



DECriminalization Done Right:

A Rights-Based Path for Drug Policy

We acknowledge that the land on which we live and work is traditionally known as Turtle Island and home to many diverse First Nations. We are called to honour the Calls to Action of the Truth and Reconciliation Commission in our work and must do our part to address the ongoing injustices faced by Indigenous Peoples who suffer the disproportionate impacts and harms of punitive drug policy. We are actively committed to this effort, working in collaboration with our Indigenous colleagues and others.

Mission

To protect and advance the health, human rights, and dignity of people who use drugs by:

- abolishing criminal and other laws, policies, and practices that control, stigmatize, pathologize, and punish people who use drugs; and
- securing the redistribution of resources into programs and services, including those that are community-led, that uphold and promote people's health and human rights, and create safety and security. This includes a safe alternative source of drugs to the contaminated, unregulated drug supply, and greater access to health and harm reduction services, income, housing, reparations for the effects of drug prohibition, food security, and other social determinants of health.

Civil Society Platform on Drug Decriminalization

A CALL TO PUT HEALTH AND HUMAN RIGHTS FIRST

Punitive drug laws and policies purported to deter drug use have failed — and worse, they have done catastrophic harm. They have fueled deadly stigma; epidemics of preventable illness and death; poverty; homelessness; and widespread, systematic, and egregious violations of human rights. They are rooted in, and have reinforced, sexism, racism, and colonialism. They have destroyed lives, torn families apart, and undermined communities' well-being and safety. They have wasted inordinate sums of public money to cause terrible damage.

Recognizing the many lives that have been lost and ruined to the state-sanctioned “war on drugs,” we must act to end the harm. We must stop stigmatizing drug use and pointlessly punishing people who use drugs. We must expand harm reduction programs; ensure access to non-coercive, evidence-informed treatment and supports; scale up safe supply measures; and ensure that policies, programs, and services protect and promote health and socio-economic wellbeing. At the heart of these reforms must be efforts focused on reducing poverty; ensuring access to housing; and combatting violence, sexism, racism, discrimination, and implementing the Calls to Action in the Truth and Reconciliation Commission report and the Calls to Justice in the report of the Missing and Murdered Indigenous Women and Girls Inquiry, and other commitments.

Decriminalizing personal drug possession and necessity trafficking are fundamental, necessary steps towards a more rational and just drug policy, and away from our current anti-drug policies. It is a change that is long overdue.

We call on the Government of Canada to adopt an anti-racist, anti-colonial, human rights–based approach to drug policy that does not rely on criminal, administrative, and medical interventions that maintain the goal of dissuading drug use, and under which people who use drugs continue to be oppressed, coerced, and silenced. Among other measures, our proposed drug policy includes:

1. **Fully decriminalizing all drug possession for personal use, as well as the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safe supply.** This requires the removal of criminal sanctions and all other penalties (administrative or otherwise) as follows:
 - A full repeal of section 4 of the *Controlled Drugs and Substances Act* (CDSA) and section 8 of the *Cannabis Act*;
 - Amendments to section 5 of the CDSA, which criminalizes trafficking and possession for the purpose of trafficking, to permit the sharing and selling of drugs for subsistence, to support personal drug use costs, and to provide a safe supply (i.e. “necessity trafficking”);
 - Removal of all sanctions and interventions associated with simple drug possession, or with necessity trafficking, including:
 - ▷ administrative penalties, including but not limited to fines, “health assessments,” or dissuasion commissions;
 - ▷ confiscation of substances, paraphernalia, or medical supplies;
 - ▷ geographic, drug use, or personal contact restrictions or curfews;
 - ▷ drug treatment courts as a coercive alternative to criminal sanctions; and
 - ▷ other coerced or involuntary treatment or other health interventions.
 - Automatic expungement of previous convictions for simple drug possession (including for cannabis) and an applications-based expungement process for necessity trafficking, as well as expungement of previous convictions for breaches of police undertakings, bail, probation, or parole conditions associated with charges for these acts;
 - Clear rules and strict limitations relating to when police can stop, search, and investigate a person for drug possession; and
 - Removal of police and other law enforcement as “gatekeepers” or “liaisons” between people who use drugs and health and social services, to be replaced by organizations led by people who use(d) drugs or skilled and trained frontline workers.
2. **Redistributing resources from the enforcement of these harmful drug laws** to non-coercive, voluntary policies, programs, and services that protect and promote people’s health and human rights, including health, education, housing, and social services that support people who use drugs, have been released from prison or are incarcerated due to conviction for drug-related offences, and promote the safety and well-being of communities.

THE CURRENT STATE OF THE LAW

Offences

Substances scheduled under the CDSA

In Canada, the unauthorized possession of various drugs (“controlled substances”) for personal use (“simple drug possession”) is a crime under section 4(1) of the *Controlled Drugs and Substances Act* (CDSA):

4(1) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III.

“Trafficking” of a (broader range of) controlled substances is also a crime under section 5 of the CDSA, as is “possession for the purpose of trafficking”:

5(1) No person shall traffic in a substance included in Schedule I, II, III, IV or V or in any substance represented or held out by that person to be such a substance.

5(2) No person shall, for the purpose of trafficking, possess a substance included in Schedule I, II, III, IV or V.

“Trafficking” is defined (in section 2) as including any act of selling, administering, giving, transferring, transporting, sending, or delivering a controlled substance — or offering to do any of these things — unless authorized by a regulation, whether for a profit or for free.

The CDSA also criminalizes the act of importing any scheduled substance (in section 6) and any production of substances (in section 7, for substances on Schedules I through V), even if the substance is for personal use. (There is a separate offence for unauthorized exporting.)

Cannabis

Cannabis is no longer regulated under the CDSA. Instead, the *Cannabis Act*, in force since October 2018, legalizes the possession, and also the production and sale (i.e. trafficking), of cannabis within certain parameters, but imposes criminal penalties for any activities outside these parameters. It is not a crime to possess up to 30g of legally obtained, dried cannabis (or its equivalent in non-dried form, such as 150g of fresh cannabis) or to share this amount with other adults. However, a person under the age of 18 is criminalized for possessing more than 5g of dried cannabis or its equivalent.

It is a crime to possess more than 30g of dried, legal cannabis (or its equivalent in some other form), or to possess any amount of cannabis that a person knows is “illicit” (i.e. was sold, produced, distributed, or imported contrary to the federal *Cannabis Act* or any provincial law), without legal authorization. It is also a crime to produce, import, or export cannabis without a federal authorization, and to distribute or sell cannabis products outside of what is allowed under a province’s regulations. Providing cannabis to a person under the age of 18 is also crime.

Which drugs are illegal under the CDSA?

Schedule I	includes a wide range of opioids (including opium, heroin, hydromorphone, methadone, buprenorphine, oxycodone, diacetylmorphine, and various fentanyl), cocaine and other coca derivatives, amphetamines (including methamphetamine and MDMA), and various other synthetic drugs (including GHB, PCP, and ketamine).
Schedule II	includes various synthetic cannabinoids (such as “spice” or “K2”).
Schedule III	includes stimulants such as methylphenidate (sold under the brand name Ritalin™) and cathinone, sedatives such as methaqualone (Quaalude™), and psychedelics such as LSD, psilocybin (“mushrooms”), mescaline, ayahuasca, and the synthetically similar dimethyltryptamine (DMT).
Schedule IV	includes barbiturates, benzodiazepines, steroids, and the psychedelic salvia.
Schedule V	is currently empty, listing no substances.
Schedule VI	includes various precursors used in the manufacture of other controlled substances.

Penalties

For substances controlled under the CDSA, the maximum penalty upon conviction for *simple possession* is seven years in prison (for a Schedule I substance), five years (for a Schedule II substance), and three years (for a Schedule III substance). It is not a crime to possess substances on the other schedules.

The maximum penalty upon conviction for *trafficking*, or *possession for the purpose of trafficking*, is life in prison (for a Schedule I or II substance), ten years (for a Schedule III or V substance), and three years (for a Schedule IV substance). There are also minimum penalties in some circumstances. The penalty in a given case depends on:

- the substance involved (see the text box for the scheduling of some common substances);
- whether the prosecution treats the offence as *indictable* (more serious) or prosecutes by way of *summary conviction* (less serious). Trafficking (and possessing for the purpose of trafficking) any Schedule I or II substance is always an indictable offence; and
- a number of other factors, such as whether it is a first or a subsequent conviction, and in the case of trafficking offences, factors such as the quantity of drugs, the presence of violence, whether a weapon or children were involved, and whether the offence was committed for or in association with a “criminal organization.” The law also requires that, in the case where a person convicted of an offence is Indigenous, a court must consider any systemic factors that may have played a part in the person being charged, and what type of sentence may be appropriate in the circumstances because of that person’s Indigenous heritage or connection.

Under the *Cannabis Act*, possessing more than the allowable quantity carries a penalty ranging from a ticket for small amounts to up to five years in prison. Illegal distribution or sale carries a penalty ranging from a ticket to up to 14 years in prison depending on amounts. Providing cannabis to a person under the age of 18 carries a maximum penalty of 14 years in prison.

In addition to formal criminal penalties associated with drug possession and trafficking, a host of informal consequences for drug-related activities play a tremendous role in furthering the punishment of people who use drugs. Criminal sanctions that arise from possessing and trafficking drugs, including prosecution, incarceration, and having a criminal record, give rise to stigma and discrimination that can directly impede one’s access to housing, child custody, employment, and health and social services. When and if a policy of decriminalization has properly been implemented, it will still be necessary to combat residual stigma and discrimination against people who use drugs via public education and committed enforcement of human rights legislation and the *Canadian Charter of Rights and Freedoms*.

THE HARMS OF CRIMINALIZATION

A growing body of evidence indicates that criminalizing drug possession is ineffective in reducing the use and availability of drugs, is a waste of public funds, and is taking a terrible human toll on people who use drugs and their loved ones. It is also an unjustifiable infringement on personal liberty and security of the person. Criminalizing drug possession puts people who use drugs at increased risk of harm, including the risk of overdose. Criminalizing drug use impedes people's access to health and social services and emergency care in the case of overdose, as well as contributing to new HIV and hepatitis C infections. In Canada, criminalization has led to more potent and dangerous drugs, hampered efforts to scale up safe supply programs, and contributed to a drug poisoning crisis that has resulted in almost 23,000 overdose deaths nationwide between January 2016 and March 2021.

Drug prohibition harms Indigenous, Black, and other racialized, marginalized, and low-income communities, who are profiled and disproportionately arrested and incarcerated for drug offences, and who are disproportionately subjected to child apprehension orders. More broadly, criminalization perpetuates stigma, discrimination, and the over-incarceration of people who use drugs, and has been used to enact human rights violations towards entire communities. In carceral settings, access to harm reduction and other health services is also drastically curtailed, and there is ample evidence showing a heightened risk of overdose following release from prison or after any compulsory abstinence, including involuntary detoxification and treatment.

While rates of drug use remain consistent among different racial groups, research shows that Indigenous, Black, and racialized populations are incarcerated for drug offences at far higher rates than white populations. The illegal status of drugs is used as justification to take children into state custody and separate children from their families, contributing to an overrepresentation of Indigenous, Black, and racialized children in state care. The harms of drug policy affect not only those individuals who are incarcerated or apprehended by the state, but extend intergenerationally through whole families and communities, compounding the marginalization these groups face.

The harms of criminalization follow people for the rest of their lives, with criminal records limiting employment and housing opportunities, affecting child custody, and restricting travel. Once branded as a person who uses drugs or who engages in a criminalized drug-related activity (either as the result of a criminal record or by association), a person faces discrimination and exclusion. Criminalization can leave people feeling ashamed, angry, and reactive, and can exacerbate consumption. The harms also go beyond the individual and affect families and communities who face stigma, social isolation, negative health outcomes, and financial burdens because of the criminalization of their loved one.

Enforcing drug offences consumes billions of dollars annually. There is significant evidence from other countries that removing criminal sanctions for simple drug possession can result in direct savings — funds that can be redirected toward more effective, evidence-based services and interventions that can promote healthier communities.

The continued emphasis on drug prohibition over the years has failed to decrease the use and availability of drugs, while worsening the risks and harms of using drugs and the violence associated with criminalized markets. Movements to defund police and challenge abusive police practices, including the overly broad use of the criminal law, are gaining momentum. The time to decriminalize drug possession and necessity trafficking, scale back the “war on drugs,” and redistribute enforcement resources to communities is long overdue.

SUPPORT. DON'T PUNISH.

It is time for Canada to adopt a human rights–based approach to drug policy, which includes, among other things, decriminalizing all drug possession for personal use and selling and sharing drugs for subsistence, to support personal drug use costs, and to provide a safe supply.

Decriminalizing simple possession

Most drug use is social, and most people who use drugs that are deemed illegal do so for relaxation, socialization, pleasure, spirituality, self-medication, and connection and without developing dependence. Decriminalizing possession of drugs for personal consumption is necessary to respect human rights, including the rights to dignity, personal privacy, liberty, and autonomy.

Important precedents have been set demonstrating that exceptions to the criminal prohibition on possession must be made in order to protect health and safety — including the decriminalization of cannabis (first for medical use, then more broadly); exemptions from the CDSA for supervised consumption, overdose prevention, and drug checking services; exemptions for the medically supervised prescription of controlled substances; and exemptions under the *Good Samaritan Drug Overdose Act* giving immunity (to a degree) to anyone who calls 911 to report an overdose. Jurisdictions in Canada are requesting exemptions decriminalizing the possession of drugs within their boundaries; others may follow. In 2021, the Federal Expert Task Force on Substance Use recommended decriminalization. While these are good starting points, a fundamental change in drug policy is required — one that removes entirely the criminalization of people for possessing a substance for their own personal consumption or for selling or sharing in situations where the transfer of drugs is done to support one's own drug use or subsistence, or to reduce the risk of others by providing a safer supply of substances to them.

Decriminalization must include the removal of criminal sanctions and all other penalties for simple drug possession for all people. This begins with a full repeal of section 4 of the CDSA, which makes simple drug possession a crime. But it must go further and include an end to all sanctions and coercive measures for simple possession, including fines and administrative penalties; the confiscation of substances, medical supplies, or paraphernalia; geographic, drug use, or personal contact restrictions or curfews; the imposition of drug treatment courts (DTCs) as a coercive alternative to criminal penalties (see text box); and any form of coerced or involuntary treatment.

In a human rights–based approach to decriminalizing simple drug possession, it is important that any services offered to individuals be completely voluntary and with their informed consent and be culturally appropriate. This includes participation in a health assessment, addiction treatment services, psychosocial and mental health services, and harm reduction or support services. Because services offered as a condition of diversion from criminal punishment are not voluntary, they should not be used as such. This also means removing police and other law enforcement from the equation by which people who use drugs access services and supports. When a person is known to possess drugs, that fact should not attract the involvement of police, other law enforcement, or government actors; rather, a range of appropriate evidence-based services and supports need to be scaled so people can access them if they want. Moreover, individuals' privacy must be respected and there should be no record of contact with law enforcement related to simple possession and no sharing of any related information with other government agencies. At the same time, there should be strong protections against “net widening” or “up-charging,” a scenario in which police lay charges for drug trafficking or possession for the purposes of trafficking because they are no longer able to proceed with simple possession charges.

A closer look at Drug Treatment Courts

Studies by the federal Department of Justice have revealed that Drug Treatment Courts (DTCs) are not only ineffective (demonstrating no statistically significant reductions in re-arrests) but are also, in some circumstances, directly harmful to participants and their families. In addition, DTCs present serious problems with accessibility, including the inability of such courts to engage women, Indigenous people, sex workers, racialized people, and youth, as well as difficulties in retaining them once they have entered. More broadly, the coercive characteristics of the DTC system result in encroachment on the substance use treatment sphere and can contort the judicial protections of defendants to the point of undermining health and infringing on human rights.

Multiple human rights concerns are raised by DTCs, which typically require an individual to first plead guilty to an offence to be admitted to the program. For the program's duration, participants are subject to frequent random urine screening, a rigorous treatment regime, highly intrusive judicial supervision, and the potential for sanctions (including jail time) for drug use, breach of conditions, or missed treatment sessions, urine tests, or court appearances.

Courts impose numerous onerous conditions on participants that are often impossible to adhere to, such as urine drug screens, curfews, attendance at meetings, restrictions on travel, and mandatory health appointments. Those who cannot comply may be expelled from the program or receive conditional sentencing orders. Participants who "graduate" from the program may receive a non-custodial sentence, usually a period of probation, restitution, and/or fines. Those who are expelled from or do not complete the program (and may have already pled guilty to enter the DTC program) face the traditional criminal sentencing process, often with no credit for the time spent in the DTC program.

DTC treatment counsellors are given powers of enforcement and judgment that are often guided by discretionary decision-making without any avenue for review. Treatment counsellors can recommend that participants be sanctioned if they do not follow treatment suggestions, blurring their roles and responsibilities from therapeutic to disciplinary, and undermining the therapeutic relationship. Participants are also required to sign release of confidentiality forms upon entry into the DTC, resulting in each participant's treatments being discussed with the DTC team and in open court. This raises concerns about the right to confidentiality between participants and health professionals. Requiring the disclosure of personal information in return for their continued freedom from incarceration not only constitutes an affront to DTC participants' dignity, it also undermines their right to privacy, which can lead to resistance to participation.

Decriminalizing selling and sharing of drugs for subsistence, to support personal drug use costs, and to provide a safe supply (necessity trafficking)

Decriminalizing the selling and sharing of a controlled substance for subsistence, to support personal drug use costs, and to provide a safe supply (“necessity trafficking”) is also in line with a human rights and public health–based approach to drug policy. It is common for people to sell limited quantities of drugs to others in their network as a means of livelihood, to support their own independent use, or to provide a safe supply. It is a poor use of public resources to criminalize selling or sharing in these circumstances. Instead, focus should be put on improving accessibility of harm reduction, treatment services, education, access to a safe supply of substances, and other supports and any law enforcement efforts focused exclusively on more serious offences within and outside the drug trade.

Section 5 the CDSA currently criminalizes “trafficking” and “possession for the purpose of trafficking,” regardless of the quantity of substance and the circumstances. It should be amended to permit selling or sharing of drugs for subsistence, to support personal drug use costs, and to provide a safe supply. As with decriminalizing simple drug possession, decriminalizing necessity trafficking requires an end to all sanctions and coercive measures.

The Controlled Drugs and Substances Act

Section 6(1) of the *Controlled Drugs and Substances Act* prohibits importing controlled substances into Canada, while section 7(1) prohibits their production. Penalties for these offences include a range of prison sentences and mandatory minimum sentences, which vary depending on circumstances such as the type and quantity of drug involved. In Canada, a significant proportion of women — and particularly Black women — serving a federal prison sentence (i.e. a sentence of 2+ years) for a drug offence are incarcerated for drug importation, many of whom were carrying drugs across borders as a way to alleviate their situations of poverty, including some who have reported being forced into these activities with threats of violence to their children and/or families. As with the prohibition on selling and sharing of a controlled substance for subsistence, to support personal drug use costs, and to provide a safe supply, criminalizing the import and production of controlled substances is a poor use of public resources, which should instead be invested in programs to address the root causes of poverty.

Additional considerations to ensure faithful implementation of decriminalization

- There must be clear rules and strict limitations relating to when police can stop, search, and investigate a person for drug possession.
- Police should receive mandatory training on these reforms and on forms of necessity trafficking, to prevent “net widening” and the inappropriate use of police discretion.
- Federal, provincial, and municipal governments must establish and resource effective civilian police complaint and oversight mechanisms that are accessible to people who use drugs and ensure accountability for police officers.

- People who use drugs should have access to legal advice and representation to help them know and defend their rights.
- No one should be in pre-trial detention for drug possession or necessity trafficking while the process is going forward.
- To reduce racial and other disparities, people who use drugs and affected communities from diverse backgrounds must be included in the entire process: planning, drafting legislation, and implementation. An external research body should be established and funded to coordinate collection of baseline data on age, race, disability, sexual orientation, gender identity and expression, spiritual and religious affiliation, income, and substance use (without personal info) during police stops and to track impact of law reform.
- That evaluation of the success of decriminalization reforms should prioritize criminal justice and social welfare outcomes.

Undoing the harms of prior criminalization

Criminal prosecution and penalties do long-lasting harm; this must also be addressed. Decriminalization must include automatic expungement of previous convictions for simple drug possession, including for cannabis, and an applications-based expungement process for necessity trafficking, as well as for all breaches of conditions flowing therefrom to mitigate the numerous harmful consequences of a criminal conviction.

Redistributing resources to protect and promote health and equity

Funds saved from decriminalizing drug possession and necessity trafficking must be adequately distributed to the communities most affected by decades of police surveillance, profiling, violence, racism, and injustice. These resources must be invested into non-profit community-based organizations, including groups led by and for people who use drugs, that support people who use drugs, including by providing health services to prevent and treat overdose, HIV, HCV, and other infections; mental health services; harm reduction services such as supervised consumption, drug checking, and needle and syringe programs; health services such as opioid agonist therapy (OAT) (including injectable forms), safe supply programs to provide quality-controlled alternatives to toxic drugs from the unregulated market, and other forms of medication and treatment to manage substance use; and other forms of healing and support.

Resources should also be reinvested into social services and affordable housing, food security projects, income support, as well as education and employment opportunities, including in a drug-related industry. Supports need to be in place where connections are informed and led by people with lived and living expertise of drug use. Additional support should be incorporated for parents who have been involved with the child welfare system. Culturally appropriate initiatives and practices need to be implemented to ensure that these supports will have the desired outcomes for individuals who have been failed by the system in the past.

Resources should specifically be available for people leaving incarceration for drug-related offences, regardless of whether they continue to use substances or not. To avoid the social inequities that occurred when the *Cannabis Act* was passed where women and Indigenous and Black people were vastly underrepresented in the new legal industry, governments should adopt social equity programs that work to prevent the perpetuation of the racial and class inequalities as decriminalization is implemented. Not only do people who use drugs need drug decriminalization and a safe supply of drugs, they need equitable and meaningful opportunities to engage in their communities and be compensated for their knowledge and expertise.

Resources and additional information

Act Now! Decriminalizing Drugs in Vancouver

(Pivot Legal Society, 2020)

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A New Approach to Managing Illegal Psychoactive Substances

(Canadian Public Health Association, 2014)

[LEARN MORE](#)

Count the Costs

(Transform Drug Policy Foundation)

[LEARN MORE](#)

Decriminalizing People who Use Drugs: Making the Ask, Minimizing the Harms — A Primer for Municipal and Provincial Governments

(HIV Legal Network, 2020)

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DrugDecrimCanada.com

(Canadian Association of People Who Use Drugs)

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Drug Decriminalisation Across the World (interactive map)

(Talking Drugs, Release & International Drug Policy Consortium, 2020)

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E-tool: Comparing models of drug decriminalisation

(International Drug Policy Consortium)

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International Guidelines on Drug Policy and Human Rights

(International Centre on Human Rights and Drug Policy et al., 2019)

[LEARN MORE](#)

Is Decriminalisation Enough? Drug User Community Voices from Portugal

(International Network of People who Use Drugs, 2018)

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**Letter to Canadian Government:
Decriminalize Simple Drug Possession Immediately**

(190+ Civil Society Organizations, May 2020)

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Reports of the Expert Task Force on Substance Use

(Government of Canada, 2021)

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5. British Columbia Civil Liberties Association
6. CACTUS Montréal
7. Canadian Association of People Who Use Drugs
8. Canadian Drug Policy Coalition
9. Canadian Students for Sensible Drug Policy
10. Cannabis Amnesty
11. Centre on Drug Policy Evaluation
12. Community-Based Research Centre
13. Drug User Liberation Front
14. Harm Reduction Nurses Association
15. HIV Legal Network
16. MAPS Canada
17. Moms Stop the Harm
18. Pivot Legal Society
19. South Riverdale Community Health Centre
20. Thunderbird Partnership Foundation
21. Toronto Overdose Prevention Society