



Mandatory Minimum Sentences for Drug Offenses: A Step in the Wrong Direction

A Brief to the House of Commons Standing Committee on
Justice and Human Rights regarding Bill C-15,
*An Act to Amend the Controlled Drugs and Substances Act
and to Make Consequential Amendments to Other Acts*

Prepared and Submitted by the Canadian AIDS Society

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About the Canadian AIDS Society

The Canadian AIDS Society (CAS) is a coalition of more than 120 community-based AIDS service organizations across Canada. Our member organizations are directed by people living with HIV/AIDS and people from communities affected by HIV/AIDS. Our mandate is: to speak as a national voice and act as a forum for a community-based response to HIV infection, as well as to speak for persons so affected; and to act as a resource for our member organizations and coordinate community-based participation in a national strategy on HIV and AIDS.

CAS is involved in initiatives linking many activities along the continuum of prevention, care, support and treatment. As an organization with work linkages to all of these areas, CAS is able to provide the support and information required by its membership to provide a sustained response to HIV/AIDS in Canada.

Ongoing activities include:

- Ongoing policy files on microbicides, vaccines, ethnocultural issues, men who have sex with men, the Greater Involvement of People Living with HIV/AIDS, housing, harm reduction and drug policy;
- CAS hosts an annual Forum for People Living with HIV/AIDS;
- CAS hosts a bi-annual National Skills Building Symposium;
- CAS held a seat on Health Canada's Stakeholder Advisory Committee on Medical Marijuana and produced a policy report on barriers to access to cannabis for medical purposes, with recommendations
- CAS was involved in stakeholder consultations for the development of the National Framework for Action to Reduce the Harms Related to Alcohol and Other Drugs and Substances in Canada.
- CAS, in collaboration with the Canadian Harm Reduction Network, produced a report called Learning from Each Other: Enhancing Community-Based Programs and Practices in Canada
- CAS carries out national awareness and prevention campaigns;
- CAS has been invited to make presentations to various federal standing committees and acted as an intervener in supreme court cases;
- CAS has coordinated national conferences on Women and HIV/AIDS and Complementary Therapies.
- CAS is the national coordination body of the Scotia Bank AIDS Walk for Life, an essential fundraising and awareness activity in communities across Canada.
- CAS engages in international partnerships such as acting as the secretariat for the North American Council of AIDS Services Organizations (NACASO); coordinating Microbicides Advocacy Group Network (MAGNet); and is the Canadian Partner in the International AIDS Vaccine Initiative (IAVI);

Mandatory Minimum Sentences for Drug Offenses Do Not Affect Drug Use or Crime

The Government proposes that Bill C-15 will contribute to the fight against gangs and other organized criminal groups, making our neighbourhoods and communities safer.¹ The Canadian AIDS Society believes that Bill C-15 is a step in the wrong direction, as evidence suggests that such measures have been shown to be ineffective in reducing drug use or drug-related crime.² In fact, other countries that have implemented harsh minimum penalties for drug offenses are moving away from this approach.³

The Canadian AIDS Society urges the Government to carefully consider the evidence and learn from other countries' experiences before proceeding with the proposed Bill C-15.

Mandatory Minimum Sentences Will Disproportionately Affect Canada's Most Marginalized

Research has shown that Mandatory Minimum Sentences are more likely to affect low-level, non-violent offenders rather than get to the large scale traffickers.^{3,4,5} People who get involved in drug trafficking, especially at the street level or on a small scale, are likely to be people who use drugs who are trafficking as a source of revenue.^{6,7} It is also well established that people with substance use problems are affected by several social determinants of health such as poverty, homelessness, lack of education, family dysfunction and parental substance misuse, mental health problems, and a history of child abuse.⁸

The proposed Bill C-15 will likely disproportionately affect the most marginalized Canadians who are already affected by poverty, homelessness, substance use problems, mental health issues and other factors. Incarceration and criminal records will not help these Canadians and will perpetuate their marginalization.

Minimum Mandatory Sentences for Drug Offenses Mean More People with Substance Use Problems in Prisons

Minimum Mandatory Sentences will inevitably target people with substance use problems. As it is, four out of five offenders who are incarcerated in federal institutions have a serious substance use problem.⁹ With Bill C-15 imposing Mandatory Minimum Sentences on people for non-violent drug offenses, the number of incarcerated people with substance use problems is likely to increase.

Bill C-15 makes provisions for drug treatment court as an option to a prison sentence. According to the proposed Bill C-15, Clause 5(2) states that:

- a court sentencing a person for a drug offence may, with the consent of the prosecutor, delay sentencing so that the person may participate in an approved drug treatment court program; and
- if the person "successfully completes" the drug treatment court program, the court is not required to impose the minimum punishment.

However, this option is not available if the person was:

- carrying a weapon in committing the offence;
- committing the offence in or near a school, on or near school grounds, or in or near “any other public place usually frequented’ by people under 18;
- involving a person under 18 in committing the offence.

We agree that violent crimes should be addressed adequately, and on a case by case basis. As for drug offenses, according to the proposed Bill C-15, some people will inevitably not be eligible for drug treatment court as implied by some of the text in Bill C-15. In addition, it is important to note that there are few operational drug treatment courts in Canada, therefore even further limiting access to this option for most people facing drug-related charges. Moreover, despite two evaluations in Canada, the success of drug treatment courts in contributing to the long-term reduction of drug use and relapse into crime among their participants has not yet been established, nor has the cost-effectiveness of such programs.¹⁰

It remains to be seen how the provision for drug treatment court will be used and what impact it will have on people with substance use problems. Inevitably, Bill C-15 will result in the incarceration of more people with substance use problems.

People with Substance Use Issues Need Health Care, Not Prison

Substance use in prison is substantially higher than in Canadian communities.¹⁶ Alcohol and other drugs are available in prisons, despite extensive efforts to limit or eliminate them in prisons.¹⁶

While there are some services available for inmates to address their substance use problems,¹⁶ treating people in the community for substance use problems “can be a highly effective intervention to prevent community and health-related harms of illicit drug use by removing addicted individuals from the [black] market altogether, or by enabling individuals to reduce their level of illicit drug use.”^{11,12} Treatment can be less expensive than a term in prison, can be cost effective, can reduce substance use and recidivism while building communities, and can be more effective than cycling people in and out of prison.¹³

If the Government wishes to improve the safety and security of Canadian communities, it needs to provide adequate treatment and services for substance use problems rather than instilling more criminal sanctions and prison sentences.

Mandatory Minimum Sentences – A Step in the Wrong Direction

In its announcement of the National Anti-Drug Strategy¹⁴, the Conservative government has eliminated references to harm reduction strategies and vowed to get tougher on “drug criminals”. The proposed Bill C-15 is one example of their efforts to do that. The shift from a health approach to a law enforcement approach is a step in the wrong direction, and goes against important work and developments that have historically taken place in Canada.

Canada’s Drug Strategy recognizes that problematic substance use is a health issue rather than a law enforcement issue.¹⁵ This approach was strengthened after an extensive, two-year multi-stakeholder consultation, headed by Health Canada and the Canadian Centre on Substance Abuse, which resulted in the National Framework for Action to Reduce the Harms Associated with Alcohol and Other Drugs and Substances in Canada.¹⁶ Its key principles clearly state that problematic substance use is a health issue that is shaped by social, economic and other factors, and that addressing problematic substance use requires a public health approach.

During own focus group consultations, one participant expressed the impact of the current law enforcement and criminalization approach to drugs:

“It’s not so much the drug itself, obviously, but also the getting and the using of it – the people and the places it takes you to to get the drug. That’s the whole lifestyle aspect of it, and that’s really what brings you down to your bottom.”

Responses to reduce the harms associated with drugs and substances need to include the full range of health promotion, prevention, treatment, enforcement, and harm reduction approaches. These strategies must be based on evidence from research and evaluation and must respect human rights. The Canadian AIDS Society participated in the consultations leading to the development of the National Framework and adheres to its principles. We urge the Standing Committee on Justice and Human Rights to do the same.

The proposed Bill C-15, in our view, will worsen Canada’s response to drug use in Canada by imposing harsher penalties for drug offenses, resulting in a negative impact on people with substance use issues. Ultimately, people who are incarcerated for drug offenses eventually return to their communities.

Impact of Incarceration on HIV/AIDS and Hepatitis C Transmission

Canadians in general should be concerned with placing people with substance use problems in prison. Correctional Services Canada report that HIV rates in federal inmates are seven to ten times higher than in the general Canadian population, and rates of hepatitis C are about 30 times higher, and that these rates are increasing.⁹ The situation is the same or worse in provincial prisons.¹⁷

Access to health services to reduce the transmission of HIV/AIDS and hepatitis C in prison is limited. While there are some services available to inmates, such as information on HIV/AIDS and hepatitis C associated with injection drug use and instructions on safe injection practices, harm reduction measures such as needle exchange programs are not available in correctional institutions in Canada.¹⁶ The pilot tattoo project, which provided inmates with safe tattooing equipment and training, was also discontinued. This decision will likely result in unsafe tattooing practices and more transmission of HIV/AIDS and hepatitis C in prisons.

Currently, needle exchange programs are not available in prisons in Canada, despite the fact that surveys of inmates have revealed prevalence of injection drug use as high as 24%.¹⁸ Inmates report that 15 to 20 people will sometimes use the same needle.¹⁸ Inmates may also turn to injecting drugs such as heroin or cocaine that clear the body faster than cannabis, so as not to be detected by drug testing programs.^{19, 20} Without access to sterile injection equipment, the transmission of HIV/AIDS and hepatitis C will continue to thrive in prison settings, and ultimately will result in greater transmission into Canadian communities upon inmates' release.

The proposed Bill C-15 will perpetuate the transmission of HIV/AIDS and hepatitis C in prisons and in Canadian communities by placing more people who use substances in prison where they do not have access to adequate services and supplies to protect themselves.

Mandatory Minimum Sentences and the Use of Cannabis for Medical Purposes

Finally, the proposed Bill C-15 will also affect people who use cannabis for medical purposes. Despite the existence of a federal medical cannabis program through the Marihuana Medical Access Regulations, which enable people to possess and produce cannabis for medical purposes, there are still many people who experience barriers to access to both the federal program and to a source of cannabis for medical purposes.

The Canadian AIDS Society identified barriers to access to a safe, legal and affordable source of cannabis for medical purposes for people living with HIV/AIDS.²¹ Eighty-six percent of focus group participants who used cannabis for medical purposes reported that they relied on illegal sources for their supply. Of the people who used cannabis for medical purposes, 8% of them grew cannabis without a license to produce from the government. As there are still barriers to access to the federal medical cannabis program, we are concerned that people living with HIV/AIDS may find themselves in prison as a result of Bill C-15.

Bill C-15 is a Step in the Wrong Direction

In closing, the proposed Bill C-15 will not likely affect drug use or crime. In practice, it will target the wrong people by disproportionately affecting already marginalized populations and not getting to the large scale traffickers. It will place more people who use drugs in prison and exacerbate the existing drug situation in correctional institutions. It will contribute to the transmission of HIV/AIDS and hepatitis C, as there is no access to sterile injection equipment in prisons. Ultimately, this will also contribute to more HIV/AIDS and hepatitis C in Canadian communities upon release of inmates. People who produce cannabis for their medical use who have not managed to obtain a license to produce will face prison sentences. This strengthening of law enforcement measures goes against a health approach to substance use and is a step in the wrong direction.

Recommendation:

The Canadian AIDS Society recommends that the Government abandon Bill C-15 in light of the absence of any evidence of added benefit to society and of the identified adverse effects of such a policy on Canadians.

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