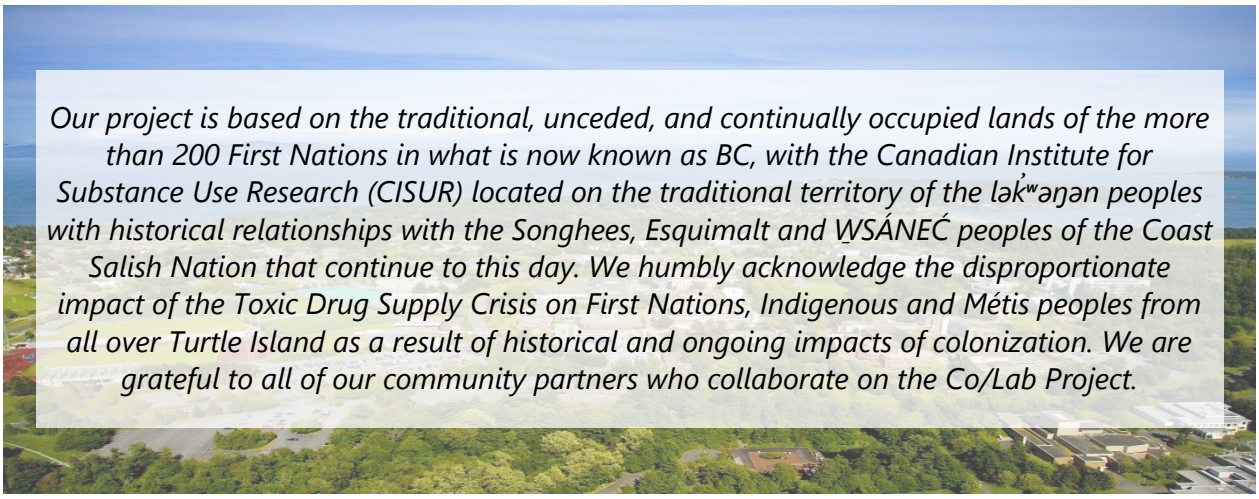
AN EVIDENCE BRIEF

DECRIMINALIZATION OF CURRENTLY ILLEGAL DRUGS IN BRITISH COLUMBIA (BC)

University of Victoria | Canadian Institute for Substance Use Research

coLab



About Co/Lab

The Collaborative Community Laboratory on Substance Use and Harm Reduction (Co/Lab) is a collaborative network for research and knowledge exchange to promote health and health equity for people with lived and living experience of substance use (including alcohol, other licit, and illicit substances). Co/Lab activities are guided by collaborations with people with lived and living experience of substance use, families, health care providers, researchers, and policy makers, and are focused on generating practical evidence that can be used to enhance substance use services and supporting policies.

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The views expressed in this brief are solely those of the authors.

Co/Lab Core Team

Bernie Pauly, RN, PhD, Principal Investigator
Karen Urbanoski, PhD, Principal Investigator
Jenny Cartwright
Amanda Farrell-Low
Brittany Graham, MPH
Susan Z. Martin
Corey Ranger, RN
Thea van Roode, PhD

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Decriminalization of Currently Illegal Drugs in British Columbia (BC)

Current context

BC is in an ongoing public health crisis. Thousands have died. Continued and additional responses are needed.

Nearly eight years ago, the Provincial Health Officer of British Columbia (BC) declared a public health emergency due to rising numbers of unregulated drug deaths (1). Since then, the crisis has worsened, with an average of 7 people dying each day in BC (2). As of December 31, 2023, more than 13,700 people have died since the emergency was declared in April 2016 (2). The tragic loss of life reaches every part of BC and is ongoing. A key driver of this emergency is the toxic and volatile unregulated drug supply, adulterated with fentanyl and other contaminants (1).

This devastating loss of life is accompanied by economic, social, cultural, and health impacts. These include healthcare and criminal justice system costs; health complications from toxic drugs and nonfatal overdose events (e.g., brain injuries and wounds); trauma amongst first responders and support workers; and grief and loss across families, communities and generations—all happening in the midst of ongoing stigma and discrimination against people using drugs (3-7).

An emergency of this magnitude requires a comprehensive response involving all levels of government, health authorities, nonprofit organizations, and communities. Responses to date have included treatment beds, Indigenous land-based healing initiatives, assertive community treatment teams, opioid agonist treatment programs, safer supply prescribing, supportive and complex care housing, overdose prevention sites, province-wide drug checking, naloxone and harm reduction supply distribution, and public education campaigns (8). It is important to recognize that many of these initiatives have not been scaled up across the province. Many places in BC continue to have limited services or lack them entirely. Further, none of these initiatives directly address the deadly toxicity of the drug supply. Given the continued high death rates, it is clear more is needed to address this population level emergency.

As an additional response, the Province implemented a three-year decriminalization initiative in January 2023. Decriminalization means the removal of criminal sanctions; in this case, for personal possession of some drugs with cumulative thresholds. The provincial government's stated goals for decriminalization are to reduce stigma and improve access to health and social services for people who use drugs.

The exemption for decriminalization for personal possession of currently illegal drugs has sparked misunderstandings, misinformation, and controversy. The purpose of this bulletin is to describe drug criminalization and decriminalization, BC's decriminalization initiative, and implications of this initiative going forward for use by policy makers and public including people who use drugs, service providers, media, and others.

BC's approach to decriminalization

BC has decriminalized small amounts of some drugs for personal possession.

BC's approach to decriminalization is detailed on their website. A brief summary is provided in box 1.

BC's current exemption for decriminalization may last until 2026. In September 2023, the BC Government made amendments to the original exemption to restrict decriminalization within 15 metres of playgrounds, wading pools, spray pools, and skate parks. In October 2023, BC added further restrictions to decriminalization by introducing Bill 34, *Restricting Public Consumption of Illegal Substances Act.* If passed, this will restrict the use of illegal drugs in many public areas, including parks, around bus stops and workplace entryways, and beaches. Those who consume illegal drugs in these places can be directed to leave, arrested without warrant, and have their drugs seized and destroyed. These amendments limit the initial scope of decriminalization, as identified in the Supreme Court injunction delaying the bill. Namely, people who use drugs and those who support them may be driven out of public places, leading to less use of healthcare services, exacerbate stigma, and cause irreparable harm (9).

Box 1: What is decriminalized in BC?

People **18+ years old** may possess a cumulative total of **2.5 grams** of **opioids** (heroin, fentanyl, carfentanil, etc.), **cocaine** (crack or powder), **methamphetamine,** and/or **MDMA.** Possession is **for personal use** only.

This **does not apply to**: schools and licensed childcare facilities, playgrounds, wading and spray pools, skate parks, airports, borders, Canadian Coast Guard vehicles, operators of watercraft and vehicles, youth, and Canadian Armed Forces members.

How is decriminalization intended to occur?

Planning and implementation: BC engaged with many partners, including police, Indigenous representatives, and people who use drugs. Training for police and education campaigns for the public were implemented.

Policing: People who have a total of 2.5 grams or less of the drugs above should not be arrested, charged, or have their drugs seized. Instead, they will be offered a card with health and social service resources.

At other organizations: Some workplaces, private operators, and other organizations may continue to prohibit drug possession with their own policies. This can include the substances and amounts outlined in BC's decriminalization exemption. Other organizations, including BC health authorities, have adapted policies to accommodate decriminalization.

Local governments: Decriminalization is supported by the Union of BC Municipalities. However, some local governments have challenged decriminalization and tried to pass bylaws that limit its reach. These bylaws contradict the public health goals of decriminalization and may not be legal. More information on the responsibilities of local governments in regards to decriminalization is available from the BC Centre for Disease Control.

As decriminalization is implemented in BC, the province must adhere to several requirements set out by the federal government. These include public education and communication, health system preparations, and monitoring and evaluation.

Decriminalization in BC has been endorsed by organizations in health, law enforcement, and government, including the RCMP, the BC Association of Chiefs of Police, the Provincial Health Officer, Doctors of BC and the Union of BC Municipalities.

What is the current situation of criminalization?

Criminalization of many drugs is well established in Canada through current drug laws that prohibit their use.

Currently, many drugs are controlled substances in Canada. These include heroin, fentanyl, cocaine, methamphetamine, MDMA, ketamine, psilocybin, LSD and benzodiazepines (10). Possessing, purchasing, transporting, and/or selling these drugs without approval for a medical or scientific purpose is illegal (10). The legislation restricting these drugs is the *Controlled Drugs and Substances Act* (CDSA). The international conventions obliging Canada to have the CDSA are the *United Nation (UN) Single Convention on Narcotic Drugs*, *UN Convention on Psychotropic Substances*, and *UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* (11).

Making drugs illegal through the CDSA is Canada's main form of criminalization. However, the Canadian Drug Policy Coalition's definition of criminalization recognizes additional forms of penalization that stem from the CDSA. For example, some municipalities in BC have attempted to further restrict and penalize drug use with zoning or nuisance bylaws. This makes criminalization, according to the Coalition, "the cyclical, mutually reinforcing nature of poverty, surveillance, and drug-related offences, as well as the impact this has on one's psyche." (12) While this bulletin focuses more narrowly on the legal aspect of criminalization, the Coalition's definition underlines the important point that this legal practice has cascading consequences for other laws, policies, and social practices.

Criminalization is not a given. What is criminalized depends on the cultural, societal, political, and economic context. In the past, Canada criminalized vagrancy, alcohol, suicide, homosexuality, pornography, abortion, birth control, Indigenous cultural practices, ability of status First Nations to seek legal advice or hire a lawyer, cannabis, and medical assistance in dying. Drug criminalization was not prominent until the 20th century. Before this, most substance criminalization was narrowly targeted at Chinese and Indigenous populations (13). A significant literature base has traced the rise in drug criminalization and linked it to such sociopolitical factors as racism and colonialism (13-16).

Indeed, there are strong associations between discrimination against a group of people and criminalization of drugs (13-16). Meanwhile, the association between which drugs are criminalized and the harms they cause is weak. Harm to self and others, death rates, toxicity, and probability of dependence are often higher for alcohol and/or tobacco than many illicit drugs (17). These harms can be devastating. However, research suggests most drug use, including both legal and illegal drugs, is episodic and non-problematic, and access to social support and health services can mitigate potential harms (18, 19).

Impacts of criminalization

Criminalization has led to an unregulated and unsafe drug market that causes significant health and social harms, particularly for marginalized groups.

The criminalization of certain drugs has contributed to a broad range of harms. Most significantly, criminalization has enabled an unregulated drug market with an increasingly toxic and volatile supply. This reflects the so-called "Iron Law of Prohibition," that proposes banning a substance leads to increasingly potent supply as producers attempt to avoid detection (21).

Improved population health is a key purported benefit of criminalization. However, existing evidence suggests criminalization has not reduced drug use in the 21st century (19, 22, 25-27), and instead increases many harms.

Harms of criminalization include high levels of incarceration of racialized communities and people in poverty; human rights violations; heightened spread of infectious diseases (e.g., HIV); high morbidity and mortality from the unregulated supply; drug market violence; limitations to employment, housing, social involvement, and travel for people with a criminal record; possible deportation for immigrants; and decreased access to health, harm reduction and social services (19, 20, 24-27). Criminalization also has economic costs (19, 22) and can reduce research and treatment access to vital drugs (e.g., opioids for palliative care) (19, 22, 30).

> *"On the basis of the evidence identified and analysed by the [Johns Hopkins-Lancet Commission on Drug Policy and Health], we conclude that the harms of prohibition far outweigh the benefits."*
>
> - Csete J et al., "Public health and international drug policy," *Lancet* (19).

BC-specific evidence shows that criminal sanctions that result in jail time can lead to an increase in overdose death rates among people recently released from prison (39), and police confiscation of drugs can lead to people procuring more drugs immediately after interacting with police (40).

What is decriminalization?

Decriminalization is an established but varied practice. BC has recently advanced one version of decriminalization.

As stated earlier, decriminalization is the removal of criminal sanctions. Recent decriminalization efforts in BC have focused on decriminalizing small amounts of illegal drugs for personal possession.

Decriminalization of personal possession of illicit drugs is supported globally by United Nations experts and the World Health Organization. In Canada, decriminalization is supported by over 100 health and human rights organizations including BC Civil Liberties Association, Canadian Association of People Who Use Drugs, Moms Stop the Harm, Union of BC Indian Chiefs, Canadian Association of Chiefs of Police, Canadian Public Health Association, Canadian Mental Health Association, Canadian Society of Addiction Medicine, and Toronto Board of Health.

There are different approaches to decriminalization. The two main types of decriminalization are non-legislative (*de facto*) and legislative (*de jure*) (29). *De facto* decriminalization is less formal and typically involves guidelines or policies encouraging discretionary enforcement of drug laws (31). Some cities in Canada, including Vancouver, Toronto, Regina, Edmonton, and Calgary have officially or unofficially said they have implemented versions of *de facto* decriminalization[1]. Crime statistics in BC suggest many jurisdictions have been reducing enforcement of drug offences since the mid 2010s[2](32). However, There are notable limitations to *de facto* decriminalization (box 2).

Box 2: Limitations of *de facto* decriminalization

The lack of formality and reliance on discretion in *de facto* decriminalization has been critiqued for creating a "grey area" of uncertainty and insecurity (simple possession as a tool). This "grey area" disproportionately affects marginalized groups; with Black, Indigenous, and homeless people who use drugs tending to be targeted more often despite decriminalization (simple possession as a tool, racial disparities in drug arrest). *De facto* decriminalization is also less formalized, and thus quickly changeable or reversible (IDPC drug policy guide).

De jure decriminalization involves formal changes to laws and enforcement practices. Versions of *de jure* decriminalization of drugs for personal possession exist in Portugal, Mexico, and the Czech Republic (26). BC is the first place in Canada to implement a version of *de jure* decriminalization for personal possession of illicit drugs. This involved a federal exemption to the *Controlled Drugs and Substances Act*.

There is a lot of variation across both *de facto* and *de jure* models of decriminalization. This includes what legal reforms occur, which drugs are decriminalized, which populations are eligible, how much of that drug is decriminalized ("threshold"), how enforcement and discretion are practiced, what exclusions exist, and what alternative responses are employed (20, 33).

> *"The proliferation of decriminalisation policies around the world demonstrates that decriminalisation is a viable and successful policy option for many countries. Decriminalisation has not been the disaster many predicted and continue to predict."*
>
> - Eastwood N et al., "A quiet revolution: Drug decriminalization across the globe" (26).

Decriminalization is different than legalization. Legalization involves regulation of the decriminalized substance. Legalization would enable some types of transport and sale of drugs and likely widen the currently limited exemptions (e.g., 2.5-gram limit). Alcohol, tobacco, and cannabis are examples of legalized substances. BC has not legalized any other illicit drugs.

Potential impacts of decriminalization

Decriminalization can mitigate the harms of criminalization. It is unlikely to significantly increase drug use.

The evidence base for decriminalization of drugs is limited (28), but promising. Studies have found that existing decriminalization models (often paired with increased health and social services) are sometimes associated with decreased rates of HIV and hepatitis, reduced incarceration, increased use of treatment services, improved mental and physical health, improved social integration (e.g., employment, relationships, housing), reduced overdose deaths, reduced rates of other crimes, and cost savings related to policing (11, 19, 25, 29). At the same time, countries implementing decriminalization have not seen escalating rates of drug use (19, 22, 25-27) and often have a lower prevalence of drug use than countries with harsh criminal sanctions (26).

[1] While the police chiefs of Regina and Saskatchewan, and the premier of Alberta have stated *de facto* decriminalization is in place, these areas lack publicly-available official enforcement practices, and there remain contradictory statements between levels of leadership. This illustrates a challenge of the informality of *de facto* decriminalization.

[2] Cannabis was legalized in 2018, which certainly may have impacted trends. However, for many jurisdictions, charges appear to have fallen prior to 2018.

Some studies have not supported decriminalization (27, 28), identifying increases in use of emergency services or slight increases in use of cannabis pre-decriminalization (28). However, systematic reviews have noted this is a limited number of studies, often with weak methodological quality assessment scores (27, 28).

The effectiveness and impacts of decriminalization depend on how it is designed and implemented (11, 26). Indeed, some critics have urged caution about implementing decriminalization in ways that may reproduce criminalization. This could occur if decriminalization results in an increase in the number of people targeted for intervention ("net widening"), and increased involvement of the criminal justice system into the sphere of drug use ("net deepening") (33). For example, in Portugal, transforming drug use to a health instead of criminal issue expanded the number of people eligible for police interaction and referral to services (33). In Mexico, low decriminalization threshold limits have led to an increase in trafficking charges (26).These are mitigatable impacts.

> *"The impact of decriminalization alone, however, should not be overstated in terms of its impact on public health; it is only with substantial investments in harm reduction and treatment services that the health problems primarily associated with problematic use can be mitigated."*
>
> - Global Commission on Drug Policy, "Advancing drug policy reform: A new approach to decriminalization" (11).

Beyond evidence: decriminalization as a social justice issue

Decriminalization is an issue of social justice.

While health reasons are often cited as the key reasons to decriminalize, it has also been identified as important for racial justice, decolonization, gender equity, and human rights (11, 14-17, 19, 34). This is in recognition of the purposeful, disproportionate, ongoing, devastating harms of drug criminalization on marginalized populations.

> *"Drug law reform is a small part of addressing indefensible wrongs such as poverty, homelessness, xenophobia, gender discrimination, and the inexcusable conditions facing Indigenous peoples. These inequities are not distinct from the public health crisis of deaths from overdose, and they need to be foremost in the dialogue on policy imperatives."*
>
> - Virani HN and Haines-Saah RJ. "Drug decriminalization: A matter of justice and equity, not just health." *American journal of preventive medicine* (15).

Planning, implementing, and evaluating drug decriminalization, then, must not only involve health or criminal justice evidence. It is also of vital importance to consider ethical obligations.

Considerations

Evaluating (de)criminalization is challenging. We must consider the context of decriminalization and how it is implemented.

It is important to consider what impacts our understanding of (de)criminalization. Decriminalization takes place within a broad social, political, cultural, and economic context (25). This broader context will influence the impacts of a decriminalization policy.

Evaluating (de)criminalization is difficult. Firstly, like many public health topics, these policies are not easily amenable to many of the research methods used to reduce bias, chance, or confounding. Isolation of variables, due to the multifaceted context, is also difficult. It is impossible to attribute outcomes like drug use, violence, or death to just (de)criminalization. Interestingly, (de)criminalization itself may impact research participants' responses, which then influences outcome measures. For example, reports of drug use may increase post-decriminalization because people are more willing to report drug use in evaluations than they were before, rather than actual increases in use (25). Finally, like all research, how we plan our evaluations, analyze results, and make conclusions will always be partly impacted by our own biases.

There are other issues to consider when evaluating the BC-wide policy for decriminalization:

- The threshold of 2.5 grams has been critiqued as too low to effect meaningful change (35-37). It may even result in more potent drugs as manufacturing works to fit the 2.5-gram limit (35, 36)
- Exclusion of youth has been another critique (36).
- The policy – like most policies decriminalizing personal possession – is not capable of making a significant impact on the drug supply (25, 38). This will severely limit the capacity of decriminalization to impact death rates (38). Further, the risky conditions of the still-criminalized drug market, the high cost of drugs and survival crime will remain (38).
- Our stated goals and evaluation measures for decriminalization are often not aligned. For example, we may measure prevalence of drug use despite the goal to enhance access to healthcare services (28). Sometimes our expected goals cannot be expected to be meaningfully impacted by decriminalization.

Indeed, decriminalization takes place within a broad social, political, cultural, and economic context (25). BC's stated goal of reducing stigma, for example, cannot only be achieved with decriminalization.

Conclusion

Decriminalization is a valuable tool for addressing the unregulated drug crisis but is not enough. Other public health, social policy, criminal justice, and community responses are necessary.

Decriminalization of drugs is an internationally supported, human rights approach to mitigating harms associated with illicit drug use. BC has introduced a version of decriminalization as an additional response to the ongoing unregulated drug crisis. The success of decriminalization is difficult to measure, and will be contingent on how it is implemented and the context it gets implemented in.

Unfortunately, there has been recent concern on the ability of BC's increasingly restricted decriminalization policy to achieve its stated goals. Reviews of other jurisdictions' decriminalization projects have demonstrated that limited implementation can result in ineffective or even harmful outcomes (11, 26). Bill 34 and other potential measures to restrict illicit drug possession or use also run in contradiction to the Global Commission on Drug Policy's recommendation that decriminalization should involve no sanctions for personal possession. Ideally, a fulsome decriminalization policy would be one component of a comprehensive, voluntary continuum of care options based in evidence and informed by people who use drugs.

For more information on recommended responses to the crisis, see the resources below.

- Co/Lab resources
- Canadian Association of People Who Use Drugs resources
- National Safer Supply Community of Practice resources
- Toward the Heart (BC Centre for Disease Control) resources
- CATIE harm reduction resources
- Canadian Drug Policy Coalition resources

Additional resources

Canadian reports recommending decriminalization

- Stopping the Harm: Decriminalization of People Who Use Drugs in BC – Office of the Provincial Health Officer
- Decriminalization: Options and Evidence – Canadian Centre on Substance Use and Addiction
- A New Approach to Managing Illegal Psychoactive Substances in Canada – Canadian Public Health Association
- Decriminalizing People Who Use Drugs: A Primer for Municipal and Provincial Governments – HIV Legal Network
- Act Now! Decriminalizing Drugs in Vancouver – Pivot Legal Society
- Decriminalization for Simple Possession of Illicit Drugs: Exploring Impacts on Public Safety & Policing. – Canadian Association of Police Chiefs

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The views expressed in this resource are solely those of the authors.

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Authors

Celeste Macevicius, Canadian Institute for Substance Use Research, University of Victoria
Corey Ranger, AVI Health and Community Services*, Canadian Institute for Substance Use Research, University of Victoria
Karen Urbanoski, Canadian Institute for Substance Use Research, Public Health and Social Policy, University of Victoria
Bernie Pauly, Canadian Institute for Substance Use Research, Nursing, University of Victoria

*Co/Lab partner organization

Co/Lab Core Team (listed alphabetically)

Bernie Pauly, RN, PhD, Principal Investigator
Karen Urbanoski, PhD, Principal Investigator
Jenny Cartwright
Amanda Farrell-Low
Brittany Graham, MPH
Susan Z. Martin
Corey Ranger, RN
Thea van Roode, PhD

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