

## Authority to Demand Blood, Urine and Saliva Samples for Drug Testing

Section 253(a) of the *Criminal Code* makes it an offence to have care or control of a motor vehicle when one's ability to do so is impaired by alcohol or drugs. However, there are no federal provisions allowing police officers to effectively gather evidence of drug impairment. While blood samples lawfully obtained under the provisions of the *Criminal Code* may be tested for drugs, these provisions apply only in very limited circumstances and are extremely cumbersome to use.<sup>1</sup> Therefore, MADD Canada recommends that the federal government enact provisions authorizing drug testing that are parallel to the *Criminal Code* breath and blood-testing provisions for alcohol.

The drug tests would work in conjunction with SFST, drug evaluation and classification testing, and the existing *Criminal Code* provisions for testing on ASDs and approved instruments. A police officer who suspects or has reasonable and probable grounds to believe that a driver is impaired will first demand an ASD or evidentiary breath test in accordance with the *Criminal Code*'s provisions. If the results indicate a BAC that is inconsistent with the driver's degree of impairment, the officer will demand that the driver participate in a drug evaluation and classification test. Finally, if the results of this test provide reasonable and probable grounds to believe that the driver is impaired by a drug, the officer will demand a saliva, blood or urine sample to provide chemical confirmation of the presence of the drug.

This entire process is important because, in many cases, the chemical drug test will only indicate that a drug is present – not when the drug was taken or whether the driver was impaired. Thus, the chemical test is best used to confirm or negate the officer's finding in the evaluation and classification test, that the driver was impaired by a certain type of drug. The fact that the drug identified by the chemical test matches the officer's conclusion and is consistent with the officer's recorded observations of impairment strengthens the evidence that the driver was impaired by that drug at the time of driving.

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<sup>1</sup> See *supra* text at 28-32.

Nevertheless, police authority to demand bodily samples should not be limited to situations in which a drug evaluation and classification test has been performed. Rather, the legislation should authorize the police to demand a saliva, blood or urine sample from any driver who they have reasonable and probable grounds to believe is impaired by one or more drugs, or a combination of alcohol and drugs. While this belief may result from the drug evaluation and classification test, it may also arise from less formal observations of impairment, the presence of drugs and related paraphernalia, and witness statements. This would make the drug testing provisions comparable to the evidentiary breath testing provisions in section 254(3) of the *Criminal Code*. Failing to comply with this demand, without a reasonable excuse, should give rise to a *Criminal Code* offence. Consistent with section 10(b) of the *Charter*, the driver should be informed of, and allowed to exercise, his or her right to counsel prior to providing the sample. This would likely be unnecessary if the driver had already been so informed and given an opportunity to exercise his or her section 10(b) rights prior to the drug evaluation and classification test.