



House of Commons  
CANADA

# Standing Committee on Justice and Human Rights

---

JUST • NUMBER 072 • 1st SESSION • 39th PARLIAMENT

---

EVIDENCE

**Wednesday, May 30, 2007**

—  
**Chair**

**Mr. Art Hanger**

Also available on the Parliament of Canada Web Site at the following address:

**<http://www.parl.gc.ca>**

## Standing Committee on Justice and Human Rights

Wednesday, May 30, 2007

• (1545)

[English]

**The Chair (Mr. Art Hanger (Calgary Northeast, CPC)):** I would like to call the Standing Committee on Justice and Human Rights to order on Wednesday, May 30, 2007. The orders for today are centred around Bill C-32, An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts.

Appearing before the committee is the Minister of Justice, the Honourable Rob Nicholson, and one departmental support individual, Greg Yost, counsel, criminal law policy section. From the RCMP we have Evan Graham, national coordinator, drug evaluation and classification program. Thank you for being here, Minister and gentlemen.

Please proceed, Minister.

**Hon. Rob Nicholson (Minister of Justice):** Thank you very much, Mr. Chairman. As you indicated, I'm here with Greg Yost from the criminal law policy section and Corporal Evan Graham from the Royal Canadian Mounted Police. I just want to make sure you know that he's not here for my protection; he's here for your edification. I want to make that clear at the outset.

I'm pleased to appear before you again as you begin consideration of Bill C-32, An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts.

[Translation]

I note that the bill received the support of all parties in the House, but that a number of members have expressed various concerns and look forward to the standing committee's hearings during which experts should be able to respond to their questions.

[English]

I want to reiterate that the government is open to consideration of any amendments that are consistent with the scope and principle of this bill and that you consider would strengthen the bill.

As you know, the bill deals with three components: drug impaired driving, defences to a charge of driving with blood alcohol content exceeding 80 milligrams, and amendments that respond to various problems in the Criminal Code's impaired driving provisions.

With respect to drug impaired driving, I should indicate that the provisions of Bill C-32 are almost identical to Bill C-16 as it was amended by the standing committee in the last Parliament. It will provide the legislative framework for the drug recognition expert or the DRE program.

Canada is actually behind some countries, including the United States, in this particular field. Since 1984, for instance, the National Highway Traffic Safety Administration in the United States has supported a drug recognition expert training program, which was initially developed by the Los Angeles, California, police department. DRE training has been validated through both laboratory and field studies conducted by Johns Hopkins University.

In 1987, the highway safety committee of the International Association of Chiefs of Police was requested by the NHTSA to participate in the development of a national expansion of drug recognition experts, as well as to oversee certifying of the DREs. It took until 1992 for all the work to be done on the first set of IACP standards to be adopted. Those standards have been revised over the years based on the advice of medical and other experts.

In Canada, DRE-certified officers only use DRE where a suspect voluntarily participates in the testing. Once our legislation authorizing police to make DRE demands is in place, we expect Canada to continue to look to the IACP process to ensure we are always using the most up-to-date, scientifically validated practices and procedures.

Of course my officials and I are not the experts on the pharmacology of various drugs, their effects on the ability of a person to drive, or how long the drug lingers in the body, but we will endeavour to respond to any questions that members have. I'm pleased to have a couple of experts with me.

I would point out that we have been guided by the advice of the drugs and driving committee of the Canadian Society of Forensic Science. In 1999, when it was examining the impaired driving provisions, it suggested that there was a need to have legislative demands to perform sobriety tests and DRE evaluations.

Some members of this committee are likely familiar with the DRE program from previous hearings. Therefore, I will outline just the main steps.

First, the officer must suspect the presence of a drug in the body before demanding sobriety tests. That suspicion could be based on a number of factors, including the smell of marijuana or physical symptoms such as eyes that do not react normally to light. This is similar to the suspicion of alcohol in the body based on the smell of alcohol or watery eyes, which is the requirement for a demand for a breath test on a screening device at roadside.

Second, it is only if the driver has failed the roadside sobriety test that the officer can demand further tests at the police station. That the driver is unable to walk a straight line or stand on one foot and hold the other six inches off the ground—the usual tests—the officer now has reasonable grounds to believe that the impairment may be caused by a drug or a combination of drugs and alcohol. This is similar to the officer who has reasonable grounds to believe that the person is impaired by alcohol can take the person to the station for a breath test, the result of which can be used in court.

I believe that members will agree that a person who can't perform the simple roadside sobriety tests should not be driving. If the impairment is caused by alcohol or a drug, the person's impairment is a criminal act. The person has voluntarily consumed a substance that reduces his or her ability to drive.

If the impairment is caused by a medical condition, the person will be sent for medical attention. It is then a matter for provincial driver licensing authorities.

• (1550)

The DRE-trained officer will examine the person and have the person perform certain prescribed tests, including, for example, eye examinations in different lighting, muscle tone, blood pressure, and pulse. Before the DRE expert can demand that a bodily substance be analyzed for the presence of a drug, the expert will have formed the opinion that the person's ability is impaired by a family of drugs or a combination of drugs and alcohol.

Third, the analysis of a bodily sample will either confirm or refute the presence of the drug that the DRE has identified as causing the impairment. This is a check on the officer's identification of the involvement of a specific drug family.

Ultimately the court will have before it evidence of erratic driving or behaviour, failure to complete simple physical coordination tests, a DRE report on the physical symptoms observed that lead to the conclusion the impairment is caused by a family of drugs, and proof by analysis that the person had the drugs in his or her body. It's my understanding that the courts in Canada have found that sufficient evidence to found a conviction in cases where the DRE has proceeded with the voluntary participation of a driver. What Bill C-32 will do is compel the person to participate in the physical coordination tests and in the DRE process.

I now turn to the current use of evidence to the contrary in the courts. I note that during the debate at second reading, reforms we are proposing received strong support. In particular, Mr. Comartin, who has studied this issue quite extensively and has seen the consequences of impaired driving, has said a number of times that the way the two-beer defence has been used is almost a "scandal".

I agree with him. A two-beer defence is a scandal. It may have had merit in an era when breath test instruments used a needle that had to be read by a technician and the results written down. But with modern electronic instruments that have built-in operability checks and that print out the results, these reasons to accept a two-beer defence no longer apply. The two-beer defence makes all the care that goes into testing and approving instruments, and training operators to use them, close to a waste of time.

One question that was raised was whether it was appropriate for the Criminal Code to restrict the kind of evidence that can be brought forward. I can tell you that Parliament has done so in the past—for example, in the rape shield provisions that restrict the cross-examination of a victim of sexual assault regarding past sexual conduct. It is altogether appropriate, therefore, for Parliament to limit the evidence to the contrary to evidence that has scientific merit. The accused will still be able to bring evidence of consumption, but unless there is evidence either that the approved instrument was malfunctioning or was not operating properly, the evidence of consumption will only be relevant if it is compatible both with the BAC recorded on the instrument and also with the person being under 80 milligrams at the time of driving—for example, because the person had a drink after the driving and before the testing.

I would like to refer to a few other particularly notable reforms proposed by Bill C-32. The bill proposes to increase the current penalties in several ways. I think the higher minimum of \$1,000 for a first offence, up from the current \$600, reflects the seriousness of the crime. We also propose to come down harder on the repeat impaired driver by increasing the mandatory terms of imprisonment, including raising from 90 to 120 days the minimum for a third-time offender.

We do not believe it is appropriate—and I trust the committee will agree—for a person who has two previous convictions to be able to seek to serve the sentence on an intermittent basis, as they now do. Moreover, we are proposing that the maximum term of imprisonment, if the prosecution proceeds summarily, be increased from six to 18 months.

• (1555)

Our provincial colleagues tell us that there are currently many cases where they will ask for more than six months of imprisonment. They have to proceed by indictment, a more serious and more expensive procedure, even though they know they will not be seeking more than 18 months. Eighteen months' maximum on a summary conviction is the same as that provided for a number of offences, including uttering threats to cause death or bodily harm, assault causing bodily harm, sexual assault, and forcible confinement. So the government believes that the threat of harm caused by the impaired driver merits the same maximum punishment on summary convictions as those offences.

In addition, the bill proposes creating new offences of being over 80 milligrams or refusing to provide a breath sample and causing bodily harm or death. These new offences reflect the general approach of the Criminal Code to treat impaired...or being over 80 milligrams and refusal in the same manner.

Currently the Criminal Code only has the offence of impaired driving causing bodily harm or death. In an accident situation, there may be no direct evidence of the person's driving. The symptoms ordinarily used to indicate impairment, such as being unsteady on one's feet, may be attributed to the effects of the accident. There is, therefore, an incentive for the person involved in an accident not to provide a breath sample, and because the certificate establishing BAC can be crucial evidence to establish that the person's ability to drive was in fact impaired....

I believe Bill C-32 is a balanced legislation that will greatly assist the police, prosecutors, and the courts in dealing with impaired drivers. I urge the committee to deal with it expeditiously.

Mr. Chairman, that concludes my remarks. I'd be pleased to answer any questions that the committee may have.

**The Chair:** Thank you, Minister.

Before we get into questions, do you have one hour available for the committee?

**Hon. Rob Nicholson:** I do, Mr. Chairman.

**The Chair:** Thank you. The departmental member as well as the corporal can stay longer, I assume. Thank you.

Mr. Murphy.

**Mr. Brian Murphy (Moncton—Riverview—Dieppe, Lib.):** Thank you, Mr. Minister.

I don't have a huge problem with what you have said. I have more of a problem with what you didn't say. In the House you've used terms like the opposition has "obstructed" or "delayed" some of these Justice bills. I might point out for you that there have been 11 bills—including Bill C-35 that was just sent up—or projects completed by this committee in just over 30 weeks of actual sitting.

I hoped you would open your remarks by complimenting at least the chairman in running a very nice committee. He obviously didn't get the big manual that we read about, because this committee has been working very well.

If the minister won't compliment you, Mr. Chair, I will.

Now to the heart of the matter. The essence of the bill...it's been kicked around for a long time. I've read the notes. The intent is good. As I said in the House, in my notes, or my speeches, I think the devil's in the details, and we have to make sure we have a law that works. To that end, the principal question here is, why did the Prime Minister announce in September 2006 that the \$4.6 million RCMP drug impairment training budget would be eliminated because it didn't work? Why didn't it work? What are you going to replace it with to make sure this bill is effective?

Just as a contingency here, if I may, Mr. Chairman, perhaps the minister feels more comfortable in having Corporal Graham answer the question as to what the \$4.6 million program was. And while he was involved—if he was involved—did he believe it didn't work and was not effective, in the Prime Minister's words?

This question is to either of you or both of you. What is going to be put in place to make sure the police have the tools to detect impaired driving to make this law efficacious?

• (1600)

**Hon. Rob Nicholson:** You've covered a lot of territory.

I can tell you that I named this chairman specifically in question period when we were dealing with the age of protection. I stepped forward and said that he and Mr. Thompson had been pioneers in this area. They had a long-standing commitment to trying to have the Criminal Code changed in this area. I was fair about it. I said they didn't get a hostile reception from the previous government. I said they had received a lot of sympathy, but the bottom line was that there was no action on it.

So I did compliment them, and I think Canadians can appreciate the efforts they made in that area and in criminal law policy in this country in general. We owe them a great deal of thanks.

You also indicated the Liberal Party's cooperation. Certainly the bill we had yesterday in the House of Commons took a long time—one year. Quite frankly, I was disappointed by the position the Liberal Party took. This bill would have given mandatory prison terms for people who committed and were convicted of serious firearms offences.

I think you'd be the first to agree with me that every so often your leader talks about the problem of firearms crimes. Last night—and I have to be fair about this—about seven of your members wouldn't go along with the party's standing. A number of them didn't show up. Some of them sat in their places. I think over 20 Liberals did not go along with what the Liberal Party was doing. So those are the kinds of things we're disappointed about.

On our support for the RCMP programs and funding, that quite properly should be directed to my colleague Minister Day, who speaks on behalf of the RCMP. But in your concluding remarks I believe you indicated some concerns or questions about the implementation of testing there. That quite properly is a question for Corporal Graham to comment on.

**Mr. Brian Murphy:** And what does he think about the \$4.6 million program that was cut—whether it was effective?

**Hon. Rob Nicholson:** My understanding is that it was tied to another bill, Bill C-16, which didn't make it. So if you're asking me about this government's commitment to law enforcement in this country, you can count on it, just as you can count on our policy on moving forward and getting tough on crime. As I said to some of my colleagues who talked about our agenda, I can assure you we're just getting started.

**Mr. Brian Murphy:** Are you ordering the corporal to not answer about the \$4.6 million? Is that what you're doing?

**Hon. Rob Nicholson:** I asked Corporal Graham and he can comment on anything he likes. You asked me about funding for the RCMP. I indicated the question would be more properly directed to my colleague Stockwell Day, who speaks on behalf of the RCMP.

But you did raise questions about the testing, and since Corporal Graham is here with me this afternoon, I think it's quite appropriate that he comment on that.

•(1605)

**Corporal Evan Graham (National Coordinator, Drug Evaluation and Classification Program, Royal Canadian Mounted Police):** The drug evaluation and classification program we are currently running is the same program we were running with the previous Bill C-16, and before that with the first Bill C-32.

The \$4.6 million that was announced as being cut wasn't really cut, because we never had it. A total of \$7 million over three years was tied to Bill C-16. With the first year for all intents and purposes lapsing, it became \$4.6 million while the bill itself was being debated. With the call for an election the \$4.6 million was parked, showing that we still had the money, but we never had access to it.

Our current funding is through Canada's drug strategy. We receive an ongoing \$2.1 million a year through the drug strategy for training. But right now there are no additional funds.

**The Chair:** Thank you.

**Mr. Brian Murphy:** Did the Prime Minister say it was not effective and that's why it was eliminated from the budget? I guess you can't answer that.

**The Chair:** Thank you, Mr. Murphy.

**Hon. Rob Nicholson:** As the constable indicated, that announcement was contingent upon Bill C-16.... As happened so many times in the previous Parliament, many of those bills died on the order paper and were never brought into law. So I suggest you to look to the national drug strategy. I'm urging you and this committee to move ahead on this bill, which identifies some gaps and weaknesses in the present law, and some improvements. I think we'll all be better off with this bill.

**The Chair:** It sounds like it's a new program in training.

Monsieur Ménard.

[*Translation*]

**Mr. Réal Ménard (Hochelaga, BQ):** Thank you, Mr. Chairman.

Welcome, Minister. I would appreciate it if you could focus strictly on the bill at hand, because so far, you have not said much about it. That is, after all, why you are here today.

When police officers, peace officers have reasonable grounds to believe that an individual is driving while drug-impaired, they will have new ways of assessing that individual. The legislative summaries refer to standardized field sobriety tests and drug recognition experts. These are two seemingly different processes, the second of which calls for training which would involve provincial areas of jurisdiction.

How will this new bill C-32 provide for the assessment of drug-impaired individuals? Why does the Criminal Code not contain numerical tests? There's no reference to set indices, but rather to reasonable grounds.

How will this play out in actual fact? Let's say, for instance, that I am on highway 20 and a police officer has reason to believe that I am driving while impaired by a drug. I want to understand what these expressions "standardized field sobriety test" and "drug recognition experts" mean.

[*English*]

**Hon. Rob Nicholson:** Thank you, Monsieur Ménard.

To be fair, you didn't get much on the bill itself because it's not what the question was directed towards. But that being said, I should indicate to you that as with all bills, this bill is respectful of provincial jurisdiction.

As you know, if a person is found with less than 80 milligrams of alcohol in his or her blood, for the most part, it is regulated by the province. I appreciate that in the province of Quebec there isn't a specific provision with respect to the 50 and 80 provisions. But there are nonetheless a number of provincial statutes on the books that, in my opinion, are actually complementary with respect to the Criminal Code powers.

With respect to your question and your example of a person driving down the street, we're not proposing any changes for the basis upon which you would be pulled over. The same indicia that are in place now as to when and how a police officer may pull you over would continue to apply.

With respect to the training and the individual, I'm going to ask for comments from Corporal Graham.

In my opening remarks, you heard about the regime we are suggesting be put in place. As I indicated to you, Canada is actually playing a bit of catch-up on this. We all recognize that it's not only alcohol; it's drugs and/or alcohol.

•(1610)

[*Translation*]

**Mr. Réal Ménard:** I want to understand what this bill will change. The objective is to apprehend drug-impaired individuals. We seem to be hearing that there are new detection technologies available. Some people are concerned with the fact that cannabis remains in a person's system for quite a long time. I would like to understand the advantages of these two tests and in which way the provinces will be called upon to contribute. I want to understand the new offence that you have created, with respect to being found in possession of a drug. Ms. Freeman will deal with that at the second round, I am sure.

But let's start with the first part of my question, because until now you have not given us much of an explanation.

**Mr. Greg Yost (Counsel, Criminal Law Policy Section, Department of Justice Canada):** I will try to respond to the first part of your question as to what this legislation will change. First of all, it will be mandatory to take part in roadside sobriety tests. Then, if a person fails the test and we know alcohol is not the cause of impairment because the person is under 0.08, the individual could be compelled to take the DRE tests. It is already being done, but on a voluntary basis. That is the major change which this new equipment will bring about.

You've also asked why we have not established limits for certain drugs, as we have done for alcohol. You will certainly be hearing from witnesses, experts in the field, but to my knowledge, given the variety of drugs available, scientists do not agree on the quantity needed to cause impairment. We cannot say how many nanograms of marijuana or cocaine are necessary to impair a person's abilities. That is unlike the blood alcohol concentration, which has long been established.

**Mr. Réal Ménard:** I would like a specific answer and I will be closing on that, Mr. Chairman.

It is difficult to understand the relationship between the new offence, operating a motor vehicle while in possession of a controlled substance, and the detection of substances which cause impairment. We support this bill in principle, but it must make logical sense. The new offence which will be created seems open to some abuse.

Why would we include this type of offence in the body of the bill?  
[English]

**Hon. Rob Nicholson:** First of all, the same tests apply, Monsieur Ménard, in terms of the suspicion of the police officer before he or she pulls that person over and then administers the sobriety test. It's only when that individual has demonstrated there is a problem that we get into it.

I'm sorry, Mr. Yost, would you like to continue?  
[Translation]

**Mr. Greg Yost:** If I've understood correctly, you're referring to the new section 253.1.

**Mr. Réal Ménard:** That is correct.

**Mr. Greg Yost:** That is an offence which was added to the bill by the standing committee during the last Parliament and which we amended somewhat. The purpose is to separate these activities: the taking of drugs and the operating of a vehicle. We think that a driving prohibition would deter young people, in particular, from carrying marijuana in their car and being tempted to smoke it, thereby impairing their abilities. That is the rationale.

**Mr. Réal Ménard:** Let's say, for instance, that I and a member of my family are going to the cottage. The person I am with does not know that I have in my glove compartment or elsewhere 15 grams of marijuana. This is a fictitious example; I am a teetotaler and straight, as you know, Mr. Yost. I've never taken drugs in my life. I am very straight in that regard.

Could the person in the vehicle be accused of drug trafficking? How will we deal with that type of situation?

**Mr. Greg Yost:** This offence only involves the person operating the vehicle and not passengers. However, if the driver knows that a passenger has an illicit drug he could give him, the driver may be charged. People should thus be careful with respect to what passengers are doing, if they are carrying drugs. If you know these people, tell them you do not accept any drugs in your car.

• (1615)

[English]

**The Chair:** Thank you, Monsieur Ménard.

Mr. Comartin.

**Mr. Joe Comartin (Windsor—Tecumseh, NDP):** Thank you, Mr. Chair.

Thank you, Mr. Minister, for being here, as well as the other officials.

Mr. Minister, you made the point that a number of U.S. states have adopted this methodology. Do you have a figure of how many of the 50 states have, at this point?

**Hon. Rob Nicholson:** I can get that for you. I know I specifically mentioned one particular state.

Mr. Yost.

**Mr. Greg Yost:** I thought it was almost universal in the United States, but I'm looking towards Corporal Graham, who is in touch with the American experts on this.

**Cpl Evan Graham:** There are 46 states and the District of Columbia currently in the drug evaluation and classification program, and the other states are either in the process of applying to it or being certified as a DECP state.

**Mr. Joe Comartin:** If I can pursue that, I know the Johns Hopkins study was done somewhere between 1988 and 1992, right? Has there been anything more recent done of a nature as extensive as that? I know there has been some update, but has there been a major study done in the form of a verification study?

**Cpl Evan Graham:** There was a study done by the Southern California Research Institute about 10 years ago. A study was also done in Arizona, and one in Minnesota, and we are currently in the process of doing one here in Canada.

We just finished one, looking at the evaluations. We've done it, to date, in Canada to see how accurate the evaluators are compared to the toxicology samples that have been attained. That was done by the Canadian Centre on Substance Abuse and came out to a 98.6% accuracy rate.

**Mr. Joe Comartin:** In the Canadian study, those would be cases where it was voluntary.

**Cpl Evan Graham:** Exactly. It would be both training and operational. They were all done by DREs in Canada.

**Mr. Joe Comartin:** Is that study public?

**Cpl Evan Graham:** It is.

**Mr. Joe Comartin:** Great. Could you provide a copy of that to the clerk of this committee, please?

**Cpl Evan Graham:** Certainly.

**Mr. Joe Comartin:** And could we also have the Arizona study?

**Cpl Evan Graham:** Certainly.

**Mr. Joe Comartin:** Mr. Minister, I'm again not sure if it's Corporal Graham who should be answering this, but I want to follow up Mr. Murphy's question about the funding for training. You said today that your government was committed to providing this. I'm not sure who's going to answer this question. We got that commitment from you, so maybe Corporal Graham should answer.

At this point, assuming this legislation is in place by the fall, optimistically, or by the end of the year, at the worst, would additional funds be needed in this fiscal period—that is, until the end of March—or at the very least, can you tell me on an annual basis how much funding is required to provide the necessary training?

**Cpl Evan Graham:** We currently have sufficient funds for this fiscal year. For ongoing sustainability and expansion of the program, we would require additional funding.

Part of the problem we have is the capacity to deliver the training. There are currently two full-time instructors in this program, and two more should be coming online very soon, seconded from other police agencies. We need to have at least 10 people doing this full time to deliver the training across the country.

To that end, we would require additional funding. How much funding would depend on how much training we are going to do. We have worked out a number of scenarios as to what funding we would require, but it also will depend on the cost sharing with the police agencies. I can't give you an exact dollar figure.

I can tell you that we currently have \$2.1 million budgeted for this fiscal year and we expect to spend all of it.

**Mr. Joe Comartin:** So you do not have a forecast at this time.

Perhaps, Mr. Minister, it's not fair to—

**Hon. Rob Nicholson:** He doesn't have one. We have one for this year, and it's \$2.1 million.

**Mr. Joe Comartin:** But in the full year of operation, you had one. I want to ask a supplementary question to that.

Have there been consultations with the provinces? They're of course going to be picking up a significant part of this tab, above and beyond the work the RCMP does.

**Hon. Rob Nicholson:** The provinces have all been consulted with respect to the implementation and the drafting of this particular bill, Mr. Comartin, and my understanding is that it's received widespread support.

**Mr. Joe Comartin:** The first part of the question was, do you have a budgetary figure for a full fiscal period?

**Hon. Rob Nicholson:** I have the budgetary figure for this particular year.

• (1620)

**Mr. Joe Comartin:** Okay.

With regard to the two-beer defence, does the department have statistics on the number of acquittals currently being obtained by the use of the two-beer defence?

**Hon. Rob Nicholson:** That's a good question. Mr. Yost?

**Mr. Greg Yost:** No, actually we have a lot of anecdotal evidence. We have some statistics from various courts on the overall rates of acquittals, which are reaching almost 50% now in some courts in the over 80 milligram cases. But they do not specify whether these were over 80 or from an intervening drink, or whether there was a mistake made in the demand. We can't work that one out. We are told by our colleagues that it is the most popular defence.

**Mr. Joe Comartin:** If they can afford it?

**Mr. Greg Yost:** Yes, it's an expensive defence.

**Mr. Joe Comartin:** Do we have an estimate of how many additional convictions we will obtain?

**Mr. Greg Yost:** No.

**Mr. Joe Comartin:** Does *Juristat* have any additional figures beyond what the department has on this point of the rate of conviction?

**Mr. Greg Yost:** No, they have overall figures for all impaired driving charges. It's my understanding that they put them all together: straight impaired driving, over-80 cases, and refusals are all counted as one. So they have an overall conviction rate for that, but they don't break the data down for over-80s, in this particular defence.

**Mr. Joe Comartin:** When this bill was before this committee in the last Parliament, there was a good deal of evidence taken with regard to the research that was going on, particularly in Europe, to try to establish a scientific test for the amount of marijuana that would impair one. I think we took that evidence about 18 or 20 months ago. Do you have any additional or new information as to how that research is going?

**Mr. Greg Yost:** I do know that a couple of European countries have established levels per se for the active ingredient of marijuana. But I'm not aware of any more recent research that establishes what basis they did that on, beyond what we had before.

I believe Corporal Graham is aware of research about how ineffective have been the attempts to detect drugs at the side of the road. Europe has been working on that, and we've been hoping they would come up with a roadside test that would help us on that.

**Mr. Joe Comartin:** Are there any new or updated reports as to how that's going?

**Cpl Evan Graham:** First of all, for the impairing levels of marijuana or other drugs, one of the problems they're running into is the same as we have with alcohol. Although the permissible level in Canada is 80 milligrams percent or 0.08, everybody is different. We have people who can be grossly impaired at 0.02, and cannot even be suspended in any province in Canada, and other people who show very little impairment at 200.

To try to use that with the number of drugs that are out there would be a nightmare. I think back to when I was working the streets as a traffic officer, and the number of impaireds. It was a constant battle, because trying to convince somebody that a person was impaired when their blood alcohol level was at or near the legal limit, compared to somebody who was at twice the legal limit... people think that twice the legal limit equals twice the impairment, and that's simply not the case. Everybody is different.

**The Chair:** Thank you, Mr. Comartin. You're well over time.

Mr. Thompson.

**Mr. Myron Thompson (Wild Rose, CPC):** Welcome, Minister.



I'm really interested in this particular bill. I doubt that there's anybody sitting around this table who hasn't been affected one way or another through a tragedy of some sort, some family that you're acquainted with, in regard to impaired driving. We know how serious a problem it is.

I want to ask you a couple of things. There's a family in my area, good friends of mine, who lost a 16-year-old daughter to a wreck when she was sitting on a two-lane highway trying to turn left. A gravel truck was coming and while she was sitting there, she was rear-ended by another vehicle and, unfortunately, her wheels were turned to the left and she was knocked in front of the gravel truck. Needless to say, it killed her.

During that process, her body was immediately taken to an area and tested in every way, fashion and form, but the driver of the other vehicle—I might point out, it was in a kind of remote area and it took a good 40 minutes for police and ambulances and everybody to get to the scene—who wasn't injured and didn't get hurt, was never tested in any way, fashion or form. It was suspected by the firemen who were the first to get there that the individual, who was a 40-year-old fellow, should have been tested because they suspected he was impaired.

How will this bill change that kind of scenario?

My second question is this. I watch a lot of court cases.... Well, if you want to respond to that first one, I'll get into this in a minute.

• (1625)

**Hon. Rob Nicholson:** It's a question of enforcement, Mr. Thompson, by police across this country. Most of the interactions are with municipal police or provincial police or, in provinces where there are no provincial police, the RCMP. But it's a question of enforcement and following up when there are suspicious circumstances. I think one of the benefits of a bill like this is that by updating the Criminal Code, we help raise awareness. I think it does its part in terms of getting the message out that we're having a look at this very serious problem and that we're making sure the Criminal Code has been modernized.

I pointed out to you, for instance, the changes with respect to the penalties. You can't leave it at \$600 forever. It should be \$1,000. I remember when the standard fine for impaired driving was \$150—just one right after another. I remember wondering why, for somebody who was picked up for shoplifting, for instance, the standard fine for shoplifting was \$200. So even as a young lawyer, I was quite aware of the fact that impaired driving is a much more serious assault on our country's values—a much more serious offence, in my opinion, than somebody who's picking up some food out of a grocery store.

So I asked myself those questions 26 or 27 years ago, when I was practising criminal law, and I remember when the minimums were raised. I was a member of the government at the time, but again, I look at it today and know we must continually modify the law to make sure it reflects the seriousness with which the impaired driving offence is held in society.

Mr. Yost, I know you wanted to make a comment.

**Mr. Greg Yost:** With respect to the situation that you outlined, Mr. Thompson, this bill would, in the new proposed subsection 254

(2), perhaps go a long way to helping. The current law allows a police officer to demand a roadside screening breath test if they suspect a person—and these are the words—“who is operating a motor vehicle”. Now, the courts have allowed a little bit of time, but if it takes 40 minutes for the police to straighten out who has done what, that person's not operating. If they just suspect alcohol but they haven't got reasonable and probable grounds, they can't ask for the screening test to see how the person will blow.

The new provision that we propose is that if the police officer has reasonable grounds to suspect that a person has in the preceding three hours been operating a vehicle with alcohol in their system—so if the police officers smell alcohol 40 minutes later, after an accident—he, under this legislation, would be allowed to ask for the approved screening device, which could move to the next step.

**Mr. Myron Thompson:** The reason I asked the question is that for the deceased no permission was given, yet she was thoroughly tested. Yet the other individual wasn't. I just never could quite figure out why that was the case.

As far as the \$1,000 fines go, I appreciate doing what we can. Personally, for impaired driving—I'm pretty radical, though, of course—I do happen to know that 35 years ago in the county I lived in, in the States, if you were caught driving impaired you lost your vehicle—no questions asked. It became the property of the county immediately. Now, you want to talk about deterring impaired driving; that did it. I know of a couple of fathers who were very unhappy with their sons, because it didn't matter if it was your vehicle or the company vehicle or your dad's.

But I'm really concerned about a \$1,000 fine. I'm watching the court cases in my riding and there are some pretty hefty fines, but it doesn't seem to slow it down. Every week there are more of the same types of charges. Nowadays, in pretty nearly every case where they have an impaired driving charge, they also have a possession charge of a drug; they find drugs within the vehicle. Most of these are young people, and that really disturbs me because I thought you had to be 18 to buy booze, but these are 16- and 17-year-olds, a great deal of them.

I'm wondering, where's the investigation on who bought them the booze? If they're too young to even have it, how did they get it? These kinds of problems seem to keep multiplying.

My question is, does the penalty from this bill apply to young offenders 16 and 17 years old? If not, could we do that?

• (1630)

**Mr. Greg Yost:** I have to apologize to the committee. I don't believe this provision overrides the provisions of the Youth Criminal Justice Act, which requires the police to go through a number of other things before they apply that. I'll have to check that with our youth criminal justice experts.

**Mr. Myron Thompson:** If you could do that, I'd appreciate it. In my opinion, if suddenly they're old enough to buy booze and they're under age, then maybe this law should apply to them specifically as well. I find that really—

**Mr. Greg Yost:** There's no question that the impaired driving provisions apply to them and it's an offence. What I don't know is whether the youth criminal courts impose the mandatory fines if they find other ways to deal with it.

**Mr. Myron Thompson:** Yes. I don't know what to do about it, but it is a concern of mine, because I did notice a high rate of young offenders in court appearances in my particular area, which is a rural riding. I get these reports pretty regularly.

**The Chair:** Thank you, Mr. Thompson.

**Hon. Rob Nicholson:** To be fair, though, Mr. Thompson, I think there is a much greater awareness of the problems of impaired driving today. I, as I'm sure you do, visit high schools and have quite a bit of interaction with young people. Quite frankly, I've been quite impressed by the level of awareness there is. I appreciate that there are exceptions to that rule. I appreciate that impaired driving continues to be a scourge within our society. But it seems to me, even within my lifetime, there has been a greater awareness through education. I give credit to the high schools and to youth groups.

I think we've made progress, so it's not all bad news in this area. I think that's one of the things we can be thankful for and should continue to encourage.

**The Chair:** Madam Jennings.

**Hon. Marlene Jennings (Notre-Dame-de-Grâce—Lachine, Lib.):** Thank you, Chair.

Thank you very much for your presentation, Minister.

I have just a couple of questions. One concerns—and I don't know what the term is in English—*l'expert en reconnaissance des drogues*. I'd like to know how many police officers across Canada have already been certified as such experts and how many more will be required in order to ensure that Bill C-32, when it becomes the law, will actually be implemented, and there is no excuse.

Given that *le test de sobriété normalisés* for drug impairment is already being used in Canada in several jurisdictions, has it been contested before the courts for its constitutionality; and if it has, what has been the result of that?

I'd also like to know the success rate of the test and the rate of conviction as compared to alcohol, if you have those statistics. If those statistics are not available, then that is a request we would make to the centre in future, to try to get that breakdown.

**Hon. Rob Nicholson:** Thank you very much, Madam Jennings.

There are currently 2,428 officers trained in standard field sobriety testing in Canada. As well, there are 250 drug recognition experts in Canada. We would expect that we would need to add to that level with the introduction of this bill. With current national funding, 144 police officers will be trained as drug recognition experts this year, and 216 trained in standard field sobriety tests. There are courses outside the national program; that's not the only way, of course, that you could get trained. There could be as many as perhaps another 96 in standard field sobriety tests.

With respect to the comments about the success in prosecutions, Mr. Yost, would you like to comment on that, please?

• (1635)

**Mr. Greg Yost:** I'm thinking of anecdotal evidence only. Evan, I believe, keeps track of the reports from the DRE-trained officers.

Before I pass it over to him, you asked about standard field sobriety testing being tested in the courts. Some of the provinces, certainly Manitoba, have regulations under their highway traffic acts requiring people to do that. My understanding is that challenges to that have been unsuccessful, but that's a challenge to provincial administrative law. This is the Criminal Code. We'll have our own challenges, no question.

**Hon. Marlene Jennings:** To your knowledge, there have not been any constitutional challenges under the Criminal Code. People can be charged with impaired driving where it's not alcohol; it's drugs. That means there has been some form of sobriety testing, and I would have assumed, then, that there would have been some kind of challenge. Defence lawyers are quite enterprising.

**Mr. Greg Yost:** Thus far the defence lawyers have the problem that their clients voluntarily participated, which makes it a little more difficult to raise the challenge.

**Hon. Marlene Jennings:** There you go. Okay, thank you.

That was it. Thank you very much.

**The Chair:** Thank you, Madam Jennings.

Corporal Graham, did you want to make reference to anything that was just said?

**Cpl Evan Graham:** You asked about the overall numbers that would be required. When we look at the drug recognition expert, we basically compare them to the evidentiary breath technician, the person who operates the breath-testing instrument. There are currently 2,600 breath techs in Canada. We're sitting with about 250 trained for drug impairment, and if we look at them as being on an equal footing, we'd be looking, overall, in the long term, to make the same number of people trained as DREs, so somewhere in the neighbourhood of 2,600 to 3,000.

**The Chair:** Thank you, Corporal.

Madam Freeman.

[Translation]

**Mrs. Carole Freeman (Châteauguay—Saint-Constant, BQ):** I would like to ask for a bit of information. Ms. Jennings was referring to DREs, drug recognition experts. I have contacted a number of police forces since yesterday to try to understand this, because I was told that this service was being used in Quebec.

[English]

**The Chair:** Madame Freeman, would you speak into the microphone?

Thank you.

[Translation]

**Mrs. Carole Freeman:** Nobody seemed to be aware of it. I would like to understand what exactly these DREs do. My colleague asked you a question earlier on and you did not answer. In real life, I know that when police officers arrest individuals, they can ask them to take a sobriety test and afterwards the drug recognition expert would get involved. How does this work from a practical standpoint?

[English]

**Cpl Evan Graham:** A drug recognition expert has specific training in the indicia of drugs as well as psychophysical tests and clinical indicators. Roadside, the person has been stopped for some reason. They are put through divided attention tests, the standardized field sobriety test battery. That will show if the person is impaired by something. If it's suspected to be alcohol, they get a breath demand, and then go back for a breath test. If it's suspected to be drugs or something other than alcohol, we ask that they go back and participate in a drug evaluation.

The first part of the drug evaluation is to obtain a breath sample to rule out alcohol as the primary cause of impairment. If the level is over the legal limit, then they are charged with driving while over 80 milligrams percent. If alcohol is ruled out, they then go through the same sobriety test they did at roadside, plus two others, in a controlled environment where there are no distractions from oncoming traffic, no distractions from bystanders, where the surface is level, and where there are no weather conditions to be concerned about either.

At the conclusion of that, we can prove that the person is either impaired or not. We still don't know what is causing the impairment. That's where we use the clinical indicators. We'll take the person's pulse on three separate occasions. We'll take their blood pressure and their body temperature, check their muscle tone, and look at their pupils in three lighting conditions—regular room light, near total darkness, and direct light. In doing this, we want to see what size the pupils are and how they react to the light. We will also check to ensure that the person doesn't have any medical problems.

At the conclusion of the clinical portion, we can put the person in one or more of seven drug categories—we're not looking for a specific drug, just the broad category—or rule that out if the problem is medical or fatigue. At this point, we're going to interview the driver, tell them what we suspect they're using, and at the conclusion of the interview ask them for a bodily fluid sample to be sent to a lab for analysis to confirm or refute what the evaluator has called.

• (1640)

[Translation]

**Mrs. Carole Freeman:** Thank you.

The minister indicated that a number of drug recognition experts were to be hired. Given the size of the country, how do you think you will be able to service remote regions?

[English]

**Hon. Rob Nicholson:** The enforcement of these, Madame Freeman, is done by municipal, regional, and provincial police forces. As to how they're allocated, they are in charge right now, of course, of impaired driving even in rural areas or remote areas, so this will certainly be a supplement to that.

Regarding the initial part of your question, I indicated that there would be more hiring given the funding that's available now, and that will increase the number of individuals. But again, the implementation of these things at the roadside level is done by provincially regulated forces that will be at either the municipal or, in the case of the province of Quebec or Ontario, the provincial police force level.

**The Chair:** Madame Freeman, go ahead, please, very quickly.

[Translation]

**Mrs. Carole Freeman:** I spoke to the police services today. According to the documents DRE services are available in several provinces, including Quebec. I didn't call the Magdalen Islands or the Gaspé region, but I did call forces in the Quebec City and Montreal regions and the various police forces I called have never even heard of it. They did not even know what I was talking about. That is why I am asking you the question. It may seem obvious, here in a committee setting, but it is less so throughout the land.

[English]

**Hon. Rob Nicholson:** We certainly want to get the message out. As I say, there is funding for people in both levels of expertise. I'm quite sure that all police forces, now that this has become a not voluntary measure—the police officers can require this—will want to get on board.

**The Chair:** Thank you, Madame Freeman.

Mr. Moore.

**Mr. Rob Moore (Fundy Royal, CPC):** Thank you, Chair.

I just want to be cognizant of the time. I think the minister has said he would be here for an hour.

**The Chair:** It's approaching one hour now. You'll be the last questioner.

**Mr. Rob Moore:** Great. We don't want to go into overtime.

Minister, thank you for being here. I know this is an extremely important bill, and it addresses concerns that probably all of our constituents have. We know that in the Criminal Code or the annotated Criminal Code, the sections on impaired driving grow year by year by year, and now it's a field of study all its own.

Can you speak a bit about this two-beer defence? It might be the first time that Canadians are hearing about it. I think it's widely recognized that it's time for it to go. Could you speak a bit about what is meant when we talk about the two-beer defence, and why, if it ever was appropriate, it's no longer appropriate?

**Hon. Rob Nicholson:** That's a very good question, Mr. Moore.

There are a hundred ways any defence can be raised, but you could have a situation where an individual is picked up and fails the breathalyzer test. You'd think it would pretty well be conclusive, in the absence of there being a problem with the breathalyzer test. Yet what you might have at a trial is an individual coming in and saying, "The breathalyzer test must be wrong; I've only had one beer or two beers over the course of a couple of hours." You could even have several witnesses who happened to have been sitting around the table say, "Yes, I remember Charlie; he only had two beers all night." Certainly that would call into question the reading.

But what we know is this: while it might have been easier 25 or 30 years to challenge the accuracy of the breathalyzer equipment—that's right, Madam Jennings is confirming—today the equipment works, and works very well. So what we want to do is restrict the ability of the individual to challenge it. If they do challenge it; if they say there's something wrong, then they'll have to show that there is actually a problem with the breathalyzer test. They won't be able to raise that doubt by having any number of witnesses come forward to indicate that the individual didn't drink or drank very little. That's the problem with it.

I know my time is up—I'm going to be meeting some people at a quarter to five—but I never like to leave without hearing from Mr. Lee, Mr. Chairman, so I'll accommodate him if you'll accommodate him.

• (1645)

**The Chair:** I was going to ask whether, in the spirit of cooperation, you would keep him happy. You certainly beat me to the punch.

Mr. Lee.

**Mr. Derek Lee (Scarborough—Rouge River, Lib.):** Thank you very much, Minister and Mr. Chairman.

I'll just ask the one question. You saw my pain as you were getting ready to pack your suitcases for your next important engagement.

It has to do with what I'll call the new possession offence in the bill. It's in clause 2 of the bill. The current Controlled Drugs and Substances Act has a possession offence in it, and it's used from time to time as necessary. The only thing is that the act does not make it an offence to possess schedule IV controlled substances, which are steroids and things like that.

Now we have, inserted into this bill, a possession offence involving care or control of a vehicle or vessel, even if it is not being operated, and it includes all of the schedules of the Controlled Drugs and Substances Act, so that what wasn't previously an offence of possession of drugs is now being made a drug possession offence in the Criminal Code, when it arguably, in the case of steroids, would have almost nothing to do with impairment of driving.

I'm curious about the policy reason for that.

**Hon. Rob Nicholson:** That's a very interesting question.

Mr. Lee quite correctly pointed out the provisions that change section 253.1, which tries to capture that individual who was operating or has the care and control of a vehicle and is also in possession of a substance under the Controlled Drugs and Substances Act.

With respect to the specific concern about steroids, Mr. Yost, would you like to make a comment?

**Mr. Greg Yost:** At first, I would say that section 253.1 was the model that came out of the standing committee the last time, except for those changes that I mentioned we thought were improvements, particularly tying it in with the prohibitions.

You raise an extremely interesting point regarding the possession of drugs that it's not an offence under the CDSA to be in possession of. I think we'll have to look at that one and perhaps discuss with the minister whether some amendment might have to be made to bring that into account.

Steroids, to my knowledge, do not affect your ability to drive at all.

**Mr. Derek Lee:** Thank you for your question. We can deal with it later as we move along.

**The Chair:** Thank you, Minister, for your attendance here. We appreciate it.

Members, Mr. Yost and Corporal Graham will be remaining.

Mr. Petit, you're next on the list.

[*Translation*]

**Mr. Daniel Petit (Charlesbourg—Haute-Saint-Charles, CPC):** Thank you.

My question is to Mr. Yost.

We are very happy that the bill will be easily passed by everyone without too many amendments, but I do have questions, even though this is a government bill.

Imagine there is a police barricade. This is the easiest case, but in other situations, the driver doesn't turn on his rear lights and the police are suspicious. The officer approaches, the driver rolls down his window and the officer smells alcohol. He makes him get out of the car. In certain cases, he cautions him and makes him go through certain motions in order to determine if he is able to drive. We are still talking about alcohol. We have to agree on that. In fact, we cannot ask 99.9% of police officers to deal with drug cases for the moment, particularly as regards this bill. I am not saying that they would not know how to do so, but the fact is that they deal primarily with alcohol-related cases.

Say the police officer arrests this person after he has been tested with the instrument that determines if he has gone beyond the 10 degrees. He brings the person to the police station, where it is determined that the blood alcohol concentrations are not over the limit, but that the person is drug-impaired. The drug the person took did not slow down his abilities: it stimulated them. The roadside tests he underwent measures the slowing down of one's abilities. I'm talking here about bringing your finger up to your nose or walking in a straight line. Some drugs will allow you to do that. So how is the police officer to deal with that? It is up to him to protect the public. How will he manage that?

•(1650)

**Mr. Greg Yost:** First of all, I must make it clear that the person must have failed the roadside tests in order to be asked to come to the police station and undergo a breath analysis or a drug recognition expert's tests. If this person had taken a drug that makes him or her a better driver, the person will pass these tests without any problem.

Normally, the person's driving, for one reason or another, draws the attention of the police officer. The officer starts to discuss the problem he observed with the person. He will then notice something. It may be the smell of alcohol or of marijuana. It is possible that the person might start laughing or behaving bizarrely or unusually within the context of the discussion with the police officer. It is also possible that the person's eyes will not react normally.

That makes the police officer suspect that there may be drugs in the person's system. This legislation will allow police officers, under such circumstances, to do roadside testing. If the person fails these tests and the services of a drug recognition expert are available, the person will have to undergo that kind of test. This does not concern alcohol; you have to turn to an expert because that is needed to determine the presence of drugs. As far as mixtures are concerned, the seven drug families and their effects on a person, Corporal Graham should be able to tell us what the police officer would be looking for.

**Mr. Daniel Petit:** I am asking the question because I have legal concerns as well. Let's say that everything you have stated is true. He fails the tests. You yourself don't know what the effects of cocaine are, compared to the effects of marijuana or to those of a different drug. Cocaine might enable a level of functioning that would surprise you. There are even business people who take it every day, carry on working, and who don't show the effects.

There is something I want to know. Let's say that everything is fine, and you take your future defendant to the station. Then, you ask the police to do five things. You can check the person's pupils. We have talked about five possibilities, including checking eye pupils. I'm trying to understand you properly. You plan to ask police officers to perform medical acts, something that could pose a problem. I hope you understand that.

If you cause some problem by looking into a person's eyes, or by checking a person's eyes, that person could sue you because you did something unacceptable. Do you feel everything has been covered? Did you talk to medical corporations about those five acts, or actions that could be taken? I would like you to list them and tell me whether you have checked everything properly.

•(1655)

**Mr. Greg Yost:** Since this is current practice in the United States, we consulted the International Association of Chiefs of Police about the tests we can use to screen for different drugs.

I can't imagine what problem asking someone to track a light in a fairly dark room could possibly cause. If he can't track the light properly, his eye will jerk around, that is one of the tests.

All kinds of people can take blood pressure.

Police officers have fairly comprehensive training. They also have training to determine when there could be a medical problem. When

they encounter a medical problem, they send the person involved to a hospital as quickly as possible so that real physicians can determine what's going on.

These tests are not intrusive. There is nothing I know about the tests in this program that could endanger anyone's health.

[English]

**The Chair:** Mr. Petit.

[Translation]

**Mr. Daniel Petit:** Could I ask one last question?

[English]

**The Chair:** I'll give you time for another question, but you're over.

[Translation]

**Mr. Daniel Petit:** Thank you.

As you know, at present, when someone has a serious accident, we take him to the hospital and are required to obtain a warrant if there is any suspicion, so that we can ask him for a blood sample to determine blood alcohol levels and other factors.

If someone has an accident and we determine there is no alcohol in the blood, will the warrant also cover drugs and all illegal substances? Do you believe everything is properly covered?

**Mr. Greg Yost:** We can already ask for a warrant to identify drugs and alcohol. The problem lies in the fact that we normally do not have many grounds on which to request that warrant. Generally, we use a warrant to screen for alcohol, but that is already there. We do not need all these tests when we have other grounds we can use to convince the justice of the peace to give us the warrant we need.

[English]

**The Chair:** Thank you, Mr. Petit.

I have a question for Corporal Graham. You spoke of a clinical analysis. Who really conducts that clinical evaluation?

**Cpl Evan Graham:** That evaluation is done by the police officer, the drug recognition expert, the trained police officer.

**The Chair:** So on reasonable probable grounds, an individual is stopped on the highway in a remote area, and it could be in the evening. He has to conduct a clinical examination on the individual. He may even have given him—or been refused—a roadside test, and then he would have to transport that individual to a detachment somewhere, I assume.

**Cpl Evan Graham:** That's correct.

**The Chair:** Then he goes through a process of evaluating how this individual reacts under different forms of light. Every police officer on the street will have to be trained quite thoroughly. I can see this as a real defence lawyer's boon, in a way, questioning, how long did you test him or how bright was the light? I can see a myriad of things coming into play here. What is going to be standard practice and acceptable?

**Cpl Evan Graham:** The evaluation is done in a controlled environment. The vast majority of the police officers working in Canada will never be trained as drug recognition experts. Again, it's a specialized field.

What we do for training is attach an eight-hour block to the standardized field sobriety test course. They're given the general symptomology to be looking for. What they record roadside will in all likelihood be totally different from what I'd see if they brought them back to the office for me to evaluate. Most drugs are short-lived. Some are longer-acting. Some react slowly. Some start their effects very quickly.

So we fully expect that during the evaluation, things will be different from what they saw roadside. Because of that, it's a totality of the evidence right from the time they dealt with the person, from when they walked up to the car, to the conclusion of the evaluation.

• (1700)

**The Chair:** But the average police officer is the individual who will have to carry this initiative through from beginning to end.

**Cpl Evan Graham:** They'd only carry it insofar as they'd be bringing them to the drug recognition expert, the same as they would for a breath test. They get them roadside. They make the determination that a person is impaired by alcohol. They bring them back and put them before an expert. The expert is the evidentiary breath technician.

For the drugs, it's really no different; they observe something that's not right and they take them to an expert to be evaluated.

**The Chair:** You're saying that the clinical test, then, is actually done by the drug evaluation expert, not by the police officer.

**Cpl Evan Graham:** That's correct. The evaluator is also a police officer, but he or she is the person who does the evaluation in its entirety. The only things done roadside are the three divided attention tests that comprise the standardized field sobriety test. As for the actual looking for drug impairment, that's done at the office by a trained evaluator.

**The Chair:** Does it not leave open some question here? If an individual refuses to take a roadside test and he's brought into the office and does not take a breathalyzer, the officer and the drug evaluation expert now have to rely strictly on what—their own experience, basically?

**Cpl Evan Graham:** Essentially that's what we're looking at right now. With the provisions of Bill C-32, we won't have that problem. There will be a demand to do the drug evaluations, the same as it is for a breath test, and the person will have the option of doing the evaluation or not. But if they don't do it, they'll be charged criminally. The provision of a bodily fluid sample will be an option, but if they choose not to, again, there will be criminal sanctions.

So we're going to treat drug-impaired driving exactly the same way as we treat alcohol-impaired driving, with the evaluator being the evidentiary breath technician.

**The Chair:** Thank you.

Let me throw another wrench into the works. Barely 40% of all drug charges laid, or impaired-driving charges laid, find a conviction. Is this going to change? Is anything in this bill going to change that? In fact, 40% may even be high.

**Cpl Evan Graham:** I can tell you that in states where the drug evaluation classification program has very solid footing, two of them being California and Arizona, the pleas are virtually all guilty pleas.

The only way the defence can attack the findings of the evaluation is to attack the credibility of the police officer.

The science is sound. It's supported by different studies. As long as the police officer does everything the way they're supposed to, we're finding right now in Canada that we're getting convictions. We've only had two or three who have been found not guilty. We've never had a case appealed. And we've been doing this program in Canada since 1995, on a voluntary basis.

**The Chair:** Mr. Yost, do you have a comment?

**Mr. Greg Yost:** Perhaps I can make one comment.

You said that barely 40% result in convictions. The numbers I've seen are higher than that. A lot of cases don't go to trial; the person pleads guilty. So maybe it's only 40% of those going to trial.

As for what in this bill will bring that number up, well, we certainly believe the DRE is very solid and will help there. And we have the evidence to the contrary defence, making that defence a rational scientific defence instead of making it based upon hypothetical calculations of what the person's blood alcohol would have been.

So we are hopeful that this will lead to a higher conviction rate in those matters that are currently going to trial based upon the toxicologist and "me and my three drinking buddies" kind of evidence.

**The Chair:** Thank you, sir.

Mr. Petit had his hand up first. Then we will go to Mr. Lee and then Mr. Thompson.

Go ahead, Mr. Petit. I recognized you.

[*Translation*]

**Mr. Daniel Petit:** Thank you.

Now, there are people who are skilled in screening for drugs and other substances. We know that when it comes to determining alcohol levels, there are issues involving timing, quantity, weight and height that can help the police. For example, the police use a breathalyzer test to determine whether the person's blood alcohol level is over the legal limit. We therefore have all kinds of tools to help lay charges and establish a defence.

When it comes to drugs, have we already determined everything we have and everything we know about time, height, weight and quantity? Will police officers know how to use those guidelines, or will they be adrift, so to say? I am not trying to ascribe ill intent to anyone, but this is something I would like to know. We are very familiar with alcohol, because for over 20 years we have been focusing on time, height, weight, quantity and other factors that affect how it acts. But will that kind of knowledge be available to drug recognition experts, or DREs?

• (1705)

**Mr. Greg Yost:** In actual fact, the answer is no. I think that drug recognition experts will testify before you, at which time they will be able to give you a much more definite answer.

The problem is that there are seven families of drugs. There are thousands of drugs, many of which are illegal, and their effects on any given individual can depend on all kinds of factors. Drugs don't act like alcohol. Moreover, if you add a small amount of alcohol to some drugs, the effects can be quite different.

The prosecutions will be based on observations leading to an individual's arrest. The arrest is based on grounds the police might have had to suspect the individual had consumed drugs, as well as on the results of roadside tests carried out, and on the expert's assessment, which is then confirmed by the tests. If the tests do not confirm that the individual took cocaine when the expert said he took cocaine, that will be the end of it, and there will be no prosecution. That sequence has already been approved by courts in Canada as being sufficiently convincing to incriminate the individual beyond any reasonable doubt.

**Mr. Daniel Petit:** To conclude that point, when an individual has been convicted for driving with illegal blood alcohol levels, after three months the individual can obtain a device that breathalyzes him every time he wishes to start the car, and thus makes it possible to use his car again. Let's say I was convicted for taking drugs, and not alcohol, what would I have to do to have that equivalent right restored?

**Mr. Greg Yost:** I don't see how that would be possible. You would need to be admitted into the provincial program, and I don't think the province would accept someone with a drug-abuse problem into an alcohol-abuse program. Moreover, when you take the wheel, there's no screening test to determine whether you've taken marijuana. Those instruments don't exist. It would be up to the provinces to decide whether you could enter the program, but I really don't see why we should open those doors.

[English]

**The Chair:** Thank you, Mr. Petit.

Madam Jennings, quickly.

**Hon. Marlene Jennings:** Very quickly.

The minister said that there are 2,000 police officers across Canada, if I'm not mistaken, trained to conduct the sobriety tests on the roadside, and at this time, there are 250 drug recognition experts. Then he said there will be an additional 144.

Are the 2,000 trained police officers just RCMP? If they are not, how many belong to provincial and municipal police forces? Can you identify them, give us an actual breakdown?

I'd also like to know, given that we're being told that the police forces in Quebec already do an evaluation by a drug recognition expert, how many have been trained—I'm assuming by the Sûreté du Québec and probably the Montreal police force—by which police forces, and for how long?

With this legislation, we're going to need a much greater number, and I'm worried that the figures we're being given are primarily for the RCMP. They may not take into account all of the police forces across Canada that would be required to implement this, and therefore the need to ensure that this is properly implemented.

• (1710)

**Cpl Evan Graham:** There are currently 2,428 police officers who have received training in standardized field sobriety tests. They run the gamut from every municipal, provincial, and regional agency, as well as the provincial police forces in Ontario and Quebec, the RCMP, and the Department of National Defence police. The same goes for those trained as DREs.

In 2003, when we took the program national—previous to that it was just in British Columbia—the decision was made to ensure that we trained police agencies right across the country regardless of what organization they're from. I can give you the exact numbers; I don't have them with me. I have a breakdown by province and whether they're municipal, regional, or provincial, as well as the RCMP.

The numbers are highest for the RCMP. The program started in British Columbia and ran there for 10 years before it went national. The RCMP are the provincial police in B.C. The split there is about two-thirds RCMP and one-third municipal, and the same would go for those who receive the training.

Nationally, it's the opposite. We're sitting around 18% to 20% in the RCMP who are trained, whereas the rest are made up of other agencies. Depending on what province it is, the numbers are different. The RCMP don't police here in Ontario, so we have very few people who are trained as DREs or are SFST trained.

Quebec has one DRE. She is with the Gatineau police. Over the years we've trained members of the SQ as well as the Montreal city police, but they didn't follow through with the training. Last year the Province of Quebec took the stand that until the legislation is passed giving us the authority to have a demand for the drug evaluation, the police forces were not to participate in the training. That's why there's nobody trained in Quebec. We are prepared to do the training there, but for reasons that are beyond our control, we can't.

There was a needs assessment in 2003 as well. Every police agency was asked to submit the questionnaire. The onus was on them to let us know what they thought, because that's what we use to prioritize the training. Those agencies that said they wanted the training are getting it; those that said they don't are not on the priority list. When we have a demand for training, we go to that list to ascertain who should receive priority training.

**The Chair:** Thank you, Corporal.

Mr. Lee.

**Mr. Derek Lee:** Thank you.

I have a question, and I don't want anyone to take my scrutiny of this legislation as lack of support for the bill generally.

There are a couple of triggers in the legislation that involve the suspected presence of an illegal drug in the body of the person. What's bothering me is this. I'm looking for ways to prevent this statute from being a continuing search for illegal drugs, even if they don't impair. In order to trigger the police officer's decision, he or she just has to suspect that there is a scheduled drug in the system of the person. There doesn't appear to be a concurrent requirement for impairment. If there's some alcohol associated with it, then one could suspect that the mix of alcohol and the drug might produce impairment.

I'll direct my question to Corporal Graham. In your experience in the last few years, has it ever come up, in Canada or elsewhere, that police start relying on this type of legislation to take people who are known to police off the road and put them through the drill when they suspect they've been taking illegal drugs but maybe the alleged impairment isn't that clear?

I'm throwing that out here. I'm thinking of many drugs that would never induce impairment in certain quantities but would be illegally present, in the pocket, in the body, etc.

• (1715)

**Cpl Evan Graham:** For the drug evaluation, although the Supreme Court of Canada gave us the authority to stop vehicles, to check driver fitness and vehicle fitness, generally speaking the vehicles are stopped for some reason. If we suspect that it may be a matter of driver fitness, then they'd do the sobriety test. If the person passes the sobriety test, we don't continue the investigation; the driver is free to go.

Whatever we do, we still have to be accountable to the court and be able to justify why we're advancing from stage to stage. When we get them back to the office for the drug evaluation, if they pass the sobriety test, or the divided attention test, there's no point in going through the clinical indicators because we don't have impairment. Without the impairment, we don't have a charge, because the charge is specifically for driving or operating a motor vehicle while impaired.

So whether they have consumed alcohol or drugs... And I've actually had cases where we've stopped people and we've seen them smoking marijuana, and they don't do the roadside tests very well, and there were reasons for that; they may have had problems. In the case of this driver in particular, he was scared—and rightfully so. We went back to the office and put him through tests. There was some indication that there might be some impairment—bearing in mind that marijuana is more mentally impairing than physically impairing. At the conclusion of the clinical indicators, I was the evaluator and said flat out, this person is not impaired. Yes, they consumed marijuana, but that's no different from their having had a beer. As a result, the person was let go without any charges.

**Mr. Derek Lee:** Mr. Chairman, that's the response of an excellent policeman. I hope every one of our police officers thinks and acts the same way. You did refer quite properly to the fact that in the end, whatever happens, it would be scrutinized by a court.

But in terms of processing guys on prairie roads, the court may never see that, the fact that the charge may not be laid. It could be an officer who has a job to do and wants to get the evaluation done and knows the person is a drug taker.

Am I thinking outside the envelope here, or are my concerns unjustified?

**Cpl Evan Graham:** I would suggest they are somewhat unjustified.

If an evaluation is done by a drug recognition expert, that evaluation must be reviewed by an instructor. Every evaluation the person does is put into a log. We're now working on an electronic log that will be done via the Internet, so I can access any evaluation anytime. The instructors review it to make sure the protocol is done correctly and the fines are correct—and these are things they must do to remain in the program. As a DRE, we must be recertified every two years.

If a DRE doesn't comply with the program, or they're consistently doing things that would bring the program into disrepute, then they're decertified and their supervisor will be notified of the fact that they've been removed from the program. I expect there would be some kind of sanction taken against that individual, because they're putting not only the program in disrepute, but also the agency they're working for.

So I just don't see that being an issue.

**The Chair:** Thank you, Mr. Lee.

Mr. Thompson.

**Mr. Myron Thompson:** I have 11 detachments in my riding. It's mostly rural. Last weekend, the long weekend, we had quite a problem in various campsites and campgrounds in different parts of Alberta.

My hometown—and Mr. Hanger is the only one here who is familiar with it—is up in the mountains and a popular place for people to go when they have a long weekend. It's great, beautiful country, with camping and all of that stuff. But we had a horrible weekend. Five people work in the detachment in my hometown and they had to call in reinforcements from some of the other detachments close by. There were numerous charges for drunkenness and impaired driving laid throughout the weekend, but I don't know of any DREs being available to any of these rural people. How do you address that?

It was a fairly large number of people who were arrested and, I assume, charged for the offences. A lot of it would have come under this legislation as well, because drugs were certainly a big part of it.

So I'm just curious as to what rural detachments can do. Six out of the 11 detachments, I can assure you, are in pretty remote areas. Five are fairly close to Calgary and larger centres, but—

• (1720)

**Cpl Evan Graham:** Alberta had its first DRE course in November of last year. There were 24 candidates. Nine of them were from the Edmonton Police Service, and the rest were from around the province, including the RCMP. The majority of those were from non-major centres.



It's going to be a problem until we have capacity. If we were starting off with the breath testing program, we'd have the same problems. We essentially have to look at where the largest problem is right now, that being the major centres and the highways that are the busiest, before we get to the rural areas. And of course, if the RCMP are policing it, there is always the possibility that we'd put somebody in there and get them trained and then they would get transferred.

So, in the short term, the smaller centres and the three territories in particular will probably not get that many people trained, just because of how we have to prioritize things.

**Mr. Myron Thompson:** Is that training under way in the assumption that this bill will pass?

**Cpl Evan Graham:** Yes, it is, and it has been since 2003.

**Mr. Myron Thompson:** Well, we'd better take care of that assumption and get the job done, gang. Let's pass this bill, because I think it's a great bill.

**The Chair:** Thank you, Mr. Thompson.

Mr. Petit.

[*Translation*]

**Mr. Daniel Petit:** I have another question, Mr. Yost, because when we examine this bill in depth, I want to be sure I know how you crafted it.

You know full well—and the question was put by our parliamentary secretary to the minister—that what we call "countering evidence", or "the two-beer defence" accepted by the Supreme Court is used to counter the breathalyzer results when an individual affirms that he or she has not consumed more than a certain quantity of alcohol. You summon a chemist who makes a statement, either in writing or before the court. He produces a supporting document, after which the client can be acquitted. That often happens when the charge is alcohol-related.

The police officer expresses himself very well, we can see he knows his job, and that is great. Except where "countering evidence" or "the two-beer defence" comes up, we take samples to determine intoxication rate with a specific drug. We might have charts indicating individuals' height and size as factors. You know, as I do, that a good chemist will be summoned to court. In fact, I would bring him with me and my client, I imagine, and I will have my client say that he took only a small amount of drug, or no drug at all. As the police officer was saying, a small amount of marijuana is equivalent to a single beer. So, we would let the client go. I would therefore tell my client to tell the judge that he has taken only a small amount of marijuana. In fact, he has taken somewhat more, but with the testimony of a good chemist, I can contradict the report of the police chemist.

In the legislation, have you provided for the kind of experience we have had with breathalyzer tests? Have you shut the gate on "countering evidence" or "the two-beer defence"? Have you done the same for drugs?

**Mr. Greg Yost:** Not really. We have a problem, as you mentioned, with concentration. We already discussed it. Actually, the effects of different drugs vary so much from one individual to another that we cannot tell what quantity will...

I hope that you will put the same questions to the drug recognition experts when they appear before you. We cannot conclude that if so many parts per million of marijuana or cocaine were detected, it is therefore clear that the person's faculties are impaired because anyone with that level of concentration in their body would have problems.

The quantity could be very high. However, we have no reliable instruments. Moreover, there is no set legal limit like the 80 milligrams per 100 millilitres established for alcohol by the legislation. Therefore, we cannot shut the gate, as you say. We can shut the gate on the "two-beer defence", because we have an instrument that is very accurate, modern, etc., that gives us reliable results and proves that you have exceeded the limit established by Parliament. However, because we have no established limit for drugs, we cannot say that a crime has been committed, because there is no prescribed concentration level.

• (1725)

[*English*]

**The Chair:** Thank you, Mr. Petit.

Mr. Kamp.

**Mr. Randy Kamp (Pitt Meadows—Maple Ridge—Mission, CPC):** Thank you, Mr. Chair.

I have just a quick question. I don't know if you can answer it for me, Mr. Yost, but Bill C-32 and its predecessor, Bill C-16, have been in the public domain for a while now. I'm assuming there's generally widespread support, at least among the law enforcement community and parliamentarians.

Can you tell us who is not supportive of this initiative and the approach they're taking?

**Mr. Greg Yost:** I would guess the defence counsel, when they come here, will not be big fans of this particular legislation.

We've been struggling with the issue of evidence to the contrary, and drugs. Basically, in 1999 a parliamentary committee, which reviewed all of the impaired driving laws, identified these as things that we should be working on. We went down what I'd only call the wrong path, as it turned out, with respect to evidence to the contrary.

We were going to try to follow what they do in Australia and New Zealand, which is basically that you fail, and that's very nice, but now if you want to challenge it, you'd better go and get yourself a medical test. When we took that out beyond our policy types and talked to the police, they said, at 2 o'clock in the morning in rural Saskatchewan, you're going to send somebody out to try to get a blood test? It wouldn't work. It would be an ineffective defence.

That's why we then, working with the experts from the Canadian Society of Forensic Science, came up with the machines as they are now, which are reliable. The machines produce printouts, and the legislation allows these printouts to go in, which will show that the machine was working before it took the sample and it was working right after it took the sample, so it was working when it got the sample. I'm not aware of any others who have been opposing it.

As for the drug recognition part, this is the third time we're trying to get this through Parliament. I believe it's accepted pretty well everywhere that this is the only reliable program we can find now. There is no magic technological bullet yet.

**The Chair:** Thank you, Mr. Kamp and Mr. Yost.

Mr. Lee has a comment to make, and after that time I think we'll conclude.

**Mr. Derek Lee:** I have a question, but I don't expect an answer. It's something that will come up later.

We're replacing most of section 254 of the code. In the proposed section, we add in the matter of the presence of a drug in the body of the suspect. The belief that there has been the consumption of a drug within the previous three hours allows the policeman to require a test and allows the police officer to require the person to accompany the police officer for the purpose of taking those tests. And throughout all of that there is no requirement, as I read it, that there is a reasonable belief that there has been impairment, only that there is a drug in the body of that person.

So I'm leaving that issue there, as to whether we really want to have that. I assume we would want to have reasonable belief of impairment before we require the subject to do tests and accompany the police officer, which might be to a police detachment a half-hour away somewhere.

**The Chair:** Mr. Yost.

**Mr. Greg Yost:** The legislation in proposed paragraph 254(2)(a) allows the officer to require the person to perform forthwith the physical coordination test, and "forthwith" basically means right there at the side of the road. It does not allow him to require the person to accompany him to the station. The accompanying to the station is if the person fails that test, whereupon the police officer has the reasonable and probable grounds that the person is impaired. Now, that might be impaired by alcohol, by a drug, or by a combination.

Obviously if they have the approved screening device handy and they think it's alcohol, they use that. The standard field sobriety

testing will be when they have the suspicion of alcohol or drugs and they want to see whether the person can perform, in a normal way, the physical test. If they succeed with that, it's all over; he drives away. He's not required to accompany the officer unless the officer can form those reasonable and probable grounds to take him to the DRE.

• (1730)

**Mr. Derek Lee:** I've read this proposed subsection (2) of 254, and I don't see.... There are only reasonable grounds to suspect that the person has taken the drug, not that they were impaired. I've read it, and I don't see it.

Secondly, it's very clear that at the very end of proposed paragraph 254(2)(a), it says that the police officer can require the person "to accompany the peace officer for that purpose"—"to accompany", which may not be the equivalent of an arrest, but it does—

**Mr. Greg Yost:** It's a detention.

**Mr. Derek Lee:** It's a detention. That is only after, as I read it, the peace officer believes that the person has consumed a drug, not that they were impaired.

**The Chair:** Mr. Yost.

**Mr. Greg Yost:** We'll discuss that perhaps further, but there may be circumstances where you don't want that person right there: "Come over here where you're away from traffic; accompany me over there", to do that sort of thing. We'll think about that wording, but it's certainly not the intention that he can take you for a 20-minute drive to do this. It's supposed to be forthwith.

**The Chair:** Did you have any comment to make, Corporal?

**Cpl Evan Graham:** No, thanks.

**The Chair:** Thank you very much, committee members.

On behalf of the committee members, thanks for staying for the full two hours, past the minister's time.

This meeting is adjourned.







**Published under the authority of the Speaker of the House of Commons**

**Publié en conformité de l'autorité du Président de la Chambre des communes**

**Also available on the Parliament of Canada Web Site at the following address:  
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :  
<http://www.parl.gc.ca>**

---

**The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.**

**Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.**