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Standing Committee On Government Operations and Standing Committee On Social Development
c/o Jennifer Franki-Smith, Committee Clerk and Michael Ball, Committee Clerk
P.O. Box 1320
Yellowknife, Northwest Territories X1A 2L9
Via email, with originals to follow by mail

To the Standing Committee on Government Operations and the Standing Committee on Social Development:

MADD Canada is pleased with many of the proposed changes to the *Motor Vehicle Act*, RSWNT 1988, c M-16 contemplated in Bill 6, *Cannabis Legalization and Regulation Implementation Act*, 3rd Sess., 18th Leg., N.W.T., 2018. However, there are a number of areas in which the legislation could be enhanced. This letter outlines MADD Canada's policies in this area and a number of recommendations to further strengthen Bill 6.

1. Cannabis Retail Procedure, and In-Vehicle Use, Consumption and Open "Containers of Cannabis"

MADD Canada is pleased that cannabis will be sold by the Northwest Territories Liquor Commission in government-controlled stores, rather than in private stores. Further, the prohibition on in-vehicle consumption, use and having an open "container of cannabis" is in accordance with MADD Canada's recommended in-vehicle cannabis policies.

However, MADD Canada is not in favour of permitting cannabis to be sold in the same retail outlets as alcohol. The retail provisions of Bill 6 can be improved by requiring cannabis be sold only in stand-alone cannabis stores.

2. Novice Drivers, Drivers under the Age of 22 and Commercial Drivers

MADD Canada applauds the Northwest Territories for implementing administrative licence suspensions (ALSs) for novice drivers, drivers under the age of 22 and commercial drivers, that are found to be positive for alcohol or drugs, or who fail or refuse to take a required test. Further, the duration of the mandatory ALS for novice drivers and drivers under the age of 22 is in accordance with MADD Canada's extended graduated licensing program policies.

In an effort to strengthen these proposed provisions, MADD Canada recommends that these prohibitions be expanded to apply to all drivers with less than five years of driving experience, regardless of their age. Further,

in accordance with MADD Canada’s preexisting policy, police should be given the ability to demand an oral fluid test at random from any driver under the age of 22 or with less than 5 years of driving experience. Being able to demand testing at random is preferable to requiring the police to meet the individualized suspicion criteria in s. 254(2)(b) of the *Criminal Code*. This provision requires the police to have reasonable grounds to suspect that the driver has alcohol or drugs in his or her body. Although this test would appear to establish a relatively low threshold, in practice it is a significant obstacle to impactful enforcement.¹ MADD Canada is in favour of including vehicle impoundments with ALSs as it greatly strengthens the deterrent impact of the law.

3. Failed Standardized Field Sobriety Test (SFST) or Oral Fluid Test

MADD Canada is supportive of the 30-day ALS for a driver who fails a SFST or who refuses to participate in such tests without a reasonable excuse.

In addition to the ALS for a failed SFST, a new provision should be added to allow for a 30-day ALS for a failed oral fluid test. Further, the 30-day ALS for a failed SFST should be supplemented with a 7-day vehicle impoundment component. This vehicle impoundment component should also apply to drivers who fail an oral fluid test.

4. Drug Recognition Evaluation (DRE) Provisions

MADD Canada agrees with the 24-hour licence suspension, temporary driver’s permit and 90-day ALS for drivers who fail a DRE or refuse to participate, as well as the immediate 90-day ALS for novice drivers who fail a DRE or refuse to participate. Moreover, MADD Canada is supportive of an officer’s DRE determination governing when a DRE is administered after a failed SFST. For example, if the DRE determines the individual is not impaired by a drug despite having failed a SFST, the administrative sanctions for failing a SFST will be lifted. This is reasonable as the DRE is a more comprehensive test and is thus likely to be more accurate than the SFST.

It should be noted that the ALS imposed for a failed SFST and the various ALSs imposed for a failed DRE overlap. It is unclear how these suspensions will work in practice. MADD Canada recommends that this be clarified. Further, in-line with MADD Canada’s recommendation for the SFST provisions, the DRE provisions should be strengthened by implementing a vehicle impoundment component. Any driver who fails a DRE or refuses to participate should be subject to a 30-day vehicle impoundment.

Amendments should be made to Bill 6 to add a 90-day ALS and 30-day vehicle impoundment for any driver who has a blood THC level of 5 ng/ml or more based on an evidentiary blood test, or has a blood THC level of 2.5 ng/ml or more based on an evidentiary blood test and a blood alcohol content of 0.05% based on an approved instrument.

5. 1-Year Driving Prohibition if Convicted of an Offence Under ss. 253 or 254 of the *Criminal Code*, R.S.C. 1985, c. C-46

MADD Canada is happy to see that the current one-year prohibition imposed upon any driver convicted of an offence under ss. 253 or 254 of the *Criminal Code*, will be expanded to include the proposed new drug-impaired driving offences, if and when they are included in the *Criminal Code* (See Bill C-46, *An Act to amend the Criminal*

¹ See R. Solomon & E. Dumschat, “Passive Alcohol Sensors: A Second Best Impaired- Driving Countermeasure” (2016) 20(2) *Canadian Criminal Law Review* 229 at 237-40.

Code (offences relating to conveyances) and to make consequential amendments to other Acts, 1st Sess., 42nd Parl., 2017).

MADD Canada recommends that the 1-year driving prohibition be supplemented by requiring mandatory attendance at a remedial drug program before the offender is able to drive again.

MADD Canada is supportive of Bill 6 and the steps the Northwest Territories have taken to strengthen its traffic safety laws. With a few adjustments, Bill 6 would comply with MADD Canada's recommendations, and the Northwest Territories' drug-related traffic safety laws will provide a model for the provinces and other territories to aspire to.

Sincerely,



Andrew Murie
Chief Executive Officer, MADD Canada



Robert Solomon
National Director of Legal Policy, MADD Canada



Eric Dumschat
Legal Counsel, MADD Canada