



**Community
Safety
Knowledge
Alliance**

Research to Practice to Alignment

Decriminalization: A Proposed Theory of Change for Improved Community Safety and Wellbeing Outcomes

**FINAL REPORT TO THE
ALBERTA ASSOCIATION OF CHIEFS OF POLICE**

2 November 2022

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Decriminalization: A Proposed Theory of Change for Improved Community Safety and Wellbeing Outcomes

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This report was reviewed in draft form and discussed by the panel, which brought diverse perspectives and expertise to bear on improving the final report. They have not yet seen the final report, and the authors alone are responsible for the final content of this report.

About the Community Safety Knowledge Alliance

CSKA is a non-profit that supports police leaders, governments and others in developing, implementing, and assessing new approaches to improving community safety and wellbeing outcomes. Through its work, CSKA mobilizes, facilitates, and integrates research and the development of new knowledge that:

- Informs how community safety-related work is organized, and delivered;
- Informs and improves professional practices across the community safety system;
- Informs alignment within the sector; and
- Improves safety and wellbeing outcomes at the individual, community, and policy levels.

Our independence and objectivity are important values at CSKA. Our success is based on values- and respect-based relationships with clients and other key stakeholders. The nature of these relations allows us to find the professional balance between independence and cooperation.

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Glossary

The following terminology is used in this report¹.

Addictive or addiction: Referencing the American Society of Addictive Medicine, the Recovery Research Institute defines addiction as a “a primary, chronic, neurobiologic disease with genetic, psychosocial, and environmental factors influencing its development and manifestation. Addiction is characterized by behaviors that include: impaired control over drug use; compulsive use; continued use despite harm; cravings.”

Depenalization: Reduction in the use of existing criminal sanctions, without changes to legislation

Diversion: Either *de facto* (in practice) initiatives or *de jure* (in law) legislation that direct people away from criminal sanctions and towards educative, therapeutic or social services, and related care pathways; or post-sentence or post-conviction diversion is not included, as they are not alternatives to criminalization

Decriminalization: The *de jure* removal of criminal sanctions for the possession of substances for personal use. Criminal sanctions may be replaced by civil penalties (e.g., fines), by measures for diverting people towards health or social support (e.g., Dissuasion Commissions in Portugal), or by no sanction at all (full decriminalization). These may reflect a variety of specific aims including avoiding the criminalization of people who use substances, reducing the economic harms to individuals and society associated with use of illicit substances, enabling cost savings and a redirection

of finite human service resources (including policing) to areas where they may have a larger impact; and reduced social costs by creating conditions that improve access to, and use of, key resources such as housing, treatment and support services, in the service of recovery and wellbeing.

Public Supply of Addictive Substances: used in place of the more commonly-used term, ‘safe supply’ to highlight the dimension of addiction while recognizing that the question of its safety/effectiveness remains open (evaluations of interventions in British Columbia are currently underway). The focus of these measures is to provide people with access to a consistent, non-toxic supply of addictive substances.

Substance: Used here in the place of the word ‘drug’ to minimize the ambiguity and stigma associated with that term. The Recovery Research Institute distinguishes between medically and non-medically used psychoactive substances, so as to decrease stigma and communicate with greater specificity.

¹ Adapted from: Recovery Research Institute (n.d.). Addictionary. <https://www.recoveryanswers.org/addiction-ary/>; Public Health Ontario (September, 2022). Scan of evidence and jurisdictional approaches to safer supply. https://www.publichealthontario.ca/-/media/Documents/S/2022/safer-supply-environmental-scan.pdf?sc_lang=en; and Stevens, A., Hughes, C., Hulme, S. &

Cassidy, R. (2022). Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession. *European Journal of Criminology*, 19(1), 29-54. DOI: 10.1177/1477370819887514

Executive Summary

The societal, economic and human costs of problematic substance use in Canada weigh heavily on everyone, in one way or another. The idea of decriminalizing simple possession of illicit substances has generated considerable debate in Canadian society. Over the past 18 months, there have been growing calls for decriminalization from multiple constituencies. For example,

- British Columbia recently applied for, and in May 2022 received, a federal exemption under the *Controlled Drugs and Substances Act*, to allow for the possession of small amounts of illicit substances within that province. Other jurisdictions are considering seeking similar exemptions as they try to deal with the present opioid crisis; and
- Both the Canadian Association of Chiefs of Police and the BC Association of Chiefs of Police have supported decriminalization as part of an integrated set of reforms.

This public dialogue has two notable features. One is a restricted framing of the problem that does not include, or fully consider, evidence suggesting a wider set of policy options. The other can be thought of as reacting to crises at the expense of responding in a

broader range of ways that address both immediate and longer-term benefits for individuals and for society.

While single-focus solutions are currently receiving the most attention, the issues embedded within ‘decriminalization’ are complex, multifaceted and interconnected, and can be made worse by interventions that are restricted in their scope. Understanding and responding to such complex problems requires a ‘whole-of-system’² lens and corresponding framework to support effective change.

Pressures to respond to urgent demands for simple solutions can make it difficult to develop and promote a comprehensive framework for ecosystem change, informed by the best available evidence and range of lived experience. Community partners, leaders and policy makers will benefit from understanding the potential role of decriminalization as one part of system-wide efforts that have potential to achieve important societal goals, including the reduction of secondary crime arising from problematic substance use.

Against this backdrop, the Alberta Association of Chiefs of Police (AACP) engaged CSA to support their organization be better positioned to:

- Develop a contextualized understanding of where, how and why decriminalization may enhance community safety and wellbeing outcomes; and

² A whole-of-system, or whole system, approach seeks to address complex problems in adaptive ways by bringing together stakeholders, including communities, together to work collaboratively and dynamically to develop “a shared understanding of the challenges before them and pursuing integrated action to “bring about sustainable, long-term systems change”. Buck D, Baylis A & Dougall D (2018). A vision for population health: towards a healthier future.

London: The Kings Fund, 2018. (p.17). Cited in Stansfield, J., South, J. & Mapplethorpe, T. (2020). What are the elements of a whole system approach to community-centred public health? A qualitative study with public health leaders in England’s local authority areas. *British Medical Journal BMJ Open* 2020;10:e036044. doi:10.1136/bmjopen-2019-036044

- Play a leadership role in achieving whole-of-system capacity alongside reforms toward decriminalization.

The overarching objectives of this project are to:

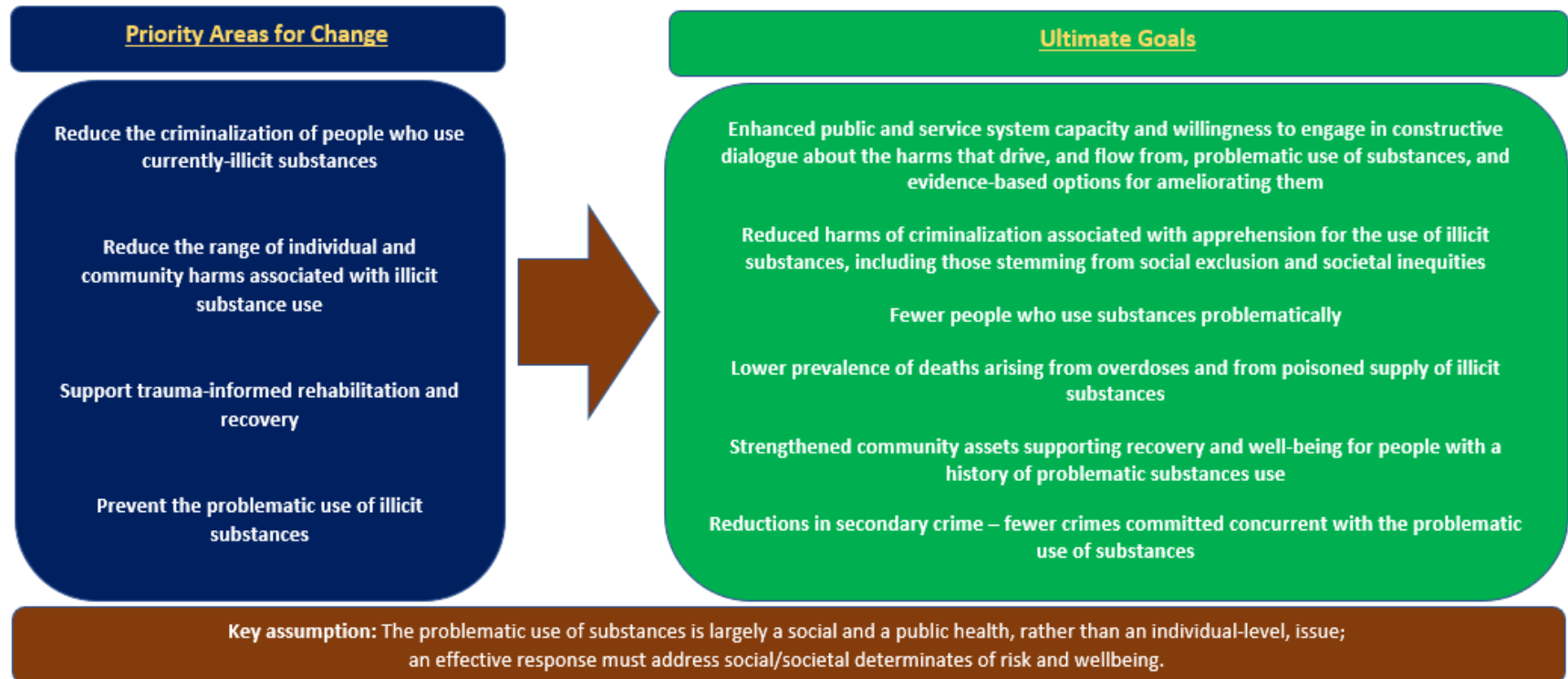
- Clarify the issues that decriminalization aims to address as a policy issue;
- Assess the best relevant knowledge on what works to alleviate the harms associated with the use of substances; and
- Establish guideposts for decriminalization that reflect its role within a whole-of-system approach to a complex set of societal problems

Drawing on up-to-date relevant research, this report presents a framework for public policy reform involving decriminalization, along with a proposed approach to change ('theory of change') in which decriminalization is understood to be just one part of an integrated whole-of-system strategy, that stands to improve social, health and economic outcomes at the individual, family and community levels.

The proposed theory of change identifies criminal justice reforms and corresponding policing practices as necessary but, in-and-of-themselves, insufficient to achieving broad community safety and wellbeing outcomes. With it now widely recognized that the problematic use of substances is mainly a social and health issue rather than a criminal one, a key role for the police is as partnering contributors to constructive social change within the arena of collaborative community safety and wellbeing practice.

Key Take-Aways from the Relevant Literature

- Decriminalization is not a unitary position or action – it is a set of concepts and policy options for addressing a range of harms associated with the use of illicit substances. While the use of these substances is widespread across industrialized populations, its harms are not evenly distributed.
- Many of these harms – notably, criminalization and death – are risks for all users.
- However, all harms are most concentrated among populations who experience a range of stressors and risk factors related to ill-health, criminalization and victimization. These individuals, drawn from racialized groups, economically marginalized and socially excluded community members, are most at risk for negative outcomes associated with the use of illicit substances, and from the application and enforcement of policies traditionally aimed at controlling the distribution and use of illicit substances.
- Although criminal activity and criminalization are important public policy challenges associated with illicit substances, the thrust of evidence points to illicit substance use as a problem of public health, societal inequities and social exclusion.
- Decriminalization is one element of a larger set of coordinated efforts focusing on lessening the harms of downstream problems and reducing the risks that they will occur in the first place.
- The most effective approach to resolving this problem is one that recognizes these dimensions and incorporates a blend of person-centred responses focusing on addressing social harms, inequitable access to essential resources, and by enhancing collaborative community safety and wellbeing practices.



The theory of change³ also emphasizes social inclusion – through the involvement of people with lived experience in ongoing learning and activities focused on refining a decriminalization agenda.

The collaborative journey embodied in the theory of change involves grappling with new ideas and changes that are sometimes at odds with long-held beliefs, customs and practices. This process

will benefit from an openness to exploring and challenging assumptions, and a commitment to crafting a common base of values while avoiding attempts to characterize the challenges of, and responses to, the problematic use of substances in terms of single issues and solutions.

³ The detailed theory of change is found on p.27

This theory of change is not a substitute for an action plan. Rather, it should support the development of a well-informed plan of action, serving as a guide to understanding, designing and participating in effective strategies and responses to problematic use of substances. In this way, it can be a centrepiece for engaging in dialogue with various stakeholders. It can also help partners and collaborators maintain a focus on the interacting conditions that can either promote or disrupt positive community safety and wellbeing outcomes.

As a living document, the theory of change should be further refined as additional relevant evidence and insights become available.

Introduction

When thinking about issues such as ‘decriminalization’, it is sometimes useful to reflect on past experiences with such broad changes. One such case was that of the deinstitutionalization of psychiatric hospitals in Canada, which began in the 1960s. As these facilities were depopulated, individuals who had experienced chronic mental health issues were discharged into the community where they were to receive care from community mental health and other treatment and support services. But those community-based programs were often fragmented and lacked integration⁴.

Those experiencing serious mental health issues, and who happened to be poor or otherwise disadvantaged, were the most severely impacted. Despite the best intentions of governments and human services, many struggled to integrate into their

communities, secure safe affordable housing and obtain appropriate and timely treatment and supports. As a consequence, many ended up on the streets and involved with the police and criminal justice system – the system of last resort in these circumstances.

“...the post-asylum world involved a complicated matrix of services that were not under the jurisdiction of any one governmental department and did not necessarily fit neatly into Canada’s constitutional federalist framework. Medical services, housing and employment needs along with financial and family support services required a delicate degree of bureaucratic coordination in a ... world of red tape.”⁵

While not a perfect analogy, the story of the deinstitutionalization of psychiatric hospitals in Canada offers a glimpse into what could occur in the context of ‘decriminalization’ if a carefully planned, whole-of-system, approach is not developed and implemented – especially as it pertains to individuals and communities experiencing social and economic marginalization.

Background

The societal, economic and human costs of problematic substance use in Canada weigh heavily on everyone, in one way or another. For example, the number of documented substance-related deaths in Canada increased more than

⁴ Trainor, J., Pomeroy, E., and Pape, B. (1999). *The Possibility of Transformation*. In Building a Framework for Support: a community development approach to mental health policy. Toronto, CMHA National Office. (p. 11-21).

⁵ Dyck, E. (2011). *Dismantling the Asylum and Charting New Pathways into the Community: Mental Health Care in Twentieth Century Canada*. (p. 187) Accessed at: <https://hssh.journals.yorku.ca/index.php/hssh/article/view/38822/35228>

400% between 1993 and 2017⁶, reflecting the unfolding opioid crisis. An economic analysis⁷ of the costs of problematic substance use in this country, as of 2002, attributed almost \$40 billion to tobacco, alcohol and illicit substances, encompassing direct costs (health care, law enforcement) and indirect costs (such as productivity issues). Of these, one fifth of the calculated per capita cost of problematic substance use (\$262 of \$1,267) was attributed to illicit substances.

The idea of decriminalizing simple possession of illicit substances has generated considerable debate in Canadian society. Over the past 18 months, there have been growing calls for decriminalization from multiple constituencies. For example,

- British Columbia recently applied for, and in May 2022 received, a federal exemption under the *Controlled Drugs and Substances Act*, to allow for the possession of small amounts of illicit substances within that province. Other jurisdictions are considering seeking similar exemptions as they try to deal with the present opioid crisis; and
- Both the Canadian Association of Chiefs of Police and the BC Association of Chiefs of Police have supported decriminalization as part of an integrated set of reforms.

This public dialogue has two notable features. One is a restricted framing of the problem that does not include, or fully consider,

evidence suggesting a wider set of policy options. The other can be thought of as reacting to crises at the expense of responding in a broader range of ways that address both immediate and longer-term benefits for individuals and for society.

While single-focus solutions are currently receiving the most attention, the issues embedded within ‘decriminalization’ are complex, multifaceted and interconnected, and can be made worse by interventions that are restricted in their scope. Understanding and responding to such complex problems requires a whole-of-system lens and corresponding framework to support effective change.

Pressures to respond to urgent demands for simple solutions can make it difficult to develop and promote a comprehensive framework for ecosystem change, informed by the best available evidence and range of lived experience. Community partners, leaders and policy makers will benefit from an understanding of the potential role of decriminalization as one part of system-wide efforts that have potential to achieve important societal goals, including the reduction of secondary crime arising from problematic substance use.

This report is intended to provide a framework for thinking about and engaging stakeholders in designing: (1) approaches to decriminalization; and (2) whole-of-system responses aimed at minimizing the harms that decriminalization seeks to address – as well as promoting a broader set of community safety and wellbeing outcomes. This is based on the understanding that decriminalization is one element of a larger set of coordinated efforts focusing on

⁶ Fischer, B., Pang, M. & Tyndall, M. (2018). The opioid crisis in Canada: Crucial lessons for public health. *The Lancet*, 4, e81-e82.
DOI:[https://doi.org/10.1016/S2468-2667\(18\)30232-9](https://doi.org/10.1016/S2468-2667(18)30232-9)

⁷ Rehm, J., Baliunas, D., Brochu, S., Fischer, B., Gnam, W., Patra, J., Popova, S., Sarnocinska-Hart, A. & Taylor, B. (2006). The costs of substance abuse in Canada 2002. Ottawa, ON: The Canadian Centre on Substance Abuse.

lessening the harms of downstream problems and reducing the risks that they will occur in the first place.

Problematic substance use is a significant public health and societal issue. The choice to experience the effects of mind and mood altering substances is not a moral failing, nor are behaviours involving the problematic use of substances, which often stem from complex personal and group experiences and their impacts. At the same time, moving hurriedly to decriminalization in the absence of committed work toward a sound framework that includes improved access to relevant and appropriate health and social supports, including evidence-based housing and income supports, etc., may ultimately result in policy failure.

For example, while those who currently use illicit substances unproblematically may largely avoid the risk of becoming criminalized, it does not follow that those with problematic use will necessarily transition toward unproblematic use solely because of changes in possession laws. In some cases, individuals may end up with reduced access to treatment and support services, while nothing is done to address the conditions associated with perpetuate problematic use.

By contrast, Portugal's approach offers a number of insights into what can be achieved through a broader and more integrated perspective. For one, it deals with concerns about accountability within a public health context – not as a criminal matter. In addition, it focuses less on decriminalization as a remedy

for problematic substance use, than on a range of measures aimed at enhancing opportunities for social inclusion and access to effective resources and improved health outcomes. For example, there is a strong consensus among Portuguese authorities (including substance users) that the primary source of widespread community-level improvements was the introduction of Dissuasion Commissions (DCs)⁸ and related resources addressing housing, employment, and social reintegration. Legislation changing drug possession to an administrative offence (rather than a crime) enabled police to connect substance users to DC's. This legal reform did not facilitate substance use or signal a societal tolerance for addictive or other problematic uses of substances as an acceptable lifestyle option.

However, the Portuguese model is not the only one that might lend value to the Canadian context. International evidence regarding the decriminalization of substance possession has been synthesized in a recent review conducted by a team at Simon Fraser University's Centre for Applied Research in Mental Health and Addiction (CARMHA). The review included multiple databases and examined 2,518 articles, with 11 publications satisfying all inclusion and exclusion criteria. The results indicate that the decriminalization of illicit substances can produce potential benefits, but only when introduced alongside strategies and resources to promote recovery from addiction. CARMHA's review serves as a companion document to the present report.

The elements of what we believe would be an effective pathway forward are also aligned to growing public expectations for policy that reflects reconciliation and social justice objectives, the need for

⁸ In Portugal, rather than being arrested, persons found in possession of personal-use amounts of any substance are ordered to appear before a local "dissuasion commission". Commissions, which are made up of officials from the legal (one member) and social services fields (two members), determine the presence and level of a substance addiction. Following a determination, the person can be

referred by the commission to a voluntary treatment program, be fined, or have other administrative sanctions imposed on them. Drug Policy Alliance (February, 2015). Drug decriminalization in Portugal: A health-centred approach. https://drugpolicy.org/sites/default/files/DPA_Fact_Sheet_Portugal_Decriminalization_Feb2015.pdf

consultation, as well as research on established interventions with high quality evidence of effectiveness, which was reviewed, in addition to that identified in the CARMHA review.

- For example, in Canada, extensive evaluation of the Housing First initiative, *At Home/Chez Soi*, demonstrated that supporting people's needs for safe, stable, inclusive housing is an effective platform for recovery, even for those with the most complex mental health and addictions needs. There is also practice-based knowledge that adds to research related to the importance of supporting stability and inclusion.
- Efforts directed at the upstream conditions that constitute risks for adverse childhood experiences and trauma, including poverty, social exclusion and family violence, would not just lessen the longer-term risk for addictive behaviours, but would have numerous other beneficial impacts on human development, community safety and general prosperity.
- Inviting into the development of a decriminalization framework the perspectives of those with lived experience of the impacts of historical trauma, mass trauma (e.g., pre-migration and migration related violence and post-migration racism), developmental trauma and social exclusion would help to ensure policy relevance while concurrently addressing the growing public trust deficit.
- It is also crucial to include and respect the experiences of people who have experienced recovery from addictions. They possess crucial insights into the factors that contribute

to change, and yet their voices are excluded from policy planning. Many of those who have recovered from addiction and mental illness report stigma associated with speaking out about their experiences, signaling a need for immediate actions to ensure their respectful inclusion in planning.

Objectives

The present document is one component of works undertaken by CSA to help the Alberta Association of Chiefs of Police be better positioned to: (a) develop a contextualized understanding of where, how and why decriminalization may enhance community safety and wellbeing outcomes; and (b) play a leadership role in achieving whole-of-system capacity alongside reforms toward decriminalization.

This work incorporated insights derived from research on decriminalization into a practical framework for change, grounded in effective community safety and wellbeing practices and contemporary Canadian values. This entailed: leveraging a review of research on the relationship between the legal status of substance possession and the criminalization of marginalized substance users⁹; and a proposed theory of change.

⁹ Moniruzzaman, A., Rezansoff, S.N. & Somers, J.M. (2022, under review). The relationship between the legal status of drug possession and the criminalization of marginalized drug users: A literature review.

The overarching objectives of this project were to:

- Clarify the issues that decriminalization aims to address as a policy issue;
- Assess the best relevant knowledge on what works to alleviate the harms associated with the use of substances; and
- Establish guideposts for decriminalization that reflect its role within a whole-of-system approach to a complex set of societal problems

The present document describes an initial theory of change for approaching decriminalization as part of an all-of-system strategy for addressing the harms that are currently associated with problematic use of substances. In order to inform an understanding of how system-wide collaboration might benefit the broader goals of which decriminalization can play a role, an array of highly relevant research was consulted.

Key Take-Aways from the Relevant Literature

- Decriminalization is not a unitary position or action – it is a set of concepts and policy options for addressing a range of harms associated with the use of illicit substances. While the use of these substances is widespread across industrialized populations, its harms are not evenly distributed.
- Many of these harms – notably, criminalization and death – are risks for all users.

- However, all harms are most concentrated among populations who experience a range of stressors and risk factors related to ill-health, criminalization and victimization. These individuals, drawn from racialized groups, economically marginalized and socially excluded community members, are most at risk for negative outcomes associated with the use of illicit substances, and from the application and enforcement of policies traditionally aimed at controlling the distribution and use of illicit substances.
- Although criminal activity and criminalization are important public policy challenges associated with illicit substances, the thrust of evidence points to illicit substance use as a problem of public health¹, societal inequities and social exclusion.
- Decriminalization is one element of a larger set of coordinated efforts focusing on lessening the harms of downstream problems and reducing the risks that they will occur in the first place.

The most effective approach to resolving this problem is one that recognizes these dimensions and incorporates a blend of person-centred responses focusing on addressing social harms, inequitable access to essential resources, and by enhancing collaborative community safety and wellbeing practices¹.

About Theories of Change

Theories of change describe how and why certain impacts are expected to happen in a particular context, as a result of a set of linked activities¹⁰. They can guide coordinated and collaborative efforts to shape conditions known to increase the likelihood of achieving intended outcomes.

A theory of change is a high-level description of the connections between the elements of an initiative and the outcomes the initiative intends to bring about. These connections may be based on theory or drawn from reviews of evidence of what works.

For example, Flynn, et al. (2020) and Stevens, et al. (2022) outline a literature search and synthesis process comprised of the sequence: identification; screening; eligibility; inclusion. Theories of change have several important uses¹¹:

- For organizing thoughts about complex problems and how to tackle them;
- For framing planning, monitoring and evaluation work; and
- As useful reference points for ongoing reflection, learning, and public communications about progress in implementing a social innovation and how this is aligned to the things its constituents and stakeholders consider important.

¹⁰ Center for Theory of Change (n.d.). What is theory of change?
<https://www.theoryofchange.org/what-is-theory-of-change/>

¹¹ Botschner, J. & Corley, C. (2021). Thompson Community Safety and Well-being plan 2021-2024: Performance monitoring and evaluation framework. Saskatoon, SK: Community Safety Knowledge Alliance.

¹² Flynn, R., Schick-Mackaroff, K., Levay, A. & Greenhalgh, J. (2020). Developing an initial program theory to explain how patient-reported outcomes are used in

From a *what works* perspective, theory-based design and evaluation looks to “frame and understand how, for whom, and under what contexts complex interventions work or not.”¹² Developing an initial theory of change can help pull together available evidence into the design of an intervention¹³.

While definitions of what is suitable evidence may vary, the following general, policy-focused, definition is useful:

Evidence “... can be independently observed and verified, ... there is broad consensus as to its contents (if not its interpretation)...[and it reflects]... the results of ‘systematic investigation’”.¹⁴

However, unlike evidence-based program-level design and delivery, systems-level initiatives emphasize complex processes that benefit from shared learning and systematic collaboration among key stakeholders.

When we focus at the level of specific systems or ‘systems-of-systems’ (ecosystems), this typically includes work to understand and shape the conditions that are associated with a likelihood of

health care settings: Methodological process and lessons learned. International Journal of Qualitative Methods, 19. DOI: 10.1177/1609406920916299

¹³ Pawson, R. (2006). Evidence-based policy: A realist perspective. Thousand Oaks, CA: Sage.

¹⁴ Davies, H., Nutley, S & Smith, P. (2000). Introducing evidence-based policy and practice in public services. In H. Davies, S. Nutley & P. Smith (Eds.). What works: Evidence-based policy and practice in public services. Bristol, UK: The Policy Press, (pp. 1-12). (pp. 2-3)

producing positive effects or minimizing negative effects (i.e., determinants of health or risk)¹⁵.

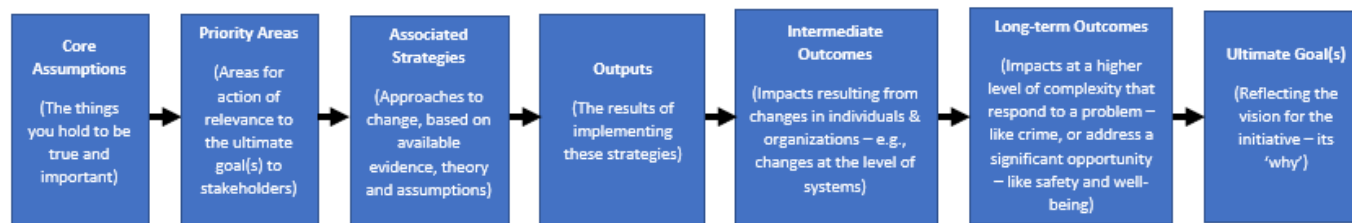
Examining and addressing the relationships that can bring about changes in systems, as opposed to the individual parts of programs, involves social innovation¹⁶. This kind of context-based learning and collaboration is a defining feature of community safety and wellbeing practice¹⁷.

Theories of change should not be static – they should be used as reference points for ongoing learning and reflection (e.g., through

research and evaluation), and can be refined as the learning journey progresses

While wider in scope than ordinary programs, frameworks for system-level change may use a logic model¹⁸ format to show the relationships between ultimate goal(s), long-term and intermediate outcomes, and the strategies intended to create those impacts. Importantly, a logic model should also specify core assumptions (evidence, values) about how the desired changes can and should be created¹⁹. This basic structure is shown in Figure 1²⁰.

Figure 1. Basic structure of a theory of change.



In the case of large complex issues, a broad initial framing of the pathway for change can help to structure the ongoing work of learning and refining the intervention.

¹⁵ Working collaboratively to affect broader conditions conducive to change is often referred to as collective impact. See, for example, N. Walzer, L. Weaver & C. McGuire (Eds.)(2018). *Collective impact and community development issues*. London, UK: Routledge.

¹⁶ Patton, M.Q. (2016). State of the art and practice in developmental evaluation: Answers to common and recurring questions. In M.Q. Patton, K. McKegg & N. Wehipeihana (Eds.). *Developmental evaluation exemplars: Principles in practice*. New York, NY: Guilford, (pp. 1-24).

¹⁷ See, for example, Nilson, C. (2018). *Community safety and well-being: Concept, practice and alignment*. Saskatoon, SK: Community Safety Knowledge Alliance.

¹⁸ Logic models help planners and evaluators map out the relationships between the inputs, activities and outcomes involved in a change process. Taylor, A. & Botschner, J. (1998). *Evaluation handbook*. Toronto, ON: Ontario Community Support Association.

¹⁹ Ebrahim, A. (2019). *Measuring social change: Performance and accountability in a complex world*. Stanford, CA: Stanford Business Books.

²⁰ Adapted from Ebrahim (2019).

Evidence-Informed Frameworks Involving Decriminalization

Over the past decade, Stevens and colleagues have undertaken extensive policy-focused work to examine the bases and implications of various policies²¹ addressing substance use, including jurisdiction-specific, utilization-focused, evidence-based policy research²². Most recently, this has included the development of a synthesis and corresponding theory of change for alternatives to criminalization for simple substance possession²³.

Several persistent findings and conclusions from this extensive body of multi-jurisdictional work are relevant to the Canadian context, with the caveat that “research in this area is complex, incomplete and not capable of providing definitive answers about what the outcome of any given approach will be in [a particular jurisdictional] context.”²⁴

- While illicit substance use is widespread and not confined to socio-economically marginalized groups, “the health and criminal harms of problematic drug use are most likely to be experienced by people who are economically, socially and racially excluded”²⁵ where substance use, dependence and

related harms can be viewed as “afflictions of inequality”²⁶ reflecting social exclusion, and asymmetrical distributions of power and opportunity.

- Policy on substances may often sustain “inequalities in the distribution of power, resources and respect... [whereas]... improving public health... [should be about]... minimizing threats to wellbeing in the form of physical, mental and social harms.”²⁷
- While societal inequity is “indispensable to the understanding of contemporary patterns of drug use, drug control and related harms”, health service practices tend to focus on individual responsibility to change unhealthy behaviours, with interventions generally ignoring “the wider structural issues, including poverty, inequality and [features of the environment]...which influence a wide range of risky behaviours”²⁸.
- The importance of substance users/people with lived experience having a voice in the development of government approaches to substances, a space traditionally driven by the perspectives of the medical/health and law enforcement sectors²⁹.

²¹ Stevens, A. (2011). *Drugs, crime and public health: The political economy of drug policy*. Oxford, UK: Routledge.

²² Hughes, C., Stevens, A., Hulme, S. & Cassidy, R. (September, 2018). Review of approaches taken in Ireland and in other jurisdictions to simple possession drug offences. A report for the Irish Department of Justice and Equality and the Department of Health. National Drug and Alcohol Research Centre, University of New South Wales, Australia; University of Kent, UK.

²³ Stevens, A., Hughes, C., Hulme, S. & Cassidy, R. (2022). Depenalization, diversion and decriminalization: A realist review and programme theory of alternatives to criminalization for simple drug possession. *European Journal of Criminology*, 19(1), 29-54. DOI: 10.1177/1477370819887514

²⁴ Hughes, et al. (2018, p. 78)

²⁵ Stevens (2011, p.129)

²⁶ IBID p.13

²⁷ IBID. Citing Benoit (2003, p. 288), Stevens (2011, p.5) describes drug policy as “an area of state action where laws, institutional capacities, funding programmes and governmental discourse meet in a ‘hybrid of social control and social welfare policies.’”

²⁸ IBID pp.5-6, with reference to the work of Sir Michael Marmot on social determinants of health

²⁹ IBID

- The conclusion that “prohibitionist policy is not a rational response to the existing ... [harms]... of drug use.”³⁰
- Where the substance problem includes “relatively high levels of both cannabis and [opioid] use, with an interrelationship between unemployment and problematic drug use, a mixed approach may be the preferred approach”, drawing from such models as depenalization, diversion and decriminalization³¹.

Concurrent with the present work, Stevens and colleagues reviewed English-language research on decriminalization of possession for personal use from nine jurisdictions and proposed a “theoretically based, empirically tested framework that can inform development and evaluation.”³² An important aim of this effort was to address a critical gap related to how various policy contexts and associated mechanisms of action may shape the outcomes of reform – both positive and negative. The process of developing the theory of change was guided by a set of questions intended to link contexts and mechanisms to outcomes (Table 1)³³:

Table 1. Research questions guiding development of Stevens, et al.’s (2022) theory of change

How can alternative measures for dealing with simple substance possession:

- Avoid criminalizing people who use substances; without
- Increasing the health harms of substance use; while not
- Intensifying the role and harms of organized criminal involvement in the supply of substances;
- Maintains the possibility to intervene in substance use;
- Divert those who need it into treatment without flooding the treatment system with those who do not need it; and is

Be cost effective?

Stevens, et al. conceptualized the range of policy alternatives to criminalization of simple possession into three categories, and identified two possible negative outcomes that could arise, under different circumstances of implementation (Table 2).

³⁰ IBID

³¹ Hughes, et al. (2018, p. 78)

³² Stevens, et al. (2022, p. 29). The jurisdictions were: Australia; Czech Republic; Denmark; Germany; Jamaica; the Netherlands; Portugal; the UK; and the USA.

³³ Stevens, et al. (2011, p.32)

Table 2. Framework for classifying policy alternatives to the criminalization of personal possession, with potential unintended negative outcomes³⁴

Policy Position	Definition
Depenalization	Reduction in the use of existing criminal sanctions, without changes to legislation
Diversions	<p>Either <i>de facto</i> (in practice) initiatives or <i>de jure</i> (in law) legislation that direct people away from criminal sanctions and towards educative, therapeutic or social services and related care pathways</p> <p>Post-sentence or post-conviction diversion is not included, as they are not alternatives to criminalization</p>
Decriminalization	<p>The <i>de jure</i> removal of criminal sanctions for the possession of substances for personal use</p> <p>Criminal sanctions may be replaced by civil penalties (e.g., fines), by measures for diverting people towards health or social support (e.g., Dissuasion Commissions in Portugal), or by no sanction at all (full decriminalization)</p>
Potential Negative Unintended Outcome	Definition
Net widening	Bringing more people into contact with the criminal justice system than before the alternative was implemented
Mesh thinning	Imposing more control on people brought into the criminal justice system than if the alternative did not exist

The specific search terms and methodology used by Stevens and colleagues resulted in 158 articles identified for retrieval and analysis. Stevens and colleagues (2022) proposed a provisional framing of an approach to change with the following features.

Conditions of the social systems in which alternatives to decriminalization operate that can be divided into two related categories:

- **Structural conditions** involving the distribution of resources and power within a society that influence who controls the consumption of substances; and
- **Cultural conditions** involving the particular ways that evolving social values shape policy and practice reform.

³⁴ Stevens, et al. (2022, p. 31)

These structural and cultural conditions are thought, in turn, to influence the shape and practices of institutional contexts, as follows:

- **Political environment** (e.g., differential implementation of decriminalization across national regions; the relationship between presence and extent of systems of administrative law and the use of non-criminal penalties);
- **Illicit market** (e.g., decline in moral condemnation of, and increase in likelihood of decriminalizing, substances as their unproblematic use becomes more widespread among high socio-economic status members of a society);
- **Use of criminal sanctions** (e.g., shifts in attitudes about the role of the criminal justice system; public and system expectations of spending less on certain criminal justice system resources and activities);
- **Culture and priorities of police and prosecutors and their effects on implementation** (e.g., differences in arrest practices reflecting police autonomy, discretion and perspectives – more or less resistant to the use of alternatives to criminalization);
- **Healthcare and welfare systems** (e.g., the capacity of these systems to match effective treatment and support for social integration with the level demand engendered by alternative measures; the extent and nature of the relationships between and collaboration among police and community agencies); and
- **Research and evaluation capacity** (e.g., whether research-based evidence is attended to or ignored; and the capacity to fund and learn from the results of research and evaluation).

Three types of overlapping mechanisms were specified as the results of interactions among the preceding conditions and contexts:

- **Normative mechanism** which involve attitudes and beliefs about the value and benefits of substances and those who use them – for example, that loosening penalties would decrease the stigma of substance use, potentially encouraging some people to seek help, or weakening the social controls that act as formal and informal deterrents to acceptability, creating gateways to expanded use;
- **Criminal justice mechanisms** which reflect motivations to: reduce the harms of criminal justice processes; contain costs within the criminal justice system enabling the allocation of police resources to more serious crimes; supporting access to health and social services; reducing recidivism; and
- **Health and social service mechanisms** supporting rehabilitation and recovery where effective services are available and accessible.

These mechanisms are shown to interact through a variety of context-influenced processes to create positive or negative outcomes related to the following:

- Level and nature of substance use;
- Social integration of people who use substances;
- Organized crime;
- Health harms; and
- Overall social costs of substance use.

As these elements interact through various feedback loops, it can be expected that outcomes may have reciprocal effects on

conditions and mechanisms of action, and that the characteristics of the mechanisms will also influence the broader context (such as might be the case where there is a generally liberalizing or a penalizing trend in policing practices).

Greer, et al. (2021) proposed a set of features to help structure the design of non-criminal responses to the possession of substances for personal use³⁵ and offered a set of cautions and recommendations:

- ‘Decriminalization’ should not be considered as a single framework or static model that can be adopted across contexts – it is a framing of a set of systematic considerations to be adapted to the unique circumstances of implementation.
 - While policy expectations and instruments may determine the means available to a decriminalization agenda, its outcomes will be shaped by the contexts in which decriminalization is implemented. This is reminiscent of the axiom, ‘culture eats strategy’.
 - It is essential to involve people who use/have used substances in the process of policy design – otherwise, its implementation may suffer from a lack of perceived “relevance, applicability, acceptability and equity”³⁶.

³⁵ Greer, A., Bonn, M., Shane, C., Stevens, A. & Tousenard, N. (2021). The details of decriminalization: Designing a non-criminal response to the possession of drugs for personal use. *International Journal of Drug Policy*, 102. DOI: 10.1016/j.drugpo.2022.103605

³⁶ Greer, et al. (2016), cited in Greer, et al. (2021)

³⁷ Health Canada Expert Task Force on Substance Use: Report #1 (May 6, 2021) [https://www.canada.ca/en/health-canada/corporate/about-health-canada/public-engagement/external-advisory-bodies/expert-task-force-substance-](https://www.canada.ca/en/health-canada/corporate/about-health-canada/public-engagement/external-advisory-bodies/expert-task-force-substance-use/reports/report-1-2021.html)

Similarly – and importantly for the Canadian context – the Health Canada Expert Task Force on Substance Abuse³⁷ emphasized five core issues as the context for its recommendations³⁸:

- Stigma;
- Disproportionate harms to populations experiencing structural inequity;
- Harms from the illegal substance market;
- The financial burden on the health and criminal justice systems; and
- Unaddressed underlying conditions.

In addition to specific recommendations related to the features of decriminalization, the Task Force emphasized³⁹:

- The need to invest in a “full spectrum of supports” for those who use substances or who are in recovery;
- The importance of establishing a base of evidence related to substance use and the effectiveness of public policy related to the health and wellbeing of Canadians; and
- The necessity of involving people with personal experience in implementing the recommendations of the Task Force.

[use/reports/report-1-2021.html](https://www.canada.ca/en/health-canada/corporate/about-health-canada/public-engagement/external-advisory-bodies/reports/report-2-2021/report-2-HC-expert-task-force-on-substance-use-final-en.pdf) (Referred to here as ETFSU-Rpt #1); and Report #2 (June 11, 2021) <https://www.canada.ca/content/dam/hc-sc/documents/corporate/about-health-canada/public-engagement/external-advisory-bodies/reports/report-2-2021/report-2-HC-expert-task-force-on-substance-use-final-en.pdf> (Referred to here as ETFSU-Rpt #2)

³⁸ ETFSU-Rpt #1 (p. ii)

³⁹ ETFSU-Rpt #1

The Task Force also foregrounded respect for the sovereign rights of Indigenous peoples and the provision of appropriate approaches to prevention and treatment as key elements of a suitable response.

A recently released reports from Public Health Ontario⁴⁰ also concluded that decriminalization can lead to a number of benefits, and that these can be best pursued through engaging people with lived/living experience throughout the full process or development, implementation and evaluation:

“...particularly for reducing drug-related harms and costs. Along with the need for high quality scientific evidence, more equitable engagement with people who use drugs is needed in the design, development and evaluation of decriminalization policies as well as parallel planning for health and social justice.” (p.12)

In its second report⁴¹, focusing on the draft Canadian Drugs and Substances Strategy⁴², the Health Canada Expert Task Force drew attention to the role of lived, living and historical trauma in the lives of many who use substances problematically – with attention to historical experiences among Indigenous populations in Canada. In addition to calling for contextually sensitive approaches to public

policies on substances, and repeating its earlier⁴³ call for significant investments in addressing the impacts of substance use, the Task Force advocated for public policy that is person-centred, evidence-based and that attends to the stigma often associated with substance use. Finally, the Task Force recommended that, in addition to decriminalization, the Drug and Substances Strategy should be informed by an overarching public health framework. In contrast to the research that informs the present theory of change, the Task Force advocated for broad access to a publicly-funded supply of addictive substances, including a range of distribution channels⁴⁴.

The latter recommendation of the Task Force reflects the depth and urgency of concern about the opioid crisis among many Canadians. However, the findings of a recent rapid review by Moniruzzaman, et al. (2022)⁴⁵ indicate that there is not – at least yet – a body of evidence supporting public supply of addictive substances as an effective, or the central, solution to the broader objectives which decriminalization seeks to address.

The Public Health Ontario (2022) scan of evidence and approaches to public supply of addictive substances⁴⁶ also found that there is

⁴⁰ Public Health Ontario (September, 2022). Evidence scan and jurisdictional approaches to the decriminalization of drugs.

https://www.publichealthontario.ca/-/media/Documents/D/2022/decriminalization-drugs-environmental-scan.pdf?sc_lang=en; and Public Health Ontario (September, 2022). Scan of evidence and jurisdictional approaches to safer supply. https://www.publichealthontario.ca/-/media/Documents/S/2022/safer-supply-environmental-scan.pdf?sc_lang=en

⁴¹ ETFSU-Rpt #2

⁴² <https://www.canada.ca/en/health-canada/services/publications/healthy-living/pillars-canadian-drugs-substances-strategy.html>

⁴³ ETFSU-Rpt #1

⁴⁴ ETFSU-Rpt #2: (pp. 10-11): “Develop strategies to use existing health infrastructure as sites for safe supply distribution including pharmacies, public health clinics, harm reduction services, and other appropriate service locations. ... Although a significant initial investment will be required to reshape the system and address the drug toxicity crisis, costs can be expected to decrease over time as the impact of new, more effective policies is felt.”

⁴⁵ Moniruzzaman, A., Rezanoff, S.N., Sobey, P. & Somers, J.M. (2022). Public supply of addictive drugs: A rapid review. Prepared for Alberta Legislature’s Special Select Committee to Examine Safe Supply. Burnaby, BC: Simon Fraser University.

⁴⁶ Public Health Ontario (September, 2022). Scan of evidence and jurisdictional approaches to safer supply. https://www.publichealthontario.ca/-/media/Documents/S/2022/safer-supply-environmental-scan.pdf?sc_lang=en

not yet a conclusive body of evidence confirming the safety or effectiveness of what is commonly called ‘safe supply’ or ‘safer supply’. The PHO report assessed that although supply focused interventions may be a viable option for individuals at high risk of overdose for a variety of reasons⁴⁷, “there is limited published literature on the effectiveness of safer supply programs compared to the well-established evidence base on the effectiveness of [opioid agonist treatment] and [injectable opioid agonist treatment].”⁴⁸ Recognizing that evaluations of supply focused interventions are currently underway in two Canadian provinces, PHO reported that the results of these initiatives have not yet been published, and recommended that further research be conducted to “support evidence informed decision-making on safer supply options, doses, and delivery methods”.⁴⁹

As we await findings from a variety of initiatives currently undergoing evaluation, it is important to keep in perspective the complex nature of problematic substance use, and the need for a holistic multi-system response. This was captured in an August 21, 2022 release from the Union of B.C. Indian Chiefs⁵⁰, in which its President, Grand Chief Stewart Phillip, stated:

“The overdose crisis is a symptom of unaddressed, long-term problems that only holistic and systemic changes can address. The recent BC Coroners Service Death Review Panel report highlighted the links between overdoses, poverty, and housing instability as well as mental health conditions. We call for safe and affordable housing, mental

and physical health systems free from racism and discrimination, accessible socio-economic services to support people in crisis, and a full spectrum of culturally appropriate substance use services to meet the needs of all people who use drugs.”

A Framework for Designing Policy Reforms Involving Decriminalization

Greer, et al. (2021) described the features of a proposed framework for decriminalizing currently illicit substances. This framework outlines three core features of substance-focused policies:

- Reform architecture;
- Eligibility criteria; and
- Actions upon detection of substances for personal use.

Drawing from the preceding research, we have adapted this framework to help guide policy reform decisions within the Canadian context. Key features and considerations are summarized in Table 3, below.

⁴⁷ Those identified include people “who do not tolerate, use, or desire available treatments as well as those who use drugs from an unregulated supply in addition to OAT” PHO (2022, September, p.1)

⁴⁸ IBID. Opioid agonist treatment (OAT) “uses medications to activate the opioid receptors, preventing withdrawal and reduce cravings for opioids like heroin and

prescription pain medications.” <https://drugpolicy.org/resource/opioid-agonist-treatment-oat-gold-standard-opioid-use-disorder-treatment>

⁴⁹ IBID

⁵⁰ https://www.ubcic.bc.ca/international_overdose_awareness_day_ubcic_calls_for_urgent_action_by_all_levels_of_government

Table 3. Design options for Canadian jurisdictions following from the present rapid review (Adapted from Greer, et al., 2021)

Feature	Details/Considerations
1. Reform architecture	
Reform objectives <i>*Critical first step*</i>	<p>Clarify the public policy problem – i.e., understanding that problematic substance use is primarily a public health and social issue:</p> <ul style="list-style-type: none"> • To reduce the harms of criminalization associated with apprehension for the use of illicit substances, including those stemming from social exclusion and societal inequities⁵¹. • To reduce the prevalence of deaths arising from overdoses and from poisoned supply of illicit substances^{52 53} • To enhance access of persons with complex needs to services, supports (notably, housing⁵⁴ and income⁵⁵) and an enhanced community resource base⁵⁶ supporting equity, inclusion, choice, recovery and wellbeing – recognizing that these are among the root causes of problematic substance use. • To reflect evolving social mores and public expectations related to the recreational use of currently illicit substances, and emerging research findings related to the potential physical and psychological health benefits of certain substances that are currently classified as illicit • To support the deployment of finite police resources towards more serious crimes that pose a greater risk to public safety.
Legal framework ^{57 58} <i>*Key design decision*</i>	<p>In the context of Bill C-5, currently before the Senate of Canada, the <i>Criminal Code</i> and the <i>Controlled Drugs and Substances Act</i> would be amended to reduce criminal consequences of simple substance possession for personal use. Some of its features include:</p> <ul style="list-style-type: none"> • Removal of mandatory minimal sentences for simple possession crimes

⁵¹ See Stevens (2011)

⁵² See Hughes, et al. (2018) and Scottish Drug Deaths Task Force (July 2022)

⁵³ See Rao, I.J., Humphreys, K. & Brandeau, M.L. (2021). Effectiveness of policies for addressing the US opioid epidemic: A model-based analysis from the Stanford-Lancet Commission on the North American opioid crisis. *The Lancet Regional Health – the Americas*. <https://doi.org/10.1016/j.lana.2021.100031>

⁵⁴ See Goering, P., Veldhuizen, S., Watson, A., Adair, C., Kopp, B., Latimer, E., Nelson, G., MacNaughton, E., Streiner, D. & Aubry, T. (2014). *National At Home/Chez Soi Final Report*. Calgary, AB: Mental Health Commission of Canada. Retrieved from: <http://www.mentalhealthcommission.ca>

⁵⁵ See Hughes, et al. (2018)

⁵⁶ See Trainor, et al. (2004)

⁵⁷ Summary after Klippenstein, L. (2022). Decriminalization of drugs in Canada: What does it mean and how would it work? *Law Now* (August 9, 2022). <https://www.lawnow.org/decriminalization-of-drugs-in-canada/>

⁵⁸ See also, in this regard, recommendations of the Health Canada Expert Task Force on Substance Use in Report #1 (May 6, 2021). <https://www.canada.ca/en/health-canada/corporate/about-health-canada/public-engagement/external-advisory-bodies/expert-task-force-substance-use/reports/report-1-2021.html> (Referred to here as ETFSU-Rpt #1)

Feature	Details/Considerations
	<ul style="list-style-type: none"> • Conditional sentences • Diversion <p>This approach does not constitute full decriminalization, in the sense that it retains the options of other non-criminal sanctions (e.g., within a public health model) and/or diversion to services and supports. The potential benefit of enhanced access to needed treatment and resources should be tempered with measures aimed at preventing net widening, especially with respect to racialized community members.</p> <p>These amendments would be applied largely through provincial and municipal policing authorities and practices.</p> <p>Currently, British Columbia has received an exemption from federal law under section 56(1) of the CDSA, on the basis of a plan that includes: adequacy of supports available to substance users; sufficient training to law enforcement to enable them to facilitate access to these resources; and a monitoring system to document the impacts of decriminalization. In this jurisdiction, those over 18 years will not face criminal penalties if found with less than 2.5 grams of any opioid, cocaine, methamphetamine, or MDMA (or any combined amount of these four substances, which have been identified as most probably connected to the ongoing opioid crisis).</p> <p>The exemption will not apply if there is evidence the adult is using the substances for more than personal use.</p> <p>If simple possession remains a criminal offence, but removal of punishment is an objective (i.e., depenalization), then features 2-3 will need to be established.</p> <p>If simple possession is removed from the criminal code, it must be decided whether or not alternative penalties will be applied. If no additional penalties are applied, then prosecutorial/police discretion or diversion are not relevant. Models with no new penalties are considered full decriminalization.</p>
Reforms that occur in law (<i>de jure</i>) or reforms that occur only in practice or procedure (<i>de facto</i>)	<p>Modest <i>de jure</i> reforms are underway, as described above.</p> <p><i>De facto</i> reforms should reflect, but also extend, those embodied in Bill C-5, should it be proclaimed.</p> <p>Minimally, these should focus on ongoing training, supervision and support for the effective implementation of practice changes reflecting identified <i>de jure</i> reforms, as well as any exemptions granted to particular jurisdictions.</p> <p>For more effective and durable changes in policing practices to support the aforementioned objectives, police services should foster, support and incent a culture of collaborative community safety and wellbeing that foregrounds problematic substance use as a social and a public health problem, and which recognizes:</p> <ul style="list-style-type: none"> • That its root causes lie in social distress and exclusion; • That effective responses involve: <ul style="list-style-type: none"> ○ Collaboration to strengthen the community resource base; and ○ A culture of community safety practice that seeks to redress systemic discrimination and historical trauma as determinates of a multitude of harms.

Feature	Details/Considerations
2. Eligibility criteria	
Age	In light of exemptions currently granted to British Columbia, and emerging brain science showing that brain development extends from childhood to 24 or 25 years of age, it would be prudent to begin by fixing eligibility somewhere between 18 and 25 years, as substance use during this period may have harmful impacts on cognitive performance ⁵⁹ . From a practical standpoint, 18 years may be the most feasible age cut-off. Research has also found that incarceration duration during adolescence and early adulthood is associated with worse physical and mental health later on ⁶⁰ .
Population	The specific groups to which the model does, or does not, apply. Considerations may include whether an offence is of a lesser or a more serious nature, and/or whether discretion should be used in relation to certain groups, in light of historical experiences and contemporary values and guidelines (e.g., TRC Calls to Action, and Gladue Principles ⁶¹ , should inform decisions related to population-specific considerations; professionals/non-professionals using traditional substances to manage serious illness).
Previous and concurrent offending	Scaled (intensified) non-criminal sanctions (such as suspension of a driver's license) where substance use/possession represents an ongoing threat to public safety should be considered. Because there is evidence implicating substance use in domestic and intimate partner violence, this should be considered as an opportunity to align policies and practices across these two issue domains. More active, trauma-informed, supportive diversions to resources, based on choice, respectful engagement and an understanding of the root causes of problematic substance use, should be deployed. Consideration of whether previous convictions will be expunged retroactively if simple possession is no longer a criminal offence should parallel steps taken in relation to cannabis, or, for example, as recommended by the Expert Task Force on Substance Abuse ⁶² .
Place	Consideration should be given in about specific geographic locations and contexts where the model may or may not apply – such as prisons, categories of workplace, or in defined proximity to schools. This should be considered based on an analysis of the geographic distribution of substance use, substance-related harms, and social and economic marginalization, so as to avoid over-policing and under-supporting those experiencing societal inequities and social marginalization.

⁵⁹ e.g., Morin, J-F, Afzali, M.H., Bourque, J., Stewart, S.H., Seguin, J.R., leary-Barrett, M. & Conrod, P.J. (2018). A population-based analysis of the relationship between substance use and adolescent cognitive development. *American Journal of Psychiatry*, 176(2), 98-106. DOI: [10.1176/appi.aip.2018.18020202](https://doi.org/10.1176/appi.aip.2018.18020202)

⁶⁰ e.g., Barnert, E.S., Dudovitz, R., Nelson, B.B., Coker, T.R., Biely, C., Li, N. & Chung, P.J. (2017). How does incarcerating young people affect their adult health outcomes? *Pediatrics*, 139(2). DOI: [10.1542/peds.2016-2624](https://doi.org/10.1542/peds.2016-2624)

⁶¹ Gladue principles emanated from the Supreme Court of Canada decision in *R. v. Gladue* (1999) 1 SCR 688. The principles seek to address the overrepresentation of Indigenous people in the criminal justice system, as a result of systemic discrimination and the history of colonialism. They include that the unique systemic or background factors which may have played a part in bringing an Indigenous person in contact with the law should be considered in criminal justice decision-making; and

pre- and post-charge diversion, alternative measures and other community-based options should be considered for Indigenous people in conflict with the law, including culturally-appropriate restorative and traditional Indigenous justice processes. Justice Canada (n.d.). <https://www.justice.gc.ca/eng/fund-fina/home-accueil.html#s2>

⁶² See also recommendation 4 in ETFSU-Rpt #1

Feature	Details/Considerations
Substance type(s)	<p>Substances can be specified by specific substance, by class or by what is known as a drug schedule.</p> <p>Greer, et al. (2021) identify that related decisions can include: whether fillers or cutting agents are considered (which may complicate categorization); or whether to focus on the presumed substance, the actual chemical substance, or a precursor; and whether a determination is made by officer judgement or laboratory assessment. They caution that differential application of the model may give rise to complicated systems, may unintentionally serve supply and distribution, or may reinforce inequitous (i.e., leading to more severe penalties for racialized groups who may use ‘hard drugs’ versus ‘soft drugs’).</p> <p>Independent evaluation of the effectiveness of British Columbia’s approach should inform this decision.</p>
Threshold quantity (TQ) <i>*Critical decision*</i>	<p>There is currently no single TQ that has been identified in the published research literature upon which to base a recommendation. As above, information from an evaluation of BC’s implementation of its exemption should inform a refinement of TQs in other provinces (notwithstanding potentially salient differences across geographies and jurisdictions).</p> <p>The following cautions, identified by Greer, et al. (2021), should be considered carefully in determining TQs, which should reflect provincial data on possession, health risks, and geographic characteristics. The note that, while undefined TQs are vulnerable to interpretation and bias in the field, if appropriately applied, they can lessen the risk of biased application of police discretion. Greer, et al. (2021) suggest that, if TQ is set too low, potential unintended consequences may include:</p> <ul style="list-style-type: none"> • Intensifying enforcement, resulting in net widening • Disproportionately impacting racialized and marginalized groups (e.g., people living in poverty and/or experiencing mental health crises) • Increasing interactions with unregulated market among people who seek to avoid criminalization through more frequent purchasing of lower quantities of preferred substances • Increasing the risk of overdoses in cases where the potency of substances is increased to remain below threshold weight <p>TQ does not consider variable patterns of personal use tied to personal characteristics, socioeconomic factors and geography (i.e., rural dwellers may purchase larger quantities in urban areas to compensate for lower availability/accessibility in their places of residence)</p> <p>In addition to these cautions, Alberta should recognize the potential cross-jurisdictional dynamics involving sparsely populated areas adjacent to provincial borders and how differing TQs between provinces may unintentionally incent an increase in cross-border trafficking.</p>

Feature	Details/Considerations
3. Actions upon detection of substances for personal use	
No actions/sanctions	Not applicable in the current context
Deterrence strategies	Determination of application of administrative or civil sanctions, such as fines, driver's license suspension, community service orders should consider factors such as whether possession was concurrent with intoxication and intimate partner/domestic violence or the operation of a motor vehicle.
Diversion and referral to therapeutic or educational strategies	<p>The focus of diversion programs is usually on reducing the burden on the criminal justice system and on preventing the criminalization of people who use substances.</p> <p>Diversion should be undertaken to enhance access to needed health and social services, and related care pathways⁶³ consistent with reform objectives (above).</p> <p>Greer, et al. (2021) suggest that the focus of diversion may include one, or a combination of deterrence, therapeutic/rehabilitative strategies (e.g., referral to treatment of support services) or educational programming (e.g., referral to educational program).</p> <p>Training, education, and organizational cultures within police agencies should be calibrated and supported to minimize the risk net widening by bringing more people into the orbit of the criminal justice system.</p>
Enforcement strategies	<p>Determining levels, nature, and degree of flexibility of police discretion in enforcing laws or administrative sanctions. Determining if/when police can confiscate/destroy substances: This interacts with age and population, such as enforced confiscation for minors.</p> <p>Responses to non-compliance with diversion should focus on persistent, trauma-informed and respectful engagement, over criminal penalties. As previously indicated, the specific contexts of driving under the influence and of intimate partner/domestic violence should be considered as occasions that may warrant the application of criminal penalties, where community-based referrals are determined to be unsuited to the situation.</p>

⁶³ This may focus initially on evidence-informed and accredited services but, recognizing that research and evaluation often lag innovations and new insights (such as those arising from native healing traditions) foster awareness of emerging opportunities for hybrid models and/or referrals, where appropriate. For accounts of contexts where conventional western mental health care may/may not be used in helpfully in conjunction with Indigenous healing traditions, see Linklater, R. (2014). Decolonizing trauma work: Indigenous stories and strategies. Halifax, NS and Winnipeg, MB: Fernwood.

Proposed Theory of Change

We propose a theory of change that positions criminal justice changes, such as decriminalization, and corresponding policing practices as necessary but, in-and-of-themselves, insufficient for achieving broad community safety and wellbeing outcomes (Figure 2). Achieving these outcomes will require shared accountability for the harms that current and historic practices and inequities, including criminal justice processes, have on members of socially excluded communities. Decriminalization is but one element in an all-of-system response to the complex drivers and consequences of illicit substance use.

Together, these elements are intended to support the role of police agencies as a key stakeholder in collaborative community safety and wellbeing practice, and to position them as partnering agents of constructive social change where it is recognized that the problematic use of substances is principally a social and health issue, rather than a criminal one.

As the Scottish Drug Deaths National Task Force (2022) asserted, “the right to the highest attainable standard of physical and mental health [should be] accessible and enforceable for people who use drugs, removing any discriminatory separation between drug dependency and other health conditions.”⁶⁴

The theory of change also emphasizes social inclusion – through the involvement of people with lived experience in ongoing learning and activities focused on refining a decriminalization agenda. It is worth

noting that social inclusion involves two-way accountabilities: there are societal responsibilities to those who are excluded, as well as expectations of reciprocity involving those who are being included. As Canada continues to confront its historical relationship to Indigenous peoples and others that have been systemically disadvantaged, such as contending with a history of anti-black racism and homophobia for example, the actions that fall under civic participation may involve principled differences that vary across groups, places and time.

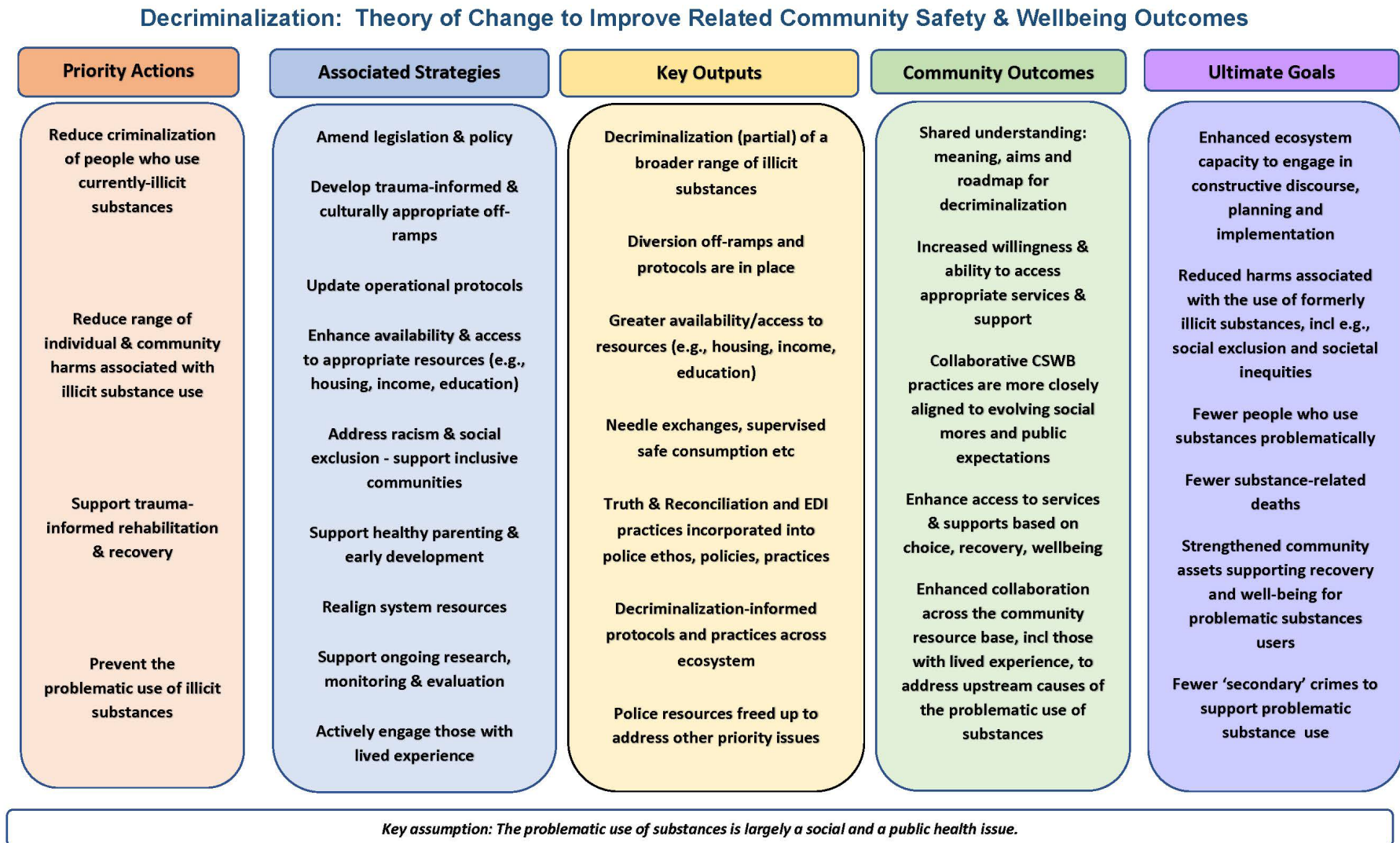
The journey sketched by the proposed theory of change involves confronting new ideas and grappling with changes that are sometimes at odds with long-held beliefs, customs and practices. This process will benefit from an openness to exploring and challenging assumptions, and a commitment to crafting a common base of values while avoiding ideological traps.

As contexts change, so may certain values, interpretations of evidence, and the ways in which evidence is sought and established. As noted in the recent Public Health Ontario scan of various approaches to decriminalization⁶⁵, the effectiveness of decriminalization models is influenced by the variability of the contexts in which policies addressing substance possession and use are implemented.

⁶⁴ Scottish Drug Deaths Task Force (July 2022). Changing lives: Our final report <https://drugdeathstaskforce.scot/news-information/publications/reports/final-report/>

⁶⁵ Public Health Ontario (September, 2022). Evidence scan and jurisdictional approaches to the decriminalization of drugs. https://www.publichealthontario.ca/-/media/Documents/D/2022/decriminalization-drugs-environmental-scan.PDF?sc_lang=en

Figure 2. Decriminalization of illicit substances: An initial theory of change showing criminal justice system reforms as one element of a whole-of-system approach to enhancing community safety and wellbeing outcomes



Conclusion

The evidence that forms the basis of this review characterizes problematic use of substances as a complex social issue that cannot be resolved through unidimensional solutions.

Successfully diverting those who use substances problematically from criminalization requires an integrated set of concepts and policy options for addressing a range of associated upstream risks and downstream harms.

This requires a whole-of-system strategy that is person-centred and addresses social harms, inequitable access to essential resources, and by enhancing collaborative community safety and wellbeing practices that prevent, and promote recovery from, substance-related harms. This will require capacity planning within and across organizations to enhance pathways of diversion and care. In some cases, organizational cultures and practices will need to evolve in line with changing societal values and learnings pertaining to trauma, and historical and structural racism. System-wide planning and collaboration, based on authentic stakeholder engagement will be a critical success factor.

The theory of change is not a substitute for an action plan. Rather, it should support the development of a well-informed course of action, serving as a guide to understanding⁶⁶, designing and participating in effective strategies and responses to problematic use of substances. In this way, it can be a centrepiece for engaging in dialogue with various stakeholders. It can also help partners and collaborators maintain a focus on the interacting conditions that can either promote or disrupt positive community safety and wellbeing outcomes.

As a living document, the theory of change should be further refined as additional relevant evidence and insights become available.

⁶⁶ This includes ongoing cycles of shared learning involving: dialogue; planning; implementation; evaluation and reflection. In collaborative community safety and

wellbeing practice, this is often referred to as co-design, co-implementation and co-measurement.

Appendix A About the Authors

Janos Botschner, PhD

Dr. Janos Botschner is a social scientist specializing in community safety and wellbeing, with expertise in applied research and evaluation, program and policy development and implementation, and human service system enhancements. He has a joint doctorate in applied social and developmental psychology and has held graduate and adjunct faculty appointments at the University of Guelph and at Wilfrid Laurier University.

He was a member of the editorial board of the Canadian Journal of Community Mental Health from 2003 to 2012, is a past section chair of the Canadian Psychological Association, and has served on local and regional Human Services Justice Coordinating Committees and Justice Advisory Groups. From 2009-10, Janos served as an expert member on the Collaborative Working Group on Mental Health and Addictions for the Ontario Ministry of Health and Long Term Care.

He has over two decades of leadership experience in the broader public sector, including as founding director of a community-based research institute and chief researcher with a large branch of the Canadian Mental Health Association, as a senior manager in the Ontario Public Service, and as an associate dean.

Julian Somers, PhD

Dr. Julian Somers is a clinical psychologist and professor of health sciences. His work focuses on social policies and clinical practices that reduce homelessness and crime involving people who are substance dependent and mentally ill.

Dr. Somers trained and specialized in the field of addiction and wrote some of the first papers addressing harm reduction, relapse prevention, and the effectiveness of brief interventions. He led the first Canadian

outcome studies on Drug Treatment Court, Community Court, and other practices designed to divert people from the justice system.

He completed clinical training at the University of Washington, Seattle's Harbourview Hospital, and British Columbia's Children's Hospital. He was Director of the UBC Psychology Clinic, President of the BC Psychological Association, and founding Director of the Centre for Applied Research in Mental Health and Addiction. He began his academic career in the UBC Faculty of Medicine, and is currently Full Professor in the Faculty of Health Sciences at Simon Fraser University.

The Somers Research Group is internationally recognized for initiatives involving large-scale randomized trials, multi-site interventions, and population-level studies described in over 150 publications. Dr. Somers has also created advanced information systems for public health surveillance and to evaluate the effectiveness of policies and services.

He and his team have earned local, national, and international awards for research in the public interest. In 2018 Dr. Somers received SFU's award for Excellence in Supervision in engineering, medical and natural sciences. Dr. Somers has authored and co-authors numerous peer-reviewed papers on related topics.

Cal Corley, MBA

Cal is the CEO of the Community Safety Knowledge Alliance.

He is a former Assistant Commissioner of the RCMP. From 2008 – 2014, he was head of the Canadian Police College and during that time served as the RCMP's Senior Envoy to Mexico and the Americas. Over the course of his career, Cal gained extensive experience in both operations and executive management, serving in such areas as community policing, major crime, drug enforcement, national security, criminal intelligence, strategic planning, human resources, and leading major organization-wide reform initiatives. He also served at the Privy Council Office and at Public Safety Canada.

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