

January 13 2025

Submission on Safer Municipalities Act, 2024 - Restricting Public Consumption of Illegal Substances Act, 2024

Prepared by: Canadian Drug Policy Coalition

Comment:

Thank you for the opportunity to comment on the *Safer Municipalities Act, 2024 - Restricting Public Consumption of Illegal Substances Act, 2024*.

This Act will prohibit the consumption of illegal substances in public spaces, defined as any place where the general public is invited or permitted and includes any structure used as a dwelling in a public place, including temporary structures such as tents which are commonly used by unhoused people for shelter from the elements amidst a widespread shortage in affordable housing and shelter spaces. Anyone who is suspected to be consuming an illegal substance in public space can be directed by a police officer to leave a particular area including a dwelling or tent, can have their substances seized and if convicted, can be liable to a fine of \$10,000 and imprisonment for six months. We strongly recommend the rescindment of this bill due to the significant potential for serious harms to people's health and safety, as well as unnecessary and inefficient financial costs to the health and criminal legal systems, and taxpayers.

Firstly, this Act, if implemented, will increase mortality amongst people who use drugs and particularly among unhoused people who use drugs. Research published in 2023 titled "Opioid-related overdose deaths among people experiencing homelessness, 2017 to 2021: a population-based analysis using coroner and health administrative data from Ontario, Canada" found that people experiencing homelessness accounted for one in six fatal overdose deaths in Ontario, a rate that has more than doubled from 2017 to 2021 and represents a population whose health needs must be supported through health-based approaches rather than criminal interventions. People consume drugs for many reasons, including lacking access to medical professionals and prescribed safer supply, addressing illness due to withdrawal symptoms, and self-managing pain due to injury. Most people who use drugs in public space do so because they are unable to access indoor space in which to consume due to a widespread lack of shelter and affordable housing options, a lack of supervised consumption services, particularly given the Ontario government's decision to close 10 supervised consumption sites and simultaneously implement new and highly restrictive criteria curtailing the establishment of new sites. The implementation of this Act, by default, will disproportionately target people living in poverty and unhoused people with no choice but to live in public space, subjecting this community to increased policing, harassment, displacement, exorbitant fines and imprisonment, in addition to the health and safety risks associated with lone or isolated substance use. For those who lack indoor spaces in which to use drugs, this Act will incentivize lone or isolated substance use in

hidden areas (in public) due to fear of criminalization and displacement. Given the contamination and toxicity of the unregulated drug supply and the high chance for overdose, all public health guidance indicates that people who use drugs should not consume drugs alone in order to prevent death and injury. This Act would incentivize behaviour that is directly in contradiction to public health guidance. The 2023 Chief Medical Officer of Health for Ontario's annual report states: "criminalization of simple possession for personal use increases the risk of people using drugs alone, and overdosing and dying" (p. 61). The costly fines, risk of imprisonment and displacement of people for (suspected) substance use in public space will clearly and specifically harm unhoused people, and constitutes a renewed commitment to a criminalizing approach which is directly contrary to public health guidance.

Secondly, this Act will disproportionately harm Indigenous people who are overrepresented in the population at the intersection of toxic drug harms and housing precarity due to the ongoing systemic impacts of colonization and the attendant discrimination in the medical and criminal legal systems. Under this Act, Indigenous people will become disproportionately displaced and criminalized, violating the inherent rights of Indigenous people. A report published by Statistics Canada in 2023 indicated that the incarceration rate for First Nations people in Ontario was 6.3 times higher than that of non-First Nations people in 2020-2021. This Act is likely to manifest similar disproportionate rates of criminalization for Indigenous people. With respect to the overrepresentation of toxic drug harms amongst Indigenous people, a 2023 report titled "Opioid Use, Related Harms, and Access to Treatment Among First Nations in Ontario Annual Update 2013-2021" published by the Chiefs of Ontario and Ontario Drug Policy Research Network found that the annual rate of opioid-related deaths among First Nations people nearly tripled between 2019 and 2021, and in 2021, the rate of opioid-related deaths was more than seven times higher among First Nations compared to non-First Nations people. This indicates that health and safety measures to prevent harms associated with drug use, such as not consuming drugs alone, are particularly important in order to address disparities in health outcomes and mortality rates between First Nations and non-First Nations populations. As discussed above, this Act incentivizes lone or isolated drug use and particularly targets unhoused people who use drugs. Indigenous people are also overrepresented among people experiencing homelessness. Ontario Aboriginal Services stated in 2023 that "Indigenous people account for 20-65% of homelessness counts in communities across Ontario and these rates can reach up to 99% in many Northern Ontario communities." Taken together, the overrepresentation in drug toxicity death rates and harms among First Nations people in Ontario, the overrepresentation of unhoused people in drug toxicity death rates, the high proportion of unhoused people who are Indigenous, and the incentivization of lone or isolated drug use through increased criminalization as proposed in this Act, we can anticipate that this Act will disproportionately increase deaths, injuries and criminalization amongst First Nations people in particular.

Thirdly, introducing an Act to increase criminalizing approaches and the attendant costs (police surveillance, arrests, incarceration, courts) is waste of taxpayer funds, particularly when contrasted with the cost-benefit analyses of public health services such as supervised consumption sites and affordable housing. In 2017, the Auditor General of Ontario's annual report indicated that the average cost of providing social housing to one household is about \$613 per month, the cost of one shelter bed is \$2,100 per month, while the cost of one

correctional facility bed is \$4,300 per month, or approximately seven times more expensive than the cost of social housing. A criminalizing approach is more costly wastes taxpayer funds. Rather than the expensive criminalizing approach represented in the Act, a public health approach would be more cost-efficient. Research published in 2010 titled “A cost-benefit and cost-effectiveness analysis of Vancouver's supervised injection facility” found that every \$1 spent on supervised consumption services is associated with more than \$5 in public health system cost savings, including the cost savings associated with the prevention of HIV and Hepatitis C. Fear of police is demonstrated to result in rushed or unsafe drug injection practices (e.g., reusing or sharing needles), representing increased costs to the medical system due to increased transmission of bloodborne illness and the associated healthcare costs. In addition to higher financial costs associated with imprisoning rather than housing people, this Act will cause an increased financial burden due the higher incidence of preventable HIV and Hepatitis C cases.

Further demonstrating the inefficiencies associated with this Act, mechanisms already exist for the prohibition of drugs, including the *Controlled Drugs and Substances Act* (CDSA) – there is no need to implement multiple layers of criminalization for a given activity. Additionally, the Public Prosecution Service of Canada (PPSC) guideline issued in 2020 indicates that PPSC prosecutors will be guided by the following principle: “Resort to a criminal prosecution of the possession of a controlled substance contrary to s. 4(1) CDSA should generally be reserved for the most serious manifestations of the offence...”

Lastly, given that the increased criminalization of people who use drugs in public space is likely to result in overdose harms and deaths, this Act will cause psychological harm to health and social service workers due to the preventable deaths of their clients, as well as psychological harm to public bystanders who encounter people who have died due to using drugs while isolated and hidden in public spaces.