



## Bill C-216: Health-based Approach to Substance Use Act

May 2022

### Context

On December 15, 2021, the Private Member's Bill C-216, *An Act to amend the Controlled Drugs and Substances Act and to enact the Expungement of Certain Drug-related Convictions Act and the National Strategy on Substance Use Act*, more commonly referred to by the short title *Health-based Approach to Substance Use Act* or simply as *Bill C-216*, was introduced in the House of Commons by New Democratic Party (NDP) Member of Parliament (MP), Gord Johns (Courtenay-Alberni).<sup>i</sup> This bill builds on previously introduced Private Member's Bill C-286 of the same name, which was first brought forth by NDP MP Don Davies (Vancouver Kingsway) in early 2021, with a first reading completed on April 15, 2021. However, C-286 was not able to proceed to further readings due to an election.<sup>ii</sup>

Bill C-216 is comprised of three parts:<sup>iii</sup>

- Part 1: decriminalization of possession of small amounts of illicit substances intended for personal use,
- Part 2: expungement of criminal records of all Canadians related to simple possession convictions; and,
- Part 3: establishment of a National Strategy on Substance Use Act, led by the federal Minister of Health, in partnership with the provinces and territories.

### Decriminalization of Possession of Illicit Substances for Personal Use

Bill C-216 tables the repeal of sections 4 and 4.1 of the *Controlled Drugs and Substances Act*. Repeal of these two sections would remove from the *Act* the criminalization of possession of small amounts of Schedule I, II, or III substances for personal use or simple possession and the definitions of medical emergency.<sup>v</sup> If sections 4 and 4.1 were to be repealed, then they would also subsequently need to be removed from the *Criminal Code*. The rationale for repealing these two sections is that the criminalization of simple possession for personal use prevents persons using substances from seeking help out of fear of being arrested. Decriminalization of possession for personal use would remove this barrier to accessing services without repealing the laws governing commercial use or sale of illicit substances (aka: drug trafficking).

### Expungement of Certain Drug-related Convictions

The second part of Bill C-216 aims establish a new *Expungement of Certain Drug-related Convictions Act*, which would provide Canadians convicted of simple possession with an opportunity to clear their criminal records. If Bill C-216 becomes law, 'the person convicted of the offence [would be] deemed never to have been charged with and convicted with that offence,'<sup>vi</sup> ultimately removing any prior offences for personal possession of illicit substances within a specified threshold from affected Canadians' records. The rationale for introducing this new *Act* is to enable those convicted of simple possession to move forward without the burden of a criminal record.

### Introduction of the *Health-based Approach to Substance Use Act*

The third part of bill C-216 focuses on developing a national strategy to address harms caused by substance use and to promote more comprehensive public health approaches. The bill directs the federal Minister of Health to create a national strategy to address the harms that have been caused by the criminalization of substance use. The proposed *Act* directs the creation of a strategy that is evidence-based, solutions-focused, and cognizant of the social determinants of health. The strategy outlined in this bill must also ensure 'low-barrier' universal access to safe supply and related services, and that actions are taken to reduce stigma around the use of substances as a health and social issue.



## Legislative Timeline

It is important to note that Bill C-216 is not law. It is a potential piece of legislation introduced through the Private Members' Bills procedures. As a public bill introduced through Private Members' Bills, the introduction and first reading of the bill is primarily an administrative process, ensuring that the bill meets certification requirements, is supported by seconders, and is entered into the agenda of Parliament for the second reading. At this time, Bill C-216 has moved through this administrative phase and is now in second reading.

The second reading of the bill began on March 2, 2022. During this reading, MP Johns cited findings and recommendations from the [Canadian Expert Task Force on Substance Use](#), former Chief Medical Officer Dr. Perry Kendall and other experts in public health, stating that the overdose crisis is a crisis of health, not of criminal activity, and thus must be treated as such.<sup>vii</sup> Furthermore, Mr. Johns discussed how enacting the three components of the bill would work toward reducing stigma surrounding this crisis currently associated with it being a criminal conviction, would help those affected by previous convictions to better access employment, housing and other essential needs due to the removal of such convictions, and would further invest in more practical, solutions-focused approaches at the ground level. As debate ensued, the bill in its current reading received mixed reviews from Liberal, Conservative, and Bloc Quebecois MP respondents. Some of the criticism included that certain component of the bill would be better suited solely within other bills (e.g., *Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*), and that decriminalization at this stage could potentially put the health care system at higher risk. Indeed, responding MPs noted that other jurisdictions moving toward decriminalization had initially invested in harm reduction strategies including significant investments in prevention, treatment, and harm reduction first before enacting decriminalization. However, feedback from all parties largely supported the idea that more immediate action is required to support health care centres and facilities to in turn provide more fulsome support to Canadians in all regions, urban, rural, and remote.

It is noteworthy that another bill has recently completed second reading which also aims to introduce public health approaches into the criminalization of substance use. *Bill C-5 An Act to Amend the Criminal Code and the Controlled Drugs and Substances Act* is currently in committee. Part I.1 introduces Evidence-based Diversion Measures, including a Declaration of Principles such as:

- Substances use should be address primarily as a health and social issue and use of the judicial system should be reserved for offences that pose a risk to public safety
- Interventions should be evidence-based and balance protection of the public with upholding the dignity and rights of those who use substances
- Recognition that criminalization of simple possession can increase stigmatization
- Root causes of substance use must be addressed

Bill C-5 also introduces discretionary interventions using Warning and Referrals, enabling warning of an individual or referral of an individual to services rather than arrest and prosecution. These bills represent two different approaches to addressing the criminalization of substance use.

## Considerations

Nursing has long supported and advocated for harm reduction, equity-oriented approaches to addressing the root causes of substance use, and risk mitigation responses to the toxic illicit drug supply. From leading research to street level response, nurses live within the systems responding to this crisis.

As the professional voice of nurses in British Columbia, NNPBC supports all forms of harm reduction including:

- Interventions to address toxic illicit drug supply including prescription safer supply, non-prescription safer supply, OAT treatment for opioid use disorder, accessible drug checking, and public health awareness and engagement.



- Decriminalization of personal possession of substances, including simple possession.
- Widescale distribution of naloxone kits and both public and care provider training to intervene in opioid overdose.
- Safe and supervised consumption and injection sites.
- Systemic approaches to addressing the stigmatization associated with substance use.

## NNPBC Position

- NNPBC applauds at a high level the items brought forth in Bill C-216 and recognizes that Bill C-216 aligns with the October 2021 application by BC's Ministry of Mental Health and Addictions to Health Canada for a province-wide exemption from Section 56(1) of the *Controlled Drugs and Substances Act*. Nursing knows that decriminalization is an effective, compassionate, and equity-oriented intervention that will save lives. It is an important step in ensuring people who use substances feel safe in accessing health interventions including nursing care and in reducing stigma. Nursing also knows that the criminalization of people who use substances follows those convicted for a lifetime. Expungement of a criminal record can support social reintegration and economic opportunity.
- NNPBC acknowledges that one rationale for decriminalization stated in second reading debate is to remove a barrier to seeking support and care. If decriminalization was successful as a policy intervention aimed at addressing this barrier, it is reasonable to anticipate that health services will see an increase in those seeking support and care. Currently, there is a recognized and well documented absence of mental health and substances use care across jurisdictions, including access to safe supply and consumption, treatment, rehabilitation, and prevention. In the context of proceeding with decriminalization and in the absence of a national strategy for substance use including new funding models, NNPBC calls on both the federal and provincial government to proactively anticipate the impact decriminalization will have on health systems and those who work within them, including nurses, and enact steps to accommodate expanded access to services and human resources.
- Further, NNPBC acknowledges that there is currently a profound lack of investment in infrastructure and resources to support substance use disorder and to address the sociocultural root causes of addiction. Pivoting judicial and social systems from a criminalization approach to a social and health intervention approach is not as simple as removing lines from legislation. A national strategy to address substance use must set out not only evidence-informed approaches to downstream intervention and treatment but also the upstream interventions that target the intersectional structural vulnerabilities of those who use substances, such as poverty, housing, trauma, violence, colonialism, and inequity. Relocating such a broad spectrum of necessary interventions under the umbrella of health asks much of health care systems. It is therefore important for NNPBC to note that the establishment of a national strategy for substance use as laid out in Bill C-216 places the full spectrum of interventions for substance use under the purview of health structures. This makes achieving action extraordinarily difficult as the health system nor health leaders are structurally enabled or resourced to take on this purview. A significant concurrent investment in health must be proactively anticipated if legislation shifts substance use interventions entirely into the domain of health through the establishment of a health-based substance use act.
- Finally, nurses provide compassionate, evidence-informed nursing care to everyone. To do this critically important work, nurses and all health care providers and workers must be supported by safe practice environments. COVID-19 has demonstrated the deep personal risks of providing care in systems that are poorly designed for complexity and uncertainty. It is therefore imperative for nursing to be vocal in pointing to our right to safe work environments, including the human and technical resources to provide care to those seeking care, when significant changes to the health system are proposed. In the case of Bill C-216, the physical and psychological safety of the health care provider, access to emergency response supports, and opportunities to enable greater competency must be enabled as policy implementation priorities should the legislation change.



## Key Messages

- Bill C-216 was introduced with the intention to amend the *Controlled Drugs and Substances Act*, to enact the expungement of certain drug-related convictions of 'small amounts for personal possession', and to enact a national health-based strategy on substance use.
- Bill C-216 is not a new bill, but a reworking of Bill C-286, which completed its first reading in early 2021 but did not progress further due to an election.
- The second reading of Bill C-216 commenced on March 22, 2022 and is currently in progress.
- Bill C-5 is also currently in progress and presents a different legislative approach to decriminalization. Specifically, it includes principles for evidence-based diversion measures in instances of substance possession that centre substance use as a health and social issue and acknowledge that criminal sanctions increase stigmatization of people who use drugs.
- Nursing has been at the forefront of harm reduction including research, leadership, and direct care. NNPBC acknowledges that decriminalization, expungement of criminal records, and a national strategy to address substance use are necessary and long-overdue responses to the extensive harm caused by the toxic illicit drug supply.
- NNPBC advocates for immediate, proactive planning for the impacts of decriminalization on health systems, including resource investment to enable those working within health care systems to respond to the anticipated increase in those accessing support and care.
- NNPBC points to the consequences of housing all substance use response under the health umbrella, including the significant challenges to implementation that structural barriers within health care will pose. Governments cannot shift responsibility from one part of the system to another without significant investment in both human and infrastructure resources. Choosing to house responsibility for substance use in a health-based strategic approach requires legislators to increase the resource allocation for the health system to meet this responsibility.
- NNPBC supplicates all decision makers at every level of health care governance to ensure the safety, competency, and support of health care workers, including nurses, is prioritized as a key consideration in implementing legislative change.

## Further Reading/Resources

- [NNPBC Issues Brief: The Overdose and Toxic Drug Crisis in 2021](#)
- [BC Request for Federal Exemption to Decriminalize Personal Possession](#)
- [NNPBC & HRNA Call for the Decriminalization of People Who Use Drugs in BC](#)
- [NNPBC Issues Brief: Bill C-22](#)
- [Bill C-216 First Reading \(December 2021\)](#)
- [Bill C-5 First Reading \(December 2021\)](#)
- [Controlled Drugs and Substances Act, Schedule I Substances](#)
- [Controlled Drugs and Substances Act, Schedule II Substances](#)
- [Controlled Drugs and Substances Act, Schedule III Substances](#)
- [Expert Task Force on Substance Use: Report 1: Recommendations on alternatives to criminal penalties for simple possession of controlled substances \(May 2021\)](#)



- [Expert Task Force on Substance Use: Report 2: Recommendations on the federal government's drug policy as articulated in a draft Canadian Drugs and Substances Strategy \(CDSS\) \(June 2021\)](#)
- [Private Members' Bills – House of Commons Procedures and Practice \(2017\)](#)

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<sup>i</sup> Parliament of Canada, LEGISinfo. 'C-216, *An Act to amend the Controlled Drugs and Substances Act and to enact the Expungement of Certain Drug-related Convictions Act and the National Strategy on Substance Use Act*, 1<sup>st</sup> sess., 44<sup>th</sup> Parliament.' 2021. <https://www.parl.ca/LegisInfo/en/bill/44-1/C-216>.

<sup>ii</sup> Canada House of Commons. '44<sup>th</sup> Parliament, 1<sup>st</sup> Session, Edited Hansard No. 039.' March 2, 2022. [Hansard]. <https://www.ourcommons.ca/DocumentViewer/en/44-1/house/sitting-39/hansard#11554086>.

<sup>iii</sup> Parliament of Canada, LEGISinfo. 'C-216, *An Act to amend the Controlled Drugs and Substances Act and to enact the Expungement of Certain Drug-related Convictions Act and the National Strategy on Substance Use Act*, 1<sup>st</sup> sess., 44<sup>th</sup> Parliament.'

<sup>iv</sup> Based on the definition from the [Pivot Legal Society](#) that "simple possession" is defined as "The criminalization of drug possession for personal use."

<sup>v</sup> CanLII. 'Controlled Drugs and Substances Act, SC 1996, c 19.' Retrieved May 3, 2022. <https://canlii.ca/t/55dqj>.

<sup>vi</sup> Parliament of Canada. 'Bill C-216 (First Reading).' December 15, 2021. <https://www.parl.ca/DocumentViewer/en/44-1/bill/C-216/first-reading>.

<sup>vii</sup> Canada House of Commons. '44<sup>th</sup> Parliament, 1<sup>st</sup> Session, Edited Hansard No. 039.' [Hansard].