Current to July 28, 2008

R.S.C. 1985, c. C-46, s. 254

[eff July 1, 1999 to July 1, 2008]

Criminal Code

R.S.C. 1985, c. C-46

PART VIII OFFENCES AGAINST THE PERSON AND REPUTATION

Motor Vehicles, Vessels and Aircraft

SECTION 254.

Definitions

254. (1) In this section and sections 255 to 258,

"analyst"

"analyst" means a person designated by the Attorney General as an analyst for the purposes of section 258;

"approved container"

"approved container" means

(a) in respect of breath samples, a container of a kind that is designed to receive a sample of the breath of a person for analysis and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada, and

(b) in respect of blood samples, a container of a kind that is designed to receive a sample of the blood of a person for analysis and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada;

"approved instrument"

"approved instrument" means an instrument of a kind that is designed to receive and make an analysis of a sample of the breath of a person in order to measure the concentration of alcohol in the blood of that person and is approved as suitable for the purposes of section 258 by order of the Attorney General of Canada;

"approved screening device"

"approved screening device" means a device of a kind that is designed to ascertain the presence of alcohol in the blood of a person and that is approved for the purposes of this section by order of the

Attorney General of Canada;

"qualified medical practitioner"

"qualified medical practitioner" means a person duly qualified by provincial law to practise medicine;

"qualified technician"

"qualified technician" means,

(a) in respect of breath samples, a person designated by the Attorney General as being qualified to operate an approved instrument, and

(b) in respect of blood samples, any person or person of a class of persons designated by the Attorney General as being qualified to take samples of blood for the purposes of this section and sections 256 and 258.

Testing for presence of alcohol in the blood

(2) Where a peace officer reasonably suspects that a person who is operating a motor vehicle or vessel or operating or assisting in the operation of an aircraft or of railway equipment or who has the care or control of a motor vehicle, vessel or aircraft or of railway equipment, whether it is in motion or not, has alcohol in the person's body, the peace officer may, by demand made to that person, require the person to provide forthwith such a sample of breath as in the opinion of the peace officer is necessary to enable a proper analysis of the breath to be made by means of an approved screening device and, where necessary, to accompany the peace officer for the purpose of enabling such a sample of breath to be taken.

Samples of breath or blood where reasonable belief of commission of offence

(3) Where a peace officer believes on reasonable and probable grounds that a person is committing, or at any time within the preceding three hours has committed, as a result of the consumption of alcohol, an offence under section 253, the peace officer may, by demand made to that person forthwith or as soon as practicable, require that person to provide then or as soon thereafter as is practicable

(a) such samples of the person's breath as in the opinion of a qualified technician, or

(b) where the peace officer has reasonable and probable grounds to believe that, by reason of any physical condition of the person,

(i) the person may be incapable of providing a sample of his breath, or

(ii) it would be impracticable to obtain a sample of the person's breath,

such samples of the person's blood, under the conditions referred to in subsection (4), as in the opinion of the qualified medical practitioner or qualified technician taking the samples

are necessary to enable proper analysis to be made in order to determine the concentration, if any, of alcohol in the person's blood, and to accompany the peace officer for the purpose of enabling such samples to be taken.

Exception

(4) Samples of blood may only be taken from a person pursuant to a demand made by a peace officer under subsection (3) if the samples are taken by or under the direction of a qualified medical practitioner and the qualified medical practitioner is satisfied that the taking of those samples would not endanger the life or health of the person.

Failure or refusal to provide sample

(5) Every one commits an offence who, without reasonable excuse, fails or refuses to comply with a demand made to him by a peace officer under this section.

Only one conviction for failure to comply with demand

(6) A person who is convicted of an offence committed under subsection (5) for a failure or refusal to comply with a demand made under subsection (2) or paragraph (3)(a) or (b) in respect of any transaction may not be convicted of another offence committed under subsection (5) in respect of the same transaction.

** Editor's Table **

For changes prior to Editor's Tables, please see other sources for in force information.

Provision	Changed by	In force	Authority
254(3)	1999 c32 s2	1999 Jul 1	SI/99-73

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R.S.C. 1985, c. C-46, s. 254; R.S.C. 1985, c. 27 (1st Supp.), s. 36; R.S.C. 1985, c. 1 (4th Supp.), ss. 14, 18 (F); R.S.C. 1985, c. 32 (4th Supp.), s. 60; S.C. 1999, c. 32, s. 2.