

Environmental Scan of literature capturing varying perspectives on current drug policy.

September 2023

Introduction

The Controlled Drugs and Substances Act (CDSA) is administered by Health Canada and establishes the legislative framework that regulates the possession, distribution and sale of certain drugs in Canada. Section 4(1) of the CDSA prohibits possession of any substance included in Schedule I, II or III (which includes substances such as heroin, methamphetamine, cocaine, etc.) with punishment including fines and imprisonment for a duration of up to seven years depending on the substance and the number of offences.

Targeted exemptions can be made under Section 56 of the CDSA (e.g., exempting supervised drug consumption site staff, exempting local police from arresting those attending the site).

Public Health Ontario, in their [Evidence Scan and Jurisdictional Approaches to the decriminalization of drugs](#), published in September of 2022, define decriminalization as a policy strategy characterised by the removal of criminal penalties for designated activities related to substance use, possession and sometimes cultivation of drugs for personal use.

An environmental scan of literature (including grey literature) was done to identify varying perspectives on current drug policy, and potential alternatives to the current Controlled Drugs and Substances Act. The literature was reviewed to determine the following:

- Identified concerns with current policy as presented in the [Controlled Drugs and Substances Act \(S.C. 1996, c.19\)](#) related to:
 - Burden of cost
 - Human toll
 - Stigma and marginalization of certain cohorts of the population.
- Whether a model that included decriminalization was supported.
 - If yes:
 - What should be the key elements of a proposed decriminalization model?
 - What complementary measures should be included if any?
 - If No:
 - What other alternatives are suggested.
- Any other noteworthy themes to include.

Appendix A: Summary of environmental scan of literature.

Details of literature reviewed:

<p>Identified concerns with current policy as presented in the Controlled Drugs and Substances Act (S.C. 1996, c.19) related to:</p> <ul style="list-style-type: none"> ○ Burden of cost ○ Human toll ○ Stigma and marginalization of certain cohorts of the population 	
Report details	Identified concerns with current model
<p>Drug Policy Alliance – Approaches to Decriminalizing Drug Use and Possession (2015)</p>	Burden of Cost
	Human Toll
	Stigma and Marginalization of certain cohorts
	Unprecedented levels of incarceration and the marginalization of millions of Americans, disproportionately poor people, and People of Colour.
<p>HIV Legal Network: Decriminalization Done Right - A Rights-Based Path for Drug Policy (2021)</p>	Burden of Cost
	Enforcing drug offenses consumes billions annually.
	Human Toll
	Criminalizing drug use puts people who use drugs at increased risk of harm, including from overdose, HIV and Hepatitis C infection. It has led to more potent and dangerous drugs and contributed to a drug poisoning crisis with 23,000 overdose deaths in Canada between 2016 and 2021.
	Stigma and Marginalization of certain cohorts
<p>Criminalization impedes people’s access to health and social services and emergency care for overdose. Harms Indigenous, Black, and other racialized, marginalized and low-income communities who are profiled and disproportionately arrested and incarcerated for drug offenses and subjected to child apprehension orders. Perpetuates stigma, discrimination and over-incarceration of people who use drugs. Criminal records follow people forever, limiting employment and housing opportunities, restricting travel and affecting child custody.</p>	
<p>Canadian Centre on Substance Use and Addiction- Decriminalization: Options and Evidence (2018)</p>	Burden of Cost
	Human Toll
	Data from Europe indicates that countries with the highest rates of drug-related death tend to have more punitive approaches to drug use. Harms of current model include high-risk consumption patterns, overdose and the transmission of blood-borne disease.
	Stigma and Marginalization
<p>Harms of current model include criminal records, stigma.</p>	
<p>Canadian Public Health Association – Decriminalization of Personal Use of Psychoactive Substances: Position Statement (2017)</p>	Burden of Cost
	In 2015, the estimated cost associated with substance use consumption was \$8.2 billion. In 2002, \$148 million was directed to prevention and research, and \$5.4 billion was associated with law enforcement. Criminalization crowds and slows the criminal justice system with non-violent crimes.
	Human Toll

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	<p>Ongoing criminalization of substances can contribute to acceleration of infections like HIV and Hepatitis C.</p> <p>Stigma and Marginalization</p> <p>Criminalization does not result in substance use, but rather results in stigmatization and other harms to those caught in possession of substances for personal use.</p> <p>Effect of criminalization does not reflect the severity of the crime and results in health inequity.</p> <p>Incarceration creates barriers to re-entry into general society (employment, housing, socio-economic harm).</p> <p>Enforcement and stigma drive people away from prevention and care.</p>
<p>Public Health Ontario – Evidence Scan and Jurisdictional Approaches to the Decriminalization of Drugs (Sept 2022)</p>	Burden of Cost
	Human Toll
	Research has demonstrated significant health, social and economic harms resulting from laws that criminalize people who use certain drugs.
	Stigmatization and Marginalization
	The development of approaches to drug use in Canada and elsewhere are rooted in and sustain racism and colonialism, and have disproportionately targeted and impacted Black, Indigenous, and racialized people through racial discrimination across the criminal justice system (e.g., policing, arrests, incarceration). Other people who use drugs also experience inequitable negative impacts from drug laws including people experiencing homelessness, people with mental health concerns, youth/children of individuals incarcerated for drug crimes and women.
<p>The Centre for Addiction and Mental Health (CAMH) – Statement on the decriminalization of substance use (2021)</p>	Burden of Cost
	Human Toll
	Criminalization has created disproportionate social and health harms for racialized people and communities.
	Stigma and Marginalization
	The historic over policing and over-incarceration of Black and Indigenous people and communities must be addressed as well as the recommendations of the Truth and Reconciliation Committee.
<p>Health Canada – Recommendations on Alternatives to Criminal Penalties for Simple Possession of Controlled Substances (Report # 1) (2021)</p>	Burden of Cost
	Creates financial burden on the health and criminal justice system.
	Human Toll
	Stigma and Marginalization
<p>Canadian Association of Chiefs of Police – Decriminalization of Illicit Substances (2021)</p>	Burden of Cost
	Human Toll
	Proportion of Indigenous offenders federally incarcerated for an offence with Mandatory Minimum Penalties (MMP) almost doubled in over 10 years (14% in 2007/2008 to 26% in 2016/2017). 39% of all Black and 20% of all Indigenous offenders in federal institutions were admitted for an offence with MMP.

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	<p>43% of all federally incarcerated offenders convicted of a CDSA offence punishable by MMP (importing/exporting or possession for exporting) were Black adults.</p> <p>40% of all federally incarcerated offenders admitted for a firearm-related offence punishable by MMP were Indigenous adults.</p> <p>Stigma and Marginalization</p> <p>Indigenous adults represent 5% of Canadian population but 30% of admissions to federal custody.</p> <p>Indigenous women represent 5% of Canadian women but 42% of federally incarcerated women.</p> <p>Black adults represent 3% of Canadian population, but 7.2% of federal offender population.</p>
<p>Waterloo Region Crime Prevention - Council Issues of Substance: Prohibition, Decriminalization, and Legalization with Strict Regulation (2022)</p>	<p>Burden of Cost</p> <p>Human Toll</p> <p>A Provincial Chief Coroner recently surmised that: "... not only are the policies and laws that we currently live under misinformed, I really believe they are actually doing harm. We are punishing people who are already experiencing problematic use, we are using all sorts of resources, law enforcement, courts, jails to further harm people who are already suffering."</p> <p>Fear of police attendance meant most witnesses to an overdose emergency would not call 911.</p> <p>Creates and perpetuates false and negative beliefs, stereotypes and structural discrimination from governments, elected officials, health and social service systems and providers, family members, society at large etc. Reducing autonomy and perceived self-worth. Fear of criminalization and reliance on unregulated marketplaces decreases mental health, produces unhealthy relationships, increases vulnerability, isolation, and traumatic events, facilitating instability. Reliance on unregulated markets leaves consumers vulnerable to victimization, isolation and unhealthy relationships.</p> <p>Fear of being poisoned by a toxic drug supply causes instability and reduced mental health.</p> <p>Criminal sanctions are extremely disruptive to labour force participation, educational attainment, family/friend relationships, personal health, international travel etc.</p> <p>Little to no remedy for ancillary interpersonal crimes and victimization (e.g. unlikely to seek police assistance). Unpredictable product creates uncertainty about adverse effects (e.g. bootleg benzodiazepines in fentanyl products incapacitating consumers for hours, causing amnesia etc.). Criminalization and systemic carceral logic increase the risk of ill health and socioeconomic well-being, and prevents and/or hampers engagement and provision of quality service for both consumers and practitioners, including initiation, diagnosis, treatment and related pathways to improved health. For no/low-income consumers, self-managing withdrawal symptoms via the unregulated market is expensive, time consuming and sometimes,</p>

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	<p>dependent on funding through risky acquisition activities (i.e. survival sex work, petty crime, selling small quantities of drugs, recycling material etc.).</p>
	<p>Stigma and Marginalization</p>
	<p>Indigenous, Black and Persons of Colour continue to be intentionally and disproportionately harmed, injured and killed - by a wide margin - through the on-going application of narcotic laws firmly rooted in colonialism. Continues to disproportionately harm people without stable housing; low income individuals and neighbourhoods; people with mental health issues; Black, Indigenous and people of colour; women and youth.</p>
<p>Canadian Society of Addiction Medicine (CSAM) Policy Brief: CSAM in Support of the Decriminalization of Drug Use and Possession for Personal Use (2021)</p>	<p>Burden of Cost</p>
	<p>Human Toll</p>
	<p>The rate of offences for drug possession has remained relatively steady from 2014 to 2018 (18.73 to 19.1 per 100,000). Yet the Canadian Tobacco Alcohol and Drug Survey reported an increase in past-year illegal drug use (excluding cannabis) from 678,000 in 2015 up to 987,000 in 2017. For those with Opioid Use Disorder (OUD) in correctional settings, only 26% reported access to Opioid Agonist Therapy (OAT). Among this percentage, only 9% were new initiations. In other words, most individuals with OUD entering into the correctional system are not identified and therefore do not receive appropriate treatment.</p> <p>Substance use is an important challenge in Indigenous communities; however, its criminalization fails to acknowledge the intergenerational systematic marginalization from cultural oppression, cultural erosion and economic exclusion.</p>
	<p>Stigma and Marginalization</p>
	<p>Consider the harms associated with a criminal conviction according to the Canadian Bar Association: challenges with housing, employment, inability to volunteer or travel, and possible deportation for immigrants.</p> <p>Persons with a history of imprisonment are half as likely to obtain an appointment with a family physician than controls (despite a universal healthcare system).</p> <p>Prospective tenants have also been requested to provide criminal records, which is a discriminatory practice. For those on social welfare in prime working age, 15% cited the “need for record suspension” as a critical barrier to employment.</p> <p>The criminalization of drug use across Canada disproportionately impacts Black Canadians. Black and Indigenous people were both overrepresented. In cannabis possession arrests (before the Cannabis Act) despite a similar frequency of use across racial groups.</p> <p>Incarcerated pregnant women also face unique risks. For example, opioid withdrawal during pregnancy can cause intrauterine growth restriction, premature delivery, miscarriage, and stillbirth.</p> <p>Some women may rely on sex work or low-level drug dealing for survival, yet they are subject to equally harsh sanctions as those who are not forced to make such decisions for the sake of economic survival.</p> <p>Incarcerated women in Canada have reported multiple barriers to accessing health services that resulted in treatment interruption and poor</p>

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	mental and physical health, all of which have contributed to addiction and crime upon release.
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<p>Whether a model that included decriminalization was supported.</p> <ul style="list-style-type: none"> ○ If yes: <ul style="list-style-type: none"> ▪ What should be the key elements of a proposed decriminalization model? ▪ What complementary measures should be included if any? ○ If No: <ul style="list-style-type: none"> ▪ What other alternatives are suggested. 	
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Report Details	Is there support for a model of decriminalization
<p>Drug Policy Alliance – Approaches to Decriminalizing Drug Use and Possession (2015)</p>	<p>Yes Removal of criminal penalties for drug law violations (possession for personal use). U.S. States with reduced penalties do not have higher rates of drug use. Many states that treat possession as a misdemeanor have slightly lower rates of illicit drug use and higher rates of admission to drug treatment than states that consider it a felony.</p>
	<p>What should be the key elements of a proposed decriminalization model and what complementary measures should be included if any?</p>
	<p>Stop arrests and administrative penalties for drug use. Scale up harm reduction and treatment programs, including medication-assisted treatment. Consideration could be given to the Portugal model: Combine the removal or criminal penalties with alternative therapeutic responses leading to a reduced burden on criminal justice system and a reduction in problematic substance use. In the absence of decriminalization, states should at minimum reclassify possession of illicit drugs as a misdemeanor or infraction.</p>
<p>HIV Legal Network: Decriminalization Done Right - A Rights-Based Path for Drug Policy (2021)</p>	<p>Yes Decriminalization of personal drug possession and necessity trafficking are fundamental, necessary steps towards rational and just drug policy.</p>
	<p>What should be the key elements of a proposed decriminalization model and what complementary measures should be included if any?</p>
	<p>Fully decriminalizing all drug possession for personal use, as well as the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safe supply. Automatic expungement of previous convictions for simple drug possession and applications-based expungement process for necessity trafficking. Re-distributing resources from the enforcement of harmful drug laws to non-coercive, voluntary policies, programs and services that protect and promote people’s health and human rights (health, education, housing, social services). Must be clear rules and strict limitations for police when stopping, searching, and investigating a person for drug possession. Police should receive mandatory training on reforms and on forms of necessity trafficking to prevent inappropriate use of police discretion.</p>

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	<p>People who use drugs (PWUD) should have access to legal advice and representation.</p> <p>Police complaint and oversight mechanisms necessary.</p> <p>No pre-trial detention for drug possession or necessity trafficking.</p> <p>Funds saved from decriminalization should be distributed to the communities most affected by the harms.</p>
<p>Canadian Centre on Substance Use and Addiction- Decriminalization: Options and Evidence (2018)</p>	<p>Yes</p> <p>No official position adopted – paper serves as policy brief, examining alternatives to criminalization internationally.</p> <p>States decriminalization is an evidence-based policy strategy to reduce the harms associated with the criminalization of illicit drugs and there is no evidence to suggest an association between decriminalization and increased rates of substance use or other harms</p> <p>What should be the key elements of a proposed decriminalization model and what complementary measures should be included if any?</p> <p>Continuity and integration of care → increases positive health and social effects.</p> <p>Community capacity → necessary to ensure the availability and interaction of health, enforcement and social programs.</p> <p>Broad or flexible eligibility criteria → maximizes program reach and equity.</p> <p>Threshold quantities → cannot be set too low, otherwise reduced impact by limiting eligibility.</p> <p>Clear communication to the public and police → reduces net widening by defining the objectives of diversion.</p> <p>Clear guidelines and ongoing training for police are required for program implementation and fidelity.</p> <p>Consider legislative and regulatory context and engage people with lived and living experience in policy development.</p> <p>De Jure option: The most sweeping decriminalization option in Canada is to remove criminal penalties associated with certain drug related offences from the CDSA as it requires legislative change at every level of government. Each region would need to scale up and out existing harm reduction services.</p> <p>De Facto Option: police forces can use discretion to apply non-criminal justice alternatives to drug offences, tailored to respond to local context and quicker than de jure change.</p>
<p>Canadian Public Health Association – Decriminalization of Personal Use of Psychoactive Substances: Position Statement (2017)</p>	<p>Yes</p> <p>Recommend:</p> <ul style="list-style-type: none"> • Federal government work with provinces and territories to decriminalize all the possession of small quantities of illegal psychoactive substances (IPS) for personal use and provide summary conviction sentencing alternatives (including discharges) • Decriminalize the sales and trafficking of small quantities of IPS by young offenders. <p>What should be the key elements of a proposed decriminalization model and what complementary measures should be included if any?</p>

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	<p>Develop probationary procedures and provide a range of enforcement alternatives, including:</p> <ul style="list-style-type: none"> • Develop harm reduction and health promotion infrastructure to enhance treatment access. • Provide amnesty for previous convictions of possession of small quantities of IPS. • Provide expanded evidence-informed harm reduction options, such as CTS and drug checking services.
<p>Public Health Ontario – Evidence Scan and Jurisdictional Approaches to the Decriminalization of Drugs (Sept 2022)</p>	<p>Yes There is evidence that suggests policies intended to prohibit or suppress drug use contribute directly and indirectly to risks for fatal drug overdose (also referred to as drug poisoning).</p> <p>What should be the key elements of a proposed decriminalization model and what complementary measures should be included if any?</p> <p>More equitable engagement with people who use drugs is needed in the design, development, and evaluation of decriminalization policies as well as parallel planning for health and social justice.</p>
<p>The Centre for Addiction and Mental Health (CAMH) – Statement on the decriminalization of substance use (2021)</p>	<p>Yes Administrative sanctions should not be applied to the model.</p> <p>What should be the key elements of a proposed decriminalization model and what complementary measures should be included if any?</p> <p>Ensure decriminalization applies across the country to all currently illicit drugs. Establish thresholds at levels that will effectively prevent criminalization. Ensure evaluation of decriminalization measures. Work with provinces to ramp up treatment and harm reduction services; increase capacity at and make SCS and drug checking services more available. Replace the current toxic supply with an alternative (iOAT, safer supply programs), work to reduce criminalization in general and invest in social determinants of health.</p>
<p>Health Canada – Recommendations on Alternatives to Criminal Penalties for Simple Possession of Controlled Substances (Report # 1) (2021)</p>	<p>Yes</p> <p>What should be the key elements of a proposed decriminalization model and what complementary measures should be included if any?</p> <p>End criminal penalties for simple possession and end all coercive measures related to simple possession and consumption. Thresholds for simple possession should be based on presumption of innocence, and thresholds should be set high enough to account for purchasing and consumption habits of all people who use drugs. Criminal records from previous offenses related to simple possession should be fully expunged. All substances should be integrated under a single public health framework of legally regulated substances. Significant investments for a full spectrum of supports need to be available. A more comprehensive system to gather, use and disseminate evidence related to substance use should be implemented.</p>

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	A new committee to facilitate people with lived and living experience (PWLLE) of substance use needs to be created to provide advice into the implementation of new policies.
Canadian Association of Chiefs of Police – Decriminalization of Illicit Substances (2021)	Yes Endorse alternative to criminal sanctions for simple possession of illicit drugs, requiring integrated partnerships and access to diversion measures.
	What should be the key elements of a proposed decriminalization model and what complementary measures should be included if any?
	Supports diversion methods. Emphasizes the need for increased community capacity and resources to support the availability of integrated health and social services programs.
Waterloo Region Crime Prevention - Council Issues of Substance: Prohibition, Decriminalization, and Legalization with Strict Regulation (2022)	No
	What other alternatives were suggested
	The Waterloo Region Crime Prevention Council rejects prohibition and decriminalization of simple possession and supports legalization with strict regulation as the legislative approach that offers the greatest opportunity for significantly improving both individual and community health, safety and well-being for all residents of Canada, substantially reducing accidental drug poisoning deaths and injuries and providing the lowest financial burden to taxpayers.
Canadian Society of Addiction Medicine (CSAM) Policy Brief: CSAM in Support of the Decriminalization of Drug Use and Possession for Personal Use (2021)	Yes
	What Should be the key elements of a proposed decriminalization model and what complementary measures should be included if any

Report Details	Other notable comments
Drug Policy Alliance – Approaches to Decriminalizing Drug Use and Possession (2015)	Benefits of decriminalization: <ul style="list-style-type: none"> • Reduce # of arrests, reduce # of incarcerations, increased drug treatment, reduced criminal justice costs • Redirected dollars to health services, police can shift focus to violent crime, reduce racial disparities in criminal justice system, reduce fear for accessing treatment, protect people from consequences of criminal charge, improve community relationship to law enforcement.
HIV Legal Network: Decriminalization Done Right - A Rights-Based Path for Drug Policy (2021)	Criminalization of drugs is ineffective in reducing the use and availability of drugs and is a waste of public funds.
Canadian Centre on Substance Use and Addiction-	Decriminalization is not a single model or approach, many decriminalization options can be combined and tailored based on problem, context and resources.

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<p><u>Decriminalization: Options and Evidence (2018)</u></p>	<p>The best solution for any given jurisdiction will be determined by a thorough consideration of contextual factors, including resources and readiness for change among decision makers and key stakeholders. Decision makers will need to determine whether adaptations to existing models are required to better reflect their own context and objectives.</p>
<p>Canadian Public Health Association – <u>Decriminalization of Personal Use of Psychoactive Substances: Position Statement (2017)</u></p>	<p>Decriminalization is an approach that places health promotion, protection, population health surveillance, and prevention of death, injury and disability as central tenants, in line with the Canadian Charter of Rights and Freedoms and UN agreements.</p>
<p>Public Health Ontario – <u>Evidence Scan and Jurisdictional Approaches to the Decriminalization of Drugs (Sept 2022)</u></p>	
<p>The Centre for Addiction and Mental Health (CAMH) – <u>Statement on the decriminalization of substance use (2021)</u></p>	<p>Meaningfully include people who use drugs in the development of policy.</p>
<p>Health Canada – <u>Recommendations on Alternatives to Criminal Penalties for Simple Possession of Controlled Substances (Report # 1) (2021)</u></p>	<p>End criminal penalties for simple possession and end all coercive measures related to simple possession and consumption. Thresholds should be based on presumption of innocence, and should be set high enough to account for purchasing and consumption habits of all PWUD. Criminal records from previous offenses related to simple possession should be expunged.</p>
<p>Canadian Association of Chiefs of Police – <u>Decriminalization of Illicit Substances (2021)</u></p>	<p>The CACP endorses alternatives to criminal sanctions for simple possession of illicit drugs, requiring integrated partnerships and access to diversion measures. - This means that drug possession remains illegal, but the nature of the penalty for possessing a small or predetermined amount of drugs for personal consumption is either reduced/changed from a criminal conviction to a fine or other type of sanction. Frontline officers will always play a critical role in any diversion model because they are often the point of first contact and the ones who will assist individuals into pathways of care.</p>
<p>Waterloo Region Crime Prevention - <u>Council Issues of Substance: Prohibition, Decriminalization, and Legalization with Strict Regulation (2022)</u></p>	