

Backgrounder: Drug and Alcohol Prohibition Compliance

In order to help reduce repeat criminal behaviour linked to substance abuse, the Government is proposing *Criminal Code* amendments that would re-establish the ability of police and probation officers to collect bodily samples from offenders who are under a court order to abstain from consuming drugs and alcohol.

The amendments proposed will give a court the authority to impose conditions requiring bodily samples to be provided to police and probation officers on demand or at regular intervals where the court sees fit to prohibit the individual from consuming drugs and alcohol. Bodily samples can include breath, blood, urine, saliva, hair and sweat samples. The amendments will allow for conditions to be included in probation orders, conditional sentences and peace bonds.

Under this legislation, failure to provide a sample for drugs or alcohol would constitute a breach of the court order. Currently, failure to comply with a condition of a probation order or peace bond is a criminal offence that can result in up to two years imprisonment. Failure to abide by restrictions set out in a conditional sentence can result in the individual being sent to prison to serve out the remainder of the sentence.

The provisions will ensure that the samples can only be taken and analysed to enforce compliance for the duration of the court order. The ability to make a sample demand will be limited to situations where there are *reasonable grounds to believe* that an individual has breached a condition when they are subject to a probation order or peace bond, and *reasonable grounds to suspect* when they are subject to a conditional sentence. A court may also order an individual to provide samples at regular intervals where such a condition is justified in the circumstances.

Samples obtained under these proposed amendments will be restricted for the purpose of compliance of the prohibition conditions, and will be destroyed once the condition has expired.

History

Prior to October 2006, a number of provisions in the *Criminal Code* allowed the court to impose conditions against the consumption of alcohol or non-prescription drugs. Typically, these conditions were placed on individuals whose criminal offending pattern was linked to substance abuse.

In order to ensure compliance with abstention conditions, courts would often also attach a condition that required an offender to provide bodily samples on demand to police and probation workers. Refusal to provide a bodily sample, or a sample that tested positive for drugs or alcohol, often resulted in prosecutions for breach of the court condition and carried

serious penal consequences. Even the threat of a demand for a sample was an effective deterrent to substance abuse and potentially to further criminal conduct as it reinforced the belief of the offender that there was a high probability of being caught.

However, in October 2006, the Supreme Court of Canada (*R. v. Shoker*) held that, while these provisions gave authority to the courts to impose a condition prohibiting drug and alcohol consumption, there was no such authority for a court to require these offenders to provide bodily samples to ensure compliance. This decision significantly hampered the ability of police and probation officers to monitor offenders in the community, under court order, whose criminal conduct and pattern of re-offending were often tied to substance abuse.

Probation Orders, Conditional Sentences and Peace Bonds

Probation orders, conditional sentences and peace bonds allow for conditions to be imposed upon individuals in the community to ensure public safety. Probation orders and conditional sentences are usually imposed by a court as part of a sentence for a criminal offence.

Probation orders may be imposed for up to three years and can be used whenever an offender is sentenced to less than two years imprisonment. Conditional sentences may be up to two years in length, and they are served in the community, often under house arrest.

Peace bonds are imposed by a court where there is no criminal conviction, but a complainant has satisfied the court that an individual is likely to commit a criminal act. Peace bonds may be up to two years in length, are renewable, and are designed to target specific types of offences, such as property and assault offences, sexual offences against children, and serious personal injury offences.