



KNOW YOUR RIGHTS

Ontario's *Safer Municipalities Act*, 2025

June 2026



Acknowledgements

The HIV Legal Network works on the land now called Canada, which is located on treaty lands, stolen lands, and unceded territories of Indigenous groups and communities who have respected and cared for this land since time immemorial. We work to address the ongoing injustices and resulting health inequities faced by Indigenous Peoples that contribute to the disproportionate impact of the toxic drug crisis and HIV epidemic on Indigenous communities. We are committed to learning to work in solidarity and to dismantling and decolonizing practices and institutions to respect Indigenous Peoples and Indigenous ways of knowing and being.

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Introduction

Unhoused people and people who use drugs have rights like all other people in Canada. However, Ontario's *Safer Municipalities Act, 2025* (SMA) introduced new rules that give law enforcement, including some provincial offences officers, more powers to police drug use in public spaces. There are two parts to this law. Schedule 1 covers the public consumption of illegal substances and creates a new provincial law called the *Restricting Public Consumption of Illegal Substances Act*. Schedule 2 punishes trespassing.

This guide provides information about the SMA, including information on what the law says, the powers that police have under this law, and what options you have if you are stopped or charged. **This pamphlet provides legal information, not legal advice. For advice about your specific situation, speak to a lawyer.** A list of legal service providers is provided at the end of this resource.

What is the current law around drug possession and use?

Under the *Controlled Drugs and Substances Act* (CDSA) people who use drugs can already be criminally charged. This is a federal law, meaning it applies across the country and in every province including Ontario. Under the CDSA, it is illegal to possess certain drugs for your own personal use (section 4 of the CDSA, or “simple possession”) as well as to possess drugs to sell, share, transfer, transport, or otherwise give to someone else — even if no money was exchanged (section 5 of the CDSA, or the “trafficking” offences).



The punishment for simple possession depends on factors, such as the type of drug:

- “Schedule I” drugs include heroin, fentanyl, other opioids, cocaine, ecstasy, amphetamines, and methamphetamines. If convicted of simple possession of Schedule I drugs, the maximum jail time is seven years.
- “Schedule II” drugs are synthetic cannabinoids. If convicted of simple possession of Schedule II drugs, the maximum jail time is five years.
- “Schedule III” drugs include LSD and magic mushrooms. If convicted of simple possession of Schedule III drugs, the maximum jail time is three years.

Simple possession of Schedule IV drugs, which includes different kinds of barbiturates and benzodiazepines, is not itself an offence in Canada. But if Schedule IV drugs are mixed with another criminalized drug (e.g. fentanyl), simple possession of the criminalized drug would attract punishment.

While these acts remain criminal offences, federal authorities have made recent changes that emphasize alternatives to criminal charges. Section 10 of the CDSA sets out principles that police and prosecutors (i.e. government lawyers) must consider before charging someone for simple possession, including that “problematic substance use should be addressed primarily as a health and social issue.” Based on these principles, the law says that when considering charges for simple possession, police and prosecutors should determine whether it would be preferable to warn someone, refer them to a community service to assist them, or simply take no further action.^[1]

[1] *Controlled Drugs and Substances Act*, SC 1996, c. 19, ss. 10.1-10.3. Online: <https://laws-lois.justice.gc.ca/eng/acts/C-38.8/>.

Additionally, the Public Prosecution Service of Canada has provided guidance to drug prosecutors on factors to consider in relation to simple possession charges.^[2] The guidance states that criminal prosecution should be reserved for the “most serious manifestations of the offence” (e.g. where there is a risk to the safety or well-being of others, particularly children or young people, or where it is associated with another drug offence or criminal offence) and that alternatives to prosecution should always be considered.

While police and prosecutors are not required to follow them, and simple possession remains a crime, these principles and guidance are meant to encourage police and prosecutors to limit charges for simple drug possession.

If simple drug possession is already a crime, what does the *Safer Municipalities Act, 2025 (SMA)* do?

The SMA creates new provincial offences: consuming illegal drugs in a public place and not complying with officer direction to stop consuming those drugs and/or to leave the public place. It also increases penalties for trespassing (discussed below).

Provincial offences are enforced by police officers and other prescribed provincial offences officers.

The structure of the law is important. A person will first be directed to 1) stop consuming and/or 2) leave the area. The offence is only triggered when a person does not comply with those directions.

If an officer believes that a person is not complying with their direction, the officer may further direct the person to provide their full name, date of birth, and address. Not complying with this is another provincial offence.

[2] Public Prosecution Service of Canada Deskbook, *5.13 Prosecution of Possession of Controlled Substances Contrary to s. 4(1) of the Controlled Drugs and Substances Act, Guideline of the Director Issued under Section 3(3)(c) of the Director of Public Prosecutions Act*, August 17, 2020. Online: www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p5/ch13.html.

If an officer believes that any of the above offences have been committed, they can arrest a person without a warrant and/or seize, confiscate, and destroy nearby drugs that are “found in plain view.”

Remember: a person should not be charged under the SMA for public drug use but for how they respond to officer directions. However, a police officer can still charge a person for simple drug possession under the federal CDSA.

What is a “public place”?

The definition of a “public place” is broad and includes any location where the public is invited or permitted. It even includes temporary dwellings like tents that are in public spaces.

Because “public place” is so broadly defined, officers have significant discretion in determining whether a location is a public place. A sidewalk, park, transit station, or encampment can all be treated as a public place. This means that unhoused people will be subject to even greater scrutiny under the SMA.

It is important to know that a supervised consumption site is not considered a public place.

Are there any instances where the SMA does not apply?

The law says that a person is not committing an SMA offence if they are using drugs at a supervised consumption site, where a person is also shielded from criminal charges for simple drug possession.

The law also says that if someone calls 911 for emergency services and evidence in support of an SMA offence was found as a result as a person having remained at the scene, they will not be charged with or convicted of an SMA offence. Similarly, a person who calls 911 is shielded from arrest and criminal charges for simple drug possession if they sought medical help for themselves or for someone else who has overdosed.

What powers do police have under the SMA?

To recap, an officer may:

- Demand a person stop consuming drugs in a public place;
- Direct them to leave that location;
- Demand a person’s full name, date of birth, and address if they believe an SMA offence has been committed;
- Arrest a person without a warrant if they believe that an SMA offence has been committed; and
- Seize, confiscate, and destroy nearby drugs and packages containing drugs that are “found in plain view” if they believe that an SMA offence has been committed.

You don’t have to tell the officer your immigration status or gender identity, but if you are arrested and held in custody, you have the right to be held with others who share the same gender identity as you do.[3]

These powers depend on the officer having “reasonable grounds” to believe an SMA offence has been committed, allowing for significant discretion.

Not complying with an officer’s direction is itself an offence. Penalties for these offences are fines up to \$10,000, imprisonment up to six months, or both.

Remember: this is a provincial and not criminal offence and does not lead to a criminal record.

[3] At this time, Ontario correctional facilities do not offer placement for those who are non-binary.

What is the current trespassing law in Ontario and how is it enforced?

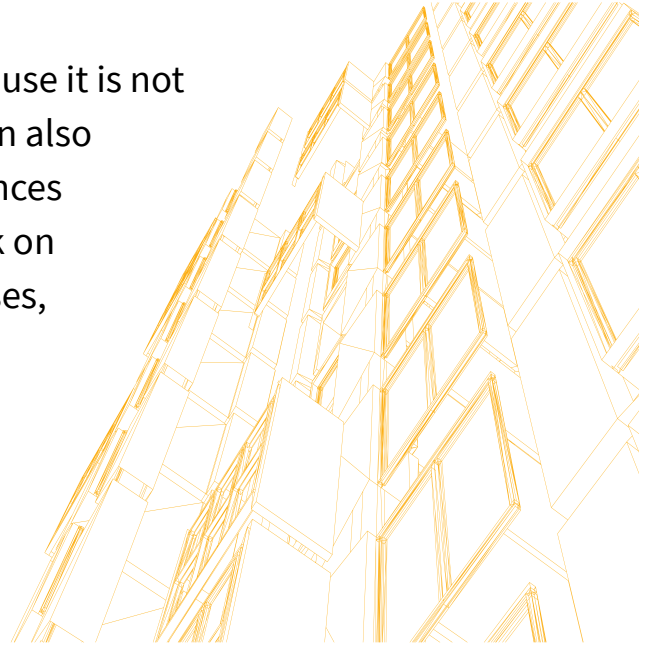
Trespassing law is often misunderstood because it is not criminal law but still enforced by police. It can also be enforced by other types of provincial offences officers, such as special constables who work on the transit, on college and university campuses, and in social housing.

Under Ontario's *Trespass to Property Act*, a person may be found to be trespassing if they:

- Enter a property without permission;
- Engage in prohibited activities on the property without permission; or
- Remain after being told to leave.

Being convicted under the *Trespass to Property Act* does not result in a criminal record. However, a person may be arrested for trespassing and, if convicted, subject to a fine of up to \$10,000. This offence is based on the rights of the 'occupier' of the property and largely depends on who controls the space and what they allow.

It is important to know that someone can be found to trespass even on public property (e.g. a park), which might belong to a city, the province, or the federal government — each of which can make rules not only about who can use their property, but also what can be done on that property and when.



What is the impact of the SMA on trespass law in Ontario?

The SMA amended Ontario's trespass law by adding two aggravating factors to be considered when determining a penalty:

1. If a person is given notice to leave the premise and they do not comply within the applicable time period; and
2. If a court finds someone 'likely' to contravene the first factor at any time.

These factors increase penalties and fines, furthering punishment for non-compliance with orders.

For example, if a person is living outside on public property (like an encampment in a public park), the law authorizes police to force people to leave their living spaces (including tents) and their belongings behind. If they return and are charged with trespassing, the fact that they returned to the place they were told to leave could be treated as an aggravating factor which increases the penalty.

What should you do if you are approached by police?

If you are approached by police, you may be asked to follow directions, provide identifying information, and hand over drugs that are in plain view. Not complying may result in charges.

However, you still have the right to:

- Not give incriminating information (e.g. answer questions about drug use, possession, or other activities);
- Ask if you are being detained, what you are being charged with, and if you can leave;
- Document the interaction;
- Document badge number, locations, witnesses, time and place, and whether force or threats were used; and
- Seek legal advice if charged.

What can you do if charged?

If you are charged under the SMA for not complying with officer directions, you will either receive a provincial ticket or a “summons” to court. Neither of these documents will indicate that you are being charged under the SMA; they will refer to the *Restricting Public Consumption of Illegal Substances Act, 2025* or the “RPCISA”.

It is important preserve these documents, make copies if needed, and note what happened in your interaction with the officer.

If you receive a ticket, it will say “Offence Notice” at the top and will have options to tick off:

- A guilty plea;
- A not guilty plea and date for trial;
- A guilty plea with submissions about the penalty; or
- Option to meet with the prosecutor for an informal resolution (but not all municipalities have this option).

You must choose one of these options and return the ticket within 15 days of it being issued; otherwise, you will be deemed to not dispute the charge and a guilty conviction will be registered.

If you receive a ticket and a conviction is registered against you, the penalty is a set fine and a victim surcharge. You cannot be sentenced to jail or to a fine of more than \$1000.

If you receive a summons, it will say “Summons” or “Summons to Defendant” at the top of the document. It is important that you do not miss the court date indicated as a trial date can be scheduled in your absence and you can be tried, convicted, and sentenced in your absence.

If you receive a summons and are convicted for trespassing, you could be sentenced to a fine of up to \$10,000.

If you receive a summons and are convicted for any of the offences contained in schedule 1 of the SMA, such as not identifying yourself when directed, you could be sentenced to a fine of up to \$10,000 or imprisonment for no more than six months, or both.

If you are charged, it is good practice to seek legal advice and consider whether proper procedures were followed. Charges can be challenged on procedural grounds including whether an officer acted within their authority and whether the officer had reasonable grounds to make an arrest, search, or seize.

Where can you get legal help?

Toronto

- Centre for Spanish Speaking Peoples – advice and representation for Spanish speaking people
- Fair Change Community Services – advice and representation
- Legal Aid Ontario embedded lawyer program at Moss Park – advice and representation
- Community & Legal Aid Services Program (Osgoode Hall Law School) – advice and representation
- Toronto Metropolitan University Legal Clinic – advice and representation

Greater Toronto Area

- Community Legal Clinic of York Region – advice and representation
- Mississauga Community Legal Services – advice and representation
- Durham Community Legal Clinic – advice and representation

Southern Ontario

- Waterloo Region Community Legal Services – advice and representation
- Huron Perth Community Legal Clinic - advice and representation
- Community Legal Aid, University of Windsor (Windsor, County of Essex) - advice and representation

Northern Ontario

- Lakehead University Community Legal Services (District of Thunder Bay) – advice and representation

Eastern Ontario

- Queen's Legal Aid (City of Kingston, Frontenac County, Lennox & Addington County) – advice and representation
- University of Ottawa Community Legal Clinic – advice and representation
- Downsview Community Legal Services – advice and brief service