Do Not Cross: Policing and HIV Risk Faced by People Who Use Drugs

Canadian HIV/AIDS Legal Network
Réseau juridique canadien VIH/sida

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About the Canadian HIV/AIDS Legal Network
The Canadian HIV/AIDS Legal Network (www.aidslaw.ca) promotes the human rights of people living with and vulnerable to HIV/AIDS, in Canada and internationally, through research, legal and policy analysis, education, and community mobilization. The Legal Network is Canada's leading advocacy organization working on the legal and human rights issues raised by HIV/AIDS.

Canadian HIV/AIDS Legal Network
1240 Bay Street, suite 600
Toronto, Ontario
Canada M5R 2A7
Telephone : +1 416 595-1666
Fax: +1 416 595-0094
E-mail: info@aidslaw.ca
Website: www.aidslaw.ca

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Executive Summary

This paper reviews the research literature of relevance to Canada on the impact of law enforcement practices on HIV/AIDS prevention, care and treatment for people who use illegal drugs. We interpret "HIV/AIDS prevention, care and treatment" broadly to include not only access to services but the ability of individuals who use drugs to engage in practices that reduce drug-related harm, including HIV transmission. For the purposes of this paper, we consider the impact of national and provincial/state laws and municipal bylaws or regulations, as well as the impact of policing at a local level. Global drug control measures are beyond the scope of this paper, though they may have local or national impact. We examine ways in which policing practices affect measures to reduce the harms associated with the use of illegal drugs and to protect and promote the health of people who use them. Based on the available evidence and a consideration of Canada's obligations to respect, protect and fulfill the human rights of all people in Canada, we offer recommendations for legislative and policy reforms. In addition to these reforms, we suggest other action needed to ensure the effective functioning of, and access to, the harm reduction measures that are supposed to represent a core element of Canada's response to both problematic substance use and HIV/AIDS.

Introduction

In many countries, including Canada, law enforcement is the dominant public policy response to illegal drug use. Application of criminal laws in the fight against drugs in Canada occurs in an essentially prohibitionist framework. That is, public policy is founded primarily on laws that prohibit the sale, use and possession of certain drugs. In the words of Canada's Drug Strategy, the ultimate goal is "to prevent the unlawful import, export, production, distribution and possession of illegal drugs."[1]

Canada's drug policy is meant to feature a "balanced approach" that complements prohibition-based law enforcement with three other "pillars" — prevention of drug use, treatment for drug addiction, and harm reduction.[2] While much is made in Canadian policy discussions of this "balanced approach," a 2001 investigation by the Auditor General concluded that 95 percent of government resources in the fight against drugs goes to criminal law measures, including policing and incarceration.[3] This is perhaps unsurprising as municipal authorities and police react to public pressure for measures that respond visibly to security and public-order concerns that are raised in the public mind by drug use. But it is unfortunate that the lop-sided resource allocation among the four "pillars" has not allowed Canada's experience to demonstrate a model of a balanced policy.

As for Canada's policy and program response to HIV/AIDS, the government espouses a human rights-based

[1] Health Canada. Canada's Drug Strategy. Available at http://www.hc-sc.gc.ca/ahc-asc/activit/strateg/drugs-drogues/index_e.html. Health Canada and the Canadian Centre on Substance Abuse have also developed a document entitled *A National Framework for Action to Reduce the Harms Associated with Alcohol and Other Drugs and Substances in Canada*. More information is available via http://www.ccsa.ca.

[2] Ibid.

[3] Auditor General of Canada. *2001 Report of the Auditor General of Canada*. Chapter 11 — Illicit drugs: The federal government's role. Ottawa: Office of the Auditor General of Canada 2001 (www.oag-bvg.gc.ca)

approach.[4] Harm reduction as a policy "pillar" is central to a human rights-centred response to HIV/AIDS. It is a concrete manifestation of the right of people who use drugs to comprehensive HIV/AIDS prevention, treatment and care services. Canada is legally committed to taking action to realize fully the human right to enjoy the highest attainable standard of health.[5] Protecting, promoting and fulfilling the right to health, which includes the right to health goods, services and information, is a fundamental part of a rights-based approach to HIV/AIDS. A central element of the right to health is the right to services that are accessible, affordable, culturally appropriate, available in a nondiscriminatory way, and attentive to the needs of those who are marginalized by law or society.[6] In Canada, Aboriginal people, who face multiple forms of discrimination in access to health and other services, sex workers, and people living in poverty are disproportionately affected by drug addiction. Harm reduction as a human rights-based measure must be adequately supported to ensure access to essential services for socially marginalized persons.

Given the dominance of criminal law approaches to drug control in Canada (and many other countries), it is essential to understand the impact of these approaches on public health policies and programs for people who use drugs, which are meant to constitute the other "pillars" of drug policy. Raising concerns about the viability of "balanced" approaches to drug policy, a growing body of research suggests that some aspects of criminal law approaches to drug use undermine public health services for people who use drugs or their ability to act on public health information and advice.[7] In this paper, we review this literature on policing and health and analyze its implications for policy and further research.

This review is limited to literature from Canada as well as the United States, Australia, and countries of western Europe — countries where the policy environment as well as income and education levels are comparable to those of Canada. While there are many lessons to be learned from the application and misapplication of criminal laws to drug policy and practice in the former Soviet countries, central and south America, China and southeast Asia, we do not wish to suggest invidious comparisons between Canada and countries where "wars on drugs" have been extremely repressive and even murderous. We have also largely limited this review to literature after the late 1980s since it was only then that researchers began making the connection between drug policy and HIV/AIDS.

[4] Government of Canada. *The Federal Initiative to Address HIV/AIDS in Canada: Strengthening Federal Action in the Canadian Response to HIV/AIDS*. Ottawa, 2004.

[5] *International Covenant on Economic, Social and Cultural Rights*. United Nations General Assembly Res. 2200A, 16 December 1966, article 12(1). Canada, along with 151 other countries, is a party to this treaty.

[6] United Nations Committee on Economic, Social and Cultural Rights. General Comment 14: The right to the highest attainable standard of health. UN Doc. E/C.12/2000/4, 4 July 2000.

[7] As noted below, an impressive body of research also suggests that prohibitionist "wars on drugs" are ineffective in controlling drug markets more generally, though this subject is beyond the scope of this review.

Law enforcement and the risk environment

The "risk environment" of drug use is a notion that assists in fully appreciating the impact of law enforcement. Simply put, it is incomplete and potentially deceptive to focus drug policy or drug-related HIV/AIDS policy only on knowledge, behaviour and practices at the level of the individual person who uses (or sells) drugs.[8] Rather, it is essential to understand the community-level and societal factors beyond the control of individuals that together determine the way in which risk is produced and constrain the ways in which it may be reduced. The risk environment includes more "macro"-level elements such as laws and policies, economic conditions, trade and movements of populations, neighbourhood amenities, social inequalities and cultural beliefs, as well as micro-level factors such as interpersonal relations among people who use drugs.[9] Designing interventions for people who use drugs without some understanding of how their risk is shaped by a variety of environmental factors may be ineffective or counterproductive.[10]

Law enforcement is only one aspect of this risk environment but, given the dominance of criminal law approaches to drug policy, it is a very important one.

Law enforcement is only one aspect of this risk environment but, given the dominance of criminal law approaches to drug policy, it is a very important one. Research on law enforcement practices, and on their impact on both behaviours among people who use drugs and their access to HIV/AIDS services, focuses to a large degree on the actions of police. These actions that structure the risk environment include the following:

- crackdowns or sweeps — that is, "centrally organized, rapidly initiated sustained policing … to reduce the possessions and sale of illicit drugs through heightened surveillance and arrest of drug users and street-level dealers";[11]
- "saturation" policing where large numbers of officers are visible in a defined area, with or without the intent of making many arrests;
- undercover "buy and bust" operations;
- intensive and frequent "stop and search" operations, even if arrests are not made, which are sometimes accompanied by large numbers of "nuisance" citations — jay-walking, loitering, etc.;
- surveillance using video cameras and the like.[12]

In recent years, there has been political support in many jurisdictions for "zero tolerance" approaches that

[8] T Rhodes et al. The social structural production of HIV risk. Social Science and Medicine 2005; 61: 1026–1044; T Rhodes. The 'risk environment': a framework for understanding and reducing drug-related harm. *International Journal of Drug Policy* 2002; 13:85–94.

[9] Rhodes et al. at 1027.

[10] See, e.g., S Burris et al. Addressing the "risk environment" for injection drug users: The mysterious case of the missing cop. *Milbank Quarterly* 2004; 82(1): 125–156.

[11] H Cooper et al. Characterizing perceived police violence: Implications for public health. *American Journal of Public Health* 2004; 94(7): 1109–1118 at 1109.

[12] See, e.g., T Kerr et al. The public health and social impacts of drug market enforcement : A review of the evidence. *International Journal of Drug Policy* 2005; 16: 210–220 at 211; and L Maher and D Dixon. The cost of crackdowns: policing Cabramatta's heroin market. *Current Issues in Criminal Justice* 2001; 13(1): 5-22 at 5–6.

operate from the premise that arresting even small-scale drug users contributes to overall security and public order. Dixon and Coffin review the experience of zero-tolerance policing and criticize it as ineffective and potentially counter-productive.[13] As they note, while zero tolerance retains enormous political appeal, it impedes policy or program discussions of or experimentation with measures that focus on reduction of death, disease, addiction or overall crime. In addition, it makes it likely that people with minor drug offenses will face imprisonment, which carries enormous risk of harms, even for short sentences. They suggest that police officers themselves who target street sales among minor players in the drug scene in response to the call for zero tolerance often understand that the most they will accomplish is to displace the market and not reduce its volume or impact.[14]

While Canada's drug strategy at the federal level does not espouse zero-tolerance approaches, it is important to note that intensive police actions can effectively take on the character of zero tolerance if the target is as much the small-scale drug user as the large-scale trafficker. Indeed, this was a criticism of the major street-based crackdown in Vancouver in 2003.[15] In November 2005 the Vancouver Police Department announced that it would arrest people injecting anywhere outside Insite, the city's safe injection facility. This announcement not only sets a worrying zero-tolerance policy but in essence turns Insite into a law enforcement tool rather than a health facility offering voluntary services.[16] Syringe exchange programs, such as that of CACTUS-Montréal, which have experienced police harassment near their doors are also seeing a particularly dangerous form of zero-tolerance policing. (See companion paper on barriers to access to syringe exchange.)

It is beyond the scope of this paper to assess the effectiveness of drug policing on the goals of disrupting drug markets or reducing drug sale, possession and consumption. But a large body of scholarly literature, including from Canada,[17] attests to the ineffectiveness of "wars on drugs" in which harsh law enforcement measures are the central element of drug policy.[18] Indeed, Canada's espousal of a "four-pillar" balanced policy is an implicit critique of the "war on drugs" approach. To the degree, however, that governments at all levels in Canada continue to allocate drug policy resources so incommensurately to law enforcement activities — creating a certain *de facto* policy imbalance — it is extremely pertinent to understand not only the ineffectiveness of these approaches but their potential harm with respect to HIV/AIDS and other health concerns.

[13] D Dixon and P Coffin. Zero tolerance policing of illegal drug markets. *Drug and Alcohol Review* 1999; 18: 477–486.

[14] Ibid. at 478.

[15] Human Rights Watch. *Abusing the user: Police misconduct, harm reduction and HIV/AIDS in Vancouver*. New York, 2003.

[16] Canadian HIV/AIDS Legal Network. Open letter to May Sam Sullivan, Vancouver, November 30, 2005. Available at www.aidslaw.ca/drugpolicy.

[17] E Wood et al. Impact of supply-side policies for control of illicit drugs in the face of the AIDS and overdose epidemics: Investigation of a massive heroin seizure. *Canadian Medical Association Journal* 2003; 168(2): 165–169. See also a review of numerous studies of this issue by Kerr et al. at 214.

[18] A number of the accounts of intensive street-based drug policing in the articles reviewed in this paper suggest that police crackdowns have become less effective than ever at disrupting drug markets because of the widespread use of cellular telephones, which enable drug dealers (but not the poorest of small-scale drug users) to adapt quickly to police action and to move their operations and networks in an agile way. See, e.g., T May and M Hough. Illegal dealings: The impact of low-level police enforcement on drug markets. *European Journal on Criminal Policy and Research* 2001; 9: 137–162 at 140.

Consequences of police action

Researchers have reported numerous consequences of and responses to intensive drug policing that have an effect on harm reduction, including HIV prevention, and on access to other health services for people who use drugs, including HIV/AIDS care. These are considered in turn.

Reluctance to carry syringes and unsafe disposal of injecting equipment

It has been frequently reported that intensive police action or presence induces reluctance to carry syringes and other injection equipment on the part of people who use drugs, even where carrying syringes is not strictly illegal. Maher and Dixon, in their compelling ethnographic account of policing in the Cabramatta neighbourhood of Sydney, Australia, note this reluctance as a first response to a heightened fear of being "busted."[19] In Cabramatta, people hid their syringes in bushes or homes, posing a potential danger to themselves and others. People surveyed by Bluthenthal and colleagues in northern California, where paraphernalia laws criminalized syringe possession, hid syringes in bushes, abandoned buildings and outdoor air conditioning units, flushed them down toilets, or asked others to hold them, all to avoid being caught with them.[20]

In Vancouver, people who used drugs told Human Rights Watch investigators that they feared being caught with syringes in the well publicized crackdown that began in April 2003 in the Downtown Eastside. Workers in the street-based syringe exchange said their clients were taking many fewer syringes and expressing the fear of being caught with them.[21] According to an investigation by researchers at the British Columbia Centre for Excellence in HIV/AIDS, the 2003 crackdown in Vancouver resulted in more unsafe disposal of syringes,[22] which may be related to drug users' fears of being caught in possession of syringes containing drug residue. (Under Canadian law, the definition of "controlled substance" includes anything that has on it, or contains in it, a controlled substance.[23]) A recent ethnographic study in Vancouver documented a case during the 2003 crackdown of HIV-positive and HIV-negative drug users whose syringes were mixed up when they had both hidden them, fearing being caught with them.[24] Unsafe syringe disposal has been documented as a result of other police crackdowns.[25]

As discussed below with respect to law reform, there is ambiguity in Canadian law about the legality of possession even of clean syringes, to the degree that fear of arrest because of syringe possession on the part of people who use drugs is well founded. In November 2005, a staff member of AIDS Niagara contacted the Canadian HIV/AIDS Legal Network to report that sex workers in Niagara were being told by police that they would be arrested for possessing clean syringes if the conditions of release from a previous conviction include a prohibition on possessing drug paraphernalia.[26] In this case, it is not clear whether penalizing possession of a sterile syringe is the real object of the condition, but again the ambiguity in the law is grounds for caution.

Maher and Dixon working in Sydney documented a police practice of requiring people who use drugs to destroy or stomp on their syringes in the presence of police officers.[27] This is an especially ill-conceived

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[19] Maher and Dixon, ibid. at 7.

[20] RN Bluthenthal et al. Drug paraphernalia laws and injection-related infectious disease risk among drug injectors. *Journal of Drug Issues* 1999; 29(1): 1–16.

[21] Human Rights Watch at 19–20.

[22] E Wood et al. Displacement of Canada's largest public illicit drug market in response to a police crackdown. *Canadian Medical Association Journal* 2004; 170(10): 1551–1556.

[23] *Controlled Drugs and Substances Act*, s. 2(2).

[24] W Small et al. Impact of intensified police activity upon injection drug users in Vancouver's Downtown Eastside: Evidence from an ethnographic investigation. *International Journal of Drug Policy* 2006; 17(2): 85–95, at 89.

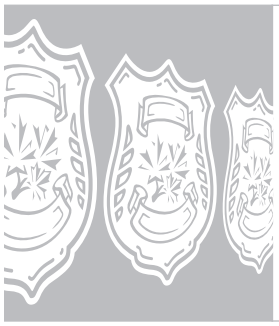
[25] See, e.g., C Aitken et al. The impact of a police crackdown on a street drug scene: evidence from the street. *International Journal of Drug Policy* 2002; 13: 193–202 at 201.

[26] R Thompson, electronic mail to Canadian HIV/AIDS Legal Network, 18 November 2005.

[27] Maher and Dixon at 7.

policy with respect to harm reduction and HIV/AIDS risk. While this action on the part of police has not, to our knowledge, been reported in Canada, the actions of the Vancouver police during the 2003 crackdown, for example, have effectively the same result as injectors felt compelled to discard their syringes or simply not to seek to obtain new ones. More recently, police in Toronto were reported to destroy crack pipes of people they arrested, again a measure that potentially adds directly to the harm of crack use.[28]

This manifestation of fear of police is directly related to HIV risk. Bluthenthal and colleagues working in California estimated that people using drugs who feared arrest because of syringe possession were twice as likely to report sharing syringes and were also more likely to have shared other injection equipment.[29] It stands to reason that fear of carrying syringes leads to being less likely to have a clean syringe when one is needed and more likely to share or to use a syringe discarded by someone else.



. . . fear of carrying syringes leads to being less likely to have a clean syringe when one is needed and more likely to share or to use a syringe discarded by someone else.

Hurried preparation and injection of drugs

Fearing that police may come upon them while injecting or preparing to inject can lead people who use drugs to hurry their injecting or otherwise to change their practices in ways that may increase HIV/AIDS risk. Many of these are well described by Kerr et al.[30] In Cabramatta, fear of police led drug users to use any available syringe, including ones that were discarded by others, as well as to eschew the practice of a small "tasting" dose in favour of taking one large dose, which may raise the risk of overdose.[31] Injecting hurriedly may also lead to vascular accident in the "rush for the vein."[32] When they are rushed, people who use drugs may be less likely to use alcohol swabs where they inject or to treat injection-related wounds, thus increasing the likelihood of abscesses.[33] In other cases in Sydney, in their haste, they would take too much drug solution from a common cap or spoon and then inject some back into the common pool, increasing risk if syringes were contaminated. The BC Centre for Excellence has documented other such risk practices in Vancouver, including hurried preparation where drug solution may be mixed with blood but in haste not heated or filtered.[34]

Women and younger people who use drugs are more likely than others to require assistance in injection, including in finding veins.[35] When people who generally require assistance in injecting are unable to get it, vascular accidents, abscesses and other harms are more likely.[36] Assisted injection is more time-consuming,

[28] New police strategy designed to blanket high violence areas, *Globe and Mail*, 13 February 2006; Canadian HIV/AIDS Legal Network, open letter to W Blair, chief of police, city of Toronto, 13 February 2006, available at www.aidslaw.ca.

[29] Bluthenthal et al. at 8.

[30] Kerr et al. at 211.

[31] Maher and Dixon at 8.

[32] Ibid.

[33] Small et al., 2006, at 89.

[34] Kerr et al. at 211.

[35] JM O'Connell et al. Requiring help injecting independently predicts incident HIV infection among injection drug users. *Journal of Acquired Immune Deficiency Syndrome* 2005; 40(1): 83–88.

[36] Small et al., 2006, at 88–89.

and people may abandon the practice when police presence is feared, specifically disadvantaging women and others who need help injecting. Not taking time to clean syringes because police may be coming may especially disadvantage women who are more likely to be "second on the needle".

Displacement of people who use drugs

One of the main consequences of police crackdowns and other intensive drug policing is often to displace people who use drugs from their normal locations for injection and purchase of drugs. As Maher and Dixon note, displacement may in fact be an express goal of the police since it responds to public pressures to remove or dissipate the immediate nuisance of a visible drug scene.[37] Displacement can have numerous consequences that increase risks to the health of individuals and to public health more generally.

- First, it may be harder for people who use drugs to reach the usual services they frequent or for outreach workers to find their usual clients. This result was documented in the 2003 crackdown in Vancouver, as the street-based health workers who usually worked with the most marginalized and frightened drug users could not find them, or if they found them, the drug users would not take time for a conversation.[38] People who use drugs may also flee to more remote parts of a city where syringe exchange and other services are less likely to be present. Aitken and colleagues documented a case where a crackdown known as Operation Clean Heart in Melbourne, Australia, resulted in flight of people who used drugs to a neighbouring town where the one syringe exchange could not meet the sudden demand it faced and eventually had to close because of dissatisfaction of people in the neighbourhood with the new volume of clients, further compounding the harms caused by a heavy-handed law enforcement response to drug use.[39] Since access to syringe exchange services is likely to be crucial to safer injecting, these effects of displacement pose a direct threat of HIV and hepatitis C risk.

- Displacement to more remote areas also means less access to help in cases of overdose or other medical emergencies. Street-level health workers in the 2003 Vancouver crackdown observed unusually high numbers of used syringes in remote parking lots, secluded parts of parks, and other corners of the city that were not usually injection sites.[40] Not only emergency medical services are unlikely to be present or accessible in such areas, but also public telephones and stores or other establishments that would be useful for seeking help.

- Displacement may also mean destabilization of established social and injecting networks that would normally provide some level of harm reduction and that may be replaced by injecting situations that are far riskier. While regular injecting networks may not always be safe, if they are stable, they at least limit harms to a closed circle of people. Burris and colleagues speculate that disruption of regular injecting networks by changes in intensity of policing may be an important factor in explaining varying rates of HIV prevalence in drug-using populations in the U.S.[41] Displacement combined with fear of arrest may also result in greater utilization or formation of new "shooting galleries," which have been associated in several studies with poor access to clean syringes and a high prevalence of risky behaviour.[42]

- Displacement may also result in the exposure of new communities or neighbourhoods to

[37] Maher and Dixon at 9–10.

[38] Human Rights Watch at 18, 22–23.

[39] Aitken et al. at 199-200.

[40] Human Rights Watch at 21. See also C McGregor et al. Experience of non-fatal overdose among heroin users in Adelaide, Australia: circumstances and risk perception. *Addiction* 1998; 93(5): 701–711.

[41] Burris et al. at 133.

[42] Kerr at al. at 212.

drug use, which may have the unintended consequence of facilitating the initiation of drug use among persons who would otherwise not have been exposed.[43] Results of the 2003 crackdown in Vancouver's Downtown Eastside, for example, included the emergence of drug use, sex work and significant numbers of unsafely discarded needles in neighbourhoods outside the Downtown Eastside.[44]

- Having to find new dealers because of the police's disruption of regular markets may open the door for the selling of fake or diluted drugs, which in turn can lead to violence and retribution as people realize they have been deceived.[45] Putting diluted or adulterated drugs in the hands of people who inject carries serious health risks as well. Some additives to adulterated drugs can be toxic. In addition, being thrown off by injecting a presumed quantity of a drug that is actually less potent (or more potent) than the person injecting believes may increase risk of overdose.[46]

These displacement consequences will affect some people who use drugs more acutely than others. Those who have the most marginal housing, the lowest income and the least developed social networks will be most at risk when they have to find a new place to inject. Those who can go indoors or can move within their existing social support networks may be less likely be exposed to the harm associated with changing locations and possibly being far from services.[47] Unfortunately, those most heavily affected by displacement are likely also to be those most marginalized and impoverished and most in need of good access to services and social support.

Dangerous drug storage and concealment

Both Cooper and colleagues working in New York and Maher and Dixon in Cabramatta reported that the respective crackdowns they followed pushed drug users to secrete drugs in dangerous ways, particularly in body cavities. In Cabramatta, people hid heroin in their mouths inside foil and a small balloon, knowing they could swallow it and retrieve it later. When police caught on to this method and began searching people's mouths, some sellers and users began storing drugs in their noses, which risks not only exposure to heroin through the nasal passage but also "possible disease transmission if the buyer subsequently places the [drug] in his or her own mouth."[48] In New York, people stored drugs rectally as well as orally, fearing police searches.[49] The clinical literature on swallowing wrapped cocaine to hide it or storing it in body orifices is sparse. A few studies, however, indicate that depending on the quality of the wrapping and the quantity ingested, swallowing can result in severe cocaine toxicity, seizures and death.[50]

From smoking to injecting

Maher and Dixon conclude that intensive policing in Cabramatta led some people who habitually smoked heroin to switch to injecting it because of the quicker and stronger impact of an injected dose, a practical consideration when one is hiding from the police.[51] In addition to the rapidity of injection compared to

[43] Wood et al., 2004, at 1554–1555; Maher and Dixon at 9.

[44] Wood et al., ibid.

[45] Maher and Dixon, ibid.; Kerr et al. at 213.

[46] Some experts have noted that heroin reaching North American markets became markedly more pure and unadulterated in the 1990s, but acknowledge that overdose risk linked to adulteration and dilution may still be an issue. See, e.g., R Coomber. The cutting of heroin in the United States in the 1990s. *Journal of Drug Issues* 1999; 29(1): 17–36 at 18.

[47] Cooper et al. The impact of a police drug crackdown on drug injectors' ability to practice harm reduction: A qualitative study. *Social Science and Medicine* 61: 673–684 at 679.

[48] Maher and Dixon at 7.

[49] Cooper et al., 2005, at 680–681.

[50] R June et al. Medical outcome of cocaine bodystuffers. *Journal of Emergency Medicine* 2000; 18(2):221–224; K Sporer and J Firestone. Clinical course of crack cocaine body stuffers. *Annals of Emergency Medicine* 1997; 29:596–601.

[51] Maher and Dixon at 11.

smoking, in Cabramatta some drug users and dealers told these researchers that the police presence and surveillance by cameras meant that it was harder to obtain the larger amounts of heroin needed for smoking, making injection more efficient.[52] This observation parallels Des Jarlais' observation of a global trend toward injectable heroin in the face of the relative ease for law enforcement officials of chasing down bulkier opiates intended for smoking.[53]

Increased incarceration

Not all crackdowns necessarily result in increased incarcerations or detention of people who use drugs, but many have done so, even if the increase is mostly in pre-trial detention. Indeed, this may be the desired result on the part of law enforcement officials. Given the vast array of HIV/AIDS-related harms associated with even short periods of detention, this result of intensive policing should be regarded as one of the most serious. Jürgens recently reviewed over 300 research articles on HIV/AIDS risk in prisons, including among people who use drugs. Even taking only the research from North America and countries comparable to Canada, there is overwhelming research evidence of the harms associated with lack of access to clean syringes or sterilizing materials in prison, lack of access to information and education on HIV/AIDS, lack of reliable access to opioid substitution therapy, lack of access to condoms, failure to prevent sexual violence and coercion, and interruption of antiretroviral treatment, among other factors.[54]

Canada . . . continues to lag behind many other countries in harm reduction and HIV/AIDS services available to incarcerated persons.

Canada, unfortunately, continues to lag behind many other countries in harm reduction and HIV/AIDS services available to incarcerated persons. Although in Canada there is access to methadone maintenance therapy in provincial and federal prisons, there remains stark evidence of extensive drug injection among prisoners[55] but still no government programs to ensure the availability of sterile injecting equipment. The experience of countries as varied as Kyrgyzstan and Switzerland has shown that sterile syringe programs in prison can be effective in reducing HIV and HCV transmission without encouraging drug use or undermining staff safety.[56] It is unclear that even bleach, which is only a partially effective sterilizing agent, is consistently available to all persons in state custody, and condoms and dental dams are only partially available.[57]

A growing body of research indicates that incarceration of injection drug users is a factor driving Canada's HIV epidemic. A recent study found that the number of known HIV cases in Canadian prisons has risen by 35 percent in the last five years, suggesting that HIV may be spreading in prisons.[58] (Appropriately, HIV testing is

[52] L Maher and D Dixon. Policing and public health: Law enforcement and harm minimization in a street-level drug market. *British Journal of Criminology* 1999; 39(4):488–512 at 505.

[53] DC Des Jarlais. Structural interventions to reduce HIV transmission among injecting drug users. *AIDS* 2000; 14(Supp 1):S41–S46 at S45.

[54] R Jürgens. *HIV/AIDS in prisons: A select annotated bibliography* (draft). August 2005. (Commissioned by the International Affairs Directorate, Health Canada.)

[55] See a recent review of studies in W Small et al. Incarceration, addiction and harm reduction: inmates experience injecting drugs in prison. *Substance Use and Misuse* 2005; 40: 831–843 at 831–832.

[56] R Lines et al. *Prison needle exchange: Lessons from a comprehensive review of international evidence and experience*. Canadian HIV/AIDS Legal Network, 2004.

[57] R Lines. *Action on HIV/AIDS in prisons: too little, too late — a report card*. Canadian HIV/AIDS Legal Network, 2002 at 16–18.

[58] Correctional Service Canada. Infectious Disease Prevention and Control in Canadian Federal Penitentiaries 2000–2001. Cat. No. 0-662-33512- 0. Available at http://www.csc-scc.gc.ca/text/pblct/infectiousdiseases/index_e.shtml; Lines, 2002.

voluntary in Canadian prisons; this means it is difficult to track changes in real prison HIV infection rates with precision.) According to a recent Vancouver study, incarceration more than doubled the risk of HIV infection of people who use illegal drugs.[59] An independent evaluation of this study also suggested that 21 percent of all HIV infections among Vancouver injection drug users may have been acquired in prison.[60]

Small's striking interviews with former inmates in British Columbia paint a dismal picture in which punishment for syringe possession in prisons leads to extensive sharing of overused injection equipment among inmates.[61] In this circumstance, bleach alone is an extremely inadequate response. Current corrections policy in Canada, among other things, violates the central human rights principle that the level of health services in prison should be the equivalent of that in the surrounding community.[62] In 2005, Correctional Service Canada requested advice from the Public Health Agency of Canada on the possibility of piloting sterile syringe programs in federal prisons, but there remains no such pilot at this writing.

Current corrections policy in Canada . . . violates the central human rights principle that the level of health services in prison should be the equivalent of that in the surrounding community.

The absence of comprehensive HIV prevention and other harm reduction services in prisons is an important backdrop to the current debate in Canada about harsher sentences for drug offenses, including the mandatory minimum sentences espoused by some government officials. The long U.S. experience with mandatory minimum sentences for drug offenses, widely studied, has resulted in huge increases in the prison population, including among women, but no demonstrable effect on the drug trade or overall drug use.[63]

In addition to the health risks that come from spending time in prisons that have inadequate harm reduction services, mandatory minimum sentencing policies take power out of the hands of judges and put it in the hands of prosecutors, who can cut deals with those who have information to trade. In practice, people using drugs on a small scale with no intention to sell drugs will have no information of value to prosecutors and may be more likely than large-scale traffickers to serve a minimum sentence. Women charged as accomplices are highly susceptible to long incarceration under such a policy because they also rarely have important information to trade and, moreover, they may be reluctant to bring evidence against a sexual partner or spouse. In the era of mandatory sentences in the U.S., incarceration of women for drug-related offences in state prisons has increased by a staggering 888 percent; the majority of this increase is accounted for by women of colour and women living in poverty.[64]

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[59] MW Tyndall et al. Intensive injection cocaine use as the primary risk factor in the Vancouver HIV epidemic. *AIDS* 2003; 17(6):887–93.

[60] Hagan H. The relevance of attributable risk measures to HIV prevention planning. *AIDS* 2003; 17(6): 911–3.

[61] Small et al., 2005, at 839.

[62] Lines, 2002, at iii-iv; World Health Organization. *WHO Guidelines on HIV Infection and AIDS in Prisons*. Geneva: WHO, 1993; UNAIDS. Statement on HIV/AIDS in Prisons to the United Nations Commission on Human Rights, 52nd Session, April 1996; UNAIDS and Office of the UN High Commissioner for Human Rights. *HIV/AIDS and Human Rights: International Guidelines*. Geneva, 1998, Guideline 4.

[63] See a summary of evidence in Canadian HIV/AIDS Legal Network. *Mandatory minimum sentences for drug offenses: Why everyone loses.* 2006.

[64] American Civil Liberties Union, Break the Chains, and the Brennan Center at NYU School of Law. *Caught in the net: The impact of drug policies on women and families*. New York, 2006, p. i.

[65] KM Blankenship and S Koester. Criminal law, policing policy, and HIV risk in female street sex workers and injection drug users. *Journal of Law, Medicine and Ethics* 2002; 30(4): 548–559 at 553.

Exacerbation of stigma, marginalization and fear

Many of the qualitative studies reviewed for this paper include compelling testimony about the way in which the lives of individuals who use drugs are affected by the climate of fear and criminalization that comes with intense drug policing. These effects may be measurable and tangible — such as the inability of people who use drugs to seek help from the police or emergency services for fear that they will wind up under arrest[65] — or more intangible, such as the break-up of injecting networks that may also serve as social support networks. Cooper and colleagues interviewed people who feared that being targeted for public searches by the police would label them as drug users to people in their communities who may not have known this aspect of their lives.[66]

Unspecified HIV risk associated with intensive policing

In an unusual study conducted at a more "macro" level of analysis than particular instances of intensive policing, Friedman and colleagues recently derived indicators of intensity of law enforcement activities and compared them to several outcomes, including HIV prevalence among people who use drugs, in 89 metropolitan areas in the U.S.[67] As represented by three indicators — numbers of drug-related arrests, expenditures on policing per capita and correctional expenditures per capita — intensity of law enforcement activities was positively associated with HIV prevalence among people who inject drugs, and the statistical association was very strong. The authors note that there may be many intervening factors that explain this connection, including popular opinion and political forces that would tend to favour both heavy policing and less emphasis on syringe exchanges, drug treatment and other harm reduction services.[68] The authors propose further research to examine causal connections.

[66] Cooper et al., 2005, at 678.

[67] SR Friedman et al. Relationships of deterrence and law enforcement to drug-related harms among drug injectors in US metropolitan areas. *AIDS* 2006; 20: 93–99.

[68] Ibid. at 97.

[69] J Cohen and J Csete. As strong as the weakest pillar: harm reduction, law enforcement and human rights. *International Journal of Drug Policy* 2006; 17(2): 101–103.

Conclusions and recommendations

The research reviewed here indicates strongly that police practices have in some cases exacerbated the HIV/AIDS risk faced by people who use drugs. They have endangered the health and the ability of people who use drugs both to use public health services and to act on health information. By so specifically and descriptively highlighting the ways in which policing has been harmful with respect to HIV/AIDS and other health problems, this body of research also suggests possible solutions.

Specific solutions are difficult to discuss, however, without first considering whether prohibitionist-based policing and criminal law based on strict prohibition can ever as a matter of public policy be compatible with reduction of HIV/AIDS risk and other harms to people who use drugs. This is a question of central relevance in Canada as, again, the dominant policy-making framework is ostensibly one of balance between health measures such as harm reduction, addiction treatment and prevention of drug use on the one hand and law enforcement measures on the other. Cohen and Csete argue that "balanced" approaches such as this may trip themselves up if they do not recognize that once the police enter the picture, they may tend — wittingly or not — to upset this balance.[69] The same policeman who might ideally refer people to drug treatment or safe injection facilities also has the power to scare a person using drugs away from any services and into a higher-risk environment. Moreover, the police rarely assess or seem to be aware of the potential harms of their own activities with respect to such outcomes as HIV risk. It is not surprising that, for their part, people who use drugs may find HIV prevention to be a secondary concern when they are faced with the disruption and abuse associated with arrest and having a criminal record. "I'd rather get AIDS than go to jail," said one drug user to Human Rights Watch in California, a sentiment undoubtedly shared by others.[70]

Many of the authors whose work is reviewed here, while recognizing the difficulties inherent in balanced approaches, nonetheless suggest that changes to police practices can make policing more harm reduction-friendly, however imperfect they may still be. Maher and Dixon treat this subject explicitly and conclude that drug law enforcement can be part of harm minimisation if police can be made aware of the potential harms of their practices and modify them accordingly.[71] Burris and colleagues likewise accept the premise that the "risk environment" faced by people who use drugs can be improved short of a complete toppling of prohibitionist policies.[72] Some of the ideas of these and other authors and some of our own are shared here as recommendations for policy development and other action. Several ideas for further research are also noted.

Reform of drug law and policy

Possession of sterile syringes is arguably legal in Canada if syringes are considered a "device" used in disease prevention and mitigation under the terms of the *Food and Drugs Act*.[73] But this idea has not been tested. The *Criminal Code* prohibition of any "instrument for illicit drug use" remains.[74] Arresting people based on possession of clean syringes, therefore, has an ambiguous legal foundation. To minimize the harms of policing on harm reduction, Canada should take steps to make it clear in the law that possession of sterile syringes is not illegal and that even during crackdowns, police cannot make arrests on that basis. Until it is possible to change the law, governments at all levels should instruct police not to make arrests based on possession of sterile syringes. This policy would be completely consistent with the legal standing of syringe exchange programs in Canada, most of which themselves receive government funding.

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[70] Human Rights Watch. *Injecting reason: human rights and HIV prevention for injection drug users — California, a case study*. New York, 2003.

[71] Maher and Dixon (2001) at 16.

[72] Burris et al. at 129.

[73] Canadian HIV/AIDS Legal Network. *Injection drug use and HIV/AIDS: legal and ethical issues (background papers)*. Montréal, 2002 at A55.

[74] *Criminal Code* s.462.2.

[75] Gabor T., Crutcher N. Manadatory minimum penalties: Their effects on crime, sentencing disparities, and justice system expenditures. Ottawa: Justice Canada (Research and Statistics Division), January 2002 at 32.

For similar reasons, Canada should prohibit arrest or search and seizure on the basis of possession of a syringe with a trace amount of drugs. Arrests on these grounds would appear to be legal under the *Criminal Code*, which defines prohibited "controlled substances" to include anything that has on it a controlled substance and that is used or intended for use in introducing the substance into the body. But prosecuting people for "possession" based on possession of a used syringe is likely to discourage people who use drugs from utilizing syringe exchange services and to encourage unsafe disposal of syringes. If Canada is serious about harm reduction, the law and government policy at all levels should do everything possible to eliminate barriers to sterile syringe access and to the safe use and disposal of syringes.

If Canada is serious about harm reduction, the law and government policy at all levels should do everything possible to eliminate barriers to sterile syringe access and to the safe use and disposal of syringes.

The imposition of mandatory minimum sentences for drug offenses, for reasons noted above, would be a step in the wrong direction for drug policy in Canada. The renewed debate on mandatory minimums should be informed by the Department of Justice's own study of the U.S. experience, which echoes the concerns noted in this paper. That study concluded that mandatory minimum sentences are "least effective in relation to drug offences," noting that "drug consumption and drug-related crime seem to be unaffected, in any measurable way, by severe [mandatory minimum sentences]."[75]

With respect to legal reform or strengthening of human rights protections in the law, it is important to note that drug policing has in many cases seemed not to be closely guided or informed by what is in the law. As Burris and colleagues put it, police have so much and so many kinds of discretion in their actions that the "law on the books" may not be in the center of the thoughts of police officers on the street.[76] As they and others note, drug policy-makers, municipal officials, police chiefs and others in their public pronouncements and directives can set a tone that may have greater impact on the degree of aggressiveness or tolerance with which police respond.[77] The frequent use during drug crackdowns of "nuisance" citations for offenses such as jay-walking and loitering attests to the fact that drug laws may not always be the most relevant in a given situation of policing.[78] Burris and others observe that the rush to espouse and practice zero-tolerance drug policing in many parts of the world has come about for the most part without changes in any laws.[79] As they suggest, however, the letter of the law is still important, and progressive law reform is an urgent priority:

In the United States, drug laws have contributed to high, racially disparate rates of incarceration, swelled prison budgets, influenced conceptions of the proper balance between individual rights and state power, and conceivably (through the disenfranchisement of drug felons) altered the course of elections.[80]

In Canada, prisoners and former prisoners have the right to vote, but racial disparities in incarceration are striking. In the late 1990s it was estimated that while Aboriginal people comprised under 3 percent of the general population, they represented about 15 percent of Canada's provincial prisoners and about 17 percent

[76] Burris et al. at 133.

[77] See also Maher and Dixon (2001) at 15.

[78] See, e.g., Human Rights Watch, Abusing the user at 16–17.

[79] Burris et al. at 136.

[80] Ibid. at 127.

[81] Lines at 5.

[82] *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*. Toronto, December 1995 at iii. Excerpts of the report

of people in federal prison.[81] The Commission on Systemic Racism in the Ontario Criminal Justice System undertook a statistical analysis of remand and incarceration judgments for African Canadians and whites accused of a variety of crimes. This analysis concluded that in Ontario in 1992-93, African Canadians were 15 times more likely than whites to be placed in pre-trial detention for drug possession charges and 27 times more likely for drug trafficking charges.[82] In this sample, 55 percent of African Canadian people and 36 percent of whites received prison sentences among those convicted of drug offenses.[83] The Commission concluded that these disparities were the result of many complicated and interrelated factors, including higher unemployment among African Canadians, a higher proportion of young men in the African Canadian population, and "intensive policing of low-income areas in which black people live."[84]

Reform of police practices, policy and training

Even without a wholesale reorientation of drug policy in Canada, much can be done to make police practice more friendly to harm reduction. We recommend the following actions:

- Police should not make arrests, accost people or conduct search and seizure operations where and when people are in the act of injecting, as such action would very likely contribute to the harm faced by injectors.[85] This principle should figure in specific directives to police as well as in police training. Similarly, police should not arrest or accost people at scenes of drug overdose as their presence may deter people from seeking urgent help.[86] Avoiding the practice of accosting people in the act of injecting improves police safety as well as injectors' safety. Introducing police presence into the act of injection only adds to police officers' risk of an accidental needlestick injury.

The availability of an injection location safe from police interference is a significant harm reduction measure . . .

- Practices that create barriers to sterile syringe access should be avoided. Police practice should never include confiscating injecting equipment or asking people who use drugs to destroy their syringes or injecting equipment.[87] This, too, should figure in official directives to police and be part of their training. Again, this measure will lower the risk that police will be exposed to needlestick injuries that they might get in the act of confiscating injecting equipment.

- Even during crackdowns, police should in fact pursue the objective they usually state, which is to target and disrupt the operations of higher-level, large-scale drug dealers. We recommend that policy and law at all levels of government in Canada do everything possible

are available from the Canadian Foundation for Drug Policy at www.cfdp.ca/ontrac.html.

[83] Ibid. at vii.

[84] Ibid. at 82–83.

[85] Maher and Dixon (2001), at 18.

[86] Burris et al. at 140.

[87] Maher and Dixon (2001), at 18.

[88] See, e.g., Maher and Dixon (2001), at 15.

to encourage law enforcement efforts, particularly crackdowns and other intensive policing, to be focused on higher-level dealers rather than on people who use drugs on a small scale.

- Related to the points above, several authors have noted the difficulty created when harm reduction is part of the official drug policy but the actions of the police or the public statements of high-level police do not reflect any knowledge of or adherence to such a policy.[88] This problem is difficult to address, but better training of police in the importance of HIV prevention and other harm reduction principles may be part of the answer. Public education (see below) is certainly another part. In some countries, attempts have been made to involve the police in harm reduction activities or to link police with public health service providers and social workers in systematic and collaborative ways. Dixon and Coffin describe the experience of the city of Maastricht, The Netherlands, in which police and health and social service workers operate in systematic collaboration through jointly developed protocols. When an arrest is made, a social worker comes to the police station to help manage the case and ensure that access to methadone or syringe services is preserved.[89] Police also have been encouraged by social service providers to concentrate their efforts on large-scale drug dealers. According to these authors, collaboration between social service providers and the police in this case, including joint development of policy goals and priorities, has resulted in "a superior network of [service] providers, contact with a broader array of users, and improved opportunities for users to obtain employment" even though the police also maintain their traditional objectives.[90]

Kerr and colleagues list the formidable barriers to reforming police practice, such as an ingrained incompatibility of police objectives and traditions with those of social service providers and systems that reward the police for numbers of arrests or incarcerations, as well as police corruption.[91] But, as with law reform, even if it is not easy, it is worth exploring methods that reduce the harm of actions taken by the police.

Expansion of treatment and other drug-related health services

As noted above, police crackdowns and other intensive drug policing can drive people who use drugs into unfamiliar locations that may not be well served by health and harm reduction services, where they inject at greater risk. The availability of an injection location safe from police interference is a significant harm reduction measure, perhaps especially at times when fear of the police is heightened. During the police crackdown that began in April 2003 in Vancouver, the unofficial safe injection site run under the auspices of the Vancouver Area Network of Drug Users (VANDU) was heavily used.[92] Had the official facility, Insite, which opened in September 2003, been open during the crackdown, many of the negative consequences of hurried and surreptitious injection and displacement of injection to marginal zones of the city may have been averted. This experience should figure in discussions of future injection sites in Vancouver and other Canadian cities.

The importance of a safe site at a time when policing is intensive or police are feared was the reason the Legal Network and local groups in Vancouver reacted strongly to the announcement by the Vancouver Police Department in December 2005 that police would arrest any people injecting outside the safe injection facility, including possibly those waiting to enter the site.[93] As the Legal Network observed in a letter to Vancouver's mayor, this policy would essentially turn the safe site into a law enforcement tool whereas the spirit and

[89] Dixon and Coffin at 483.

[90] Ibid.

[91] Kerr et al. at 215.

[92] Canadian HIV/AIDS Legal Network. Awards for Action on HIV/AIDS and Human Rights, 2004. Available at www.aidslaw.ca/awards.

[93] Canadian HIV/AIDS Legal Network. Safe injection site should not be a law enforcement tool (press statement and open letter to Vancouver Mayor-Elect Sam Sullivan), November 30, 2005. Available at http://www.aidslaw.ca/publications/publicationsdocEN.php?ref=59.

[94] CACTUS-Montréal. *Rapport annuel 2004/05* p. 3.

letter of its regulations establish it as a public health facility. Such an approach is particularly objectionable when all indications are that Insite is not itself capable of meeting the need even in the immediate environs of Vancouver's Downtown Eastside.

Syringe exchange facilities are a life-saving intervention under any circumstances but at times of intensive policing may be especially essential. When people who use drugs fear carrying syringes, they may need to visit syringe exchanges more often. They certainly need to know that they can utilize these services without being harassed or targeted by the police. They may need especially to avail themselves of the counselling and support to be found at syringe exchanges if they fear using government-run health services of other kinds. Drug policing where a "balanced" approach to drug policy is the rule should mean that crackdowns and other intensive actions should be conducted in ways that protect syringe exchanges and other essential services for people who use drugs, but this is rarely the case.

Even short of police crackdowns, a regular police presence near the entrance to syringe exchange facilities can disrupt this essential service. CACTUS-Montréal, a long-time needle exchange provider, reported police harassment to be its greatest challenge in its most recent annual report.[94] In 2005, CACTUS staff documented both an upswing in incidents of police harassment of people using the needle exchange, including some unprecedented cases of police entering the building to search or arrest people using the service. CACTUS staff said that previously there was an understanding with police that there should be something of a buffer zone to allow people who need syringes to use the service without fearing they will be accosted by police.[95] In June 2005, the Legal Network participated in a meeting with the commander of the police precinct in Montréal where CACTUS is located, along with representatives of CACTUS, other community-based organizations in Montréal, and representatives of the provincial public health authorities. The commander said the police recognize the value of syringe exchange but that if people in the neighbourhood make complaints, the police have to respond to them. This discussion persists as community groups continue to emphasize that policing should not be allowed to undermine access to health services or public health.

Maher and Dixon note that police crackdowns on people who use drugs are sometimes justified by public officials as a means to urge drug users into treatment for their addiction.[96] Decisions about entering addiction treatment, as with all medical interventions, should be made voluntarily and with informed consent by the person to be treated, and not in any way coerced. People seeking treatment should be guided in such decisions by health professionals and not by police.[97] In Canada, moreover, as in many countries, it seems rarely to be the case that existing drug treatment programs are sufficient to meet the demand. Treatment for substance abuse is one of the "pillars" of a "balanced" approach to drug control. If it is a weak pillar — if waiting lists to get into treatment are long or treatment is otherwise inaccessible, including to people who cannot pay for it — options for people who use drugs to keep themselves as safe as possible are that much more constrained, and any idea that intensive policing can lead to more treatment is unfounded. Greater investment in comprehensive and humane treatment for addiction is clearly needed in Canada. Burris and colleagues describe a policy in some jurisdictions in the United Kingdom of offering a range of treatment options at the time of arrest, during detention, and at every other stage in a person's contact with the criminal justice system.[98] In such a system, however humanely it is conceived, it would be important to build in effective safeguards to coercion, ensuring that "offers" of treatment made in the criminal justice system are made with informed consent under the guidance of medical professionals, as would be the case in an ethically sound public health system.

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[95] D. Palmer and M. Tonnelier, personal communication.

[96] Maher and Dixon at 16.

[97] The experience of countries, such as Thailand and China, where there is a long history of law enforcement authorities forcing people who use drugs into treatment and "rehabilitation" indicate that these methods are generally associated with a very high rate of relapse — that is, a poor record of helping drug users to attain abstinence, even only a few months after the end of treatment. See World Health Organization. *The practices and context of pharmacotherapy of opioid dependence in South-East Asia and Western Pacific regions*. WHO Doc. WHO/MSD/MSB/02.1, 2002.

[98] Burris et al. at 140.

[99] Dixon and Coffin at 482.

When people who use drugs have criminals records and on this basis are excluded from housing and other public assistance programs, treatment and harm reduction are undermined.[99] In general, several authors of the studies reviewed here emphasize that addiction treatment needs to be understood more broadly and less strictly clinically than is the case in most jurisdictions. As Maher and Dixon conclude from their experience in Sydney:

> Detoxification is not [for many people who use drugs] physically very difficult. The real challenge comes in staying off heroin. Many relapse not because of a physical addiction, but because drug use and sales offer them benefits from which they are otherwise socially excluded — friendship, fun, employment, economic opportunities and access to goods and services. Their lives cannot be changed just by treatment. If we are serious about developing alternatives to criminal justice, we need to confront difficult questions about social and economic reform.[100]

If the human rights of people who use drugs, including their right to the highest attainable standard of health, are a foremost concern, law enforcement policy, police practice and training, and public education on the impact of police actions must be profoundly rethought.

Public education

In many cases, crackdowns and other intensive drug policing respond to public pressure for law enforcement action that is visible and quick. But it seems clear that the public in many countries, including Canada, is under-informed about the possible negative health and human rights consequences of intensive drug policing. Neighbourhood residents are understandably upset by seeing syringes lying about or unsafely discarded, but they rarely appreciate that the actions of the police can contribute to unsafe syringe disposal.

Public education is sorely needed on the potential dangers of policies that are meant to "clean the streets" of "undesirable" persons at all costs, as when international events are held in a city, when a city is competing to host an important international event, or during or just before a city's heavy tourist season. CACTUS-Montréal, for example, notes that police harassment of people who use drugs is more frequent as part of what community-based organizations have come to call "spring cleaning" — that is, police actions to clear the streets of "undesirables" are intensified in anticipation of Montréal's tourist season.[101] The 2003 crackdown in the Downtown Eastside of Vancouver coincided with the season when the city was in competition to host the 2010 winter Olympics (a competition the city won), though no city official at the time would link the crackdown and the Olympics on the record.

Additional research needs

While the existence of the body of literature reviewed here attests to an increasing scholarly interest in the public health impact of policing for people who use drugs, there are many gaps in the body of knowledge of the impact of drug policing on HIV risk reduction and other harm reduction. Some of these are as follows:

- There should be more studies in Canada and elsewhere of the health and social impact of police actions. The numerous studies cited here by researchers at the British Columbia

[100] Maher and Dixon (2001) at 17.

[101] M. Tonnelier, personal communication.

[102] C. Bellot. *La judiciarisation des populations itinérantes à Montréal de 1994 à 2004* (résumé). 2005, available at

Centre for Excellence on HIV/AIDS have made an enormous contribution to Canada's understanding of the health consequences of police activity. A recent ground-breaking study by Prof. Céline Bellot of the Université de Montréal is a similarly pioneering effort, highlighting the results of a meteoric increase in incarceration of homeless people in Montréal from 2001 to 2004.[102] But there are great gaps in research on this topic from most Canadian cities. Independent academic or community-based research can to some degree play the role of a check on police activity and is essential for educating the public about the full range of consequences from police crackdowns and other actions. Government and private research funders in Canada should do everything possible to make resources available for research on the health and social impact of police action.

- There is, in general, an urgent need to evaluate the few attempts on the part of police departments and criminal justice systems to minimize the harms of intensive prohibition-based policing with respect to harm reduction and HIV risk (such as the experiences in Maastricht and some communities in the UK). What factors have led some police departments and officers to be open to working closely with social service and health service providers or otherwise to modify their procedures? How sustainable are these efforts? What kind of and what duration of police training has supported these changes? How have social service providers experienced and evaluated these efforts?

- As more jurisdictions in Canada are studying the need for and feasibility of safer injection sites, it would be useful to know more about the role of these facilities during times of intensive drug policing. Are they able to provide something of a safety valve for those people using drugs who most fear the police and whose fear would otherwise lead them to inject in remote locations or unsafe ways? Do they make a difference for such outcomes as safe disposal of syringes during crackdowns?

- The study by Friedman and colleagues described above is an unusual attempt to apply sociological methods to the question of the association between HIV/AIDS risk faced by people who use drugs and police practice. As the authors of this work themselves note, it is important to complement this work with more detailed qualitative and quantitative research that would shed light on the connection between more intensive policing and greater HIV/AIDS risk suggested by the study. Similar work to that of Friedman et al. could easily be done in Canada on the basis of existing HIV/AIDS surveillance and data on resource allocation to police activities.

- There are very few studies covered by this review where people who use drugs had any role in the design or execution of the research. Canada's Federal Initiative to Address HIV/AIDS espouses the greater involvement of people vulnerable to HIV/AIDS in policies and programs that affect their lives.[103] This includes involvement in policy-related research. The Legal Network has recommended the involvement of people who use drugs in the response to HIV/AIDS, including in the planning, researching and evaluation of policies, interventions or services that concern them. It would be useful for governments at all levels in Canada to provide resources and guidelines for research initiated by groups of people who use drugs and for more effective engagement of people who use drugs as advisors and decision-makers in academic research projects on drug policing and related issues.

- There is an urgent need for more and better evaluations of drug courts, which exist in a number of Canadian and U.S. jurisdictions and are frequently proposed as a means of keeping drug users out of jail and away from more potentially abusive law enforcement

http://www.rapsim.org/pdf/resume%20recherche.pdf.

[103] *Federal Initiative to Address HIV/AIDS*, at 13.

[104] Department of Justice Canada. Drug treatment court funding program — overview. Available at canada.justice.gc.ca/en/ps/pb/prog/dtc/.

measures. In Canada, so-called drug treatment courts operate in Vancouver, Toronto, Ottawa, Edmonton and Winnipeg as demonstration projects that have the goal of "breaking the cycle of drug use and criminal recidivism."[104] For certain categories of people convicted of drug offenses, the courts are designed to provide an alternative to incarceration by offering instead a drug treatment program that would usually be accompanied by "random and frequent drug testing, incentives and sanctions, clinical case management and social services support."[105] Dixon and Coffin comment on the U.S. drug court experience, suggesting that the treatment programs prescribed by these courts "increasingly came to resemble prisons" and that if the treatment was for any reason unsuccessful, the person who "failed" in treatment would frequently be remanded to prison in any case.[106] They also suggest that in some courts, persons charged with drug offenses must plead guilty to be able to avail themselves of a treatment option, which may be a violation of the right to due process. The Department of Justice is conducting an evaluation of the Canadian drug treatment court experience, but there is also a need for independent non-governmental evaluations and research on the health and human rights impact of these courts.

What we know so far about the impact of intensive drug policing on harm reduction and HIV/AIDS should raise deep concerns for policy-makers and health services providers, as well as police and corrections officials. The impact of policing on harm reduction is an area in which all levels of government in Canada must be challenged to prove that human rights-based approaches to HIV/AIDS — always espoused as a foundation of HIV/AIDS policy — are more than just rhetoric. If the human rights of people who use drugs, including their right to the highest attainable standard of health, are a foremost concern, law enforcement policy, police practice and training, and public education on the impact of police actions must be profoundly rethought.

[105] Ibid.

[106] Dixon and Coffin at 484.

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