

July 3, 2020

*Via Email*

**The Hon. Adrian Dix**  
Minister of Health, BC

**The Hon. Judy Darcy**  
Minister of Mental Health and Addictions, BC

Dear Ministers,

We write with urgency regarding *Bill 22 – 2020: Mental Health Amendment Act*,<sup>1</sup> introduced in the Legislative Assembly of BC last week and scheduled for second reading on July 6, 2020. As BC-based organizations whose mandates include furthering evidence-based drug policy and ending the harms of drug prohibition, Pivot Legal Society and the Canadian Drug Policy Coalition (CDPC) urge you to do everything in your power to stop the passage of Bill 22 into law.

Bill 22 directly undermines the public health, safety, and rights of youth who use drugs. It rolls back BC's progress in responding to the ongoing opioid crisis, particularly during increased public health risks due to COVID-19 that have exacerbated the impact of a poisoned drug supply. As BC's Chief Coroner already brought to your attention, "there is the potential for serious unintended consequences as a result of [Bill 22's] legislative amendments, including the potential for an increase in fatalities."<sup>2</sup> Pivot and CDPC echo this caution and offer additional context for the health harms that Bill 22 would present, if enacted.

### **Compulsory detention and drug treatment are not evidence-based**

There is no evidentiary basis to conclude that involuntary detention coupled with compulsory abstinence or drug treatment will promote the discontinuation of drug use or the cessation of drug-related harms for youth who use drugs. In fact, research demonstrates that compulsory detention and treatment in the context of substance use give rise to a range of potential drug-related harms and human rights abuses, including deterred access to harm reduction services out of fear of apprehension.<sup>3</sup>

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<sup>1</sup> Bill 22, *Mental Health Amendment Act*, 5<sup>th</sup> Sess, 41<sup>st</sup> Parl, 2020, (first reading 23 June 2020), [Bill 22], online: <https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/41st-parliament/5th-session/bills/first-reading/gov22-1>

<sup>2</sup> Public Safety and Solicitor General, "Chief coroner's statement on proposed amendments to the Mental Health Act", *BC Gov News* (23 June 2020), online: <https://news.gov.bc.ca/releases/2020PSSG0035-001150>

<sup>3</sup> D Werb et al, "The Effectiveness of Compulsory Drug Treatment: A Systematic Review" (2016) 28: IJDP 1-9, online: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4752879/> See also: Wayne Hall et al, "Compulsory

The actions sanctioned by Bill 22 subscribe to a prohibition-based model (aimed at eliminating and criminalizing drug use) that is outdated and patently inconsistent with the Provincial Health Officer Dr. Bonnie Henry’s 2019 report and recommendations, which call for the decriminalization of people who use drugs and discourage policymakers from enacting punitive drug policy: “If the intention of a prohibition-based system was to protect individuals from harms inherent to substance use, then this policy approach has significantly failed to achieve this goal at an individual or population level. Evidence shows that this approach has had the opposite effect and has substantially increased harms.”<sup>4</sup>

### **Heightened risk of withdrawal and fatal overdose following short-term detention**

If passed, Bill 22 would authorize the detention of youth for up to one week in “stabilization facilities” following an overdose. Short-term detentions can pose long-term harms for people who use drugs. This is especially true in the context of a toxic illicit drug market and the Province’s failure to ensure an accessible, safer supply of drugs. A few days of forced abstinence—as sanctioned by Bill 22—can lead to vicious withdrawal symptoms and a heightened risk of overdose upon release.

Based on Coroner data from April 2018, of the 1,854 reported overdose deaths in BC between January 2016 and July 2017, 18% of people died while under community corrections supervision or within 30 days of release from a correctional facility.<sup>5</sup> The Provincial Health Officer’s above-noted report similarly underscores that “in situations where people living with opioid use disorder are exposed to situations where they cannot avoid withdrawal symptoms (e.g., in police holding cells, or court cells)...tolerance is lost, leading to an increased risk of overdose and death when they seek out and use opioids at the same dose they would have typically taken.”<sup>6</sup> Detention also causes other health-related harms. Pivot’s 2018 report *Project Inclusion* found that in addition to adverse health impacts, short-term detentions can lead to a loss of income, housing, or employment—all of which comprise social determinants of health.<sup>7</sup>

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Detention, Forced Detoxification and Enforced Labour Are Not Ethically Acceptable or Effective Ways to Treat Addiction” (2012) 107(11): *Addiction* 1891-3, online: <https://pubmed.ncbi.nlm.nih.gov/22563884/>

<sup>4</sup> British Columbia, Office of the Provincial Health Officer, *Stopping the Harm: Decriminalization of People Who Use Drugs in BC*, (2019) [PHO Report] at 18, online: <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/special-reports/stopping-the-harm-report.pdf>

<sup>5</sup> Report to the Chief Coroner of British Columbia, *BC Coroners Services Death Review Panel: A Review of Illicit Drug Overdoses* (5 April 2018) at 19, online: [https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/death-review-panel/bccs\\_illicit\\_drug\\_overdose\\_drp\\_report.pdf](https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/death-review-panel/bccs_illicit_drug_overdose_drp_report.pdf)

<sup>6</sup> PHO Report, supra note 4 at 19.

<sup>7</sup> Pivot Legal Society, *Project Inclusion: Confronting Anti-Homeless & Anti-Substance User Stigma in British Columbia*, (Vancouver BC: Pivot Legal, 2018) at 81, online: <https://d3n8a8pro7vhm.cloudfront.net/pivotlegal/pages/1986/attachments/original/1543969275/project-inclusion-digital.pdf?1543969275>

## Chilling effect on calls to 911 in the event of overdose

In 2017, the Canadian government enacted the *Good Samaritan Drug Overdose Act (GSDOA)* as a means to “encourage and protect people who [experience or] are witnessing an overdose so they can seek help, and ultimately, save lives.”<sup>8</sup> The *GSDOA* recognized that while prompt medical attention could prevent many fatal overdoses, “evidence shows that witnesses to an overdose often do not call 911 for fear of police involvement.”<sup>9</sup> Bill 22 compromises the legal protections afforded by the *GSDOA* and its life-saving purpose and effects. Re-introducing the risk of detention for youth who have experienced an overdose disincentivizes calling 911 when emergency help is needed and may foreseeably result in the types of fatalities the *GSDOA* intends to prevent.

## Rights Violations

Bill 22 raises significant concerns about infringements to individual rights protected by the *Canadian Charter of Rights and Freedoms* and international laws and treaties. The involuntary admission, detention, and restraint authorized by Bill 22 may, for instance, restrict the liberty right safeguarded under section 7 of the *Charter*, which protects against liberty infringements that are not in accordance with the principles of fundamental justice. These restrictions may also violate Article 9 of the *International Covenant on Civil and Political Rights (1966)*<sup>10</sup> and Articles 14 and 25 of the *Convention on the Rights of Persons with Disabilities (CRPD)*,<sup>11,12</sup> to which Canada is a signatory.

Problematically, Bill 22 extends the notion of treatment delivered without consent into the realm of youth and substance use.<sup>13</sup> “Stability” as defined in the proposed amendments includes the youth’s capacity to make decisions about their health care, but that is only one of three necessary conditions to determine stability. In the instance where one or both of the other two conditions of stability required under s. 48 are not met, the youth’s consent may be completely vitiated by the physician. Vitiating consent or deemed consent to treatment – *despite the existence of problematic substance use or a mental health disorder* – are considered by many to be contrary to the *Charter* and the CRPD. As is done in other Canadian jurisdictions, the provision for

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<sup>8</sup> Health Canada, “Good Samaritan Drug Overdose Act Becomes Law in Canada”, *News Release* (modified 13 Aug 2018), online: [https://www.canada.ca/en/health-canada/news/2017/05/good\\_samaritan\\_drugoverdoseactbecomeslawincanada.html](https://www.canada.ca/en/health-canada/news/2017/05/good_samaritan_drugoverdoseactbecomeslawincanada.html)

<sup>9</sup> *Ibid.*

<sup>10</sup> *International Covenant on Civil and Political Rights*, 19 Dec 1966, 999 UNTS 171 art 9 (entered into force 23 Mar 1976, accession by Canada 19 May 1976).

<sup>11</sup> *Convention on the Rights of Persons with Disabilities*, 13 Dec 2006, 3 UNTS 2515 arts 14 & 25 (accession by Canada with a reservation on Article 12 permitting supported and substitute (i.e. guardianship) decision-making, but without mention or reservation of the ban on deprivation of liberty).

<sup>12</sup> Committee on the Rights of Persons with Disabilities, *Guidelines on Article 14 of the Convention on the Rights of Persons with Disabilities*, UNGA, 77th Sess, Supp No 55, UN Doc A/72/55.

<sup>13</sup> Bill 22, *supra* note 1 at ss. 54(2)(a).

substituted decision-making should be in place to provide informed consent on behalf of youths determined unable to consent to treatment on their own.

### **Undermining progress and perpetuating stigma against people who use drugs**

Since before the formal onset of the opioid crisis in 2016, people who use drugs and their allies have tenaciously pushed policymakers toward more progressive, evidence-based drug policy in BC and Canada. This has meant drawing attention to the harms and stigma of drug prohibition in favour of a system that is rooted in public health and responsive to the needs and expertise of people who use drugs. Unfortunately, Bill 22 signals a regressive return to the criminalization of substance users and the attendant stigma of that system. By authorizing the compulsory, non-consensual detention of youth who use drugs, the legislation revives an outdated, deeply stigmatizing drug policy model that flies in the face of drug users' teachings.

We urge you to consider the unintended and harmful consequences that will result if Bill 22 is enacted and ask that you take immediate action to stop its passage into law. Please do not hesitate to reach out if you have additional questions or concerns.

Sincerely,



**Caitlin Shane**  
Lawyer, Pivot Legal Society



**Scott Bernstein**  
Director of Policy, Canadian Drug Policy Coalition