

Submission by the Toronto Drug Strategy Implementation Panel to:

Members of the Senate of Canada Standing Committee on Legal and Constitutional Affairs regarding Bill C-15, *An Act to amend the Controlled Drugs and Substances Act and to make substantial amendments to other Acts*

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Executive Summary

The Toronto Drug Strategy Implementation Panel is an intersectoral group that provides oversight and strategic advice on implementation of our municipal drug strategy. Toronto is challenged with many issues associated with large urban centres, including drug-related crime. We know that tackling crime is a priority for the federal government, as it is for the Toronto Drug Strategy. However, the Panel is concerned that Bill C-15 will not achieve its goal of reducing crime and will instead create serious negative consequences for taxpayers, families and communities¹. Comprehensive strategies are needed that respond to the complex array of individual and systemic factors that influence an individual's drug use, their involvement in the drug trade, and the communities in which they live.

- ***Mandatory minimum sentences do not reduce drug crime***
Research has found that mandatory minimum sentencing for drug offences is ineffective, costly, and does not reduce crime. Other jurisdictions, including the U.S., that have had mandatory minimum sentences for years, are repealing these laws and replacing them with treatment and other initiatives.
- ***Mandatory minimum sentences are expensive for taxpayers***
Other jurisdictions have shown that imposing mandatory minimum sentencing dramatically increases the numbers of people in prison, which in turn increases criminal justice and corrections costs that are borne by taxpayers. Research has shown that treatment-oriented approaches are more cost-effective than lengthy prison terms in addressing crime related to substance use.
- ***Some people will be disproportionately affected by Bill C-15***
We are concerned that more **youth** will spend time in prison, an experience that can seriously jeopardize a young person's future. Mandatory-sentencing has resulted in long sentences for **women** charged as co-conspirators to crimes committed by their partners, even though they had little involvement in the crimes. Canada already has a serious over-representation of **aboriginal** people in our prisons; Bill C-15 will compound this effect. Mandatory sentencing has also resulted in significant increases in the incarceration of **ethno-cultural communities**.
- ***This new legislation will have serious health and social impacts***
Imprisoning people with addictions can lead to even more problematic and dangerous drug use inside the prison system, where HIV and Hepatitis C rates are much higher than for the general population. Incarceration of one family member can also have detrimental, long-term social and economic consequences for the whole family.
- ***Drug treatment courts are only one part of the solution***
We support drug treatment courts as a sentencing option. However, under the proposed legislation drug courts will only be accessible to a limited number of people. Further, drug courts do not work for everyone; they are part of the solution but not the whole answer.

The TDS Implementation Panel urges the federal government to abandon Bill C-15 and instead adopt a comprehensive, evidence-based approach to addressing drug crime. An alternative worth consideration is “justice reinvestment” where funds are used to rebuild human resources and physical infrastructure – schools, healthcare facilities, parks and public spaces – in communities devastated by high levels of incarceration.

¹ Please note: The Toronto Police Service, which is a member of the Toronto Drug Strategy Implementation Panel, is not in support of this submission.

Introduction

The Toronto Drug Strategy (TDS) Implementation Panel is an intersectoral group that provides oversight and strategic advice on implementation of our municipal drug strategy. The TDS provides a comprehensive approach to alcohol and other drugs based on the four integrated components of prevention, harm reduction, treatment and enforcement.

The TDS Implementation Panel includes expertise from a broad range of sectors including health promotion and prevention, education, harm reduction, addiction and mental health treatment, social development, criminal justice, as well as the experience of youth and people who use alcohol and other drugs. We believe that effective solutions come from all sectors working together, from an evidence-based approach, toward the common goal of improving the quality of life of individuals, families and communities.

Toronto is challenged with many of the issues associated with large urban centres, including community safety. We know that tackling crime is a priority for the federal government, which is part of the motivation for introducing Bill C-15. Addressing drug-related crime is also a priority of the Toronto Drug Strategy. However, we believe that comprehensive strategies are needed that respond to the complex array of individual and systemic factors that influence an individual's drug use, their involvement in the drug trade, and the communities in which they live. The context within which people make decisions about using drugs and dealing drugs is complex, and directly relates to their experiences of poverty, abuse, racism and discrimination, social and cultural alienation, as well as to the dynamics of their own addiction.

The TDS Implementation Panel is concerned that the proposed Bill C-15 will not reduce crime, will be very expensive for the Canadian taxpayer, and will create significant health, social and economic harms for people who are incarcerated, their families and communities. We are particularly concerned about the disproportionate impact mandatory minimum sentencing will have on youth, women, aboriginal, and ethno-cultural communities.

Mandatory minimum sentences do not reduce drug crime

The stated objectives of this new legislation are to “crack down on crime and to ensure the safety and security of our neighbourhoods and communities.”² According to the federal government's own sources, national crime rates have been steadily decreasing since the 1980s. Property crime rates have decreased 46% since peak levels in 1991. Violent crime peaked in 1992, gradually decreased until 2004, and after two years of small increases, the violent crime rate again dropped 2.5% in 2007.³

A 2002 report for Canada's Department of Justice reviewing mandatory minimum penalties found that mandatory minimums for drug offences are ineffective and costly. The report stated that “severe mandatory minimum sentences seem to be least effective in relation to drug offences...drug consumption and drug-related crime seems to be unaffected in any measurable way.”⁴ A key aspect of this issue is that drug selling is particularly vulnerable to the “replacement effect.” When you take one low-level drug dealer off the street, they are easily replaced with another. It is usually low-level dealers who are most effected by this type of legislation as high-level dealers are in better positions to have information to trade for an exemption from these penalties.

² Department of Justice, Press Release dated February 27, 2009

³ Corrections and Conditional Release Statistical Overview, 2008

⁴ T. Gabor and N. Crutcher. 2002. Mandatory Minimum Penalties: Their effects on crime, sentencing disparities and justice system expenditures. Department of Justice Canada: Research and Statistics Division.

Other jurisdictions, in particular the United States, that have had mandatory minimum sentences for years are now repealing these laws and replacing them with treatment and other initiatives. In a recent state address, New York Governor, David Paterson said,

*“I can’t think of a criminal justice strategy that has been more unsuccessful than the Rockefeller Drug Laws. New York has found mandatory minimum sentencing provisions to be expensive and ineffective, dramatically increasing prison populations without reducing crime.”*⁵

On the same point, Senate Majority Leader, Malcolm Smith said,

*“This policy shift will reverse years of ineffective criminal laws, protect communities, and save taxpayers millions of dollars that were wasted on the current policy. With more money going toward treatment instead of costly incarceration, our State will finally have a smarter policy.”*⁶

Mandatory minimum sentences are expensive for taxpayers

We know from the experience of other jurisdictions like the U.S., that imposing mandatory minimum sentencing dramatically increases the number of people in prison. The U.S. has an estimated 100,000 non-violent drug offenders in prison - more than the entire prison population for the European Union, which has 100 million more people.⁷

Canada’s prison and criminal justice system does not have enough capacity now. Prisons are overcrowded, creating many health and social issues. Our courts are congested and cannot process existing caseloads in a timely fashion. In reality, the provinces and territories will feel much of the financial impact of this legislation as many of the mandatory sentence terms will be less than two years. Regardless, there is only one taxpayer, and it is Canadians who will pay the increased prison, court and policing costs resulting from Bill C-15.

In 2006-07, federal corrections expenditures in Canada totaled about \$1.9 billion; an increase of 11.3% since 2002-03. Provinces and territories spent \$1.39 billion on corrections in 2005-06. The average annual cost of keeping someone incarcerated in the federal system is \$93,030, or \$255 per day.⁸

It costs substantially less to maintain an offender in the community than in prison (\$23,076 per year vs. \$93,030 per year).⁹ Further, research has shown that treatment-oriented approaches are more cost effective than lengthy prison terms in addressing crime related to substance use.¹⁰

Some people will be disproportionately affected by Bill C-15

A key limitation of Bill C-15 is that it does not allow for consideration to be given to a person’s individual circumstance with respect to the drug crime for which they are charged. If an individual is convicted of one of the designated offences and any of the “aggravating factors” are present (for example, a previous conviction) they will go to prison, regardless of the circumstances. This lack of capacity for judicial discretion, as well as systemic issues of bias that already exist in the criminal

⁵ Time Magazine, Thursday April 2, 2009.

⁶ Press Release, New York Governor David A. Paterson, March 27, 2009

⁷ Canadian HIV/AIDS Legal Network. (2006). *Mandatory Minimum Sentences for Drug Offences: Why Everyone Loses.*

⁸ Corrections and Conditional Release Statistical Overview, 2008.

⁹ *Corrections and Conditional Release Statistical Overview, 2008.*

¹⁰ T. Gabor and N. Crutcher. (2002). *Mandatory Minimum Penalties: Their effects on crime, sentencing disparities and justice system expenditures.* Department of Justice Canada: Research and Statistics Division.

justice system, mean the proposed legislation will likely have a disproportionate effect on several groups, including the following:

1. Youth

We are concerned that under Bill C-15 more young people (over the age of 18) will spend time in prison. Even a short period of incarceration can ruin a young person's life forever, and have serious negative consequences for their families and communities. Under the proposed legislation, an 18 year-old caught dealing cocaine or ecstasy to a friend at school would be subject to a least one year in prison. A youth growing even one marijuana plant, if it is deemed to be for the purposes of trafficking, would spend at least six months in prison.

2. Women

It is likely that more women will be sent to prison with the enactment of Bill C-15. Mandatory sentences are linked to the quantity of drugs involved in the offence and not to an individual's involvement. Mandatory-sentencing policies in the U.S. have resulted in long sentences for women charged as co-conspirators or accomplices to crimes committed by their sexual or marital partners, even though they had little direct involvement in the crimes.¹¹

3. Aboriginal people

In Canada we already have a serious over-representation of aboriginal people in our prisons, and we are concerned about the compounding effect that Bill C-15 will have on our aboriginal peoples. According to the 2006 Census, while aboriginal people represent 4% of our adult population overall, they represent 24% of adults in provincial/territorial custody, 19% of people in remand custody, and 18% of people in federal custody.¹²

4. Ethno-cultural communities

Research into mandatory minimum sentencing has found significant increases in the incarceration of ethno-cultural communities when this type of legislation is introduced. For example, in the United States, drug arrests for African Americans rose at three times the rate for whites from 1980 to 2003 – 225% compared to 70%. Further, this disparity cannot be explained by corresponding changes in rates of drug use.¹³ In a diverse city like Toronto, where we are working hard to create inclusive, supportive communities with opportunities for all, the potential for this type of disparity resulting from Bill C-15 is a serious concern.

This new legislation will have serious health and social impacts

The proposed legislation does not allow for any differentiation between high-level drug dealers and low-level drug dealers, many of whom deal drugs to support their own addiction. Imprisoning people with addictions can lead to even more problematic and dangerous drug use inside the prison system. It is estimated that 4 out of 5 offenders arrive in prison with a serious addiction.¹⁴ A recent review of our federal corrections system acknowledges the rampant presence of illicit drugs in prisons, as well as the lack of treatment or other health and support services to help reduce the harms of substance use.¹⁵

¹¹ American Civil Liberties Union, Break the Chains, and the Brennan Centre at NYU School of Law. (2006). *Caught in the new: The impact of drug policies on women and families*.

¹² Canadian Centre for Justice Studies. *Adult Correctional Services in Canada, 2005/06*, as cited in Centre for Addiction & Mental Health. (2008). *The National Anti-Drug Strategy: A CAMH Response*.

¹³ R. King. (2008). *Disparity by Geography: The War on Drugs in American Cities*. The Sentencing Project

¹⁴ 2007 Report of the Correctional Service of Canada Review Panel.

¹⁵ 2007 Report of the Correctional Service of Canada Review Panel.

People in federal and provincial prisons have much higher rates of both HIV-infection and Hepatitis C than the general population. Studies on provincial prisons in Ontario, B.C. and Quebec found HIV rates 10 times higher than for the general population.¹⁶ A recent study found HIV cases in Canadian prisons had risen 35% in the last six years.¹⁷ Some people enter prison already infected with Hepatitis C or HIV, but the likelihood of further spread of these diseases is high due to unsafe sex and drug use practices while incarcerated. Once released from prison, these individuals will return to our communities and, therefore, we should all be concerned about these health issues.

Incarceration does not only affect the individual spending time in prison, it also affects families and communities. The incarceration of one family member can have detrimental and long-term social and economic consequences for the whole family, especially if that person is a parent or the primary income earner. Laura Sager of Families Against Mandatory Minimums says of Michigan's mandatory sentencing approach:¹⁸

“The state’s mass incarceration experiment has achieved none of its stated objectives. The dividends were broken families and broken communities, not less crime.”

Drug treatment courts are one part of the solution

We are pleased to see that drug treatment courts are included as a sentencing option in Bill C-15. However, drug courts are not available in all communities nor do they have the capacity to meet the increased demand that will result from this legislation. Under Bill C-15, drug treatment courts are only an option for people not convicted with “aggravating factors” such as previous arrests. As a result, drug courts will only be accessible to a limited number of people. In addition, it is important to recognize that drug courts do not work for everyone; they are part of the solution but not the whole answer. Drug courts also tend to be abstinence-based and so are not flexible to the reality that for many people addiction is a lifelong issue that is not “cured” by one round of treatment.

A more effective way forward

Instead of relying on blunt instruments such as mandatory minimum sentencing, we urge the federal government to adopt a comprehensive, evidence-based approach that responds to the complex array of individual and systemic factors that influence drug use and crime. Targeting resources to prevention, treatment and harm reduction initiatives as well as to enforcement would be a more prudent and effective investment than continuing to rely on enforcement-driven responses to drug crime. A more effective approach is to provide a mix of accessible treatment for addicted dealers, employment opportunities for part-time dealers, and tough sentences for hard core, high-level dealers.¹⁹

One option worth consideration is to reinvest correctional spending into other areas, also known as “justice reinvestment.” This approach is being used in U.S. states frustrated by the ineffectiveness of incarcerating low-level drug offenders. A lot of money is spent incarcerating people in environments that often make them sicker, more stigmatized, unskilled, and at-risk of re-offending. These individuals will eventually return to their communities and we have to ask ourselves if this approach is really creating safer communities? Cyclical imprisonment disrupts the fragile economic, social and political bonds that are the basis for informal social control in a community.²⁰

¹⁶ Canadian HIV/AIDS Legal Network. (2004/05). *HIV/AIDS and Hepatitis C in Prisons: The Facts*.

¹⁷ Correctional Service Canada. (2000-2001). *Infectious Disease Prevention and Control in Canadian Federal Penitentiaries*.

¹⁸ The Toronto Star, April 2, 2009.

¹⁹ T. Gabor and N. Crutcher. (2002). *Mandatory Minimum Penalties: Their effects on crime, sentencing disparities and justice system expenditures*. Department of Justice Canada: Research and Statistics Division.

²⁰ Open Society Institute. (2003). *Justice Reinvestment: To invest in public safety by reallocating justice dollars to refinance education, housing, healthcare and jobs*.

The goal of “justice reinvestment” is to redirect some of the money spent on corrections to rebuilding the human resources and physical infrastructure – schools, healthcare facilities, parks and public spaces – in communities devastated by high-levels of incarceration. It is also about devolving accountability and responsibility to the local level. Local governments would plan for and allocate funds depending on local need, for example, job training, drug treatment programs, preschool programs, as well as incarceration for the dangerous few. Other options could include rehabilitating housing, rebuilding parks and playgrounds, micro-loans to create jobs, or family development loans for education, debt consolidation, or home ownership.²¹

This prevention-oriented approach fits well with what the City of Toronto is doing with respect to investing in its 13 priority neighbourhoods, and is worth consideration by the federal government as a more effective approach to addressing drug-related crime.

Conclusion

As the largest city in Canada, Toronto has a vested interest in future drug policy and legislative decisions at the federal level, especially as it relates to potential impacts on individuals and families in our community.

Based on the experience in other jurisdictions, the Toronto Drug Strategy Implementation Panel is concerned that the proposed Bill C-15 will not achieve its stated goals of reducing crime, that it will be expensive for the Canadian taxpayer, and create significant health, social and economic harms for people who are incarcerated and their families. We are particularly concerned about the disproportionate impact mandatory minimum sentencing will have on youth, women, aboriginal, and ethno-cultural communities.

We urge the federal government to abandon Bill C-15 and instead adopt a comprehensive, evidence-based approach to improving community safety.

²¹ Open Society Institute. (2003). *Justice Reinvestment: To invest in public safety by reallocating justice dollars to refinance education, housing, healthcare and jobs.*