

## Decriminalization of Substance Use in Canada

**QUESTION:** Should Canada decriminalize the possession and use of currently illegal substances?

**DEFINITIONS:**

Decriminalization refers to the removal of criminal +/- administrative (e.g. financial) penalties for drug law violations related to possession or consumption for personal use. Practically, this means that people are not arrested, incarcerated, or fined for *personal* possession or use of a drug<sup>i</sup>. Decriminalization is not the same as legalisation.

**SUMMARY:**

Canada faces an escalating drug poisoning crisis with unprecedented numbers of accidental drug poisonings and deaths. This is in large part due to increasing toxicity in the illegal drug market<sup>ii</sup>. Indigenous people in Canada have been disproportionately affected by accidental poisoning deaths as well as over-policing and incarceration<sup>iii</sup>.

People use substances for a variety of different reasons and most substance use does not result in negative health or social consequences. Criminalizing substance use via arrests, drug seizure and other penalties has been ineffective in eliminating the use of drugs and puts people who use drugs at increased risk of harm since substances are produced and sold by an unregulated and toxic illegal market, are consumed in high-risk settings, and are associated with stigma when seeking health and social services or employment<sup>iv,v</sup>. Incarceration introduces additional risk of poisoning events when people return to use in the community upon release<sup>vi,vii,viii</sup>.

Drug decriminalization is an evidence-based policy that aims to reduce the harms associated with criminal sanctions for the possession and personal use of substances, and to shift efforts toward prevention, treatment, and safer use strategies. Decriminalization is a health-focused and human rights-based policy approach. There is no evidence to support an association between decriminalization and increased rates of drug use or other drug related harms.

**ACTION:**

1. The Federal Government should decriminalize drug possession for personal use.
  - a. Available evidence from countries that have undertaken decriminalization should inform the planning and implementation of drug decriminalization in Canada.
  - b. New policies and laws should be informed by the expertise and perspectives of people who use drugs, including Indigenous people, as well as legal and medical professionals.
  - c. Decisions regarding threshold amounts must be made with the considered and expert evidence of people who use drugs and social justice experts, to avoid creating downstream harm from reactive, alternative forms of sanction (i.e., “net widening”



through the imposition of administrative fines or charges for other drug-related offences, such as sharing with friends without profit).

2. The federal government should end the mass incarceration of people who use drugs or possess small amounts of drugs for personal use; criminal records for those previously convicted and/or incarcerated should be expunged.
3. While considering decriminalization, carceral systems should:
  - a. implement greater access to evidence-based addiction treatment.
  - b. aim to improve transitions in care after incarceration, recognizing that the risk of death is highest in the two weeks after release.
4. While considering decriminalization, governments should continue to scale-up targeted, evidence-based interventions for substance use as exemptions under Section 56 of the Controlled Drugs and substances Act<sup>ii</sup>, including increased access to:
  - a. new, unused supplies and needle-exchange programs,
  - b. supervised consumption sites,
  - c. medication-assisted therapies, and
  - d. safer supply.
5. Choosing not to charge individuals, and/or confiscating substances on a discretionary basis within an ongoing criminalization context is insufficient. Clear guidelines and training should be provided to law enforcement regarding decriminalization to reduce the risk of new policies being inequitably applied to marginalized groups.
6. While decriminalization is considered, local jurisdictions should be empowered to implement 'decrim zones' in response to the needs of their communities.

#### **EVIDENCE:**

- Criminalization of substance use limits the availability of evidence-based treatments in the community and in carceral settings.
- Evidence shows a heightened risk of poisoning death following release from prison, where individuals face compulsory abstinence and involuntary detoxification.
  - a. A history of substance use (prior use, use at time of the offense, or substance use disorder) is common in prison populations<sup>vii</sup>.
  - b. The two weeks following release from prison present a high-risk period, with reported poisoning mortality rates 12x higher than similar demographic groups in the general population<sup>vi</sup>.

- Incarceration and subsequent criminal records for substance use contribute to:
  - a. Social stigma and exclusion. The social stigma created by criminalization presents a barrier to seeking help, frequently resulting in the use of drugs in secret, and in circumstance/environments that increase morbidity and mortality.
  - b. Economic penalization: limiting employment and housing opportunities.
  - c. Inequitable access to health care due to fear of criminal reprisal when disclosing substance use to health care providers, often preventing people who use drugs (PWUD) from fully accessing available treatments.
  - d. Negative interactions with the criminal justice system. These are traumatic for many PWUD and instil fear, stress, anxiety and other psychological suffering, which can further exacerbate substance use disorders.
  
- Incarceration has generational impacts. For example, the incarceration of a parent/breadwinner impacts family income, the ability to meet basic needs, social stability, and family relationships. Children of those affected by criminalization or similar are thus at greater risk of social exclusion, poor housing status and health outcomes<sup>ix</sup>.
  
- In Portugal<sup>x</sup>, since decriminalization with wraparound supports was introduced in 2002 there has been:
  - a. a fall in drug induced mortality (80 deaths in 2001 to 16 deaths in 2012).
  - b. reduced rates of problematic and adolescent drug use.
  - c. reduced incidence of HIV infections among people who inject drugs (1575 new infections in 2000 to 78 new infections in 2013).
  
- Decriminalization in Portugal and Spain has not been associated with escalations in drug use or drug related problems<sup>xi</sup>.

## CONTEXT:

- Substance use disorder (SUD) is a medical condition which affects a person's brain and behaviour, leading to an inability to control their use of a legal or illegal drug or medication - individuals with SUD continue to use of drugs despite physical and psychological harms and/or negative psychosocial and socioeconomic consequences caused by drug use<sup>xii</sup>. Though many people who use drugs meet the criteria for SUD, many do not.
  
- The **core mission of both the medical system and law enforcement is to save lives**. The criminal justice system should not be the primary means of addressing a public health crisis.
  
- Arresting and incarcerating individuals for substance use is ineffective at preventing poisonings (and in fact increases the risk of poisoning on release from prison), is costly and is harmful to the long-term recovery of individuals with substance use disorder.

- The current poisoning crisis is fueled by the proliferation of a poisoned illegal drug supply. Hence, individuals who use drugs have an increased risk of death from accidental poisoning, whether they use occasionally or compulsively.
- The criminalization of drugs intersects with the criminalization of specific PWUD. Indigenous people and communities of colour experience greater policing of substance use and thus disproportionately experience the harms of criminalization, reinforcing existing social and structural inequities<sup>ix,xiii,xiv</sup>.
  - a. Indigenous people in some regions of Canada are almost 9x times more likely to be arrested for drug possession.
  - b. Black Canadians are > 5x as likely to be arrested, despite similarities in illegal substance use across racial groups.
- Indigenous people are overrepresented in drug poisoning overdoses and deaths due to the historic and ongoing impacts of colonialism, racism, and intergenerational trauma.
  - a. Mortality rate for Indigenous people who use drugs is 5x higher than for non-Indigenous people who use drugs. Indigenous Peoples account for 6% of the total population but 22% of poisoning deaths<sup>xv</sup>.
  - b. Indigenous women are 8x more likely to have a nonfatal poisoning and 5x more likely to have a fatal poisoning than non-Indigenous women<sup>iii</sup>.
- A legacy of chemical control exists for many people who use drugs, including the racialized and colonized; people who use drugs should share in any decision-making about the models implemented to address this legacy (i.e., they should have the right to self-determination)<sup>xvi</sup>.

## REFERENCES:

<sup>i</sup> <https://drugpolicy.org/issues/drug-decriminalization>

<sup>ii</sup> Canadian Centre on Substance Use and Addiction, accessed January 16, 2022. <https://www.ccsa.ca/changes-related-covid-19-illegal-drug-supply-and-access-services-and-resulting-health-harms>

<sup>iii</sup> Lavalley J, Kastor S, Valleriani J, McNeil R. Reconciliation and Canada's overdose crisis: responding to the needs of Indigenous Peoples. *CMAJ*. 2018;190(50):E1466-E1467. doi:10.1503/cmaj.181093

<sup>iv</sup> [https://www.aic.gov.au/sites/default/files/2020-09/ti602\\_impact\\_of\\_arrest\\_and\\_seizure\\_on\\_drug\\_crime\\_and\\_harms.pdf](https://www.aic.gov.au/sites/default/files/2020-09/ti602_impact_of_arrest_and_seizure_on_drug_crime_and_harms.pdf)

<sup>v</sup> <https://www.sciencedirect.com/science/article/pii/S0955395919302361#bib0027>

<sup>vi</sup> Binswanger IA, Stern MF, Deyo RA, et al. Release from Prison — A High Risk of Death for Former Inmates. *N Engl J Med*. 2007;356(2):157-165. doi:10.1056/NEJMsa064115

<sup>vii</sup> Binswanger IA, Nowels C, Corsi KF, et al. Return to drug use and overdose after release from prison: a qualitative study of risk and protective factors. *Addict Sci Clin Pract*. 2012;7(1):3. doi:10.1186/1940-0640-7-3



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- <sup>ix</sup> Daniels et al 2021 : <https://harmreductionjournal.biomedcentral.com/articles/10.1186/s12954-021-00564-7>
- <sup>x</sup> [https://drugpolicy.org/sites/default/files/dpa-drug-decriminalization-portugal-health-human-centered-approach\\_0.pdf](https://drugpolicy.org/sites/default/files/dpa-drug-decriminalization-portugal-health-human-centered-approach_0.pdf)
- <sup>xi</sup> Quintas and Arana 2017: [https://link.springer.com/chapter/10.1007/978-3-319-65361-7\\_8](https://link.springer.com/chapter/10.1007/978-3-319-65361-7_8)
- <sup>xii</sup> [https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health#:~:text=A%20substance%20use%20disorder%20\(SUD,most%20severe%20form%20of%20SUDs.](https://www.nimh.nih.gov/health/topics/substance-use-and-mental-health#:~:text=A%20substance%20use%20disorder%20(SUD,most%20severe%20form%20of%20SUDs.)
- <sup>xiii</sup> <https://www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20TPS.pdf>
- <sup>xiv</sup> <https://www.hri.global/decolonisedrugpolicy>
- <sup>xv</sup> Alberta Opioid Response Surveillance Report: First Nations People in Alberta.
- <sup>xvi</sup> Halseth R, Murdock L. Supporting Indigenous self-determination in health: Lessons learned from a review of best practices in health governance in Canada and internationally. 2020: National Collaborating Centre for Indigenous Health.