
MEMORANDUM

PHD-C 11-2020

Subject: Decriminalization of Personal Possession of Illicit Drugs
Date: October 13, 2020
To: Public Health & Social Services Committee
From: Dr. Andrea Feller, Associate Medical Officer of Health

Background:

Addiction is a disease, often tracking back to childhood adversity and trauma(s). We now have a strong understanding of the neurodevelopmental physiology involved and adverse childhood experiences are estimated to account for 40-60% of the risk of development of substance-use disorders in North America.

Education that has focused on drug avoidance, such as Drug Abuse Resistance Education (DARE), have been shown to be ineffective and perhaps harmful. Criminalization of drug use has not reduced the use of, or harms from, drugs and causes harms, including:

- Stigma and harsh judgment of people who use drugs
- Criminal records that impair people's ability to recover from addiction
- Difficulty accessing harm reduction and treatment services, which can lead to bloodborne infections such as HIV
- Disproportionate impacts on vulnerable individuals, including people experiencing poverty or homelessness, and people from racialized groups.

Current Approach in Canada:

Increases in harm reduction and treatment services for people who use drugs, including availability of Naloxone, supervised consumptions sites (SCSs), medical substitution therapy, and provision of sterile drug use equipment have become common. Niagara's utilization of these options is appropriately proportionately higher than the provincial average, and police services have already moved to decreased drug criminalization in practice. These are important investments and efforts, but opioid-related harms continue to increase. Readiness is high. Last month, the Public Prosecution Service of Canada (PPSC) issued a directive strongly discouraging prosecution of simple

possession. This is a critical step and formalizes the current common practice, but is not enough to ensure decriminalization.

Decriminalization of Possession of Illicit Drugs and Global Experience:

Decriminalization is the removal of criminal penalties for the individual use and possession of drugs. It is not legalization; the manufacturing, distribution, and sale of illicit drugs remains illegal.

Many organizations in Canada, and internationally, support decriminalization, including the Canadian Association of Chiefs of Police, the Canadian Public Health Association, the Centre for Addiction and Mental Health, and the World Health Organization.

Portugal decriminalized all drugs in 2001, leading to reduced problematic drug-use, no increase in drug-use since decriminalization, fewer people incarcerated for drug offences, more people in treatment for substance dependence, reduced incidence of HIV, reduced drug-related deaths, and still had an estimated reduction in the social costs of drug use of 18%.

Portugal's decriminalization occurred after two years of increasing investment in prevention, harm reduction, and treatment services for people who use drugs. Drug-use remains an administrative offense, with diversion to health services practiced for those identified with problematic substance-use.

Other countries with varying levels of decriminalization of drug-use have seen mixed and less conclusive results due to differing contexts and approaches.

- Australia's diversion programs showed high completion rates and a reduction in any further drug offences, but net widening was observed initially. Net widening:
 - When the number of people implicated in the criminal justice system increases after implementation of a diversion scheme, which could result in increased prosecution despite decriminalization
 - Effects were reduced through clear communication to the police and public about the purpose of the diversion program, increasing flexibility of the program, and increasing the threshold quantities for personal possession; these measures were in place early in Portugal, and net widening was avoided there
- The Czech Republic decriminalized personal possession of drugs originally in 1990, subsequently increasing criminalization in 1999 due to political pressures, with analyses finding increases in social and enforcement costs and no reduction in drug use with the increased criminalization
- The Netherlands decriminalized small amounts of drugs, with mixed results, including low use and harm from opioids and high use of MDMA and amphetamines

- Mexico instituted some drug decriminalization policies in 2009, with associated diversion practices, however the amount considered “personal possession” was very small and there was limited implementation, with unclear results

Norway has begun a diversion scheme and intends to make more sweeping changes in 2021, and New Zealand has introduced legislation requiring police to consider the potential benefits of providing health services instead of prosecution.

Altogether, decriminalization does not lead to increased substance use. There is good information available to guide decriminalization policy attempts to ensure the benefits outweigh any risks, including the importance of prevention, harm reduction, social support and other interventions, similar to those existing in Niagara, which are likely key to maximizing success.

Key Points:

- The current layered approaches around substance use are critical but will not be enough
- Net widening, a potential risk of decriminalization, can likely be avoided through clear communication to the police and public, high threshold quantities for classification as personal possession, and flexible diversion policies
- Decriminalization policies in the context of increased investment in prevention, health promotion, harm reduction, treatment, and supportive (e.g. housing, employment) services reduce drug-related harms and likely also decrease societal costs
- Consideration for and review of broader implementation of decriminalization, safe supply, and other innovative approaches is well supported by the evidence

Respectfully submitted and signed by

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