

# Decriminalization 101: What You Need to Know

Criminalizing people who use illegal substances does not actually reduce their use.<sup>1</sup> In fact, it often causes more harm than good. Criminalization contributes to an unsafe drug supply, creates more stigma around substance use, overburdens the healthcare system, and disproportionately affects Black and Indigenous people.<sup>2</sup> The goal of decriminalization is to prevent these harms.<sup>3</sup>

**Healthcare burden:** Because of laws that make possession of certain substances a criminal act, people are not able to use these substances safely. They must rely on an unregulated supply that contributes to the current drug toxicity crisis.<sup>2</sup> From 2016 to 2023, there have been more than 50,000 hospitalizations related to drug toxicity, putting a strain on an already overburdened healthcare system.<sup>4</sup>

**Financial burden:** In 2020, Canada spent around \$5 billion on policing, courts, and correctional costs as a result of criminalization.<sup>5</sup> Canada also spent more than \$1 billion on healthcare costs related to the use of illegal substances, such as opioids and stimulants.<sup>5</sup> Criminalization contributes to these costs because it discourages people from accessing earlier treatment and prevention options.<sup>2</sup>

**Harm to racialized communities:** Criminalizing substance use is part of a long history of racism and overpolicing that unfairly puts racialized people at greater risk of prosecution for substance-related offences.<sup>2</sup> For example, Black and Indigenous people in Canada are overrepresented among those arrested for cannabis possession.<sup>6</sup>

## What Is Decriminalization?

**Decriminalization** refers to the removal of criminal penalties for substance-related activities.<sup>3</sup> Instead of arresting someone caught with a small quantity of substances, they would receive fines and warnings.<sup>7</sup>

- De jure decriminalization: Formal changes to legislation to remove criminal sanctions like arrests and criminal charges for substance-related offences.<sup>7</sup>
- De facto decriminalization: Informal approaches, in which police can use their own discretion and use alternative pathways for substance-related offences.<sup>7</sup>
- Section 56(1) exemption: An exemption to the *Controlled Drugs and Substances Act* that the Minister can issue for medical purposes or if it is in the public's interest.<sup>8</sup> For example, this exemption allows for the operation of supervised consumption sites.<sup>7</sup>

## Examples in Practice

Portugal decriminalized possession of substances in 2001, shifting the focus to treatment and prevention. This has reduced substance-related deaths and prison overcrowding.<sup>9</sup> Levels of substance use in Portugal have been consistently below the European average for the past 20 years.<sup>10</sup>

Switzerland decriminalized possession of all substances in 2013. Simple possession of any substance now results in confiscation and fines.<sup>9</sup>

In 2021, Oregon became the first U.S. state to decriminalize possession of small amounts of all substances. Individuals are now fined and offered referral to treatment and other services.<sup>9</sup>

In response to the drug toxicity crisis, in 2023 Health Canada granted British Columbia a time-limited Section 56(1) exemption under the *Controlled Drugs and Substances Act* that decriminalizes possession of any substance until 2026. This moves toward reframing substance use as a public health issue.<sup>11</sup>

## Common Misconceptions

### “Decriminalization would be a total free-for-all!”

Decriminalization is often confused with legalization, but it is different. Substances would not be legally available. Possession would still be illegal but would not result in jail time or a criminal record.<sup>12</sup>

### “Decriminalization will lead to out-of-control distribution and sale of substances!”

Decriminalization typically applies only to personal possession and use, not to the sale or distribution of substances, which usually remains illegal.<sup>7</sup>

### “Decriminalization leads to more substance use!”

The impact of decriminalization on substance use rates has been studied in various contexts. Most research suggests that decriminalization does not necessarily lead to significant increases in use.<sup>13</sup> For example, cannabis use among youth in Canada has not increased as a result of its legalization.<sup>14</sup>

## Benefits of Decriminalization

- Potential to reduce stigma and discrimination<sup>15</sup>
- Easier to access treatment options and harm reduction supports without fear of criminal consequences, thereby lowering rates of sexually transmitted infections and deaths related to substance use<sup>9,16</sup>
- Potential to reduce over-representation of racialized people in the criminal justice system<sup>2</sup>

## The Way Forward

The gold standard for decriminalization involves a few key elements. In addition to removing criminal sanctions for possession of illegal substances, any decriminalization strategy should also include promotion of health and social services. People with lived experience of using substances should be included in all aspects of planning.<sup>17</sup>

In legal terms, any previous convictions should be expunged after decriminalization. Public authorities should receive training to ensure adherence to policy decisions. Resources and funding should be diverted from law enforcement into health services.<sup>17</sup>

Recognizing that decriminalization is just one vital part of a broader approach to substance use, Health Canada's *Expert Task Force on Substance Use* made [recommendations](#) to reshape Canada's Drug and Substances Strategy, including legal regulation of substances and a safer-supply emergency response.<sup>18</sup>

**Legal regulation:** A single public health framework for all substances to minimize an illegal drug supply and create a legal, regulated market.

**Safer-supply emergency response:** A strategy that increases access to safer substances to reduce the risk of poisoning from toxic substances.

The *Expert Task Force on Substance Use* also recommends the following changes<sup>18</sup>:

- Adopt a public health approach with a continuum of services and supports that focus on addressing the social determinants of health.
- Implement anti-stigma campaigns with clear messaging. Frame public education around health promotion and minimizing harm. Make it illegal to discriminate against people who use substances.
- Add equity as a core principle. Federal policies should be developed in partnership with Black and Indigenous communities and guided by people with lived experience.
- Create national quality standards for services that support people who use substances. These should incorporate Indigenous cultural practices.
- Provide ongoing funding to support decriminalization, reshape Canadian policy on substance use, and address the drug toxicity crisis. Now more than ever, action is needed to save lives.

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