

<b>Title</b> IIO Investigations and the CDSA Exemption	<b>Number</b> 5180
<b>Section</b> Investigations	<b>Original Effective Date</b> January 31, 2023
<b>Responsibility</b> Chief Civilian Director	<b>Last Revised Effective Date</b> January 6, 2025

## POLICY

### 1 Introduction

- 1.1 This policy provides guidance to IIO investigative staff, police officers, and members of the public on how the IIO will manage critical incidents where the exemption under [subsection 56\(1\)](#) of the *Controlled Drugs and Substances Act* (CDSA) may be a factor.
- 1.2 The exemption was updated as of May 7, 2024 following a request from the province of British Columbia for the previous exemption to be amended due to concerns about widespread use of controlled substances in public spaces and achieving a balance between public health and public safety. The exemption affirms that substance use should be treated as a health and social issue and will expire on January 31, 2026 unless replaced by another exemption. This policy was amended shortly thereafter to also align with the goals set out in the amended exemption.

### 2 Scope of Exemption

- 2.1 As of May 7, 2024, police officers have the legal authority to enforce the *Controlled Drugs and Substances Act*, except in the following circumstances, where the exemption will still apply:
  - If an adult is in possession of opioids, cocaine, methamphetamines or MDMA, or any combination of such illegal substances, up to a maximum cumulative quantity of 2.5 grams, and
    - a) they are within a designated health care clinic (i.e., settings that primarily offer substance use and addictions services: overdose prevention sites, supervised consumption sites, drug checking sites, community-based addiction treatment clinics);
    - b) they are unhoused and sheltering in either outdoor or indoor locations (e.g. emergency shelters); subject to all applicable laws (including bylaws); or
    - c) they are within a private residence (as defined in section 1 of the *Liquor Control and Licensing Act*):
      - a building or part of it, or a manufactured home that is occupied and used by the owner, lessee or tenant solely as a private dwelling, together with the land and buildings adjacent to it that are used for the convenience, occupation and enjoyment of the occupants, or
      - a private guest room in a hotel, motel or other building in which private rooms are maintained for the accommodation of the public.

The exemption only applies if:

- the possession of the illegal substance is for personal use with no intent to traffic, export or use in the production of a controlled substance, and
- the adult who possesses an illegal substance in a designated health care clinic complies with the policies and requirements of the place (i.e. clinic or private residence).

2.2 The full text of the amended exemption can be found at Appendix A.

### **3 Police Action**

3.1 Police officers must consider whether it would be preferable to take no further action, to warn the individual, or with consent of the individual to refer them to a program, when dealing with a violation of subsection 4(1) regarding personal drug possession.<sup>1</sup>

A police officer may be subject to an IIO investigation if that officer returned illicit drugs (or did not seize drugs) to someone who is not protected by the exemption. 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.

3.2 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.

3.3 For the duration of the effective period, if an individual sustains serious harm or dies as a result of use of illegal 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.

If there is any doubt whether an incident should be reported, advice can be sought from the IIO.

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<sup>1</sup> [Sections 10.1 and 10.2 of the CDSA](#)

#### **4 IIO Action**

- 4.1 In cases where police were aware an individual had illegal substances, and that person subsequently sustained serious harm or died 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.
- 4.2 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?
- 4.3 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 the 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 of the exceptions to the exemption,

- whether the nature and/ or quantity of the substance(s) involved fell within the scope 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 was evidence that the serious harm or death may have had any other significant contributory cause(s) resulting from any other action 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 Policy 5170 [Concluding Investigations by Addendum](#) for more information.

## 2 Guidance

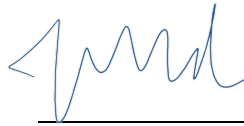
2.1 This policy will be reviewed by the CCD if the Minister determines that a suspension of the exemption is necessary to protect public health or public safety or is of the opinion that the exemption is no longer necessary.

## SUPPORTING DOCUMENTATION

Document	Name/Location
Appendix A	Subsection 56(1) class exemption to possess small amounts of certain illegal substances in the province of British Columbia – health care clinics, shelters and private residences

### POLICY

Approved by:



\_\_\_\_\_  
Jessica Berglund, Chief Civilian Director

Date Approved:

\_\_\_\_\_  
January 6, 2025

### PROCEDURE

Approved by:



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Laura Livingstone, Chief of Investigations, Strategy, Performance, & Engagement

Date Approved:

\_\_\_\_\_  
December 13, 2024

## APPENDIX A

Downloaded 2024-06-14 from:

<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 to possess small amounts of certain illegal substances in the province of British Columbia – health care clinics, shelters and private residences**

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#### **Preamble**

This exemption is granted in consideration of the following:

- substance use harms are first and foremost a health and social issue and should be treated as such except in exceptional cases where public safety risks are present;
- the *Controlled Drugs and Substances Act* (CDSA) has a dual purpose to protect public health and maintain public safety;
- the province of British Columbia has requested that the exemption granted under subsection 56(1) of the CDSA be amended due to concerns about widespread use of controlled substances in public spaces; and
- part of achieving a balance between public health and public safety is ensuring law enforcement has the tools needed to address issues of public safety while continuing to take a public health approach to addressing substance use harms.

#### **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.

#### **Designated health care clinic**

means a health care clinic that provides addictions services and that the Minister of Mental Health and Addictions of British Columbia designates as a place where this exemption applies.

#### **Illegal substance**

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

### **Private residence**

means a residence as defined in the section 1 of the *Liquor Control and Licensing Act*, SBC 2015, c. 19.

### **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, and

- a. they are within a designated health care clinic;
- b. they are unhoused and sheltering in accordance with all applicable laws; or
- c. they are within a private residence.

### **Conditions**

This exemption is applicable only if

- a. 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
- b. the adult complies with the policies and requirements of the place to which this exemption applies.

### **Duration**

This exemption expires on the earliest of the following dates:

- a. the date on which this exemption is replaced by another exemption; or
- b. January 31, 2026.

### **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.

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

Effective Date: This exemption is effective as of May 7, 2024.

### **Annex**

## IIO Investigations and the CDSA Exemption

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) <a href="#">Footnote1</a> )
	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	
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	

## IIO Investigations and the CDSA Exemption

Illegal Substance	CDSA listing	CDSA Schedule and Item
	<p>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:</p> <ol style="list-style-type: none"> <li>1. O-desmethyltramadol (3-[2-[(dimethylamino)methyl]-1-hydroxycyclohexyl]-phenol)</li> <li>2. N,O-didesmethyltramadol (3-[1-hydroxy-2-[(methylamino)methyl]cyclohexyl]-phenol)</li> </ol>	Schedule I, item 27
	Lefetamine ((-)-N,N-dimethyl- $\alpha$ -phenylbenzeneethanamine), its salts, derivatives and isomers and salts of derivatives and isomers	Schedule III, item 29
	Zipeprol (4-(2-methoxy-2-phenylethyl)- $\alpha$ -(methoxyphenylmethyl)-1-piperazineethanol) and any salt thereof	Schedule III, item 31
Cocaine	Cocaine (benzoylecgonine)	Schedule I, subitem 2(2)
Methamphetamine	Methamphetamine (N, $\alpha$ -dimethylbenzeneethanamine), but not including its salts, derivatives, isomers and analogues and salts of derivatives, isomers and analogues	Schedule I, item 18
MDMA	N-methyl-3,4-methylenedioxy- amphetamine (N, $\alpha$ -dimethyl-1,3-benzodioxole-5-ethanamine)	Schedule I, subitem 19(8)
<p><b>Footnote 1</b></p> <div style="border: 1px solid black; padding: 5px;"> <p>Please note that subitem (3) is excluded from the application of the CDSA under the <i>Regulations Exempting Certain Precursors and Controlled Substances from the Application of the Controlled Drugs and Substances Act</i>.</p> </div>		