



**Submission to the City of Vancouver:
Mayor Stewart's motion to decriminalize
personal possession of controlled substances in Vancouver**

November 20, 2020

The HIV Legal Network (formerly the Canadian HIV/AIDS Legal Network) wishes to express our support for Mayor Stewart's motion to direct "the City of Vancouver to write to the federal Ministers of Health, Public Safety and Emergency Preparedness, and Justice and Attorney General to request a federal exemption from the *Controlled Drugs and Substances Act* to decriminalize personal possession of illicit substances within the City's boundaries for medical purposes, in order to address urgent public health concerns caused by the overdose crisis and COVID-19."¹

As you may know, in May of this year, the HIV Legal Network, Pivot Legal Society and the Canadian Drug Policy Coalition called on the federal government to exercise its section 56 exemption power to decriminalize simple drug possession — a call that has been endorsed by more than 170 civil society organizations to date.² **We reiterate our support for this particular route to effectively decriminalize simple drug possession: one that is simple, straightforward, and can be undertaken immediately.**

There is a tremendous need to act quickly. As the current text of the motion notes, the overdose crisis has tragically claimed more than 1,500 lives in Vancouver since a provincial overdose emergency was declared in April 2016, and 2020 is projected to be the worst year yet. The motion also acknowledges that decriminalization is "an urgent and necessary next step to addressing the overdose crisis."³

Research has shown that the criminalization of simple drug possession, and the attendant fear of drug seizures and arrests, push some people who use drugs to do so in isolation, compromising their ability to take critical safety precautions, such as using a "buddy system" or accessing supervised consumption or overdose prevention services.⁴ It also creates significant barriers to health care and social supports by fuelling stigma, discrimination, shame and blame. Moreover, heightened law enforcement surveillance in the context of restrictions imposed in response to the COVID-19 pandemic also increases the risk of arrest, detention, and incarceration faced by people who use drugs.⁵

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No administrative sanctions, involuntary interventions or other punitive measures

Even in the absence of criminal sanctions, however, **administrative sanctions or other penalties associated with personal drug possession give license to law enforcement to surveil and punish people who use drugs.** In Portugal, for example, where simple drug possession is decriminalized but remains an administrative violation punishable by penalties such as fines or community service,⁶ people who use drugs are still stopped, searched and harassed by the police.⁷ The policing of people who use drugs also falls most heavily on the most marginalized.⁸ If, as Mayor Kennedy's motion indicates, an aim of decriminalization is to help address "anti-Black, anti-poor, and colonial policing," then ongoing administrative sanctions would undoubtedly undermine this objective.

At the same time, ongoing policing of people who use drugs in Portugal, along with persistent stigma and discrimination against people who use drugs, has resulted in the displacement of communities of people who use drugs. This displacement creates significant barriers to accessing services, including health care and harm reduction. If the motion seeks to "reduce the stigma associated with substance use and encourage people at risk to access lifesaving harm reduction and treatment services," replacing criminal prosecution with an administrative sanction would similarly undermine this objective.

Any referrals to treatment must also be entirely voluntary, and law enforcement should play no formal role in referring people to "health assessments," treatment, commissions or diversion programming. Not only would any such action be perceived to be coercive by people who use drugs, involuntary treatment is ineffective and a waste of resources that could be better spent on evidence-based supports for people who use drugs.

As the Global Commission on Drug Policy (comprising former heads of state or government and other eminent political, economic, and cultural leaders from countries around the world) has observed:

"many local and national authorities have adopted alternatives to punishment, abandoning criminal sanctions against people who use drugs and replacing them by administrative consequences like fines, often combined with medical treatment and social measures. Nevertheless, these alternatives do not go far enough. ... **[T]he Commission calls for the removal of all punitive responses to drug possession and use.**

...

Alternatives to punishment, and the support of neglected communities, are the pathways to liberate both individuals and communities from the grip of organized crime, open new economic perspectives, and respect the rights and dignity of all."⁹

We support this recommendation of the Global Commission on Drug Policy, and urge you to ensure **that criminal sanctions are not replaced with administrative sanctions. Meaningfully addressing the harms of the prohibition of simple drug possession requires the removal of all criminal sanctions and other punitive measures by the state for the possession of substances**

for personal use, such as administrative penalties, fines, confiscation or seizures of substances or drug use equipment, conditions of release such as geographic restrictions, drug use conditions, temporal conditions, personal contact conditions, or formal diversion to Drug Treatment Courts as an alternative to criminal sanction.

This would reduce the persistent threat of police surveillance, arrest, and prosecution; decrease stigma related to drug use; and remove barriers to harm reduction, health, community, and social services, particularly for the Black, Indigenous, and poor communities most affected. As the Vancouver Area Network of Drug Users and Pivot Legal Society recently underscored,

“[administrative or other consequences for drug possession] do not help us. Instead, they preserve the same fear and distrust that drives drug use underground, negatively impacting our lives in much the same ways as criminalization itself. ... a legacy of racist, anti-poor policing means that even a seemingly ‘benign’ interaction with a police officer is often experienced as a hostile detention by communities that have been over-policed, profiled, and incarcerated.”¹⁰

Widespread support for decriminalization

Criminalizing simple drug possession does not protect public health or public safety and has been ineffective in reducing the use and availability of illicit drugs.¹¹ Prohibition drives rampant stigma against people who use drugs and puts them at increased risk of harm, including by impeding their access to much-needed services and emergency care in the event of an overdose or, now, by increasing their risk of exposure to SARS-CoV-2, the virus that causes COVID-19. As the Canadian Centre on Substance Use and Addiction concluded in a 2018 report, a growing body of evidence supports decriminalization as an effective approach to mitigate harms associated with substance use, particularly those associated with criminal prosecution for simple possession.¹² A scan of more than 25 jurisdictions around the world that have decriminalized drugs identified a number of positive health outcomes, including reduced rates of HIV transmission and fewer drug-related deaths, improved education, housing, and employment opportunities for people who use drugs, and significant savings, with a negligible effect on levels of drug use.¹³

Given the extensive evidence, there is strong support in Canada for the decriminalization of drug possession for personal use from organizations of people who use drugs and other community organizations, harm reduction and human rights advocates¹⁴ as well as public health associations and authorities including the Canadian Public Health Association,¹⁵ Canadian Mental Health Association,¹⁶ Canadian Nurses Association,¹⁷ Toronto Board of Health,¹⁸ Toronto’s Medical Officer of Health,¹⁹ Montreal Public Health,²⁰ Winnipeg Regional Health Authority,²¹ and Provincial Health Officer of British Columbia.²²

Globally, decriminalizing simple drug possession has been recommended by numerous health and human rights bodies as a measure that both protects health and upholds human rights,

including the World Health Organization (WHO), UNAIDS, UN Special Rapporteurs on the right to health,²³ the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment,²⁴ and most recently, the UN Chief Executives Board for Coordination — which has adopted a call for decriminalization of simple possession as the common position of the UN system (including the UN Office on Drugs and Crime, the lead technical agency on drug policy issues).²⁵ The *International Guidelines on Human Rights and Drug Policy*, endorsed already by the UN Development Program (UNDP), UNAIDS and WHO, also call on States to “decriminalise the possession, purchase, or cultivation of controlled substances for personal consumption.”²⁶

Conclusion

Support for decriminalization continues to grow, amidst calls to also reconsider the role of police in various contexts, and a growing body of evidence about the disproportionate impact of punitive drug policy on Black, Indigenous and poor communities. A section 56 exemption offers an immediate, straightforward mechanism that can be used by the City of Vancouver without delay to start undoing the damage of criminalizing people for personal drug use, and instead shift our energies and resources to more effective ways of protecting and promoting the health of people in our families and communities.

¹ “Mayor Stewart announces plan to decriminalize simple possession of drugs in Vancouver,” November 18, 2020. Available at https://www.kennedystewart.ca/decriminalize_simple_possession_of_drugs_in_vancouver.

² Canadian HIV/AIDS Legal Network, *Letter to Canadian Government: Decriminalize Simple Drug Possession Immediately*, May 14, 2020 updated June 25, 2020. Available at www.hivlegalnetwork.ca/site/letter-to-canadian-government-decriminalize-simple-drug-possession-immediately/?lang=en.

³ Supra note 1.

⁴ *Canada (Attorney General) v. PHS Community Services Society*, 2011 SCC 44 at para 10; A. B. Collins et al., “Policing space in the overdose crisis: A rapid ethnographic study of the impact of law enforcement practices on the effectiveness of overdose prevention sites,” *International Journal on Drug Policy* 73 (2019): pp. 199-207.

⁵ See, for example, CCLA and Policing the Pandemic Mapping Project, *Stay off the Grass: COVID-19 and Law Enforcement in Canada*, June 2020. Available at <https://ccla.org/cclanewsites/wp-content/uploads/2020/06/2020-06-24-Stay-Off-the-Grass-COVID19-and-Law-Enforcement-in-Canada.pdf>.

⁶ Transform Drug Policy Foundation, *Drug decriminalisation in Portugal: setting the record straight*, November 14, 2018. Available at <https://transformdrugs.org/drug-decriminalisation-in-portugal-setting-the-record-straight>.

⁷ International Network of People who Use Drugs, *Is Decriminalisation Enough? Drug User Community Voices from Portugal Introduction – Building on Our Consensus Statement*, 2018. Available at https://www.inpud.net/sites/default/files/Portugal_decriminalisation_final_online%20version%20-%20RevisedDec2018.pdf.

⁸ Ibid.

⁹ Global Commission on Drug Policy, *Advancing Drug Policy Reform: A New Approach to Decriminalization*, 2016. Available at <https://www.globalcommissionondrugs.org/wp-content/uploads/2016/11/GCDP-Report-2016-ENGLISH.pdf>.

¹⁰ Vancouver Area Network of Drug Users & Pivot Legal Society Joint Statement, “We Support a Vancouver Motion to Request a Federal Exemption to Fully Decriminalize Drug Possession,” November 19, 2020. Available at https://www.pivotlegal.org/vandu_pivot_joint_statement.

¹¹ E. Wood et al., “The war on drugs: a devastating public-policy disaster,” *The Lancet* 373:9668 (2009) pp. 989-990.

¹² Canadian Centre on Substance Use and Addiction, *Decriminalization: Options and Evidence*, 2018. Available at <https://www.ccsa.ca/sites/default/files/2019-04/CCSA-Decriminalization-Controlled-Substances-Policy-Brief-2018-en.pdf>.

¹³ Release, *A Quiet Revolution: Drug Decriminalisation Across the Globe*, March 2016. Available at <https://www.release.org.uk/publications/drug-decriminalisation-2016>.

¹⁴ Canadian HIV/AIDS Legal Network, “Canada must adopt a human-rights based approach to drug policy,” November 22, 2018. Available at www.aidslaw.ca/site/statement-canada-must-adopt-a-human-rights-based-approach-to-drug-policy/?lang=en. The statement was endorsed by Amnesty International Canada, Canadian Aboriginal AIDS Network, Canadian Association of People Who Use Drugs, Canadian Drug Policy Coalition, Canadian Nurses Association, Canadian Public Health Association, Criminal Lawyers’ Association, HIV & AIDS Legal Clinic Ontario (HALCO), Moms Stop The Harm, moms united and mandated to saving the lives of Drug Users (mumsDU) and Pivot Legal Society.

¹⁵ Canadian Public Health Association, *Decriminalization of personal use of psychoactive substances*, position statement, October 2017. Available at www.cpha.ca/sites/default/files/uploads/policy/positionstatements/decriminalization-positionstatement-e.pdf

¹⁶ Canadian Mental Health Association, *Care not Corrections: Relieving the Opioid Crisis in Canada*, April 2018. Available at https://cmha.ca/wp-content/uploads/2018/04/CMHA-Opioid-Policy-Full-Report_Final_EN.pdf

¹⁷,Supra note 14.

¹⁸ N. Thompson, “Toronto board of health to urge federal government to decriminalize drug use,” *The Globe and Mail*, July 16, 2018.

¹⁹ E. Mathieu, “Chief medical officer calls for decriminalization of all drugs for personal use,” *The Toronto Star*, July 9, 2018.

²⁰ Santé Montréal, “La directrice régionale de santé publique de Montréal salue les recommandations de Toronto” news release, July 27, 2018. Available at <https://santemontreal.qc.ca/population/actualites/nouvelle/decriminalisation-des-drogues-pour-usage-personnel/>.

²¹ Winnipeg Regional Health Authority, *Position statement on harm reduction*, December 2016. Available at <https://serc.mb.ca/wp-content/uploads/2018/06/HarmReduction-wrha.pdf>

²² British Columbia Office of the Provincial Health Officer, *Stopping the Harm: Decriminalization of People who use Drugs in BC*, April 2019. Available at 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

²³ See, for example, Anand Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN General Assembly, 65th Session, UN Doc A/65/255, August 6, 2010; Anand Grover, *Submission to the Committee against Torture regarding drug control laws*, October 19, 2012; Anand Grover, *Open letter by the Special Rapporteur on the right of everyone to the highest attainable standard of mental and physical health, Dainius Pūras, in the context of the preparations for the*

UN General Assembly Special Session on the Drug Problem (UNGASS), to UNODC Executive Director Yury Fedotov, December, 7 2015.

²⁴ Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly, 22nd Session, UN Doc A/HRC/22/53, February 1, 2013.

²⁵ United Nations Chief Executives Board, *Summary of Deliberations: Segment 2: common United Nations system position on drug policy*, UN System, 2nd regular session of 2018, UN Doc CEB/2018/2, January 18, 2019; United Nations Chief Executives Board, *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, UNCEB, 2nd Session, Annex 1, UN Doc CEB/2018/2, January 18, 2019.

²⁶ International Centre on Human Rights and Drug Policy, UNAIDS, UNDP, WHO, *International Guidelines on Human Rights and Drug Policy*, March 2019. Available at <https://www.humanrights-drugpolicy.org/>.