



Submission to the House of Commons
Standing Committee on Justice and Human Rights:
Review of Bill C-5, An Act to amend the Criminal Code and the Controlled Drugs and Substances Act

April 29, 2022

I. Introduction

I am the co-executive director of the [HIV Legal Network](#), and am presenting today on behalf the Network and the [Centre on Drug Policy Evaluation \(CDPE\)](#). I am going to focus my remarks today on the section of Bill C-5 that pertains to “Evidence-based Diversion Measures” and propose specific amendments.

a. Full repeal of section 4 of the *Controlled Drugs and Substances Act*

Despite acknowledging in its “Declaration of Principles” the need to “protect the health, dignity and human rights of individuals who use drugs,” the stigma associated with criminalization, and that “judicial resources are more appropriately used in relation to offences that pose a risk to public safety,” Bill C-5 stops short of repealing section 4 of the *Controlled Drugs and Substances Act* (CDSA), the provision criminalizing drug possession for personal use.

From 2014 to 2020, police in Canada made more than 600,000 arrests for drug offences; two-thirds of those were for simple drug possession.ⁱ

Not only does drug prohibition fuel stigma and discrimination against people who use drugs, criminal records limit employment and housing opportunities, affect child custody, and restrict travel.

Studies have also shown frequent contact police have with people who use drugs contributes to what researchers call the “health risk environment” through pathways such as syringe and naloxone confiscation and physical and verbal harassment, which can lead to syringe sharing, rushed injection, and isolation while using drugs. Furthermore, studies have shown how police encounters act as barriers to accessing health services. Drug prohibition therefore perpetuates widespread human rights violations and contributes to epidemics of preventable illness and death including HIV, hepatitis C, and other infections, as well as overdose, which has resulted in nearly 27,000 deaths between January 2016 and September 2021 across Canada.

In Canada, there is strong support to decriminalize drug possession from community organizations, harm reduction and human rights advocates, public health authorities, and law enforcement. In 2021, more than 100 civil society organizations across the country, including groups of people who use drugs, families affected by drug use, drug policy and human rights organizations, frontline service providers, and researchers [released a national drug decriminalization platform](#) for Canada that recommended not only the decriminalization of simple drug possession, but also of necessity trafficking, defined as the sharing or selling of drugs for subsistence, to support personal drug use costs, or to provide a safe supplyⁱⁱ (i.e., safe alternative sources of drugs to the contaminated, unregulated drug supply).

Public health authorities across the country have similarly endorsed the decriminalization of drugs for personal use.ⁱⁱⁱ

Moreover, [Health Canada’s Expert Task Force on Substance Use recommended](#) “Health Canada end criminal penalties related to simple possession.”

Provincial^{iv} and municipal^v authorities are increasingly joining these calls and Vancouver, British Columbia, and Toronto have formally requested an exemption to decriminalize simple possession within their jurisdictions.

Globally, numerous United Nations (UN) entities and human rights experts have expressed support for decriminalization, including the World Health Organization (WHO), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the UN Development Program (UNDP), the UN Special Rapporteur on the right to health,^{vi} and the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment.^{vii} In 2018, all 31 agencies of the UN system (including the UN Office on Drugs and Crime, the lead technical agency on drug policy issues) adopted a [common position](#) recommending to all governments that they decriminalize simple drug possession.^{viii}

Considering ample evidence demonstrating the harms associated with criminalizing simple drug possession and consistent with the Declaration of Principles, Bill C-5 should include a full repeal of section 4 of the CDSA.

b. Amendments to the Declaration of Principles^{ix}

Short of such repeal, we recommend amendments to section 10.1 regarding the “Declaration of Principles” that explicitly:

- acknowledges that most cases of substance use do not pose “problems” for the individual; centers human rights;
- references the harms of criminalizing “necessity trafficking” (defined as the sale or exchange of drugs for subsistence, to support personal drug use costs, or to provide a safe supply); and
- acknowledges the disproportionate impacts of criminal sanctions on drug possession on Black, Indigenous, and other racialized communities.

As detailed in the [national civil society platform on a rights-based path for drug policy](#),^x 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. A significant proportion of people who use drugs sell drugs to manage their own use and avoid withdrawal.^{xi} Research has also indicated that many street-level people who sell drugs take positive steps to protect their clients, such as using drug checking technologies and communicating clearly about the content of the drugs, to put those clients in a position to better manage the risks of their drug use.^{xii} It is a poor use of public resources to criminalize selling or sharing in these circumstances and this should be acknowledged in the Declaration of Principles. Instead, focus should be put on improving accessibility of harm reduction, treatment services, education, access to a safe supply of substances, and other supports as well as any law enforcement efforts targeting more serious offences within and outside the drug trade.

At the same time, it is important to acknowledge the disproportionate impacts of drug prohibition on Black and

Indigenous communities in the Declaration of Principles. Canada’s drug control framework is rooted in, and reinforces, racism and colonialism and Black and Indigenous communities in Canada continue to be disproportionately charged, prosecuted, and incarcerated for drug offences:

- In Toronto, [data collected from 2003 to 2013 by the Toronto Police Service](#) indicate Black people with no history of criminal convictions were three times more likely to be arrested for cannabis possession than white people with similar backgrounds.^{xiii}
- A [2019 study](#) of cases between 2007-2013 found that Black youth accused of cannabis possession in Ontario were more likely to be charged and less likely to be cautioned than white youth and youth from other racial backgrounds.^{xiv}
- A [2020 report](#) found that Black and Indigenous people are dramatically overrepresented in drug charges recommended by the Vancouver Police Department. While making up 1% of the city’s population, Black people have accounted for 6.4% of drug trafficking and possession charges in Vancouver since 2014; Indigenous people have accounted for almost 18% of drug trafficking and possession charges but are just 2.2% of the city’s population.^{xv}
- A [2020 study](#) found that Black and Indigenous people continue to be overrepresented in cannabis possession arrests across Canada.^{xvi}
- A [2020 study](#) conducted by the Ontario Human Rights Commission found that Black people were more likely to be charged, over-charged, and arrested by the Toronto Police Service. Between 2013 and 2017, Black people in Toronto were 4.3 times more likely to be charged with cannabis possession than their representation in the general population would predict.^{xvii}
- A [2022 report](#) analyzed non-cannabis simple drug possession arrest data from police services in select major cities in Canada. Data from 2015 to 2021 indicates that Black people were nearly three times more likely in Ottawa, nearly four times more likely in Toronto, and around 6.6 times more likely in Vancouver to be arrested for drug possession than their representation in the population would predict. Indigenous people were nearly six times more likely in Regina, five times more likely in Saskatoon, and nearly eight times more likely in Vancouver to be arrested for drug possession than their representation in the population would predict.^{xviii}

An explicit reference to the disproportionate impacts of drug prohibition on Black and Indigenous communities is critical, especially if Bill C-5 does not repeal the prohibition of simple drug possession and merely relies on law enforcement discretion – a discretion which has been exercised unevenly against racialized communities. As the Report of the Commission on Systemic Racism in the Ontario Criminal Justice System concluded more than two decades ago, “persons described as black are most over-represented among prisoners charged with drug offences”^{xix} – a reality that persists today.

c. Nullification of principles

Section 10.2(1) of Bill C-5 requires a peace officer to “instead of laying an information against an individual alleged to have committed an offence under subsection 4(1), consider whether it would be preferable, having regard to the principles set out in section 10.1, to take no further action, to warn the individual or, with the consent of the individual, to refer the individual to a program or to an agency or other service provider in the

community that may assist the individual.” Despite this requirement, section 10.2(2) of Bill C-5 indicates that subsequent charges are not invalidated if a peace officer fails to consider these options.

We recommend deleting this paragraph altogether, as it undermines or largely nullifies the purpose of the Bill.

d. Police record-keeping

Section 10.4 of Bill C-5, regarding a “record of warning or referral” provides:

The police force to which a peace officer referred to in section 10.2 belongs may keep a record of any warnings or referrals relating to individuals alleged to have committed an offence under subsection 4(1).

This provision is contrary to the spirit of Bill C-5 and the Declaration of Principles. Police record-keeping would negatively affect the privacy of people who use drugs and undermine the potential to improve the quality of their encounters with police.

Research with people who use drugs has shown that in jurisdictions that have partially “decriminalized” simple drug possession (e.g., by retaining administrative sanctions), a hidden implication is that it can lead to an increase in the frequency of interactions between people who use drugs and police. Practices such as police monitoring and surveillance led respondents to sense a loss of privacy and increased feelings of monitoring and surveillance. It is imperative that police not engage in monitoring, surveillance, and record-keeping under the guise of reform or public safety. Therefore, we suggest replacing “may” with “must not.”

ⁱ Statistics Canada, *Police-reported crime statistics in Canada: Police-reported crime for selected offences, Canada, 2014 and 2015*, July 20, 2016; Statistics Canada, *Police-reported crime statistics, 2016*, July 24, 2017; Statistics Canada, *Unfounded criminal incidents in Canada, 2017: Police-reported crime for selected offences, Canada, 2017*, July 23, 2018; Statistics Canada, *Police-reported crime statistics, 2018*, July 22, 2019; and Statistics Canada, *Police-reported crime statistics in Canada, 2019*, October 29, 2020.

ⁱⁱ Canadian Association of People who Use Drugs, *Safe Supply Concept Document*, 2019. Online: <https://vancouver.ca/files/cov/capud-safe-supply-concept-document.pdf>

ⁱⁱⁱ See, for example, J. Ling, “Seven Chief Public Health Officers Call for Drug Decriminalization, But Justin Trudeau Isn’t Budging,” *Vice News*, September 2, 2020.

^{iv} BC Ministry of Mental Health and Addictions, *B.C. applies for decriminalization in next step to reduce toxic drug deaths*, 2021. <https://news.gov.bc.ca/releases/2021MMHA0059-002084>

^v City of Vancouver, *Request for an exemption from the Controlled Drugs and Substances Act (CDSA) pursuant to section 56(1) that would decriminalize personal possession of illicit substances within the City of Vancouver Final Submission to Health Canada*, 2021. <https://vancouver.ca/files/cov/request-for-exemption-from-controlled-drugs-and-substances-act.pdf>; Toronto Public Health, *Submission to Health Canada: Request for exemption to the Controlled Drugs and Substances Act to allow for the possession of drugs for personal use in Toronto*, 2022. <https://www.toronto.ca/wp-content/uploads/2022/01/943b-TPH-Exemption-Request-Jan-4-2022-FNLAODA.pdf>

^{vi} See, for example, A. Grover, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health*, UN General Assembly, 65th Session, UN Doc A/65/255, August 6, 2010 and A. Grover, *Submission to the Committee against Torture regarding drug control laws*, October 19, 2012.

^{vii} Juan E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN General Assembly, 22nd Session, UN Doc A/HRC/22/53, February 1, 2013.

^{viii} UN Chief Executives Board, *Summary of Deliberations: Segment 2: common United Nations system position on drug policy*, UN System, 2nd regular session of 2018, UN Doc CEB/2018/2, January 18, 2019; United Nations Chief Executives Board, *United Nations system common position supporting the implementation of the international drug control policy through effective inter-agency collaboration*, UNCEB, 2nd Session, Annex 1, UN Doc. CEB/2018/2, January 18, 2019.

^{ix} The proposed amendments are marked in red, below:

Declaration of Principles

10.1 The following principles apply in this Part:

- (a) problematic substance use should be addressed primarily as a health and social issue, **and in most cases substance use is not problematic;**
- (b) interventions should be founded on evidence-based best practices and should aim to protect the ~~health, dignity and human rights~~ **human rights, dignity and health** of individuals who use drugs and to reduce harm to those individuals, their families and their communities;
- (c) criminal sanctions imposed in respect of the possession of drugs for personal use ~~can~~ increase the stigma associated with drug use and are not consistent with **human rights or** established public health evidence;
- (d) criminal sanctions imposed in respect of the sale or exchange of drugs for subsistence, to support personal drug use costs, or to provide a safe supply are not consistent with human rights or established public health evidence;**
- (e) interventions should address the root causes of problematic substance use, including by encouraging measures such as **voluntary** education, treatment, aftercare, rehabilitation and social reintegration; ~~and~~
- (f) Black, Indigenous, and other racialized communities have been disproportionately affected by the criminal sanctions imposed in respect of the possession of drugs; and**
- (g) judicial resources are more appropriately used in relation to offences that pose a risk to public safety.

^x HIV Legal Network, *supra*.

^{xi} *R. v. Ellis*, 2021 BCPC 280.

^{xii} *Ibid* and G. Kolla and C. Strike, "Practices of care among people who buy, use, and sell drugs in community settings," *Harm Reduction Journal*. 2020 May 7; 17(1):27. doi: 10.1186/s12954-020-00372-5 and G. Bardwell et al., "Trusting the source: The potential role of drug dealers in reducing drug related harms via drug checking," *Drug and Alcohol Dependence* Vol. 198, 1 May 2019, 1-6; and A. Bestsos et al., "I couldn't live with killing one of my friends or anybody": A rapid ethnographic study of drug sellers' use of drug checking," *Int J Drug Policy*. 2021 Jan; 87:102845. doi: 10.1016/j.drugpo.2020.102845. Epub 2020 Nov 24.

^{xiii} J. Rankin and S. Contenta, "Toronto marijuana arrests reveal 'startling' racial divide," *Toronto Star*, July 6, 2017.

^{xiv} K. Samuels-Wortley, "Youthful Discretion: Police Selection Bias in Access to Pre-Charge Diversion Programs in Canada," *Race and Justice* 1-24 (2019).

^{xv} D. Fumano, "New figures reveal the racial disparity in Vancouver drug charges," *Vancouver Sun*, August 7, 2020.

^{xvi} A. Owusu-Bempah and A. Luscombe, "Race, cannabis and the Canadian war on drugs: An examination of cannabis arrest data by race in five cities," *International Journal of Drug Policy* (2020), 102937.

^{xvii} Ontario Human Rights Commission, *A Disparate Impact: Second interim report on the inquiry into racial profiling and racial discrimination of Black persons by the Toronto Police Service*, August 10, 2020.

^{xviii} R. Browne, "Exclusive Data Shows Canadian Cops Target More Black and Indigenous Folks for Drug Arrests," *Vice News*, April 19, 2022.

^{xix} Commission on Systemic Racism in the Ontario Criminal Justice System, *Report of the Commission on Systemic Racism in the Ontario Criminal Justice System*, 1995.