Decriminalization of Drug Possession for Personal Use in Toronto: Review of the Harms Caused by the Disproportionate Impact of Drug Criminalization on African, Caribbean, and Black People in Toronto

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Prepared by: MASS LBP for the African, Caribbean, and Black Decriminalization Working Group

TORONTO Public Health

Dear Dr. de Villa,

We the undersigned are members of Toronto Public Health's Decriminalization Reference Group who came together to form the African, Caribbean and Black Decriminalization Working Group to ensure that:

Evidence of the historic and ongoing harms of drug criminalization, which has disproportionately affected African, Caribbean and Black people, is sufficiently documented;

Decriminalization be advanced as a necessary component of undoing systemic discrimination against African, Caribbean and Black people; and

A model of decriminalization is developed that prioritizes the elimination of barriers to substance use health and social services for African, Caribbean and Black people.

In order to advance equity in decriminalization, the following document includes recommendations for Toronto's Model of Decriminalization to be considered by Toronto Public Health and Health Canada. These are intended to inform Toronto Public Health's request for an exemption under section 56(1) of the *Controlled Drugs and Substances Act* that would decriminalize the possession of drugs for personal use in Toronto.

We welcome the opportunity for ongoing collaboration with the goal of creating the best model of decriminalization for African, Caribbean and Black people in the city that meaningfully addresses systemic racism and discrimination.

Signed,

Angela Robertson, Executive Director, Parkdale Queen West Community Health Centre

Black Coalition for AIDS Prevention

Colin Johnson, Chair, Toronto Harm Reduction Alliance

Frank Crichlow, Board President, Canadian Association for People Who Use Drugs

Kwame McKenzie, CEO, Wellesley Institute

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Introduction

The African, Caribbean, and Black Decriminalization Working Group is a sub-Group of Toronto Public Health's Decriminalization Reference Group. We came together in 2022 to ensure that:

- Evidence of the historic and ongoing harms of drug criminalization, which has disproportionately affected African, Caribbean and Black people, was sufficiently documented;
- Decriminalization be advanced as a necessary component of undoing systemic discrimination against African, Caribbean and Black people; and
- A model of decriminalization be developed that prioritizes the elimination of barriers to substance-use related health and social services for African, Caribbean and Black people.

To achieve these goals, in this report we present the health equity implications of drug criminalization on African, Caribbean and Black populations in Toronto based on an examination of the best available evidence. Grounded in this analysis, and to advance equity in the application of decriminalization for a variety of populations, we provide recommendations for Toronto's Model of Decriminalization. These are intended for Toronto Public Health and Health Canada to consider in respect of Toronto Public Health's request for an exemption under section 56(1) of the Controlled Drugs and Substances Act that would decriminalize the possession of illicit substances for personal use within Toronto.

The evidence is unequivocal. African, Caribbean and Black populations have been disproportionately impacted by the criminalization of drugs in Toronto and this has had a range of negative health and social implications. At the same time, African, Caribbean and Black populations in Toronto have had inequitable access to health and social services for substance use, which has adversely impacted these populations' health outcomes. The decriminalization of the possession of drugs for personal use, alongside the scale up of health, social and substance use services for Black people who use drugs, provides an opportunity to improve the health and well-being of African, Caribbean and Black people who use drugs in Toronto.

African, Caribbean and Black people have been essential to creating the Toronto we know and love, and remain vital to the social, cultural, and economic fabric of the city. African, Caribbean and Black communities in Toronto are heterogeneous and have a rich diversity of strengths. While this report predominately focuses on the negative health and social consequences of drug criminalization on these populations, we acknowledge that African, Caribbean and Black people and communities are not reducible to experiences of inequity, injustice, or systemic discrimination. However, it is important to bring the systemic discrimination experienced by Black people due to drug criminalization to light in order to disrupt and dismantle inequitable systems.[1]

Toronto Model for Decriminalization of the Possession of Drugs for Personal Use

In July 2018, Toronto's Board of Health endorsed a public health approach to drug policy in response to the escalation in drug toxicity deaths.[2] This led to the examination of alternatives to the criminalization of drugs for personal use. After extensive public consultations and the establishment of a multi-sectoral working group, the Board of Health directed the Medical Officer of Health to submit a request to Health Canada for an exemption under Section 56(1) of the Controlled Drugs and Substances Act (CDSA).

The goals of the proposed Toronto model of decriminalization are three-fold:

1. Advance equity, social justice, and human rights.
2. Reduce stigma and discrimination associated with substance use.
3. Improve health and well-being through increased access to culturally safe health and social services.

In Canada and internationally, enforcement measures have been a long-standing approach to addressing drug-related harms, often referred to as the "war on drugs." These measures have focused on the production, sale, trafficking and use of drugs. However, evidence indicates that the criminal justice system is not an effective way to address health issues associated with substance use.[3] Criminalizing drugs creates stigma and discrimination against people who use drugs, which then act as significant barriers to health care, social services, housing, and employment.[3] Furthermore, criminalization, alongside associated stigma and discrimination, encourages people who use drugs to use alone and thus increases the risk of death from the toxic and unpredictable unregulated drug supply.[3]

Criminalization increases interactions between people who use drugs and the police and justice system. These interactions, including navigating charges, fines, bail, legal fees, criminal records, court appearances, jail time, parole, drug testing etc., are

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[1] Black Health Equity Working Group. (2021). Engagement, Governance, Access, and Protection (EGAP): A Data Governance Framework for Health Data Collected from Black Communities. Available at: https://blackhealthequity.ca/wp-content/uploads/2021/03/Report_EGAP_framework.pdf.
[2] Toronto Public Health. (2018). A Public Health Approach to Drug Policy. Available at https://secure.toronto.ca/council/agenda-item.do?item=2018.HL28.2.
[3] Health Canada Expert Task Force on Substance Use. (2021). Report 1: Recommendations on Alternatives to Criminal Penalties for Simple Possession of Controlled Substances. Available at: https://www.canada.ca/content/dam/hc-sc/documents/corporate/about-health-canada/public-engagement/external-advisory-bodies/reports/report-1-2021/report-1-HC-expert-task-force-on-substance-use-final-en.pdf.

considerably stressful, timely, costly, demoralizing, and traumatic.[3] Even in the absence of explicit police interactions, the potential threat of legal culpability and heightened surveillance creates tremendous stress for people who use drugs, especially Black and Indigenous people.[4] Criminal charges can negatively impact the fundamental social determinants of health, including access to housing and stable employment.[5]

The criminalization of drugs for personal use places many individuals, their families, and communities in a vicious cycle of marginalization and poverty that is difficult to overcome.[5] Adverse childhood experiences (ACE) – including parental criminalization and criminalization during youth – compound and, if not mitigated, create toxic stress and trauma, which are predictors of poorer adult health overall, including mental health and substance use health.[6]

While research is starting to recognize racism as an ACE,[7] existing evidence demonstrates that experiences of racism and discrimination can create toxic stress and trauma which contribute to poor life outcomes for racialized populations.[8] Therefore, in addition to the direct stress of interactions with the criminal justice system and the adverse impact of having a criminal record on life prospects, criminalization contributes to intergenerational trauma.

Conversely, decriminalization works to address systemic racism in the criminal justice system and the direct harms of criminalization. It has the potential to increase uptake of health and social services by removing the fear of criminalization and, over the longer term, reducing societal stigma and discrimination against people who use drugs.[3] Such an approach shifts drug use away from being a criminal act (though activities such as producing, trafficking, and selling drugs remain illegal) toward a public health approach that treats substance use as a health issue in need of large-scale, population focused initiatives. Decriminalization, alongside enhanced, culturally safe, evidence-based treatment, harm reduction and prevention services are a step toward improved health outcomes for African, Caribbean and Black populations, including those who use drugs.

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[4] Owusu-Bempah, A., Jung, M., Sbaï, F., Wilton, A. S., & Kouyoumdjian, F. (2021). Race and Incarceration: The Representation and Characteristics of Black People in Provincial Correctional Facilities in Ontario, Canada. Race and Justice, 0(0). Available at: https://journals.sagepub.com/doi/10.1177/21533687211006461.

[5] Wortley, S & Jung, M. (2020). Racial Disparity in Arrests and Charges: An Analysis of Arrest and Charge Data from the Toronto Police Service. Ontario Human Rights Commission. Available at: https://www.ohrc.on.ca/sites/default/files/Racial%20Disparity%20in%20Arrests%20and%20Charges%20TPS.pdf.

[6] Bucci, M, Silvério Marques, S, Oh, D, & Burke Harris, N. (2016) Toxic Stress in Children and Adolescents. Advances in Pediatrics, 63(1):403-421.

[7] Bernard, D.L., Calhoun, C.D., Banks, D.E. *et al.* (2021) Making the "C-ACE" for a Culturally-Informed Adverse Childhood Experiences Framework to Understand the Pervasive Mental Health Impact of Racism on Black Youth. *Journ Child Adol Trauma* 14:233–247.

[8] Priest N, Doery K, Truong M, et al. Updated Systematic Review and Meta-analysis of Studies Examining the Relationship between Reported Racism and Health and Well-being for Children and Youth: A Protocol. BMJ Open 2021;11:e043722.

Brief History of Canadian Drug Laws

> "The war on drugs has operated more effectively as a system of racial control than as a mechanism for combating the use and trafficking of narcotics. … [It] has disproportionately targeted people of African descent and disregarded the massive costs to the dignity, humanity and freedom of individuals."
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> -UN Working Group of Experts on People of African Descent[9]

People have consumed drugs throughout human history. In Canada, psychoactive substances only started to become illegal in the late 19th century.[10] Drug laws in Canada and internationally were not developed based on evidence about the harms of substance use and how to reduce them,[11] but rather have been driven by dominant morals, colonial agendas, and systemic racism.[12] For example, 1884 amendments to the *Indian Act* made it illegal for Indigenous people to purchase or consume alcohol or enter a licenced establishment. Similarly, the 1908 *Opium Act* was rooted in anti-Chinese racism against labourers who had constructed the Canadian Pacific Railway.[13]

In the 1960s and 70s, there was heightened interest in the United States and internationally in the use of criminal justice measures to curb substance use. The impetus behind what came to be known as the "war on drugs" was to minimize dissent among growing social movements:

> "The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the anti-war left and [B]lack people. We knew we couldn't make it illegal to be either against the war or [B]lack, but by getting the public to associate the hippies with marijuana and [B]lacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course, we did."
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> -John Ehrlichmann, Assistant for Domestic Affairs to US President Richard Nixon[14]

The "war on drugs" was instituted in Canada through successive legislation from the 1980s to 2010s that increased drug-related offences, police powers, and penalties,

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[9] United Nations High Commission for Human Rights. (March 14, 2019), Fight Against World Drug Problem Must Address Unjust Impact on People of African descent, say UN experts. Media Statement. Available at: https://www.ohchr.org/en/news/2019/03/fight-against-world-drug-problem-must-address-unjust-impact-people-african-descent-say

[10] History of Drug Policy in Canada. Available at: https://drugpolicy.ca/about/history/.

[11] Nutt, D. (2012) Drugs Without the Hot Air: Minimizing the Harms of Legal and Illegal Drugs. Cambridge, England: UIT Cambridge,

[12] Daniels, C., Aluso, A., Burke-Shyne, N. *et al.* (2021) Decolonizing drug policy. *Harm Reduct J* 18, 120.

[13] Toronto Public Health. (2018). Quick Facts: Canada's Drug Laws and Strategies. Available at: https://www.toronto.ca/wp-content/uploads/2018/05/970c-Canadas-Drug-Laws-Strategies.pdf.

[14] Baum, Dan. (2016) Legalize it all: How to Win the War on Drugs. Harper's. Available at: https://harpers.org/archive/2016/04/legalize-it-all/.

including for minor drug offences.[15] Khenti has characterized the Canadian approach to drug policy through this period as reflecting a political preference for funding policing and prisons rather than a health and social welfare approach, despite declining rates of substance use.[15]

Billions of dollars have been spent internationally on moving individuals—most often those from racialized and marginalized communities—into the criminal justice system, generating a cycle of poverty and poor health, while having insignificant and even counterproductive impacts on drug use behaviours.[3] Despite these policies, people continue to use drugs. Furthermore, these enforcement policies have contributed to people using drugs alone and have been a significant barrier to substance use related health and social services. In 1992, provincial and federal governments in Canada received $400 million in annual funding to focus on enforcement measures compared to only $88 million dedicated to treatment services.[15] By 2008, approximately 70 percent of federal drug funding was directed towards law enforcement.[15] In 2020, $3.9 billion was spent on policing, courts, and correctional costs related to drug laws in Ontario.[16]

Disproportionate Criminalization of African, Caribbean and Black People

African, Caribbean and Black people, as well as Indigenous people, have been disproportionately impacted by the criminalization of drugs for personal use in Canada. As elaborated through the data presented below, Black people are more likely to be stopped, harassed, detained, and experience violence by the police.[4,5,15]

More Interactions with Police

Interactions with the police are quite different for Black and non-Black residents. Black people are more likely to: have interactions with police; have force used against them; experience trauma from police interactions; and have a strong fear of having to manage encounters with police or having their children navigate interactions with police.[17] The Toronto Police Service recently publicly released results from an internal investigation that demonstrated that in 2020 Black people were 2.2 times over-represented in enforcement actions compared to their presence in Toronto and 1.6 times over-represented in use of force interactions compared to their presence in the enforcement action population. Black people were also 1.5 times more likely to have a police firearm pointed at them than White people.[18] The disproportionate application of force not only makes interactions with police more likely to be physically and

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[15] Khenti, A. (2014) The Canadian War on Drugs: Structural Violence and Unequal Treatment of Black Canadians. International Journal of Drug Policy. 190-195.
[16] Canadian Centre on Substance Use and Addictions. (2023). Ontario Profile: Canadian substance use costs and harms. Retrieved from https://csuch.ca.
[17] Ontario Human Rights Commission (2018) Interim Report: A Collective Impact: Interim Report on the Inquiry into Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service. Available at: https://www.ohrc.on.ca/sites/default/files/TPS%20Inquiry_Interim%20Report%20EN%20FINAL%20DESIGNED%20for%20remed_3_0.pdf#overlay-context=en/news_centre/ohrc-interim-report-toronto-police-service-inquiry-shows-disturbing-results.
[18] Toronto Police Service (2020) Race & Identity Based Data Collection Strategy: Understanding Use of Force & Strip Searches in 2020 Detailed Report. Available at: https://www.tps.ca/media/filer_public/93/04/93040d36-3c23-494c-b88b-d60e3655e88b/98ccfdad-fe36-4ea5-a54c-d610a1c5a5a1.pdf.

psychologically harmful, but also generates a broader sense of fear regarding rapid escalation in police encounters, which fosters distrust in police services among Black people.

Overrepresented in Charges

Black people are significantly over-represented in arrest statistics and criminal offences across Ontario. The Ontario Human Rights Commission (OHRC) reports on the over-representation of Black people in arrests as well as the economic and social harms that stem from police bias and profiling.[5,19] Some key findings include:

- From 2013-2017, Black people represented 28.5 percent of people involved in non-cannabis drug possession charges while only comprising 8.8 percent of Toronto's population. This is 3.2 times higher than what their representation in the general population would predict.

- While males are charged at significantly higher rates than females across all racial groups, Black men have much higher charge rates than other men. Black men represent 4 percent of Toronto's population, but are involved in 25.7 percent of non-cannabis drug possession charges. This is 6.4 times higher than what their representation in the general population would predict.

- The non-cannabis drug possession charge rate for Black women is 1.3 times greater than the rate for White women and 5.2 times greater than the rate for women from other racialized groups.

- White people accused of non-cannabis drug possession were more likely to be released on the street (56.9 percent) compared to Black people (46.2 percent).

- Black people are more likely to be detained and/or taken to the police station for processing when they are found to have drugs on them. For a single non-cannabis drug possession charge, 56.3 percent of Black people were detained, compared to 46.6 percent of White people.

- Very few non-cannabis drug-related charges result in a conviction, meaning that the charges do not stand up in court and the court finds the accused to be not guilty. Black people are slightly more likely to be found not guilty after being charged compared to White people. The conviction rate for Black people is 14 percent compared to 15 percent for White people.

Higher Incarceration Rates

Black people are also incarcerated at disproportionate rates across Canada. In 2018, Black adults accounted for 3 percent of Canada's total adult population but represented

[19] Ontario Human Rights Commission (2020) Interim Report: A Disparate Impact: Second Interim Report on the Inquiry into Racial Profiling and Racial Discrimination of Black Persons by the Toronto Police Service. Available at: https://www.ohrc.on.ca/sites/default/files/A%20Disparate%20Impact%20Second%20interim%20report%20on%20the%20TPS%20inquiry%20executive%20summary.pdf.

7 percent of individuals incarcerated in federal institutions.[20] Owusu-Bempah et al. document the substantial over-representation of Black people in provincial correctional facilities:[4]

- Black men were five times more likely to be incarcerated than White men.
- Black women were almost three times more likely to be incarcerated than White women.
- Black men spent longer in provincial correctional facilities and were more likely to be transferred to a federal prison compared to other men.

These disparities in incarceration rates are also present for Black youth. A recent John Howard Society report documents that since the enactment of the *Youth Criminal Justice Act* in 2003, fewer young people have gone through the courts or to jail due to measures such as diversion programs and discretionary powers provided to the police. However, youth that are involved with the child welfare system, youth with mental health issues, and Black and Indigenous youth are still experiencing disproportionate rates of incarceration. Black youth, in particular, continue to be over-represented:[21]

- In 2016, Black youth made up 7.1 percent of Ontario's population, but constituted 15.3 percent of admissions to detention centres and 20.6 percent of admissions to secure detention, a more restrictive form of detention.
- In Toronto, between 2006 and 2016, Black youth in admissions to open detention represented two to three times the proportion of Black youth in the general population.

Child Welfare

The impact of criminalization on the lives of Black people who use drugs extends beyond the justice system to other institutions, including child welfare, where systemic racism has also been institutionalized. Members of the African, Caribbean, and Black Decriminalization Working Group shared their personal and their communities' experiences with the child welfare system and the disproportionate removal of Black children from their parents, including due to parental substance use in the absence of child neglect or abuse. While not specific to situations involving substance use, the Ontario Human Rights Commission has found a disproportionately high incidence of Black children in admissions into care at many child welfare agencies across the province.[22] Black children were over-represented in admissions into care at 30 percent of agencies (8 of 27). Overall, the proportion of Black

[20] Government of Canada. Addressing Systemic Racism in Canada's Criminal Justice System while Maintaining Public Safety: Proposed Legislative Amendments to the Criminal Code and the Controlled Drugs and Substances Act. Available at: https://www.justice.gc.ca/eng/csj-sjc/pl/sr-rs/index.html.
[21] John Howard Society. (2021). Unequal Treatment: Experiences and Outcomes of Young People in Ontario's Youth Bail System. Available at: https://johnhoward.on.ca/wp-content/uploads/2021/03/Unequal-Justice-Report-Final.pdf.
[22] Ontario Human Rights Commission. (2018) Interrupted Childhoods: Over-Representation of Indigenous and Black Children in Ontario Child Welfare. Available at: https://www3.ohrc.on.ca/sites/default/files/Interrupted%20childhoods_Over-representation%20of%20Indigenous%20and%20Black%20children%20in%20Ontario%20child%20welfare_accessible.pdf.

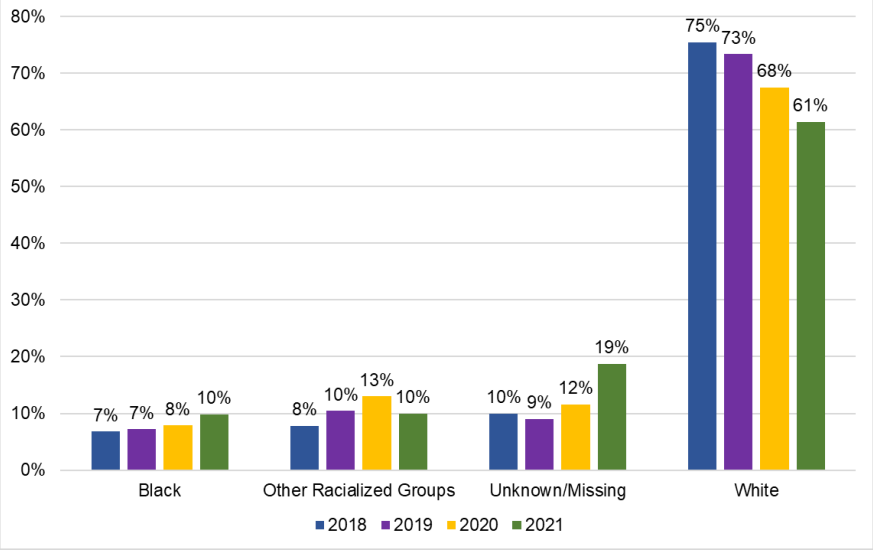
children admitted into care was 2.2 times higher than their proportion of the entire child population. Furthermore, the Children's Aid Society of Toronto has found that children in Black-led families are in care longer than children with parents from other racial groups.

Drug Toxicity Deaths and Access to Health Care

In Ontario, there is limited data by which to examine outcomes in health and access to health care by ethno-racial group. The health care system does not systematically collect data on race. This limits the ability to uncover and correct potential disparities.[1] In 2017 the Office of the Chief Coroner for Ontario started collecting and sharing additional information, including socio-demographic characteristics, about people whose deaths were caused by opioid toxicity.

Preliminary data from the Office of the Chief Coroner for Ontario (OCC) estimates 591 confirmed opioid toxicity deaths in 2021 and 504 in 2022 in Toronto.[23] Data on accidental opioid toxicity deaths between 2018 and 2021 show that the percentage of deaths among people identified as Black increased to 10 percent in 2021, compared to 7 percent in 2018 (Figure 1). The proportion of accidental opioid toxicity deaths among people identified as White has been decreasing during this time, however, an increase has also been seen in the percentage of deaths with unknown or missing racial identity.[24] According to 2021 Census data, the Black population represents 9.6 percent of the Toronto population,[25] but in quarter three of 2021 there was a peak where they comprised 13 percent of opioid toxicity deaths.

Figure 1. Accidental opioid toxicity deaths by ethnicity of the decedent, Toronto, 2018-2021.



23 Coroner's Opioid Investigative Aid. January 2018 to October 2023. Office of the Chief Coroner for Ontario. Extracted January 2024.
24 Coroner's Opioid Investigative Aid, January 2018 to December 2021 , Office of the Chief Coroner for Ontario, extracted November 2, 2023.
25 Statistics Canada. 2021 Census of Population.

*Data is preliminary and subject to change.

Notes: The category 'Other' includes people identified as South Asian, Latin American, East Asian, Southeast Asian and Middle Eastern.

The African, Caribbean, and Black Decriminalization Working Group requested that the Ontario Drug Policy Research Network[26] conduct an analysis of OCC data to better understand the demographic characteristics, circumstances surrounding death, and access to health services prior to death among people who died of opioid-related toxicity in Toronto by ethno-racial group. In terms of demographics, between July 2017 and June 2021:

- People identified as Black were generally younger (median age of 36) at the time of death compared to those identified as White (median age of 43).

- People identified as Black (68.2 percent) were more likely to live in lower-income neighbourhoods at the time of death compared to people identified as White (59.5 percent).

- A slightly higher proportion of Black people (23.4 percent) compared to White people (20.1 percent) were also experiencing homelessness prior to death.

The pattern of these findings are consistent with the Black population as a whole in Toronto. According to 2016 census data for Toronto, the median age of the Black population is around 10 years younger than the White population.[27] The Black population also had a higher prevalence of low income compared to the White population,[28] as a result of anti-Black racism in education and employment.[29]

Directly related to and reiterating disparities in the criminalization of people who use drugs presented earlier, among those who died from opioid toxicity in Toronto between July 2017 and June 2021, people identified as Black were more likely (32.7 percent) to have had a prior history of incarceration compared to people identified as White (22.1 percent). While

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[26] This study was conducted by the Ontario Drug Policy Research Network (ODPRN), a province-wide network of researchers who respond to policymakers' needs for relevant research to guide and inform their decisions, using the administrative claims databases housed at the Institute for Clinical Evaluative Sciences (ICES). The ODPRN is funded by grants from the Ontario Ministry of Health (MOH). This study was supported by ICES, which is funded by an annual grant from the Ontario MOH and the Ministry of Long-Term Care (MLTC). Parts of this material are based on data and information compiled and provided by the MOH and the Canadian Institute for Health Information (CIHI). This document used data adapted from the Statistics Canada Postal Code[OM] Conversion File, which is based on data licensed from Canada Post Corporation, and/or data adapted from the Ontario Ministry of Health Postal Code Conversion File, which contains data copied under license from ©Canada Post Corporation and Statistics Canada. The analyses, conclusions, opinions and statements expressed herein are solely those of the authors and do not reflect those of the data sources; no endorsement is intended or should be inferred. These datasets were linked using unique encoded identifiers and analyzed at ICES. We thank IQVIA Solutions Canada Inc. for use of their Drug Information File.

[27] Statistics Canada. 2017. Focus on Geography Series, 2016 Census. Statistics Canada Catalogue no. 98-404-X2016001. Ottawa, Ontario. Data products, 2016 Census.

[28] Statistics Canada, 2016 Census of Population, Statistics Canada Catalogue no. 98-400-X2016211.

[29] Public Health Agency of Canada. 2020. Social Determinants and Inequities in Health for Black Canadians: A Snapshot. Available at: https://www.canada.ca/content/dam/phac-aspc/documents/ services/health-promotion/population-health/what-determine s-health/social-determinants-inequities-black-canadians-snap shot/health-inequities-black-canadians.pdf.

we do not know the specific contexts of these deaths, fear of criminalization is a barrier to accessing substance use related health and social services, which could be particularly salient for Black people who have been previously incarcerated and face systemic discrimination in policing.

The data also show differences in substance use and potential disparities in access to harm reduction services. Between July 2017 and June 2021:

- In almost three-quarters (72.9 percent) of opioid toxicity deaths among people identified as Black, stimulants (e.g., cocaine, methamphetamines) were found to have also directly contributed to death, higher than the 56.5 percent of deaths among people identified as White.

- In 24.3 percent of deaths among people identified as Black, there was an individual available to intervene at the time of the overdose incident, which was higher than among people identified as White (18 percent). However, among people identified as Black, naloxone was administered in only 42.3 percent of these incidents, which was lower than the percentage among people identified as White (51.3 percent).

Members of the African, Caribbean and Black Decriminalization Working Group have highlighted that stimulants, particularly crack cocaine, are used within Black communities and require targeted harm reduction supports. The higher involvement of stimulants in opioid toxicity deaths among Black people compared to White people points to the specific need for safer inhalation services to support Black people who use drugs in Toronto. These data also suggest that people who are Black may have more limited access to harm reduction services and naloxone compared to people who are White.

Similarly, these data highlight disparities in access to health care more broadly:

- Overall, 23.4 percent of people identified as Black had a health care encounter in the week prior to an opioid toxicity death, which was lower than the percentage among people identified as White (29.9 percent). This pattern persisted in the year prior to death, although the disparity was reduced (88.8 percent among people identified as Black, compared to 91.6 percent among people identified as White). This disparity is also consistent with findings that pharmaceutical opioids contributed to a lower percentage of deaths among people identified as Black (12.1 percent) compared to people identified as White (28.6 percent).

- Among people identified as Black, 53.3 percent had an indication of opioid use disorder in the 5 years before death, which was considerably lower than the percentage among people identified as White (70.5 percent). Similarly, only 12.1 percent of Black people who died of opioid toxicity had been dispensed opioid agonist therapy in the 5 years prior to death, compared to 39.1 percent of White people.

These data could suggest that the Black population has less access to substance use related health services, including those required to obtain an indication of an opioid use

disorder and prescription medications, than the White population.

Disparities in access to health care have also been found in the broader health system in Toronto. In 2016, Ontario Health Toronto Region asked the Institute for Clinical Evaluative Sciences to look into health service utilization among adult patients who visited eight Toronto hospitals and completed the "Adult Socio-demographic Data Questionnaire" from April 2013 to July 2015. The findings highlight significant disparities in health status, health care access, and health care utilization for Black patients compared to White patients. Black patients had the highest or among the highest average emergency department visits, inpatient length of stay, alternative level of care days, repeat emergency department visits, and readmissions after hospital discharge. In addition, Black patients had among the lowest mental health and/or addictions related primary care visits and use of primary care visits after discharge from the hospital. This study's indicators were not specific to mental health and substance use health care, but highlight barriers that Black patients face in accessing other types of health care services in Toronto, which likely also exist for mental health and substance use health care. Looking specifically at patients from the Centre for Addictions and Mental Health (CAMH) included in the data set, 4.7 percent of CAMH patients were Black. Similar to the full data set, the results indicate considerable disparities in health status, health care access, and health care utilization for Black patients accessing services at CAMH, compared to some other racial groups and White patients. These results indicate challenges that Black patients with mental health and substance use conditions face in accessing health care services in Toronto.

The Toronto Mental Health and Addictions Access Point (Access Point), which provides coordinated access to mental health and addictions support services and supportive housing, shared data on referrals to service and service outcomes from April 1, 2022 to November 30, 2022. These data show that across all service and housing types, Black people are significantly over-represented in referrals compared to their percentage in the Toronto population. This includes referrals to mental health supportive housing, addictions supportive housing, mental health and justice supportive housing, intensive case management, and Assertive Community Treatment Teams. Moreover, a higher percentage of Black people are referred to services at younger ages compared to White people. The over-representation of Black people in referrals to these intensive support options may indicate that Black people experience more severe mental health and substance use outcomes. This could be the result of increased exposure to negative life stressors and environmental risk factors (e.g. trauma, stress, experiences of racism, violence), as well as structural barriers to accessing resources, including not receiving adequate upstream and preventative supports. That Black people are referred to mental health and justice supportive housing at a much higher rate than their representation in the general population once again emphasizes the disproportionate criminalization of Black people. Beyond referrals to services, the Access Point data did not show any disparities in service outcomes.

Ontario Health Toronto Region examined access to community mental health and substance use services based on admission and eligibility criteria related to target populations, client diagnoses, provisions and legal status. This was done to determine if some population sub-groups may be excluded from services. Based on analysis for the City

of Toronto as of August 2022, two significant gaps in services were noted:

- While just over fifty percent of services did not identify any specific target populations (i.e. they targeted the whole/general population), only two services specifically targeted African, Caribbean and Black people, which has implications for culturally appropriate care.

- The majority of services, including the two specifically targeting African, Caribbean and Black people, exclude people who are incarcerated. Furthermore, some services exclude people with other involvement in the criminal justice system, for example 11 percent of services exclude clients on federal parole, nine percent of services exclude clients with sentence condition, and nine percent of services exclude clients on bail, etc. These results may suggest a gap in the provision of mental health and substance use services for clients with legal issues, particularly those who are incarcerated. This may have a specific impact on African, Caribbean and Black people due to disproportionate criminalization.

Within Toronto, geographical gaps in services and eligibility criteria is an additional barrier to accessing services. Mapping conducted by Ontario Health Toronto Region shows that the majority of substance use and mental health services are located within the southern central part of the City of Toronto. A similar pattern is observed for opioid-related services. There are limited services in Etobicoke, North York, and Scarborough. These areas overlap with the High Priority Neighborhoods that have been identified by the province and Ontario Health Toronto Region and which have high concentrations of Black and other racialized populations. This may indicate inadequate access to substance use and mental health services for people who are Black in the areas in which they live.

In addition to geographic and eligibility barriers to care, members of the African, Caribbean and Black Decriminalization Working Group describe anti-Black racism compounded by stigma and discrimination against people who use drugs and fear of criminalization as limiting health care access. Barriers to accessing health services are a major challenge reported by Black people in Toronto, which contributes to poorer health outcomes. Many Black people have shared stories of explicit anti-Black racism and micro-aggressions when interacting with health service providers, experiences which contribute to people's mistrust of the health care system.[30]

All health services and health care providers should provide high quality, culturally safe, client-centred, trauma-informed care that is accessible to everyone, regardless of race or substance use history. In addition, there is a need for more Black-led health services and Black health care practitioners. While there are incredible Black-led health and social organizations operating across the city, such as the Black Coalition for AIDS Prevention, Taibu Community Health Centre, Black Physician's Association of Ontario and the Black Health Alliance, among others, there remain significant gaps in mental health and substance use related health care for African, Caribbean and Black people. Across the country, only two percent of physicians identify as Black, and only a few health agencies

[30] Black Health Alliance. No date. Perspectives on Health and Wellbeing in Black Communities in Toronto: Our Health, Our Way. Available at: https://blackhealthalliance.ca/wp-content/uploads/Perspectives-on-Health-and-Wellbeing-in-Black-Communities-in-Toronto-Our-Health-Our-Way.pdf.

are Black-led or Black-serving.[30] Without significant investment in creating services that are equitably accessible and representative, Black communities will continue to face barriers in accessing care, including for substance use, and as a result, continue to face negative health outcomes.

Toronto's Model of Decriminalizing Drugs for Personal Use: Recommendations to Support African, Caribbean and Black Communities

As Toronto shifts from a criminal justice approach to a public health approach to drugs, Toronto Public Health and Health Canada have the opportunity to be leaders in advancing health equity. In order to support equity within the Toronto Model of Decriminalization, the African, Caribbean and Black Decriminalization Working Group make the following recommendations for consideration by Toronto Public Health and Health Canada:

- **A model of decriminalization that encompasses the greatest number of people who use drugs, recognizing various use and purchasing patterns, as well as the variability of the unregulated drug market, and specifically:**
    - Rejects a small possession threshold that can be used to further criminalize African, Caribbean and Black populations and cause a net-widening effect, especially among racialized people.
    - Encourages minimizing police discretion in the decriminalization model and creating clear guidelines articulating what evidence directly constitutes trafficking/selling to increase transparency.
    - Recommends that youth also benefit from decriminalization, as interactions with the criminal justice system can be traumatic and life-altering, creating a vicious cycle of poverty and marginalization. All efforts should go into diverting youth from entering the criminal justice system through decriminalization, and by building up capacity in education, social programming, and employment opportunities.
    - Explore the disproportionate criminalization of African, Caribbean and Black people due to drug sharing and necessity trafficking and work towards extending decriminalization to those who share or sell drugs out of necessity to support their own drug use.
- **Police policies, training, and accountability practices that promote equitable access to decriminalization and avoid net-widening and other charges.** As indicated by the findings from the OHRC and the most recent internal investigation by Toronto Police Service, police bias has been a driving force in the overrepresentation of Black people in law enforcement interactions. In order to mitigate risks, Toronto's decriminalization model must include police-specific training and accountability measures through ongoing transparency to ensure that there is no implicit or explicit racial bias in the implementation of decriminalization.

African, Caribbean and Black people have experienced negative outcomes from a police response to mental health and substance use related crisis calls. Enhancing a non-police response to crisis calls should be prioritized, including through the expansion of the Toronto Community Crisis Service to all parts of the city.

- **Continuous monitoring and evaluation of the decriminalization model.** Rigorous monitoring and evaluation is needed to observe the effects of decriminalization on charges, interactions with police, drug use behaviours, and health outcomes. This monitoring and evaluation can be used to adjust protocols and policies in real time to have maximum benefits and support accountability to the public. Given disparities in criminalization for personal possession, such monitoring and evaluation needs to be attuned to reporting on these dynamics among Black and Indigenous groups to ensure equity. To create transparency and accountability, monitoring and evaluation must be publicly reported on a regular basis.

- **The opportunity to learn from cannabis legalization.** While Canada has been praised for the legalization of cannabis, until the recent passage of Bill C-5, little has been done to address historical harms and trauma inflicted on communities through its previous criminalization, including the impact of criminal records on economic opportunities and child custody. It will be important for the Toronto model to recommend the immediate expungement of criminal records of those convicted of possession offences — a tangible measure that would reduce stigma against people who use drugs and help to address historical discrimination against African, Caribbean and Black people.

- **Developing a health and social services system that is equitable for African, Caribbean and Black populations, including harm reduction and treatment services.** The systemic racism in health services compounded by stigma against people who use drugs has contributed to negative health outcomes, including mental health and substance use health for African, Caribbean and Black people.[31] Therefore, Toronto Public Health should work with Ontario Health and the Ministry of Health to ensure that the entire health system, including harm reduction and treatment services, is capable of meeting the needs of African, Caribbean and Black populations. Additionally, investments must be made to Black-led services and collaboration among agencies to enhance care for African, Caribbean and Black populations, including people who use drugs.

[31] Owusu-Bempah, Akwasi. 2021. Where Is the Fairness in Canadian Cannabis Legalization? Lessons to be Learned from the American Experience. Journal of Canadian Studies.52(2):395-418.