

## 30/60/90 DAY DECISION NOTE

## Issue: Decriminalization

- The decriminalization of people who use drugs in B.C. would be a significant step in responding to the overdose crisis and provide an important opportunity to address the stigma and discrimination faced by people who use drugs. **A decision is required within 30 days.**

## Background:

- Canada criminalizes the unauthorized simple possession of drugs under the *Controlled Drugs and Substances Act* (CDSA), section 4(1).
- Possession continues to be the most prevalent drug-related criminal offence in Canada, despite a decreasing rate.<sup>1</sup>
- In B.C., the criminalization of people who use drugs exacerbates stigma associated with substance use and may prevent people from accessing life-saving health and social services. In addition, the long-term impact of a criminal record on obtaining employment, applying for housing/an apartment and certain restrictions related to free movement (e.g., passport rules of various other jurisdictions) are significant.
- On July 9, 2020 the Canadian Association of Police Chiefs endorsed the decriminalization of simple possession of illicit drugs. This endorsement echoes recent recommendations from B.C.'s Provincial Health Officer Dr. Bonnie Henry, Chief Coroner Lisa Lapointe, and others who believe that substance use in our society should be treated as a health issue rather than a moral or criminal issue. Many police agencies in B.C. have adopted policies and/or practices to not refer simple possession offences to the Prosecution Service for charge consideration but rather choose other avenues available for disposition of the offence. Police may refer a matter to Crown for consideration of more serious charges but due to various reasons, the Prosecution Service may reduce the eventual charge to a lesser offence such as simple possession.
- Despite these policies and practices, front-line workers in the overdose crisis and advocacy groups for people with lived and living experience continue to report that fear of arrest and prosecution for the use or possession of drugs or of injecting supplies is deterring people from seeking health and social services.
- On July 20, 2020, Premier John Horgan wrote to the Prime Minister to urge the federal government to develop a national plan to decriminalize the possession of controlled substances for personal use and is awaiting a formal response.
- s.13; s.16
- 

<sup>1</sup> Statistics Canada. Table 35-10-0030-01 Adult criminal courts, guilty cases by type of sentence (<https://doi.org/10.25318/3510003001-eng>)

Page 02 of 75

Withheld pursuant to/removed as

s.13

**MINISTRY OF MENTAL HEALTH AND ADDICTIONS  
MEETING MATERIAL**

**CLIFF #:** 1188262

**PREPARED FOR:** Honourable Sheila Malcolmson, Minister

**DATE, TIME, AND LOCATION OF MEETING:** March 2, 2021, 2:30-3:00 p.m.

**MEETING REQUEST/ISSUE:** Meeting between Minister Malcolmson and Minister Farnsworth, Minister of Public Safety and Solicitor General (PSSG) to discuss MMHA and PSSG shared mandate letter commitments in advance of the legislative session.

**SHOULD MINISTRY STAFF ATTEND THIS MEETING:** Yes, Deputy Minister Christine Massey.

**BACKGROUND:**

MMHA and PSSG have three shared mandate items:

- Fast track the move toward decriminalization by working with police chiefs to push Ottawa to decriminalize simple possession of small amounts of illicit drugs for personal use. In the absence of prompt federal action, develop a made-in-BC solution that will help save lives (with PSSG and AG).
- Lead work to invest more in community-based mental health and social services so there are more trained front-line workers to help people in crisis, and free up police to focus on more serious crimes (MMHA leads, PSSG supporting).
- Expand the successful 'situation table' model that connects front-line workers from different health, safety, and social service sectors to identify and help vulnerable people (PSSG leads, MMHA supporting).

Additional PSSG mandate items that have implications for MMHA include:

- Addressing serious crime, including cracking down on those who distribute toxic drugs on the streets.
- Evaluate the recommendations of the Special Committee on Reforming the *Police Act* and bring forward other police-related recommendations including to review training and procedures related to 'wellness checks.'

**Decriminalization**

- The main drivers for pursuing decriminalization include the continuing impacts of the overdose emergency, the stigma faced by people who use illicit substances and the barriers this creates to seeking treatment, and the potential to better deploy law enforcement, justice sector and correctional services resources.
- On July 20, 2020, Premier Horgan wrote to Prime Minister Trudeau, urging the federal government to develop a national plan on decriminalization.
- On February 3, 2021, the Minister of Mental Health and Addictions sent a letter to the federal Minister of Health formally requesting to explore a s.56 exemption to the

s.13

- s.13; s.16

- s.13

- 

### **Community-based mental health and social services (freeing up police)**

- In many communities across BC, police are the first responders to emergency calls involving people in mental health and substance use (MHSU) crisis. While police presence is needed in some of these situations, it is broadly recognized that in cases a health and social service-focused response is more appropriate and more effective than a law enforcement response.
- Since the 1990s, organizations including PSSG, health authorities, the RCMP and municipal police forces have been collaborating to improve coordination or provide interfaced MHSU services for people experiencing crisis.
- MMHA staff are conducting a scan of successful models of community-based mental health crisis intervention to inform policy options. Broadly, these models include police/health interface services, technology solutions, and alternate dispatch solutions.
- *Police health interface* models include:
  - Integrated Mobile Crisis Response Services: This model pairs a police officer with a mental health professional in a police vehicle to respond to MHSU emergencies in the community. Examples include: Car 67 (Surrey), Car 87 and 88 (Vancouver), and Integrated Mobile Crisis Response Team (IMCRT in Island Health).
  - Integrated Case Management and Outreach Services: This model partners MHSU services in health authorities with community agencies to support recovery of individuals with complex mental illnesses and/or substance use disorders. Examples include: Assertive Community Treatment (ACT) teams, which in some locations include fully embedded police officers; and Assertive Outreach Teams (AOT) which pairs a MHSU service provider with a police officer.

- MHSU Liaison: The model situates a Liaison Officer in a police agency to co-ordinate services from healthcare to law enforcement for the purposes of responding to an individual in crisis, facilitating outreach assessments, managing risk, monitoring case managed individuals and supporting review panel and extended leave processes.
- *Technology based solutions* include programs that provide police officers with virtual access to health care providers for on-the-spot mental health consultation at the scene of the crisis incident, or allow police officers to enter notes into an app that translates their observations into clinical language that medical staff can more readily interpret, speeding up the process at the hospital. It should be noted that while these models may improve efficiency and connections between the police and health system, they still rely on an initial police response to a mental health crisis situation.
- *Alternate dispatch solutions* are service models in which police are not dispatched to MHSU emergencies unless there is active risk (e.g. violence or weapons). Instead, a civilian-led response team is dispatched. This could either be through a separate mental health emergency line, or through existing emergency lines with dispatchers trained to identify situations where police are not required.

### **Situation Tables**

- PSSG's Office of Crime Reduction and Gang Outreach (OCR-GO) leads work related to situation tables in BC. Staff from OCR-GO and MMHA have met to share foundational information and discuss how MMHA can support PSSG.
- A situation table is a service model comprised of front-line workers from various agencies and sectors that meets regularly to proactively identify and mitigate the risks associated with criminal offending, victimization, and personal crisis.
- Situation table clients meet the threshold of Acutely Elevated Risk, which means they have multiple risk factors that span the mandates of more than two agencies; that the likelihood of a crisis in their lives is imminent; and that the crisis will be severe.
- Participants include local and/or Indigenous government, police, children and family services, community corrections, health authority, housing, income assistance, emergency services, school board and non-profit service providers.
- Most clients are referred to situation tables through police, but it is most often other agencies that take the lead on addressing the client's situation and connect them to services and supports to mitigate their risk.

### **SUGGESTED RESPONSE:**

- The discussion is an opportunity for the Ministers to learn about each other's priorities in relation to these shared mandate commitments.

**JOINT MINISTER MEETING:** Yes

**IF SO, CAN THIS MATERIAL BE SHARED:** Yes

---

**Program ADM/Division:** Nick Grant, Strategic Policy and Planning

**Telephone:** 778 698-7967

**Program Contact (for content):** Tricia Poilievre

**Drafter:** Juanita Jara and Kristin Barnes

**Date:** February 22, 2021

## Decriminalization

### Introduction:

- The decriminalization of people who use drugs in BC would be a significant step in responding to the overdose crisis and provide an important opportunity to address the stigma and discrimination faced by people who use drugs.

### Background:

- Canada prohibits the unauthorized simple possession of drugs under the *Controlled Drugs and Substances Act* (CDSA), section 4(1).
- Possession continues to be the most prevalent drug-related criminal offence in Canada, despite a decreasing rate.<sup>1</sup>

#### *Decriminalization*

- Decriminalization refers to the process of removing criminal sanctions related to possession for personal use only; drug trafficking and other drug-related offences would remain illegal.
- In 2017, the Global Commission on Drug Policy called for decriminalization of the consumption and possession of small amounts of illegal drugs as a key to addressing the opioid epidemic in North America. The commission stated that “only by decriminalizing the consumption of drugs and their possession for personal use can people in need of health and human services access these services easily, and without fear of legal coercion or social exclusion.”<sup>2</sup>
- At least 30 jurisdictions around the world have adopted or are beginning to adopt a shift in drug policy that moves away from criminalizing people who use drugs to one of decriminalization, within the context of supporting human rights. In January 2019, the United Nations Chief Executive Board, which represents 31 United Nations agencies, announced the adoption of a common position on drug policy that endorses decriminalization of possession and use of drugs.<sup>3</sup>
- In British Columbia, the criminalization of people who use drugs exacerbates stigma associated with substance use and may prevent people from accessing life-saving health and social services. In addition, the long-term impact of a criminal record on obtaining employment, applying for housing/an apartment and certain restrictions related to free movement (e.g., passport rules of various other jurisdictions) are significant.

### Ministry/Government Actions to date:

- On April 24, 2019, the Provincial Health Officer, Dr. Bonnie Henry, released a report urging the B.C. government to consider decriminalization of people who use drugs.
- On July 9, 2020 the Canadian Association of Police Chiefs endorsed the decriminalization of possession of illicit drugs for personal use. This endorsement echoes recent recommendations from BC’s Provincial Health Officer Dr. Bonnie Henry, Chief Coroner Lisa Lapointe, and others who believe that substance use in our society should be treated as health issue rather than a moral or criminal issue.
- On July 20, 2020, Premier John Horgan wrote to the Prime Minister to urge the federal government to develop a national plan to decriminalize the possession of controlled substances for personal use and is awaiting a formal response.

---

<sup>1</sup> Statistics Canada. Table 35-10-0030-01 Adult criminal courts, guilty cases by type of sentence (<https://doi.org/10.25318/3510003001-eng> )

<sup>2</sup> Global Commission on Drug Policy. (2017). *The Global Commission Calls for Decriminalization as key to addressing the Opioid Epidemic in North America*. Retrieved from: <https://www.globalcommissionondrugs.org/the-global-commission-calls-for-the-decriminalization-of-drug-use-and-possession-as-key-to-addressing-the-opioid-epidemic-in-north-america>

<sup>3</sup> United Nations System Chief Executives Board for Coordination. Summary of deliberations, Second regular session of 2018. Manhasset, NY: United Nations System Chief Executives Board for Coordination; 2019 Jan 18 [cited 2019 Mar 26]. Available from: <https://www.unsceb.org/CEBPublicFiles/CEB-2018-2-SoD.pdf>

Page 07 of 75

Withheld pursuant to/removed as

s.13 ; s.16

Page 08 of 75

Withheld pursuant to/removed as

s.13



**From:** [Massey, Christine MMHA:EX](#)  
**To:** [Sieben, Mark PSSG:EX](#); [Fyfe, Richard J AG:EX](#); [Bond, Allison MCF:EX](#); [Brownsey, Silas IGRS:EX](#); [Brown, Stephen R HLTH:EX](#); [Byres, David W HLTH:EX](#)  
**Cc:** [Butler, Ally MMHA:EX](#); [Casanova, Tamara MMHA:EX](#)  
**Subject:** FW: Letter from Minister of Mental Health and Addictions  
**Date:** February 3, 2021 1:44:09 PM  
**Attachments:** [1171210 Hajdu Outgoing.pdf](#)

---

Attached is the letter sent today from Minister Malcolmson to Minister Hajdu regarding decriminalization.

Mark/Richard/Steve – your ministers were also copied.

---

**From:** Minister, MMHA MMHA:EX <MMHA.Minister@gov.bc.ca>  
**Sent:** February 3, 2021 1:22 PM  
**To:** 'Patty.Hajdu@parl.gc.ca' <Patty.Hajdu@parl.gc.ca>  
**Cc:** Minister, HLTH HLTH:EX <HLTH.Minister@gov.bc.ca>; Minister, PSSG PSSG:EX <PSSG.Minister@gov.bc.ca>; Minister, AG AG:EX <AG.Minister@gov.bc.ca>  
**Subject:** Letter from Minister of Mental Health and Addictions

Hello ,

Please see attached letter from Honourable Sheila Malcolmson, Minister of Mental Health and Addictions.

Thanks,

**Nicky Reid**

Administrative Assistant to The Honourable Sheila Malcolmson  
Minister of Mental Health and Addictions | Parliament Buildings | Room 247 | P: 250-952-7623

Page 10 of 75 to/à Page 27 of 75

Withheld pursuant to/removed as

s.12

Page 28 of 75 to/à Page 30 of 75

Withheld pursuant to/removed as

s.13

Page 31 of 75

Withheld pursuant to/removed as

s.13 ; s.16

Page 32 of 75

Withheld pursuant to/removed as

s.13

Page 33 of 75

Withheld pursuant to/removed as

s.13 ; s.16

Page 34 of 75 to/à Page 38 of 75

Withheld pursuant to/removed as

s.13

Page 39 of 75

Withheld pursuant to/removed as

s.12



**From:** [Walsh, Taryn MMHA:EX](#)  
**To:** [Butler, Ally MMHA:EX](#)  
**Subject:** FW: Decrim - Fed/Prov Leg  
**Date:** December 11, 2020 8:09:18 AM  
**Attachments:** [575030 MMF Priorities Letter to Police.pdf](#)  
[1183241 2020-12-14 Decrim DBN.pdf](#)

---

---

**From:** Walsh, Taryn MMHA:EX  
**Sent:** Friday, December 11, 2020 8:07 AM  
**To:** Massey, Christine MMHA:EX <Christine.Massey@gov.bc.ca>  
**Subject:** Decrim - Fed/Prov Leg

Hi Christine see below and let me know if Kelly requires more info

**Discussions with Federal Government:**

s.13; s.16

**Decriminalization**

○ “Decriminalization” would remove criminal sanctions for possession of small amounts of controlled substances for personal use. Drug trafficking and other drug related offences would remain illegal. Criminal law is a federal responsibility. Currently, Canada criminalizes the possession of drugs under the *Controlled Drugs and Substances Act (CDSA)*, section 4(1). There is a possibility for decriminalization in BC via a Section 56 exemption to the *Controlled Drugs and Substances Act* on the basis that it is necessary for a medical or scientific purpose or is otherwise in the public interest.

○ Dr. Bonnie Henry’s report *Stopping the Harm* states at page 37:

*Ideally, decriminalization would involve changes to the federal Controlled Drugs and Substances Act (the Act). In the absence of legislative changes to the Act, BC can still take steps to achieve protection of the health of British Columbians by limiting the criminal enforcement of simple possession ....*

Dr. Henry then goes on to describe options for amending Provincial Police Policy or Regulation under the *Police Act* – however given that criminal law is a federal

responsibility, these options would not remove all possibility of criminal charges for possession in BC because possession would remain a criminal offence.

s.13

- Even when charges are referred to Crown by Police, there is new guidance to the Public Prosecution Service of Canada (August 2020) that aligns with a health-focused approach by directing prosecutors to consider alternatives to prosecution and pursue diversion from the criminal justice system (<https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p5/ch13.html>)

s.13

*Taryn Walsh*

Assistant Deputy Minister

Strategic Priorities and Initiatives

Ministry of Mental Health and Addictions

Page 42 of 75 to/à Page 44 of 75

Withheld pursuant to/removed as

s.13

**MINISTRY OF MENTAL HEALTH AND ADDICTIONS  
DECISION BRIEFING NOTE**

**Cliff #1183241**

**PREPARED FOR:** Honourable Sheila Malcolmson - **FOR DECISION**

**TITLE:** Decriminalization of possession of controlled substances

**PURPOSE:** Determining next steps to meet the mandate commitment for decriminalization

**BACKGROUND:**

- Since a public health emergency was declared in April 2016, more than 5,500 lives have been lost in BC as a result of illicit drug toxicity. More people die from overdose than motor vehicle accidents, homicides and suicides combined.
- Currently, Canada criminalizes the possession of drugs under the *Controlled Drugs and Substances Act (CDSA)*, section 4(1).
  - Possession continues to be the most prevalent drug-related criminal offence in Canada, despite a decreasing rate.<sup>1</sup> In BC, between 2008-2017 there were 49,891 criminal possession charges.
- The criminalization of people who use drugs exacerbates stigma associated with substance use and may prevent people from accessing life-saving health and social services.
- There have been increasing calls in Canada to decriminalize possession of illicit drugs for personal use, including:
  - The Canadian Association of Police Chiefs: *Decriminalization for Simple Possession of Illicit Drugs: Exploring Impacts on Public Safety & Policing*
  - Dr. Bonnie Henry: *Stopping the Harm*
  - Canadian Mental Health Association: *Care not Corrections: Relieving the Opioid Crisis in Canada*
  - Vancouver Coastal Health: *Response to the Opioid Overdose Crisis: in Vancouver Coastal Health.*
  - Pivot Legal Society: *Act Now! Decriminalizing Drugs in Vancouver*
- On July 20, 2020, Premier John Horgan wrote to the Prime Minister to urge the federal government to develop a national plan to decriminalize the possession of controlled substances for personal use.
- The November 26, 2020 Mandate Letter for the Minister of Mental Health and Addictions directs the Ministry to:

*Work with the Minister of Public Safety and Solicitor General and the Attorney General and Minister responsible for Housing to fast track the move toward decriminalization by working with police chiefs to push Ottawa to decriminalize simple possession of small amounts of illicit drugs for personal use. In the absence of prompt federal action, develop a made-in-B.C. solution that will help save lives.*

---

<sup>1</sup> Statistics Canada. Table 35-10-0030-01 Adult criminal courts, guilty cases by type of sentence (<https://doi.org/10.25318/3510003001-eng>)

Page 46 of 75 to/à Page 51 of 75

Withheld pursuant to/removed as

s.13 ; s.16

Page 52 of 75 to/à Page 72 of 75

Withheld pursuant to/removed as

s.12



February 3, 2021

1171210

The Honourable Patty Hajdu  
Minister of Health  
Ottawa, ON K1A 0A6

Dear Minister:

I am writing further to Premier Horgan's letter of July 20, 2020 to The Right Honourable Prime Minister Justin Trudeau, and further to our productive discussions regarding federal decriminalization of small amounts of controlled substances for personal use.

In November, Premier Horgan appointed me as the Minister of Mental Health and Addictions and directed me in my mandate letter to lead work to, "*...fast track the move toward decriminalization by working with police chiefs to push Ottawa to decriminalize simple possession of small amounts of illicit drugs for personal use.*"

Since BC declared an overdose public health emergency in April 2016, more than 6,000 lives have been lost in BC as a result of illicit drug toxicity. More people die from overdose here than motor vehicle accidents, homicides and suicides combined.

In BC we have continued to escalate the provincial response to the overdose crisis through a bold and innovative set of measures and policies. Working with our partners, evidence-based policies and services are in place to save lives including:

- Expansion of overdose prevention services and provision of optimal supplies, training and community-level infrastructure to ensure people have sustained access to Naloxone.
- Innovative approaches to separate people from the toxic drug supply through pharmaceutical alternatives such as:
  - Tablet Injectable Opioid Agonist Therapy, a model using supervised consumption of hydromorphone tablets via oral intake and/or injection, for individuals who have not benefitted from oral OAT or iOAT.
  - New clinical guidance published with the BC Centre on Substance Use (*Risk Mitigation in the Context of Dual Public Health Emergencies*) for prescribing substances to support COVID-19 related to self-isolation, including prescription alternatives to drugs including opioids, stimulants, benzodiazepines, alcohol and nicotine.
  - The Pharmaceutical Alternatives to the Toxic Drug Supply policy initiative, which will expand safe supply to prevent deaths from high potency illicit fentanyl.
- Provincial Episodic Overdose Prevention Services (e-OPS) Protocol to guide social services staff on how to observe substance use and respond to overdoses outside of designated or fixed supervised consumption services or overdose prevention services.

...2

- Lifeguard mobile application that mitigates risks associated with using drugs alone by automatically connecting to emergency responders if an individual become unresponsive while using drugs.
- Rapidly responding to the devastating impacts of COVID-19 by scaling up key interventions including inhalation services, smoking supplies, nurses supporting access to medication-based treatment and pharmaceutical alternatives, and interdisciplinary outreach teams.

In addition, BC has taken action to strengthen the full continuum of substance use services including:

- *Ending stigma:* Reducing stigma around drug use and treating problematic substance use as a health issue and not a moral or criminal issue. Initiatives underway include:
  - Planning a province-wide social marketing anti-stigma campaign to follow up on previous anti-stigma work encouraging all British Columbians to see addiction as a health condition that deserves the same dignity, respect and treatment as any other.
- *Prevention:* Expanding early intervention services, particularly for youth. Initiatives underway include:
  - Expanding integrated services through Foundry Centres which offer primary care, mental health and substance use services, peer and family support, and social services.
  - Establishing new models to promote greater collaboration such as Integrated Child and Youth Teams in school districts.
- *Building a network of treatment and recovery services:* Expanding bed-based services, outpatient treatment and robust referral pathways through:
  - Improving access to addiction treatment through the implementation of Rapid Access to Addictions Care Clinics in all health regions.
  - Increasing the number of adult and youth residential treatment and recovery beds.
  - Increasing access to intensive outpatient treatment through new investment.
  - Enhancing team-based service delivery by implementing the Substance Use Integrated Teams initiative to increase multidisciplinary, wraparound care for adults with a range of substance use challenges.
- *Housing and other supports:* Enhancing access to safe supportive housing options such as:
  - Working with health authorities to provide substance use supports such as overdose prevention services and wraparound care at supportive housing sites.

Although BC has made significant progress implementing a wide-ranging overdose response, people who use drugs continue to face obstacles accessing these services. In particular, the stigma around drug use along with the fear of criminal sanctions are barriers preventing people from accessing life-saving services.

...3



The pandemic has only added urgency - we know that during the pandemic, the illicit drug supply has become much more toxic, attendance at overdose prevention services is down 40%, and more people are using alone, leading to tragic increases in overdose deaths. Decriminalizing individuals in possession of drugs for personal use would be a significant step in saving lives, reducing stigma, and treating problematic drug use as a health issue and not a moral or criminal issue.

Decriminalization would allow for more effective use of law enforcement, court and correctional services resources, as the Canadian Association of Police Chiefs have argued. Already, BC's Minister of Public Safety and Solicitor General Mike Farnworth has directed policing units to focus efforts on disrupting the supply chain, and to pursue a public health and harm reduction approach to addressing substance use. Many police agencies in BC have adopted policies and practices to refrain from referring simple possession offences to the prosecution service for charge consideration, but this approach is not consistent across the province and involves significant discretion.

We cannot address these challenges alone and need the support of our federal colleagues working with us to reduce stigma and save lives. Through our work with experts, advocates and people with lived experience, we have identified decriminalization as a critical component of a comprehensive response to addressing the overdose crisis and an important step to reducing system barriers. We believe that you share this view. This is an area of federal jurisdiction and we believe that national leadership is key.

I have the support of the Premier to bring this matter to your attention. Are you willing to consider a Section 56 exemption to the *Controlled Drugs and Substances Act* for BC to decriminalize the possession of small amounts of controlled substances for personal use, as a way to reduce stigma as a barrier to treatment? If you are, I look forward to the detailed work ahead. Provincial staff are already in contact with Health Canada and are ready to engage in more fulsome analysis, including starting to map out what a future public engagement process could look like.

I look forward to working with you on this important initiative, and the many other ways we can work together to help save lives.

Sincerely,



Sheila Malcolmson  
Minister

pc: Honourable David Eby, Attorney General and Minister responsible for Housing  
Honourable Mike Farnworth, Minister of Public Safety and Solicitor General  
Honourable Adrian Dix, Minister of Health