

File No.: 04-1000-20-2021-136

April 20, 2021

s.22(1)

Dear s.22(1)

**Re: Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")**

I am responding to your request of March 5, 2021 for:

**Record of the preliminary application submitted to Health Canada on March 1, 2021 outlining the "Vancouver Model" of drug decriminalization.**

All responsive records are attached.

Under section 52 of the Act, and within 30 business days of receipt of this letter, you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your FOI request by writing to: Office of the Information & Privacy Commissioner, [info@oipbc.ca](mailto:info@oipbc.ca) or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number (#04-1000-20-2021-136); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

[Signature on file]

**Barbara J. Van Fraassen, BA**  
**Director, Access to Information & Privacy**

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453 W. 12th Avenue Vancouver BC V5Y 1V4

\*If you have any questions, please email us at [foi@vancouver.ca](mailto:foi@vancouver.ca) and we will respond to you as soon as possible. Or you can call the FOI Case Manager at 604.871.6584.

Encl.

:dp

**From:** [Mochrie, Paul](#)  
**To:** [carolanne.chenard@canada.ca](mailto:carolanne.chenard@canada.ca); [Jennifer.saxe@canada.ca](mailto:Jennifer.saxe@canada.ca)  
**Cc:** [Stewart, K](#); [Singh, Sandra](#); [Patty.Daly@vch.ca](mailto:Patty.Daly@vch.ca); [Palmer, Adam](#)  
**Subject:** CDSA Exemption - Preliminary Submission  
**Date:** Monday, March 1, 2021 6:34:57 PM  
**Attachments:** [March 1 Submission - Preliminary Submission To Health Canada - Exemption Request 1.5.pdf](#)  
[image001.png](#)

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Jen Saxe  
Director General  
Controlled Substances Directorate  
Health Canada/Government of Canada

Carol Anne Chenard  
Director, Office of Controlled Substances  
Controlled Substances and Cannabis Branch  
Health Canada/Government of Canada

Dear Ms. Saxe and Ms. Chenard,

As you know, the Vancouver City Council has directed that a request be made for an exemption from the Controlled Drugs and Substances Act (CDSA) pursuant to section 56(1) that would decriminalize personal possession of illicit substances within the City of Vancouver. Your assistance in identifying some of the issues to address in a Submission has been most helpful.

To assist in our dialogue with you, we have prepared a Preliminary Submission to initiate our request for an exemption and outline the key components of a model for decriminalization in Vancouver. Our staff will be pleased to review this Submission at your upcoming meeting with them.

Thank-you for your consideration.

Best regards,  
Paul Mochrie

**Paul Mochrie** (he/him)  
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The City of Vancouver acknowledges that it is situated on the unceded traditional territories of the xʷməθkʷəy̓əm (Musqueam), Skwxwú7mesh (Squamish), and səliłwətał (Tsleil-Waututh) Nations.



**PRELIMINARY SUBMISSION TO HEALTH CANADA**

**EXEMPTION REQUEST**

Request for an exemption from the Controlled Drugs and Substances Act (CDSA) pursuant to section 56(1) that would decriminalize personal possession of illicit substances within the City of Vancouver

Version Date: March 1, 2021

## Background – The Local Context

The City of Vancouver pursuant to a motion by Council<sup>1</sup> is requesting that Health Canada provide a federal exemption from the Controlled Drugs and Substances Act (CDSA) pursuant to section 56(1) that would decriminalize personal possession of illicit substances within the City's boundaries. The City of Vancouver is seeking the section 56(1) exemption based on an urgent medical need and in the interest of the public. In April 2016, British Columbia's (BC) Provincial Health Officer declared a public health emergency due to rising rates of overdose deaths and widespread contamination of the illicit drug supply. Since then, there have been over 1,577 illicit drug toxicity deaths in Vancouver.

The statistics on overdose deaths in BC and Vancouver are tragic and call for urgent action. The BC Coroner's recent report provides detail on the situation in BC and Vancouver.<sup>2</sup> Some of the most striking statistics among many are:

- In 2020, there were 1,716 suspected illicit drug toxicity deaths in BC. This represents a 74% increase over the number of deaths seen in 2019 (984)
- The number of illicit drug toxicity deaths in 2020 equates to about 4.7 deaths per day
- There were 408 overdose deaths in Vancouver in 2020, the highest number of any year in the report
- Between 2010 – 2020, there were 2152 overdose deaths in Vancouver.
- In BC between 2017-2020, illicit fentanyl and analogues were detected in 86.8% of illicit drug toxicity deaths. Post-mortem toxicology results suggest that there has been a greater number of cases with extreme fentanyl concentrations in Apr-Dec 2020 compared with previous months.

Under a Vancouver citywide exemption from the offense of simple possession, individuals found to be in possession of controlled substances for personal use would not be subject to criminal sanctions within the municipal boundaries. If approved, all adults would be exempted from enforcement under the CDSA when found to be in possession of an established threshold personal supply of any illegal drug, where there is no drug trafficking involvement.

The City of Vancouver's move to decriminalize personal possession is not being made in isolation, but rather as a part of a comprehensive approach, which complements local and provincial investments in safe supply, treatment, harm reduction, outreach, and housing.

The need for this exemption has been well documented in numerous reports and studies. Substance use is best addressed as a health issue, rather than a criminal justice issue. Criminalization has terrible consequences for individuals, families, the community, and the economy.

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<sup>1</sup> <https://council.vancouver.ca/20201125/documents/cfsc6.pdf>

<sup>2</sup> <https://www2.gov.bc.ca/assets/gov/birth-adoption-death-marriage-and-divorce/deaths/coroners-service/statistical/illicit-drug.pdf>

Most recently, the British Columbia Provincial Health Officer issued a report<sup>3</sup> that lays out the compelling need to decriminalize substance use. The PHO Report notes that there are over 30 jurisdictions pursuing approaches to decriminalization.

The report states:

Immediate provincial action is warranted, and I recommend that the Province of BC urgently move to decriminalize people who possess controlled substances for personal use. This is an important additional step to stem the tide of unprecedented deaths.

The time for decriminalization is now. There is growing recognition that decriminalization is necessary, and a concerted effort is needed to move forward. The City of Vancouver is prepared to provide leadership in developing a decriminalization model.

The City of Vancouver is in a unique position to provide leadership in decriminalization as evidenced by the following.

- Widespread support within Vancouver for decriminalization from the police, civil society organizations, First Nations, the public and people who use drugs (PWUD) themselves. A recently completed public consultation identified considerable support for decriminalization.
- A history of partnership with the Federal and Provincial governments, Vancouver Coastal Health, the Vancouver Police Department, and community organizations in addressing the issues of mental health and addictions. This is described in the following section of this submission.
- There has been expansion of a comprehensive and innovative range of mental health and addictions services funded by the Province, designed, and delivered by Vancouver Coastal Health that will support the changes required by decriminalization. More detail is provided on this in the description of the possible elements of a decriminalization framework for Vancouver.
- Vancouver has successful experience with the use of an exemption in the case of Canada's first safe consumption site. This approach is now widely accepted across Canada.
- Vancouver benefits from an established substance use research infrastructure that is ideally positioned to evaluate innovative public health initiatives like drug decriminalization. If appropriately funded, research evaluations from the Vancouver setting could be used to inform other jurisdictions.

### **Vancouver's Public Health Approach to Mental Health and Addictions**

The many initiatives around the world to decriminalize personal use of substances is founded on the now widely accepted view that problematic substance use is a health issue and not one best addressed by policing and the criminal justice system (CJS). A public health approach requires:

- Addressing the upstream factors that affect health (the social determinants of health) including the historic and on-going impacts of colonization.

<sup>3</sup> <https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/special-reports/stopping-the-harm-report.pdf>

- Focusing on policy strategies that reduce health inequities among key populations including Black, Indigenous and People of Colour.
- Increasing efforts in health promotion, illness prevention and harm reduction
- Adopting intersectoral policies that create a comprehensive approach to addressing the complexity of social problems

The City of Vancouver has embraced a public health approach in partnership with Vancouver Coastal Health through such initiatives as the Healthy City Strategy – the City’s social sustainability plan that applies a health equity lens to factors affecting the well-being of the citizens of Vancouver.

Programs and more detail on this long-standing initiative can be found on the City of Vancouver website.

Vancouver Coastal Health is a leader in addressing mental health and addictions within the City of Vancouver. Working closely with the Provincial Ministry of Mental Health and Addictions, they have a wide range of wrap around services that will support a Vancouver decriminalization model especially a diversion pathway that is an alternative to criminal prosecution. The relevant VCH services are documented later in this submission.

The longstanding commitment of the City of Vancouver to a health approach to substance use policy is evident in some of the major initiatives undertaken in recent years.

Two decades ago, the City approved the *Four Pillars Framework for Action: A Four Pillar Approach to Vancouver’s Drug Problems* – a guiding document that has shaped the City’s drug policy now known as the City’s Four Pillars Drug Strategy, including a focus on harm reduction, prevention, treatment, and enforcement. The Strategy was prompted by a heroin crisis in Vancouver in the 1990s that caused hundreds of people to overdose. Former Mayor Philip Owen first introduced it at Vancouver City Council. In April 2001, Council officially adopted the revised framework and policy recommendations authored by Donald MacPherson, Executive Director of the Canadian Drug Policy Coalition after considerable consultation and jurisdictional review (see here for engagement and consultation summary report: <https://council.vancouver.ca/010424/rr1-appa.htm>). The Strategy recognizes the limitations of enforcing laws against possession of small quantities of illicit substances, and marked a notable shift away from substance use as a criminal issue and instead as a health issue.

In 2005, Council approved the long-term plan, *Preventing Harm from Psychoactive Substance Use* (<http://druglibrary.wordpress.stir.ac.uk/files/2017/07/DrugPolicy.pdf>), including the recommendation that the Federal Government review Canada’s laws around illegal drugs and consider alternatives to prohibition.

In 2010, Council endorsed the Vienna Declaration, a document that focuses on the harms of prohibition and calls on all governments to take an evidence-based approach to drug use and to decriminalize drug users (<http://viennadeclaration.com/the-declaration>).

In subsequent terms, Mayor and Council have supported and continued to update the Four Pillars Strategy to reflect current and emerging community needs. In 2018, Mayor Kennedy Stewart initiated the *Mayor’s Overdose Emergency Task Force* in partnership with Vancouver Coastal Health and the Vancouver Community Action Team, funded under the Province of BC Overdose Emergency Response

Centre (OERC). Over 30 recommendations reflected a health approach to substance use in the context of an overdose crisis due to the poisoned drug supply.

(<https://council.vancouver.ca/20181220/documents/spec20181220min.pdf>)

In 2019, Council directed staff to investigate and report back on the possibility of implementing drug policy initiatives that have proven to be successful in Portugal, and that align with the Four Pillars Strategy, including the decriminalization of illicit drugs. Throughout the last two years, health representatives from the Province have presented to Council on the negative impacts of stigma and the urgency surrounding a different regulatory approach to illegal drugs.

The Vancouver Police Department (VPD) has a long history of being a leading and progressive police agency on substance use. In the early 2000s, following the City's adoption of the Four Pillar Strategy, the VPD revised its policies and procedures related to substance use. In 2003, the VPD was a supportive partner in the opening of the first sanctioned supervised drug injection site in North America. Then, in 2006, the VPD became the first police agency in Canada to cease attending overdose calls as a matter of routine – respecting the potential barrier to accessing health services that can result from having police attend every overdose incident.

In 2017, in response to the emergence of the opioid crisis, the VPD publically advocated for expanded opioid assisted therapy programs and additional investment in addiction treatment in the report *The Need for Treatment on Demand*<sup>4</sup>. Following up on this report, in 2019, the VPD released its report *A Journey to Hope*<sup>5</sup>, which documents the VPD's progressive actions and its work with health and government partners to combat the harms caused by the ongoing opioid crisis.

### **The Harms and Benefits of Decriminalization**

It is beyond the remit of this submission to summarize the many studies and reports that document the harms associated with criminalization and the positive impacts of decriminalization. Some easily accessible reports include those produced by the HIV Legal Network<sup>6</sup>, Toronto Public Health<sup>7</sup><sup>8</sup>, the Canadian Association of Chiefs of Police<sup>9</sup> and the aforementioned report by BC's Provincial Health Officer and the Lancet Commission *Public health and international drug policy*<sup>10</sup>.

Evidence-based studies have concluded that the criminalization of simple drug possession:

- Creates negative beliefs about people who use drugs

<sup>4</sup> <https://vancouver.ca/police/assets/pdf/reports-policies/opioid-crisis.pdf>

<sup>5</sup> <https://vancouver.ca/police/assets/pdf/VPD-Opioid-Crisis-Report.pdf>

<sup>6</sup> <http://www.hivlegalnetwork.ca/site/decriminalizing-people-who-use-drugs-a-primer-for-municipal-and-provincial-governments/?lang=en>

<sup>7</sup> <https://www.toronto.ca/wp-content/uploads/2018/05/9105-A-Public-Health-Approach-to-Drugs-Discussion-Paper.pdf>

<sup>8</sup> <https://www.toronto.ca/wp-content/uploads/2018/05/9888-Harms-Associated-with-Drug-Laws.pdf>

<sup>9</sup> [https://www.cacp.ca/index.html?asst\\_id=2189](https://www.cacp.ca/index.html?asst_id=2189)

<sup>10</sup> [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)00619-X/fulltext#articleInformation](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)00619-X/fulltext#articleInformation)

- Forces people to use drugs in isolation and in unsafe places without safety precautions or using supervised consumption sites. People who are imprisoned for drug offences have also been found to start injecting drugs at a younger age
- Results in criminal records with long lasting effects on employment and housing opportunities
- Increases high risk practices leading to increases in rates of infections and disease
- Creates illegal drug markets and an unsafe supply of drugs. The unregulated, illegal market has produced stronger, more harmful drugs for higher profits
- Creates huge costs associated with policing, courts, and prisons to enforce drug laws
- Some groups of people who use drugs experience more negative impacts from our drug laws than others. These include people who are economically insecure and/or homeless, people with mental health and/or substance use issues, youth, children of parents imprisoned for drug crimes, Indigenous people, racialized groups, and women.

Research highlighted in various reports also identifies some benefits of decriminalization efforts internationally including:

- Reductions in substance use
- Increases in people accessing substance use treatment and engaging in health and social services
- Reduction in HIV and HCV in the population
- Reductions in the costs to the criminal justice system
- Better police community relations.

The international evidence provides strong support to undertake drug decriminalization.

### Consultation and Public Engagement

Policies to lessen the impact of the criminalization of substance use have been introduced over time but this fragmented approach is insufficient to address the underlying harms associated with criminalization. Public consultations show that there is considerable support within all sectors of society to decriminalize the simple possession of drugs for personal use and thus reduce the many demonstrated harms of this approach to dealing with a health crisis. A recent poll conducted by Angus Reid<sup>11</sup> showed that nearly 60% of Canadians support decriminalization.

The City of Vancouver believes that robust public engagement is critical when developing and implementing new public policy. The City's long history of public engagement in its substance use policy is summarized earlier in this submission.

To effectively implement an approach to decriminalize drug possession for personal use, the City of Vancouver is committed to continuing its proactive public consultation and engagement. **Some aspects of the model for decriminalization discussed in this submission are presented to facilitate discussion. They require further technical work and engagement with key stakeholders.** Successful implementation of the Section 56 Exemption will also require a robust communication and education

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<sup>11</sup> <https://angusreid.org/opioid-crisis-covid/>

strategy to ensure those most affected by the exemption understand what it means for them. An initial framework for public communication and engagement is noted below.

- Inform key communities of interest about the approach and its implementation
- Solicit input into the overall approach from groups and organizations representing those most affected
- Meaningfully engage with key informants on technical aspects of the framework and its implementation

The City of Vancouver is well positioned to quickly implement an engagement process. It already has in place working groups to support the exemption request and has the Mayor's Overdose Emergency Task Force (Community Action Team) as a forum involving the full range of interests. This forum has already provided input and can be drawn upon quickly going forward with implementation planning.

### **Objectives and Potential Impacts of Vancouver Model for Decriminalization**

Criminalization contributes to the marginalization and stigmatization of people who use drugs, which in turn makes it difficult to engage them in harm reduction strategies, treatment and other health and social service supports. This significantly increases the risks to the individual and contributes to the downstream health and social problems associated with the use of drugs. A central goal of decriminalization is to reduce the risks and harms that are associated with the marginalization and stigmatization of people who use drugs (PWUD).

It must be stressed that decriminalization alone will not address all the current harms experienced by people who use drugs and our communities. The causes of problematic substance use are complex and require a comprehensive mix of policies and programs across sectors of society. As such, the expectations around the short-term impacts of decriminalization must be tempered and recognize that many of the goals of decriminalization are long term and highly dependent on a multitude of other factors such as the availability of a safe drug supply.

There are documented models of decriminalization that identify a wide range of potential impacts. These will help shape the goal setting and performance measurement of a Vancouver model. For example, the BC Provincial Health Officer report focused on the Portuguese model and concluded that:

Evidence has shown that this drug policy model, along with other interventions (e.g., harm reduction, prevention, enforcement, and treatment strategies) has led to an increase in treatment uptake, a reduction in drug-related deaths, and importantly, no increase in drug use rates.

The Portuguese model is just one approach and is not necessarily transferable to Vancouver. Jurisdictions across the world are working on alternatives to the criminalization of people who use drugs. A recent review by Hughes et al <sup>12</sup> compared the range of regulatory strategies being pursued internationally. They derived six overarching models to describe these efforts: depenalization, de facto

<sup>12</sup> <http://harmreductioneurasia.org/wp-content/uploads/2019/07/Hughes-et-al-ISSDP-2019-Models-for-the-decriminalisation-depenalisation-and-diversion-of-illicit-drug-possession-FINAL.pdf>

police diversion, de jure police diversion, decriminalisation with civil penalties, decriminalisation with targeted health/social referrals and decriminalisation with no sanctions.

Their analysis developed logic models for each and concluded that each had different advantages and disadvantages.

For example, depenalization is the easiest reform to adopt, but it can lead to justice by geography/demography (limiting access to specific sub-groups). In contrast, decriminalisation with targeted health/social referrals requires more inputs (e.g. legal change and treatment supports), but it is associated with reductions in the burden on the criminal justice system as well as in drug-related health and social harms. (p 15)

Logic models are a way of setting reasonable expectations of the relationship between an intervention and the potential short-term and long-term outcomes of the intervention. A sample logic model shown below has been constructed for a Vancouver model for decriminalization.

Purpose Statement: End the criminalization of people who use drugs for simple possession recognizing that drug use can be potentially harmful				
INPUTS	OUTPUTS	OUTCOMES	MID-TERM IMPACTS	LONGER TERM IMPACTS
Section 56(1) Exemption	Schedule of threshold amounts	Reduction in CJS interactions	Increased use of police resources on other priorities	Reduction in overdose deaths
Set minimum threshold	Guidelines and training	Increase in referrals to health care system	Reduction in drug associated public disorder	Reduced stigma
Support front line decision-makers	Referral resources	Increase in use of safe supply options		Reduced problematic substance abuse in population
Provide alternate (i.e. diversion) pathway	Point of access for health care support	Reduction in street level violence		Improved integration of PWUD in social and economic spheres
	Evaluation	Reduction in property crime		

## Design Principles for the Vancouver Model

A model for decriminalization will be guided by key principles that reflect the goals and objectives for the initiative as well as the literature on policies targeting drug overdose and drug dependence.

1. A public health approach is the foundation for regulation, policies and programs.
2. Evidence and best practices must guide the design of the framework recognizing there are limited experiences with the implementation of decriminalization approaches.
3. Decriminalization is only one part of a comprehensive approach to addressing the overdose crisis and to be successful must be carried out in conjunction with other public health and harm reduction initiatives such as safe supply programs and access to rapid evidence-based substance use treatments.
4. The scope, complexity and intransigence of the problem requires bold and creative approaches.
5. The framework must be tailored to the characteristics of the populations and issues in Vancouver.
6. There is a continued commitment to equity and reconciliation with Indigenous Peoples.
7. Those most affected must be engaged in defining the solutions.
8. Given there are risks associated with any innovation, risk mitigation must be incorporated in the model.
9. Evaluation and monitoring are an important component of any solution to inform policy development and mitigate risks.

## Components of a Decriminalization Model

The British Columbia PHO Report described three main components to any decriminalization approach - personal use threshold, penalties and decision-making - and constructed a sample alternative pathway for managing personal use of illegal substances. Based on consultation to date, an approach to these three aspects of a decriminalization model is presented for purposes of this submission. **It must be stressed that the details of this model are under further discussion and work is underway to develop components of the model.**

### *Threshold*

An essential aspect of any decriminalization model is the determination of an appropriate personal use threshold. The British Columbia PHO Report reviewed the Portuguese model and concluded that:

There is no ideal threshold for a given substance —what is a typical quantity for personal use varies by the substance and the person—but thresholds that are too low have not been found to be impactful. Experience in Mexico, for example, where threshold amounts were set very low, resulted in increased numbers of people being charged for trafficking rather than simple possession. Experience from Portugal has shown that a set objective amount for each substance should be determined to remove the subjectivity associated with interpretation of more ambiguous terms.

As noted by the PHO, there is no ideal threshold for personal use and setting the amount too low will undermine the goal of decriminalization and potentially lead to risks and harms to PWUDs. In

developing the Vancouver model, threshold amounts from other jurisdictions will not be adopted. The situation related to thresholds in Canada will be different than in other jurisdictions because, for example, trafficking charges in Canada are not tied solely to amount, rather behaviour and presence of other indicators of sales/distribution. An evidence-based approach is required that is:

- Based on science and research evidence and not opinion
- Reflects the actual personal use amounts in Vancouver and
- Not overly restrictive such that it creates harms identified in experiences with a low threshold.

As well, the range of drugs covered by the thresholds must be broad as many drugs are in use and there is poly drug use among many PWUDs. The BC Coroner's Report provides some indication of the range of substances as reflected in the top drugs identified in illicit drug toxicity deaths.

Drug	Percentage Identified
Illicit fentanyl & analogues	86
Cocaine	49
Methamphetamine/amphetamine	35.2
Other opioids	29.8
Ethyl alcohol	28.1
Benzodiazepines	4.3
Other stimulants	2.7

Preliminary work on threshold development is underway.

#### *Decision-making and Diversion Pathway*

A key component of any decriminalization approach is the support for decision-making. Decriminalization models envision a proactive diversion of individuals away from the criminal justice system if they are found to possess an amount of illegal substance below the threshold. In some models such as the Portuguese model, there is also the possibility of a mandatory review of the case and administrative penalties (e.g., fines) or other sanctions outside the criminal justice system. Of course, referral to health programming is also important for those using above the threshold who are charged and placed in the criminal justice system.

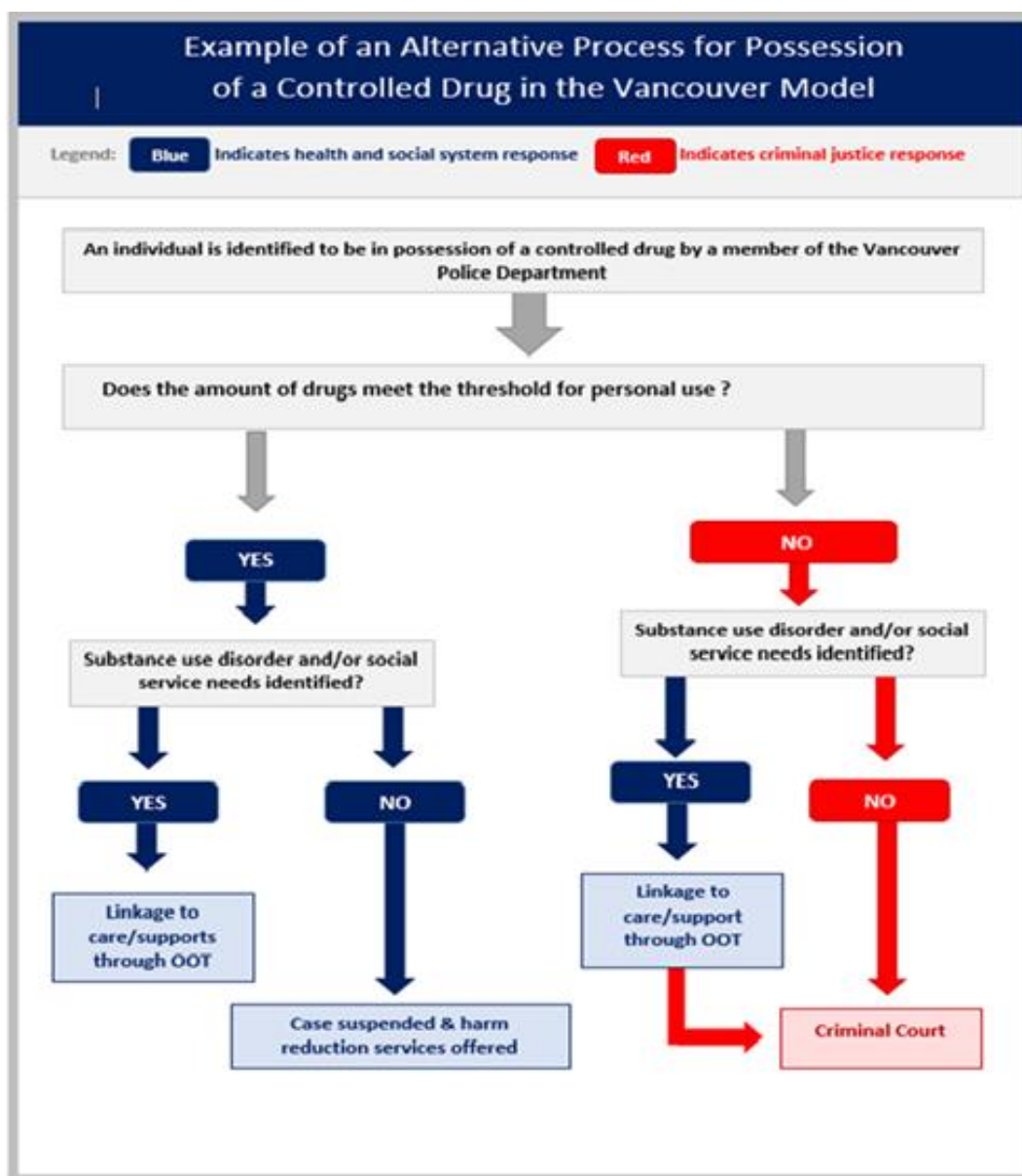
The Vancouver model will encompass a well-supported diversion pathway that is still under development. Police will be required to determine if an individual is in possession for personal use at the scene. At this point in the development of the pathway, it is not envisioned that administrative penalties or sanctions will be put in place to replace criminal charges for those in possession below the threshold but not involved in drug trafficking. Voluntary referrals will be made to Vancouver Coastal Health's Overdose Outreach Team (OOT) at the scene. This will help reduce the stigma associated with the personal use of substances and increase trust in the health orientation of the approach. This is especially important for Indigenous people to promote cultural safety (as noted further in the submission, a separate pathway for Indigenous people will be explored). The Crown and police, in consultation with VCH's OOT, can also reassess trafficking cases that are referred to the criminal court located at 222 Main Street and if deemed appropriate direct those individuals to the support services associated with the diversion pathway.

The Vancouver model will support police in the diversion process. Referral materials will be available and OOT members will regularly brief frontline police officers at morning and evening shift parades regarding the OOT's services. Police will be provided with contact cards for OOT. Whenever possible the OOT workers will attempt to do a 'warm hand-over' (i.e., they will try to meet officers on the scene for immediate referrals). To help accomplish this, Vancouver Coastal Health intends to add a new OOT position that will operate out of the provincial courthouse at 222 main. Those workers would be available exclusively to the VPD and Justice stakeholders. If a referral is made after hours, OOT will follow up with the individual the following day. The VPD is concerned about speed of referral, so Vancouver Coastal Health is committed to reducing follow up time as much as possible.

As noted, at the time of intervention, the police will provide information on the access point for service and if they deem it appropriate (e.g., overdose; PWUD request) make a referral to the OOT team. Police will also be empowered to collect some basic information to assist in the referral - such as the amount of drugs used for personal consumption and basic personal information to complete a referral. The referral will be sent to the OOT. There will be no requirement for the individual to act on the referral; however, the information from the referral forms sent to the OOT will be used to continuously evaluate the effectiveness of the diversion model including:

- Validating the personal threshold estimates established for the decriminalization model
- Monitoring the success in referral uptake and the increase in contact between PWUDs and the health care system.

A graphic of a process for individuals found to be in possession of a federally controlled substance is shown below. **Again, it must be emphasized this pathway is intended for illustrative purposes and for the basis of further exploration with Health Canada and Vancouver stakeholders.**



As within any new approach, the Vancouver Police Department in conjunction with its partners will develop the necessary training and policy guidelines to support the diversion process once it is fully designed. As part of the further development of the model, simulations of the new pathway can be trialled.

#### *Diversion Pathway – Health System Supports*

As noted, once a decision has been made that an individual is in possession of drugs within the threshold for personal use, the alternative pathway will be key to successfully achieving the goals of decriminalization. This pathway moves the emphasis on the intervention from a criminal justice response to a health response.

Vancouver Coastal Health is committed to supporting the exemption by offering a simple, convenient, and timely substance use support referral pathway. Justice system stakeholders will be able to refer individuals found to be in personal possession of controlled substances to OOT. OOT includes social workers and outreach workers who connect people who are at risk of overdose to care. They can assist in navigation to appropriate medical and social services, support access to Opioid Agonist Treatments (including injectable Opioid Agonist Treatments) and safer supply and offer overdose prevention education.

At present, the most common referral sources for OOT are Emergency Departments, Vancouver Fire and Rescue Services, Vancouver Police Department, members of the public, community and acute care-based substance use services, housing and other community based social service providers, and primary care providers. The OOT has recently increased its staffing complement and projections of demand for service due to a new pathway will be undertaken to assess future impact on the referral services from justice system partners should the exemption be granted.

In addition to the OOT, VCH is expanding its substance use support services. The new services to support an alternative pathway to criminal prosecution include:

- Increased capacity in VCH and fee-for-service primary care by training more GPs to treat opioid use disorder and alcohol use disorder in Vancouver
- Increased capacity in Rapid Access Addiction Services, including the RAAC at Vancouver's St. Paul's Hospital and Downtown Eastside Connections Clinic
- Increase prescriber support via the BC Centre on Substance Use's 24/7 Addiction Medicine Clinician Support Line
- Increased capacity of local Emergency Departments to screen and initiate treatment for substance use disorders
- Addition of new Urgent Primary Care Centres in Vancouver, all of which provide substance use treatment
- Creation of the Centre for Excellence in HIV/AIDS' Hope to Health Centre which has increased access to primary care and addiction medicine in Vancouver's inner city
- A new Youth Intensive Case Management Team which, like OOT, connects young people to treatment and supports them to stay engaged in care
- New Vancouver Withdrawal Management Centre (opening 2024) which will dramatically increase local access to detox beds and to substance use treatment
- New expansion of scope for Registered Nurses and RPNs practicing in BC that enables them to prescribe Sub Oxone (now) and other OAT meds (coming in March 2021), which increases the local health system's treatment capacity
- VCH in partnership with the PHS Community Services Society and BCCSU is set to launch SAFER, a 4-year pilot program funded by Health Canada (July 2020-24). The program, located in Vancouver's Downtown Eastside, will provide pharmaceutical alternatives to clients who are vulnerable to the risks associated with the toxic drug supply.

The availability of the Overdose Outreach Team and the expanded services will help assure the referral model that will be introduced is resourced to support the Vancouver model of decriminalization.

### **Cultural Safety**

Health inequities are particularly pronounced for Indigenous populations due to the impact of colonization and racism. Indigenous people are especially over-represented in the Criminal Justice System and the overdose crisis has been especially problematic for this community. The health care system is also focussing on increasing cultural safety for Indigenous people because of the systemic racism that exists.

Indigenous populations have a justified mistrust of the health and justice systems. As such, a working session with the Indigenous community is planned as part of the on-going engagement strategy. This will help ensure an appropriate cultural approach to the referral pathway that is developed. Discussions will also focus on defining and resourcing service components within the Indigenous service sector.

### **Risks and Risk Mitigation**

Innovation like the proposed Vancouver model for decriminalization is not without risks. Some of these and the current thinking on risk mitigation are described below. Further engagement is planned to expand on the risk mitigation approaches.

1. Youth. The scope of this request for a Section 56 exemption is for adults. Within the implementation planning underway, the City of Vancouver and its partners will work with the Ministry of Child and Family Development and the Office of the Representative for Children to better understand the impacts of the exemption on youth.
2. Demand for health services. There is concern that decriminalization will increase the demand for health services with a concomitant pressure on budgets. The increase in health care utilization is an intended and positive aspect of decriminalization; however, if demand cannot be met those seeking service may not receive the range of services identified in the proposed model. This is problematic but even without additional services there are benefits to the destigmatizing of PWUDs and the removal of criminal sanctions for simple possession. Fortunately, Vancouver is in a favourable position to mitigate this risk as Vancouver Coastal Health, with funding support from the provincial government, has significantly increased its capacity in the addictions portfolio.
3. Confiscation of drugs and harm reduction supplies. Concerns have been expressed that drugs and the supplies needed for personal use (e.g., needles) may be confiscated even though the person using drugs will not be criminally charged. In the proposed model, this would not occur as it would be part of possession and not subject to seizure. Police training would clearly define threshold limits to incorporate supplies. All stakeholders are aware that confiscation has the potential to leave individuals in a vulnerable situation requiring them to quickly seek out potentially unsafe replacement drugs or supplies (e.g., sharing needles) which may involve

engaging in criminal activity to purchase replacement drugs. The alternative referral pathway mitigates the need for any confiscation as it provides for immediate referrals to the Overdose Outreach Team who will respond as appropriate.

4. Charge substitution. There is a concern that the elimination of charges for possession may lead to an increase in trafficking charges brought by police. The proposed approach entails the application of threshold amounts as *floors* vs. *ceilings*. This allows police to have discretion when encountering drug possession amounts above the thresholds. Anyone found with an amount over the Vancouver limit (a floor limit) is not subject to a new/higher charge; just as is the case currently, the evidence to support a charge would depend on all the factors present, with the amount of drugs present being just one of many factors.
5. Incentivizing people who use substances to re-locate to Vancouver. There is currently no evidence that decriminalization will encourage PWUDs to relocate to Vancouver to use drugs. The experience with the introduction of the Vancouver safe injection site - Onsite - is informative in this regard. As well, the VPD current experience with reduced enforcement can help inform this issue. A diversion model can provide that referral forms record the municipal home location of the person referred. As part of the evaluation process, any increase in referrals for people living outside Vancouver can be examined. It is also not expected that people will travel to Vancouver to access the services available as part of the diversion pathway. Vancouver Coastal Health and other health authorities in the Province have greatly expanded these types of services across the Province.
6. Trafficking. There is a concern that decriminalization of amounts for personal use will enable drug dealing. There is no evidence this will occur. Data on trafficking over time will be monitored to assess the impact of decriminalization.
7. Homeless Population. This vulnerable population often encounters the criminal justice system. The referral pathway will need to ensure the route responds to their particular needs.

## Evaluation and Research

Evidence from other jurisdictions demonstrates that removing criminal sanctions for personal drug possession did not increase levels of other drug use (cocaine, amphetamine, MDMA, and heroin), and that punitive drug laws and rates of drug use are not correlated. Because other jurisdictions have different cultures, social supports and unique characteristics, research on the application of decriminalization in local contexts is critical. A real-time evaluation of any exemption model will assess impacts and risks.

It will be important that the exemption come in tandem with federal funding for evaluation to inform implementation. Health Canada could explore issuing evaluation funding through its Substance Use and Addiction Program (SUAP) or through a directed grant from CIHR to the BC Node of CRISM, which focuses on substance use research.

A well-funded, mixed-methods approach to evaluation will be important in order to capture the benefits that decriminalization may produce across government sectors and for the lives of people who use drugs. As noted, it will also help to identify any unintended consequences so the City of Vancouver and its health and policing partners can adjust the approach where necessary. Evaluation should include collaborations by multi-disciplinary health economists, criminologists, addiction and substance use epidemiologists and clinician-scientists, qualitative and community ethnographic researchers. It should also engage directly PWUD in the design and execution.

The logic model presented earlier also provides an indication of performance measures that will be developed to evaluate the model over time.

### **Conclusion**

A model for decriminalization in Vancouver will be an evidence-based approach to benefit people who use drugs, a wide variety of stakeholders and the Vancouver community overall. Although there will be risks associated with implementation, the City of Vancouver is committed to creating the necessary implementation plan with its partners to monitor these risks and address them. As Vancouver has demonstrated in the past, it is experienced and prepared to initiate a decriminalization model that is so desperately needed to address the overdose crisis facing not just Vancouver but the Province and Canada.