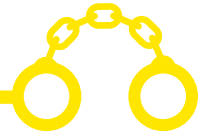


It's not so **SIMPLE**

The impact of simple drug
possession and trafficking
offences on health equity

EXECUTIVE SUMMARY

BACKGROUND



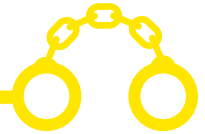
A growing body of evidence confirms that Canada's drug control framework undermines public health and public safety, resulting in negative health outcomes for people who use drugs while exacerbating systemic inequities, particularly among Indigenous, Black, unhoused, and poor people. In response, legal and policy reforms over the past decade have reduced standalone simple drug possession charges. At the same time, these developments have resulted in more frequent drug trafficking charges and more severe punishments for trafficking convictions.

To better understand the implications of these developments on the health and well-being of people who use drugs, the HIV Legal Network and Toronto Metropolitan University designed a mixed-method, qualitative research study with people who use drugs, harm reduction workers, defence lawyers, and drug policy experts to explore three questions:

1. How do people who use drugs acquire, consume, keep, and/or carry criminalized substances?
2. How do police, prosecutors, and courts in Canada and other jurisdictions globally distinguish between drug possession for personal use versus for the purpose of trafficking?
3. What are the immediate and longer-term impacts of criminalizing simple drug possession and trafficking?



KEY FINDINGS



EVERYDAY DRUG USE AND DRUG SHARING PRACTICES ARE CRIMINALIZED AS TRAFFICKING

- A review of court decisions in Ontario and the literature confirmed that the quantity of drugs a person is caught carrying is a critical factor police, prosecutors, and courts consider in distinguishing simple possession from possession for the purpose of trafficking.
- Other factors law enforcement associate with trafficking include: the presence of scales, separated packages, cutting agents, and large sums of cash on a person or their property.
- Yet, our study revealed numerous reasons why people who possess drugs for their own consumption might have larger quantities, possess scales, divide their drugs into smaller packages, and/or split or share their drugs — including for their own and others' safety.
- People who use drugs often buy in bulk for economic reasons, to reduce exposure to unsafe supply, and to reduce the risk of encounters with police.
- Many people own and use scales to ensure a fair transaction when buying drugs or to measure out a suitable dose to reduce overdose risk.
- It is common for people to store their drugs in separate packages to minimize the risk of robbery (i.e. losing their entire supply, which could lead to painful withdrawal), differentiate drugs of varying potency or composition, and reduce the risk of inadvertently consuming a different drug or an excess quantity of drugs.
- Sharing or procuring drugs for friends is common, often motivated by care, to prevent painful withdrawal, or to reduce the risk of overdose through a known or trusted supply.

“One of the beautiful things that we see is because criminalization and enforcement has created such a volatile supply, people really do look out for each other in community, and it has created an economy where... people are constantly saving each other’s lives by sharing their supply with one another.”

DRUG POLICY EXPERT 1



ETHICAL PRACTICES AMONG DRUG SUPPLIERS CHALLENGE COMMON ASSUMPTIONS

- Perceived binaries between people who use drugs and those who supply them, and many of the indicators distinguishing one group from the other, are blurred in practice.
- People who supply drugs often recognize the risks of a volatile drug market and some adopt practices of care to reduce overdose risk or to otherwise confer health benefits, such as:
 - identifying reliable suppliers who have knowledge about their product and can attest to its quality and composition;
 - using drugs prior to selling them to determine their strength and quality, and communicating this to others;
 - participating in drug checking programs to know drug composition, and communicating this to others;
 - modifying the content of their drugs to ensure consistency and to moderate potency;
 - only selling to people they know and not selling to those for whom tolerance levels are unknown;
 - distributing harm reduction equipment; and
 - reviving people from overdoses.

PUBLIC DRUG USE IS A SAFETY STRATEGY IN THE ABSENCE OF ALTERNATIVE SPACES

- The extraordinary crisis of homelessness in Canada means using drugs in public is often the only viable option.
- People who use drugs constantly need to balance safer forms of consumption (e.g. using drugs in public where there is a greater chance of someone witnessing and responding to an overdose) with the threat of police (which requires using in more isolated locations).
- To minimize the risk of attracting police, people must also consume hurriedly, which poses greater risks to health.
- Many also try to increase their personal safety by accessing supervised consumption services, but these locations are increasingly unavailable in Ontario, given legislation passed in 2024 which resulted in the closure of numerous sites and will hamper the continued operation of sites that remain. The lack of spaces for safer inhalation is another reason for public drug use.
- The visibility of poor and unhoused people in public space means they face constant interactions with the police which, in turn, leads to greater enforcement of drug offences among those living in poverty — a risk that is amplified for Black and Indigenous people who commonly recount racial profiling by police.

“People don’t want to be [alone] inside. They don’t want to die.”

DRUG POLICY EXPERT 4



DRUG LAWS INTERSECT WITH OTHER PUNITIVE LAWS, CREATING BARRIERS TO HEALTHCARE AND CAUSING OTHER HEALTH AND SOCIAL HARMS

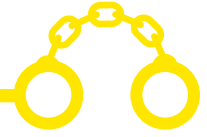
- Fear of police among people who use drugs related to the threat of criminal charges for drug offences and other punitive consequences, such as the involvement of child protective services, leads to isolation and rushed, unsafe consumption, which drives overdose deaths.
- The threat of police is a particularly stressful concern for Black and Indigenous parents due to racial profiling and the subsequent over-representation of Indigenous, Black, and other racialized children in the child welfare system.
- Police officers confiscate equipment or use the presence of drug use equipment as a pretext to search people who use drugs, discouraging people from carrying safer drug use equipment.
- People who use drugs avoid accessing harm reduction services fearing encounters with police or being profiled as a person who uses drugs.
- Criminalization makes harm reduction outreach more difficult because when clients fear police, this can lead to displacement and dispersal, making it more difficult for workers to reach them.
- When drug suppliers' access to harm reduction services is limited, harm reduction workers miss opportunities to engage with these individuals to provide safer drug use and harm reduction education, ultimately affecting the safety of clients.
- Drug seizures destabilize supply and push people to riskier markets. Seizures interrupt access to known and/or trusted sources of drugs, induce withdrawal symptoms, increase engagement with the unregulated drug market, and often force people to access an unfamiliar supply that may be more potent.
- The accompanying arrest of drug suppliers has also led to increased vulnerability to violence in the community.
- Criminalization can lead to eviction and loss of housing. People are displaced from housing after being evicted from their homes for their assumed involvement in drug offences or because they were arrested and/or incarcerated, and consequently lost access to their residence or shelter beds.
- Criminal records limit access to housing and employment, further entrenching poverty, and incarceration interrupts access to healthcare, including medications.
- Drug prohibition touches every aspect of people's lives, from their health (including their risk of infection and toxic drug injury and death), to their personal safety and security, to their access to families, networks of support, housing, employment, and more.

"As soon as we start building community I feel like the police break us up."

INDIGENOUS WOMAN WHO USES DRUGS, SUDBURY



RECOMMENDATIONS FOR REFORM



The toxic drug crisis is claiming thousands of lives annually. Policymakers have a choice: continue a failed criminalization model or embrace an approach based on social justice and human rights.

Canada must move beyond piecemeal reforms and commit to decriminalize, regulate, and support services that promote the health and dignity of people who use drugs.

A HOLISTIC APPROACH TO DECRIMINALIZATION

Current drug laws have been an unjustifiable source of harm to the health, safety, and well-being of people who use drugs and to communities more broadly. The depenalization of simple drug possession has also entrenched a false distinction between those who use and those who sell drugs. Failing to consider drug suppliers and producers in law reform efforts, and the corresponding shift in enforcement focus on activities construed as drug trafficking, has resulted in multiple harms including increasingly punitive charges and penalties as well as heightened risks of toxic drug injury, death, and violence.

As such, **Canada must overhaul current drug laws, including the decriminalization of personal drug possession and activities related to drug supply and distribution — meaning police could no longer charge, arrest, or otherwise punish someone for engaging in these activities.** This would reduce the fear and barriers people face in accessing meaningful supports.

REGULATION AND LEGALIZATION

Policymakers **should not limit themselves to decriminalization and Canada, in collaboration with provincial authorities, must also take immediate steps to legalize and/or regulate controlled substances,** as this would be the only way to effectively address the current, toxic drug supply. Such calls for legalization and regulation have been made by Health Canada's own Expert Task Force on Substance Use, to bring stability to markets and provide access to safer substances.

SCALE UP OF HEALTHCARE AND VOLUNTARY SUPPORTS FOR PEOPLE WHO USE DRUGS

All levels of government in Canada need to redistribute resources currently used to enforce drug offences to **more robust health and social programs, and scale up harm reduction supports and voluntary treatment services, particularly those that are gender-sensitive and culturally responsive** for communities that have been historically neglected.

This must include reforms to expand access to housing, income supports, harm reduction services, and safer supply programs that meet the needs of women and Indigenous, Black, racialized, and gender-diverse communities.

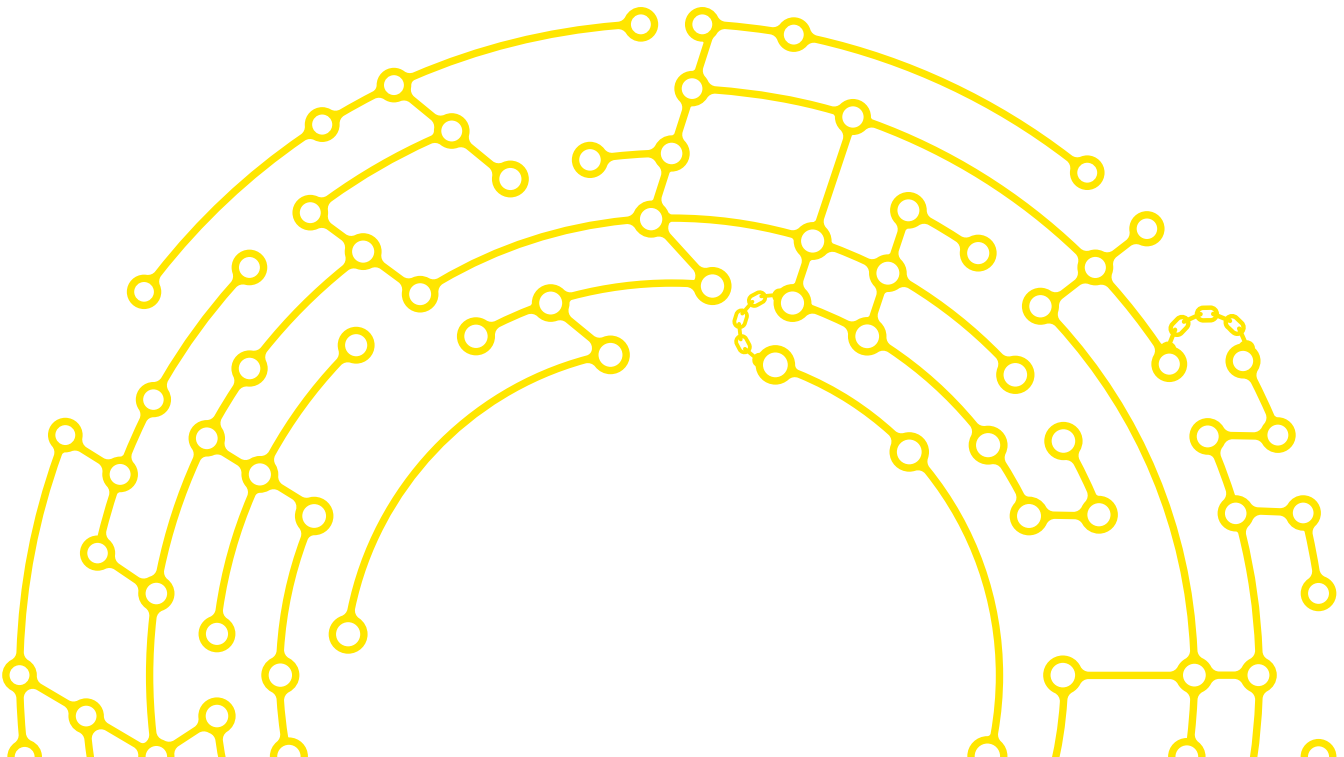
ADDRESS INTERSECTING SOURCES OF EXPOSURE TO CRIMINALIZATION

All levels of government in Canada must consider drug law reform along with other structural factors that harm people who use drugs and which result in over-exposure to interactions with the criminal legal system. These include social and economic drivers of participation in unregulated markets (e.g. economic deprivation, inadequate social assistance, and exclusion from formal labour markets due to systemic racism or other factors), as well as ending practices by police and prosecutors that treat harm reduction measures as evidence of trafficking.

This is especially pertinent in a context where local and provincial governments hostile to people who use drugs have increasingly enacted laws and policies further punishing people who use drugs in public spaces, erecting numerous additional barriers to harm reduction services, including by defunding critical social and health services, and authorizing involuntary drug treatment — thereby violating the rights to autonomy, life, health, liberty, and equality of people who use drugs.

People who use drugs are paying the highest price for Canada's failed drug policies.

Our study provides clear calls for transformative change that we hope will inform deliberation and dialogue among drug policy experts, researchers, and affected communities, and assist policymakers in making more informed decisions that improve the criminal legal system's approach to substance use. **By centering those most impacted, our study offers an evidence-based roadmap for law and policy reform that reduces harm, restores trust, and reorients Canada's approach to substance use toward social, economic, and racial justice and human rights.**



HIV LEGAL NETWORK

1240 Bay Street, Suite 600
Toronto, ON M5R 2A7

Telephone: +1 416 595-1666

Fax: +1 416 595-0094

Email: info@hivlegalnetwork.ca



Public Health
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