

Title IIO Investigations and the CDSA Exemption	Number 5180
Section Investigations	Original Effective Date January 31, 2023
Responsibility Chief Civilian Director	Last Revised Effective Date Not applicable

POLICY

1 Introduction

- 1.1 This policy provides interim guidance to the IIO investigative staff, police duty officers who report critical incidents to the IIO, other police officers, and members of the public on how the IIO will manage critical incidents where the ‘public interest’ exemption (“the Exemption”) under subsection 56(1) of the *Controlled Drugs and Substances Act* (CDSA) may be a factor.
- 1.2 The Exemption comes into effect on January 31, 2023 and will expire after three years unless replaced by another exemption.
- 1.3 The Exemption states that individuals who are in possession of an illegal substance as defined by the Exemption, including opioids, cocaine, methamphetamine or MDMA, or any combination of these, are exempt from application of subsection 4(1) of the CDSA as long as the illegal substances are for personal use only, do not exceed a combined total maximum of 2.5 grams, and meet the requirements of the Exemption.
- 1.4 The full text of the Exemption can be found in Appendix A.

2 Police Action

- 2.1 Without the exemption, a police officer who did not seize or returned illicit drugs to an individual who subsequently sustained serious harm or death related to use of those drugs, may be subject to an IIO investigation. This investigation may result in criminal charges against the officer for criminal negligence and/or failure to provide necessities and endangering the life or health of a person.
- 2.2 The Exemption requires that officers lawfully allow individuals to retain illegal substances for personal use, or will return them if they have been seized, provided the scope and conditions of the Exemption have been met.
- 2.3 For the duration of the effective period for the Exemption, if an individual, or third party, sustains serious harm or dies for reasons related to use of illicit substances which were not seized or were returned by police previously, the police agency should report the incident to the IIO if:

- the time and/or location of the police interaction were proximate to the serious harm/death, and
- the scope and conditions of the Exemption were not adequately met.

Advice can be sought from the IIO if there is doubt whether an incident should be reported.

3 IIO Action

- 3.1 In cases where police were aware an individual had illicit substances, and that person subsequently sustained serious harm or dies for reasons related to use of those substances, the IIO will generally provide advice and not commence an investigation when:
- the scope and conditions of the Exemption appear to have been met,
 - there is no evidence that consumption of the illegal substance occurred while the affected person was detained or in the custody of police,
 - there is no evidence that the consumption or serious harm/death occurred in an officer's presence or while the officer was in contact with the affected person,
 - there is no information received that a failure to take action by police may have contributed to the serious harm or death, and
 - there is no allegation of wrongdoing from a member of the public related to police actions/inactions.
- 3.2 When determining whether the IIO will commence an investigation, the on-call Team Director will consider the following questions:
- is there information that police caused the harm or death by action or inaction, other than provided within the Exemption?
 - was there any direct or indirect contact between police and the affected person at a time relevant to the injury/death?
 - may other police actions or inactions have contributed to behaviour on the part of the affected person that resulted in their serious injuries or death?
- 3.3 Decisions will necessarily be based upon initial information provided by the involved police agency, but the IIO will undertake investigative tasks as necessary to independently verify the information provided where it is in the public interest to do so.

PROCEDURES

1 Investigative Steps

- 1.1 If further investigation is required into an incident that involves application of the Exemption, an investigation will commence.
- 1.2 Initial investigative steps will seek to determine:
- whether an officer did or failed to do anything beyond what is required by the exemption,
 - whether any additional circumstances may have factored into the incident (e.g., if the affected person expressed suicidal ideation, etc.) that may have precluded officer's adherence with the Exemption.
- 1.3 If the affected person may have suffered serious harm or death related to use of an illegal substance covered by the Exemption, investigators will seek to identify:
- whether the Exemption was in force at the material time,
 - whether the person may have fallen under one or more of the exceptions to the Exemption,

- whether the nature and/or quantity of the substance(s) involved fell within the ambit of the Exemption,
- whether the officer was aware of any circumstance(s) that would have made it unreasonable to return the substance(s), notwithstanding the Exemption, and
- whether there is evidence that the serious harm or death may have had any other significant contributory cause(s) resulting from any other action(s) or inaction of the officer.

1.4 Should the investigation confirm the actions of the officer appropriately complied with the Exemption, the matter may be concluded by addendum when appropriate. Refer to IIO Police 5170 Concluding Investigations by Addendum for more information.

2 Interim Guidance


2.1 This policy provides initial interim guidance and will be subject to review within six months of the commencement of the Exemption or earlier if directed by the CCD of the IIO.

SUPPORTING DOCUMENTATION

Document	Name/Location
Appendix A	Subsection 56(1) class exemption for adults in the province of British Columbia to possess small amounts of opioids, cocaine, methamphetamine and MDMA

POLICY

Approved by:



Ronald J. MacDonald, KC, Chief Civilian Director

Date Approved:

December 8, 2022

PROCEDURES

Approved by:



Gene Krecsy, Chief of Investigations, Operations

Date Approved:

December 8, 2022

APPENDIX A

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<https://www.canada.ca/en/health-canada/services/health-concerns/controlled-substances-precursor-chemicals/policy-regulations/policy-documents/exemption-personal-possession-small-amounts-certain-illegal-drugs-british-columbia/subsection-56-1-class-exemption-adults-18-years-age-older.html>

Subsection 56(1) class exemption for adults in the province of British Columbia to possess small amounts of opioids, cocaine, methamphetamine and MDMA

This exemption is granted in consideration of the following

- too many lives have been lost due to overdose in the province of British Columbia. Others have been forever altered;
- substance use harms are first and foremost a health and social issue and should be treated as such;
- stigma associated with substance use can lead people to hide their drug use, use in riskier ways and prevent them from accessing services and supports;
- Indigenous and racialized communities have been and are disproportionately impacted by the overdose crisis and are overrepresented in the criminal justice system;
- the *Controlled Drugs and Substances Act* (CDSA) has a dual purpose to protect public health and maintain public safety; and
- the province of British Columbia has requested that an exemption be granted under subsection 56(1) of the CDSA so that adults will not be subject to criminal charges for the personal possession of small amounts of certain controlled substances as part of its comprehensive response to address the overdose crisis.

Definitions

Except as provided below, the terms used in this exemption have the same meaning as those provided in the CDSA and its regulations.

"Adult" means an individual who is 18 years of age or older.

"Airport" means an aerodrome in respect of which an airport certificate issued under Subpart 2 of Part III of the *Canadian Aviation Regulations* is in force.

"Canadian Armed Forces Member" means, in accordance with the definitions in subsection 2(1) of the *National Defence Act*, an officer or non-commissioned member

1. of the regular force;
2. of the special force; or
3. of the reserve force, when the officer or non-commissioned member is
 1. undergoing drill or training, whether in uniform or not,
 2. in uniform,
 3. on duty,
 4. called out under Part VI of the *National Defence Act* in aid of the civil power,
 5. called out on service,
 6. placed on active service,

7. in or on any vessel, vehicle or aircraft of the Canadian Forces or in or on any defence establishment or work for defence,
8. serving with any unit or other element of the regular force or the special force, or
9. present, whether in uniform or not, at any drill or training of a unit or other element of the Canadian Forces.

"Canadian Coast Guard vessel" means a vessel, as defined in the *Canada Shipping Act, 2001*, that is owned by the Government of Canada and is managed and operated by the Canadian Coast Guard.

"Child care facility premises" means the premises on which supervision of children under 13 years of age is provided in accordance with a licence issued under section 11 of the *Community Care and Assisted Living Act*, S.B.C. 2002, c. 75.

"Code of Service Discipline" means the provisions of Part III of the *National Defence Act*.

"Illegal substance" means an opioid, cocaine, methamphetamine or MDMA, as set out in the Annex.

"K-12 School premises" means the premises

1. owned or leased by a board or francophone education authority, as defined in the *School Act*, R.S.B.C. 1996, c. 412, or an authority, as defined in the *Independent School Act*, R.S.B.C. 1996, c. 216; and
2. at which students receive instruction in an educational program, as defined in the *School Act* or *Independent School Act*, as applicable.

"Minor" means an individual under 18 years of age.

"Mobile equipment" means a self-propelled device that is incapable of exceeding 10 km/h and that

1. can be steered only by an operator walking or standing behind, walking in front of or walking alongside the device;
2. is a work platform used to raise and lower the following
 1. the operator of the platform, or
 2. tools and supplies; or
3. is in a class of devices prescribed by the MVA or its regulations,

but does not include a device in a class of devices excluded by regulation made under MVA.

"Motor assisted cycle" means a device

1. to which pedals or hand cranks are attached that will allow for the cycle to be propelled by human power;
2. on which an individual may ride;
3. to which is attached a motor of a type prescribed by the MVA or its regulations, and that has an output not exceeding the output prescribed by the MVA or its regulations; and
4. that meets the other criteria prescribed under section 182.1 (3) of the MVA.

"Motor vehicle" means a vehicle, not run on rails, that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires, but does not include mobile equipment, a motor assisted cycle or a regulated motorized personal mobility device.

"MVA" means the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318.

"Premises" means a building or structure and includes outside areas adjacent to the building or structure ordinarily used in the course of providing services.

"Rail transportation" means

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1. a rail transportation system as defined in the *South Coast British Columbia Transportation Authority Act*, S.B.C. 1998, c. 30;
2. a commuter rail service as defined in the *British Columbia Transit Act*, R.S.B.C. 1996, c. 38; or
3. the transportation of passengers by railway, as defined in the *Railway Act*, R.S.B.C. 1996, c. 36.

"Regulated motorized personal mobility device" means a personal mobility device

1. that is designed
 1. to be solely self-propelled or self-propelled with the capability to be propelled by human power, and
 2. subject to exceptions prescribed under section 210 (3.2) of the MVA, to transport one individual, and
2. that meets other criteria prescribed under section 210 (3.2) of the MVA,

but does not include a motor assisted cycle.

"Watercraft" means a vessel or other craft in, on or by which an individual or thing may be transported or drawn on water, excluding Canadian Coast Guard vessels.

Scope of Exemption

Pursuant to subsection 56(1) of the CDSA, adults within the province of British Columbia are, subject to the conditions set out below, exempt from the application of subsection 4(1) of the CDSA if they are in possession of an illegal substance (see definition above), or any combination of such illegal substances, up to a maximum cumulative quantity of 2.5 grams.

This exemption does not apply

- on K-12 School premises;
- on child care facility premises;
- in airports;
- on Canadian Coast Guard vessels or in Canadian Coast Guard helicopters;
- to a Canadian Armed Forces member who is subject to the Code of Service Discipline;
- in a motor vehicle that is driven or operated by a minor, whether or not the vehicle is in motion;
- in a watercraft that is operated by a minor, whether or not the watercraft is in motion.

Conditions

This exemption is applicable only if

- the possession of the illegal substance is for personal use with no intent to traffic, to export or to use in the production of a controlled substance in a manner that is not authorized under the CDSA; and
- in the case where the illegal substance is possessed on rail transportation or in a motor vehicle or a watercraft driven or operated by an adult, the substance is not readily accessible to the driver or operator.

Duration

This exemption expires on the earliest of the following dates:

- the date on which this exemption is replaced by another exemption; or
- 3 years after the effective date.

Suspension or Revocation

This exemption may be suspended without prior notice if the Minister determines that such suspension is necessary to protect public health or public safety.

The Minister may revoke the exemption if the Minister is of the opinion that it is no longer necessary.

Effective Date: January 31, 2023.

Annex

Illegal Substance	CDSA listing	CDSA Schedule and Item
Opioid	Opium Poppy (<i>Papaver somniferum</i>), its preparations, derivatives, alkaloids and salts	Schedule I, item 1
	Phenylpiperidines, their intermediates, salts, derivatives and analogues and salts of intermediates, derivatives and analogues	Schedule I, item 3
	Phenazepines, their salts, derivatives and salts of derivatives	Schedule I, item 4
	Amidones, their intermediates, salts, derivatives and salts of intermediates and derivatives	Schedule I, item 5
	Methadols, their salts, derivatives and salts of derivatives	Schedule I, item 6
	Phenalkoxams, their salts, derivatives and salts of derivatives	Schedule I, item 7
	Thiambutenes, their salts, derivatives and salts of derivatives	Schedule I, item 8
	Moramides, their intermediates, salts, derivatives and salts of intermediates and derivatives	Schedule I, item 9
	Morphinans, their salts, derivatives and salts of derivatives	Schedule I, item 10
	Benzazocines, their salts, derivatives and salts of derivatives	Schedule I, item 11
	Ampromides, their salts, derivatives and salts of derivatives	Schedule I, item 12
	Benzimidazoles, their salts, derivatives and salts of derivatives	Schedule I, item 13 (not including (3) Footnote 1)
	Fentanyl, their salts, derivatives, and analogues and salts of derivatives and analogues	Schedule I, item 16
Tilidine (ethyl-2-(dimethylamino)-1-phenyl-3-cyclohexene-1-carboxylate), its salts, derivatives and salts of derivatives	Schedule I, item 17	
Tapentadol (3-[(1R,2R)-3-(dimethylamino)-1-ethyl-2-methylpropyl]-phenol), its salts, derivatives and isomers and salts of derivatives and isomers	Schedule I, item 22	
AH-7921 (1-(3,4-dichlorobenzamidomethyl)cyclohexyldimethylamine), its salts, isomers and salts of isomers	Schedule I, item 23	

Illegal Substance	CDSA listing	CDSA Schedule and Item
	MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine), its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues	Schedule I, item 24
	U-47700 (3,4-dichloro-N-(2-(dimethylamino)cyclohexyl)-N-methylbenzamide), its salts, derivatives, isomers and analogues, and salts of derivatives, isomers and analogues	Schedule I, item 26
	Tramadol (2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol), its salts, isomers and salts of isomers and the following derivatives of tramadol and the salts, isomers and salts of isomers of those derivatives:	
	<ol style="list-style-type: none"> 1. <i>O</i>-desmethyltramadol (3-[2-[(dimethylamino)methyl]-1-hydroxycyclohexyl]-phenol) 2. <i>N,O</i>-didesmethyltramadol (3-[1-hydroxy-2-[(methylamino)methyl]cyclohexyl]-phenol) 	Schedule I, item 27
	Lefetamine ((-)- <i>N,N</i> -dimethyl- α -phenylbenzeneethanamine), its salts, derivatives and isomers and salts of derivatives and isomers	Schedule III, item 29
	Zipeprol (4-(2-methoxy-2-phenylethyl)- α -(methoxyphenylmethyl)-1-piperazineethanol) and any salt thereof	Schedule III, item 31
Cocaine	Cocaine (benzoylecgonine)	Schedule I, subitem 2(2)
Methamphetamine	Methamphetamine (<i>N</i> , α -dimethylbenzeneethanamine), but not including its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues	Schedule I, item 18
MDMA	<i>N</i> -methyl-3,4-methylenedioxy-amphetamine (<i>N</i> , α -dimethyl-1,3-benzodioxole-5-ethanamine)	Schedule I, subitem 19(8)