warrant issued by telephone or other means of telecommunication shall, on entering or as soon as practicable after entering the place or premises, cause a facsimile of the warrant to be suitably affixed in a prominent place within the place or premises.

2000, c. 2, s. 3

20 Subsection 662(5) of the Act is replaced by the following:

Conviction for dangerous operation when another offence charged

(5) For greater certainty, when a count charges an offence under section 220, 221 or 236 arising out of the operation of a conveyance, and the evidence does not prove that offence but proves an offence under section 320.13, the accused may be convicted of an offence under that section.

2013, c. 11, s. 2

21 Paragraph (b) of the definition *sentence* in section 673 of the Act is replaced by the following:

(b) an order made under subsection 109(1) or 110(1), section 161, subsection 164.2(1) or 194(1), section 320.24 or 462.37, subsection 491.1(2), 730(1) or 737(3) or section 738, 739, 742.1, 742.3, 743.6, 745.4 or 745.5,

1994, c. 44, s. 68

22 The portion of subsection 680(1) of the Act before paragraph (a) is replaced by the following:

Review by court of appeal

680 (1) A decision made by a judge under section 522 or subsection 524(4) or (5) or a decision made by a judge of the court of appeal under section 320.25 or 679 may, on the direction of the chief justice or acting chief justice of the court of appeal, be reviewed by that court and that court may, if it does not confirm the decision,

2011, c. 7, s. 2

23 Subsection 729.1(2) of the Act is replaced by the following:

Definition of *analyst*

(2) In this section, *analyst* has the same meaning as in section 320.11.

1999, c. 32, s. 6

24 Paragraph 732.1(3)(g.2) of the French version of the Act is replaced by the following:

g.2) si le lieutenant-gouverneur en conseil de la province où est rendue l'ordonnance de probation a institué un programme visant l'utilisation par le délinquant d'un antidémarrreur éthylométrique et s'il accepte de participer au programme, de se conformer aux modalités de celui-ci;

25 Paragraph (b) of the definition *designated offence* in section 752 of the Act is amended by adding the following after subparagraph (xxiii.3):

(xxiii.4) section 320.13 (dangerous operation),

(xxiii.5) subsections 320.14(1), (2) and (3) (operation while impaired),

(xxiii.6) section 320.15 (failure or refusal to comply with demand),

(xxiii.7) section 320.16 (failure to stop after accident),

(xxiii.8) section 320.17 (flight from peace officer),

2013, c. 11, s. 4

26 Paragraph (b) of the definition *sentence* in section 785 of the Act is replaced by the following:

(b) an order made under subsection 109(1) or 110(1), section 320.24, subsection 730(1) or 737(3) or section 738, 739, 742.1 or 742.3,

2011, c. 7, s. 12

27 Subsection 811.1(2) of the Act is replaced by the following:

Definition of *analyst*

(2) In this section, *analyst* has the same meaning as in section 320.11.

1999, c. 5, s. 45

28 Part XXVIII of the Act is amended by replacing the references after the form headings in the following forms with “(Sections 320.29 and 487)”:

(a) Form 1;

(b) Form 5.

2014, c. 25, s. 32

29 (1) Subparagraph (b)(iii) of Form 5.04 in Part XXVIII of the Act is replaced by the following:

[] (iii) an offence under any of sections 145 to 148, subsection 173(1), sections 264, 264.1, 266 and 270, subsections 286.1(1) and 320.16(1), paragraph 348(1)(e) and sections 349 and 423 of the *Criminal Code*,

(2) Form 5.04 in Part XXVIII of the Act is amended by striking out “or” at the end of subparagraph (b)(iv) and by adding the following after that subparagraph:

[] (iv.1) an offence under section 252 of the *Criminal Code*, as it read from time to time before the day on which section 14 of *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts* comes into force, or

R.S., c. 27 (1st Supp.), s. 184(3)

30 Form 5.1 in Part XXVIII of the Act is amended by replacing the reference after the heading “FORM 5.1” with the following:

(Sections 320.29 and 487.1)

R.S., c. 27 (1st Supp.), s. 184(3)

31 Form 5.2 in Part XXVIII of the Act is replaced by the following:

FORM 5.2

(Section 489.1)

Report to a Justice

Canada,

Province of,

(territorial division).

To the justice who issued a warrant to the undersigned under section 320.29, 487 or 487.1 of the *Criminal Code* (or another justice for the same territorial division or, if no warrant was issued, any justice having jurisdiction in respect of the matter).

I, (name of the peace officer or other person) have (state here whether you have acted under a warrant issued under section 320.29, 487 or 487.1 of the *Criminal Code* or under section 489 of the *Criminal Code* or otherwise in the execution of duties under the *Criminal Code* or other Act of Parliament to be specified)

1 searched the premises situated at; and

2 seized the following things and dealt with them as follows:

Property Seized

(describe each thing seized)

Disposition

(state, in respect of each thing seized, whether

(a) it was returned to the person lawfully entitled to its possession, in which case the receipt for it shall be attached to this report; or

(b) it is being detained to be dealt with according to law, in which case indicate the location and manner in which or, if applicable, the person by whom, it is being detained.)

1.

...

2.

...

3.

...

4.

...

In the case of a warrant issued by telephone or other means of telecommunication, the statements referred to in subsection 487.1(9) of the *Criminal Code* shall be specified in the report.

Dated *(date)*, at *(place)*.

Signature of the peace officer or other person

Review and Report

Review

31.1 (1) Within three years after the day on which this section comes into force, the Minister of Justice and Attorney General of Canada must undertake a comprehensive review of the implementation and operation of the provisions enacted by this Act, including an evaluation of whether their implementation and operation have resulted in differential treatment of any particular group based on a prohibited ground of discrimination. The Minister of Justice and Attorney General of Canada must prepare a report setting out his or her conclusions and recommendations and including robust data sets collected by government and non-government agencies on the effectiveness of these provisions and the impacts resulting from them.

Report to Parliament

(2) The Minister of Justice and Attorney General of Canada must cause a report on the review to be laid before each House of Parliament on any of the first 15 days on which that House is sitting after it is completed.

Transitional Provisions

Application for disclosure of further information

32 (1) Section 320.34 of the *Criminal Code*, as enacted by section 15 of this Act, applies in respect of any application for the disclosure of further information that is made on or after the day on which that section 15 comes into force if the sample or samples to which the application relates were taken before that day.

Trial

(2) Subsection 320.31(1) of the *Criminal Code*, as enacted by section 15 of this Act, applies to the trial of an accused that is commenced on or after the day on which that section 15 comes into force if the sample or samples to which the trial relates were taken before that day.

Bodily substances and results obtained before coming into force

33 Section 320.36 of the *Criminal Code*, as enacted by section 15 of this Act, applies to bodily substances obtained under section 254 of that Act, as it read from time to time before the day on which that section 15 comes into force, and to results of any evaluation, physical coordination test or analysis of bodily substances obtained under that section 254, as it read from time to time before that day.

Appeal of order made under section 259

34 (1) An appeal may be taken on or after the day on which section 21 of this Act comes into force against an order made under section 259 of the *Criminal Code*, as that section read from time to time before that day. Such an appeal is to be taken in accordance with section 675 of that Act, as that section read immediately before that day, and is to be dealt with and disposed of in accordance with the provisions of that Act as they read immediately before that day.

Stay of order made under section 259

(2) Sections 261 and 680 of the *Criminal Code*, as they read immediately before the day on which section 21 of this Act comes into force, apply in respect of an appeal that is taken on or after that day against an order made under section 259 of that Act, as that section read from time to time before that day.

Approved instrument, approved screening device, approved container

35 Any approved container, approved drug screening equipment, approved instrument or approved screening device approved under subsection 254.01 of the *Criminal Code*, as it read immediately before the day on which section 14 of this Act comes into force, is deemed to be approved as an approved container, approved drug screening equipment, approved instrument or approved screening device, respectively, under section 320.39 of the *Criminal Code* as enacted by section 15 of this Act.

Qualified technician — breath samples

36 Any person who is designated as a qualified technician within the meaning of paragraph (a) of the definition *qualified technician* under subsection 254(1) of the *Criminal Code*, as it read immediately before the day on which section 14 of this Act

comes into force, is deemed to be designated as a *qualified technician* under paragraph 320.4(a) of the *Criminal Code* as enacted by section 15 of this Act.

Qualified technician — blood samples

37 Any person who is designated as a qualified technician within the meaning of paragraph (b) of the definition *qualified technician* under subsection 254(1) of the *Criminal Code*, as it read immediately before the day on which section 14 of this Act comes into force, is deemed to be designated as a *qualified technician* under subparagraph 320.4(b)(i) of the *Criminal Code* as enacted by section 15 of this Act.

Analyst

38 Any person who is designated as an analyst within the meaning of the definition *analyst* under subsection 254(1) of the *Criminal Code*, as it read immediately before the day on which section 14 of this Act comes into force, is deemed to be designated as an *analyst* under subparagraph 320.4(b)(ii) and paragraph 320.4(c) of the *Criminal Code* as enacted by section 15 of this Act.

Consequential Amendments

R.S., c. A-2

Aeronautics Act

2008, c. 6, s. 55

39 Section 8.6 of the *Aeronautics Act* is replaced by the following:

Admissibility of evidence

8.6 Evidence relating to the presence or concentration of alcohol or a drug in a sample of a bodily substance obtained under the *Criminal Code* is admissible in proceedings taken against a person under this Part, and sections 320.31 to 320.34 of the *Criminal Code* apply to those proceedings with any modifications that the circumstances require.

R.S., c. C-47

Criminal Records Act

1995, c. 39, par. 191(a)

40 The definition *sentence* in subsection 2(1) of the *Criminal Records Act* is replaced by the following:

sentence has the same meaning as in the *Criminal Code*, but does not include an order made under section 109, 110, 161 or 320.24 of that Act or subsection 147.1(1) of the *National Defence Act*. (*peine*)

2012, c. 1, s. 112

41 Paragraph 2.3(b) of the Act is replaced by the following:

(b) unless the record suspension is subsequently revoked or ceases to have effect, requires that the judicial record of the conviction be kept separate and apart from other criminal records and removes any disqualification or obligation to which the applicant is, by reason of the conviction, subject under any Act of Parliament, other than section 109, 110,

161, 320.24, 490.012, 490.019 or 490.02901 of the *Criminal Code*, section 259 of the *Criminal Code*, as it read immediately before the day on which section 14 of *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts* comes into force, subsection 147.1(1) or section 227.01 or 227.06 of the *National Defence Act* or section 36.1 of the *International Transfer of Offenders Act*.

2012, c. 1, s. 126

42 Subparagraph 7.2(a)(ii) of the Act is replaced by the following:

(ii) an offence under the *Criminal Code*, other than an offence under subsection 320.14(1) or 320.15(1) of that Act, the *Controlled Drugs and Substances Act*, the *Firearms Act*, Part III or IV of the *Food and Drugs Act* or the *Narcotic Control Act*, chapter N-1 of the Revised Statutes of Canada, 1985, that is punishable either on conviction on indictment or on summary conviction; or

R.S., c. N-5

National Defence Act

R.S., c. 27 (1st Supp.), s. 187 (Sch. V, item 5)

43 Section 131 of the National Defence Act is replaced by the following:

Reference to Attorney General

131 For the purposes of this Act, the reference in section 320.4 of the *Criminal Code* to the "Attorney General" includes the Attorney General of Canada.

2005, c. 25, s. 23(2)

44 Paragraph (a) of the definition secondary designated offence in section 196.11 of the Act is replaced by the following:

(a) an offence within the meaning of any of paragraphs (a) to (d.2) of the definition *secondary designated offence* in section 487.04 of the *Criminal Code* that is punishable under section 130;

R.S., c. 1 (2nd Supp.)

Customs Act

45 Subsection 163.5(2) of the Customs Act is replaced by the following:

Powers relating to impaired driving offences

(2) A designated officer who is at a customs office performing the normal duties of an officer or is acting in accordance with section 99.1 has the powers and obligations of a peace officer under sections 320.27 to 320.29 of the *Criminal Code*. If, by demand, they require a person to provide samples of blood or breath or to submit to an evaluation, they may also require the person to accompany a peace officer referred to in paragraph (c) of the definition *peace officer* in section 2 of that Act, for that purpose.

R.S., c. 32 (4th Supp.)

Railway Safety Act

2008, c. 6, s. 60

46 Subsection 41(7) of the *Railway Safety Act* is replaced by the following:

Admissibility of evidence

(7) Evidence relating to the presence or concentration of alcohol or a drug in a sample of a bodily substance obtained under the *Criminal Code* is admissible in proceedings taken against a person under this Act in respect of a contravention of a rule or regulation respecting the use of alcohol or a drug, and sections 320.31 to 320.35 of the *Criminal Code* apply to those proceedings with any modifications that the circumstances require.

1992, c. 20

Corrections and Conditional Release Act

2006, c. 14, s. 8

47 The portion of section 109 of the *Corrections and Conditional Release Act* before paragraph (a) is replaced by the following:

Cancellation or variation of prohibition orders

109 The Board may, on application, cancel or vary the unexpired portion of a prohibition order made under section 320.24 of the *Criminal Code* or section 259 of that Act, as it read immediately before the day on which section 14 of *An Act to amend the Criminal Code (offences relating to conveyances) and to make consequential amendments to other Acts* comes into force, after a period of

1995, c. 42, s. 64(3); 2012, c. 1, s. 103(10)

48 Paragraphs 1(s.1) to (s.2) of Schedule I to the Act are repealed.

49 Section 1 of Schedule I to the Act is amended by adding the following after paragraph (z.24):

- (z.25)** section 320.13 (dangerous operation);
- (z.26)** subsections 320.14(1), (2) and (3) (operation while impaired);
- (z.27)** section 320.15 (failure or refusal to comply with demand);
- (z.28)** section 320.16 (failure to stop after accident);
- (z.29)** section 320.17 (flight from peace officer);

50 Schedule I to the Act is amended by adding the following after section 1:

1.1 An offence under any of the following provisions of the *Criminal Code*, as they read from time to time before the day on which this section comes into force, that was prosecuted by way of indictment:

- (a)** subsections 249(3) and (4) (dangerous operation causing bodily harm and dangerous operation causing death);
- (b)** subsection 249.1(3) (flight causing bodily harm or death);
- (c)** section 249.2 (causing death by criminal negligence — street racing);
- (d)** section 249.3 (causing bodily harm by criminal negligence — street racing);

(e) section 249.4 (dangerous operation of motor vehicle while street racing); and
Bill C-46 X
(f) subsections 255(2) and (3) (impaired driving causing bodily harm and impaired driving causing death).
(Royal Assent)
June 21, 2018

PART 3 Table of Contents

Coordinating Amendments and Coming into Force

OFFENCES RELATING TO
TRANSPORTATION — DRUGS

Coordinating Amendments

AMENDMENTS TO THE CRIMINAL CODE

Bill C-39

51 (1) Subsections (2) and (3) apply if Bill C-39, introduced in the 1st session of the 42nd Parliament and entitled *An Act to amend the Criminal Code (unconstitutional provisions) and to make consequential amendments to other Acts* (in this section referred to as the *other Act*), receives royal assent.

OFFENCES RELATING TO

(2) If subsections 7(1) and (3) of this Act come into force before subsections 10(3) and (4) of the other Act, then those subsections 10(3) and (4) are deemed never to have come into force and are repealed.

AMENDMENTS TO THE CRIMINAL CODE

(3) If subsections 10(3) and (4) of the other Act come into force on the same day as subsections 7(1) and (3) of this Act, then those subsections 10(3) and (4) are deemed to have come into force before those subsections 7(1) and (3).

TRANSITIONAL PROVISIONS

Coming into Force

TRANSITIONAL AMENDMENTS

180th day after royal assent

52 Sections 12 to 50 of this Act come into force on the 180th day after the day on which this Act receives royal assent.

Criminal Records Act

National Defence Act

Published under authority of the Speaker of the House of Commons

Customs Act

Railway Safety Act

Corrections and Conditional Release Act

COORDINATING AMENDMENTS AND COMING INTO FORCE

COORDINATING AMENDMENTS

COMING INTO FORCE