

Locked Up, Left Out:
How the Justice System Perpetuates a Cycle of Entrapment for Individuals with Substance
Use Disorders

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Abstract

Substance use disorders (“SUDs”) are complex biopsychosocial conditions influenced by biological, psychological, and social factors. Yet Canada's historical response has relied heavily on punitive legal measures that criminalize individuals rather than addressing the root causes of addiction. This paper critically examines how criminalization perpetuates cycles of recidivism and social inequities for individuals with SUDs, particularly within British Columbia. Through case studies and policy analysis—including the *Insite* decision, Bill C-5, and BC's Decriminalization Pilot Program—this paper demonstrates how harm reduction strategies represent a shift toward a public health-oriented model grounded in evidence-based and rights-focused approaches. While significant progress has been made toward decriminalization and public health reform, persistent barriers remain. The paper concludes by emphasizing the need for continued legislative reform and sustained advocacy from community organizations to ensure that individuals with SUDs are treated through health and social policy rather than the criminal justice system.

Keywords

1. Substance Use Disorders
2. Harm Reduction
3. Criminalization
4. Public Health Law
5. Drug Policy Reform
6. Access to Justice
7. Human Rights
8. British Columbia

Introduction

Substance use disorders (“SUDs”) stem from a complex interplay of biological, psychological, and social factors, often bringing individuals into contact with the justice system. Unfortunately, most individuals who grapple with SUDs often encounter the justice system by getting caught up in either drug-related crimes, violent crimes, and/or property crimes due to their addiction. Historically, the strategies employed by most nations, including Canada, to deal with crimes related to SUDs were focused on punishment.¹ These traditional punitive measures often fail to address the underlying issues that drive substance use and can exacerbate existing social inequalities.

The United Nation Member States have recently changed their mentality on this subject from a criminal justice approach to a public health-oriented approach.² The assertion that criminal sanctions are ineffective at preventing or addressing SUDs has been verified by scientific evidence produced by the United Nations. Research demonstrates that drug policies grounded in public health principles are more effective at reducing the health and safety risks associated with substance use while supporting the rights and dignity of those affected.³ Therefore, public health approaches, such as harm reduction policies, can offer viable alternatives by prioritizing health and social well-being over the traditional criminal approach of punishment.

This recent shift from punitive to public health-oriented approaches necessitates a critical evaluation of current legal frameworks and explore how the implementation of health policies, such as harm reduction strategies, can promote a more just and effective response to SUDs.

¹ N. D. Volkow et al. “Drug use disorders: impact of a public health rather than a criminal justice approach” (2017) 16:2 *World Psychology* at p 213.

² *Ibid.*

³ *Ibid.*

Purpose and Scope of the Paper

This paper critically examines how Canada's reliance on the criminalization of substance use—especially within British Columbia—poses barriers for individuals with SUDs by failing to address the root causes of their condition and instead reinforcing a cycle of entrapment within the criminal justice system. Rather than treating SUDs as criminal acts, this analysis reveals they are best understood as complex biopsychosocial conditions that demand a public health, rather than punitive, approach. By highlighting the complex biological, psychological, and social factors that shape SUDs, the paper demonstrates that current legal frameworks disregard the underlying determinants of substance use and, in doing so, exacerbate vulnerabilities, impede recovery, and perpetuate repeated justice system involvement.

To build this case, the paper first provides an overview of the multidimensional nature of SUDs, highlighting how psychological, biological, and social factors shape patterns of substance use. It then traces the historical and current legal responses to substance use in Canada, demonstrating how criminalization has perpetuated the *revolving door* phenomenon—particularly in Vancouver—where individuals are repeatedly incarcerated without meaningful support for underlying health needs. The analysis then turns to the ineffectiveness of criminalization, illustrating how incarceration fails to reduce substance use or prevent reoffending. This section is followed by an examination of public safety concerns and community impacts, situating them within the broader consequences of policies that prioritize punishment over health-oriented interventions.

The final portion of the paper considers recent policy and legislative developments in Canada, beginning with federal reforms such as Bill C-5 and provincial initiatives including British Columbia's Decriminalization Pilot Program. It then analyzes harm reduction

measures—most notably supervised consumption sites like Insite—to evaluate how these approaches address the shortcomings of punitive models. The section also highlights the important role of advocacy organizations in advancing evidence-based, rights-focused reforms. Together, these discussions set the foundation for understanding why a sustained shift toward health-oriented legal strategies is essential for addressing SUDs in Canada.

Background

It is important to understand how biological, psychological, and social factors influence the development of SUDs, as these disorders are often misunderstood in the justice system; which leads to ineffective legal and policy responses. By examining these factors that contribute to substance use, we can gain insight into why individuals develop SUDs, as well as the underlying reasons that may lead them to become entangled in the criminal justice system. This understanding is essential for evaluating how the criminal justice system responds to substance use, particularly in terms of criminalization. A clearer perspective on SUDs allows for a more informative discussion about the effectiveness of the current Canadian legal frameworks that address this issue. The following section will first explore the nature of SUDs and then examine the historical Canadian legal implications of substance use within the criminal justice system.

Understanding Substance Use Disorders

SUDs are not merely a result of personal choice or moral failing, they are complex biopsychosocial disorders influenced by a combination of biological, psychological, and social factors. Numerous studies have explored how these interrelated factors contribute to the onset of SUDs.

Biological Factors

From a biological research standpoint on SUDs, epigenetic dynamics have been examined to understand how environmental exposures can impact gene expression. Research has demonstrated that certain brain regions experience DNA epigenetic changes following drug exposure.⁴ A recent study indicated that substance use influences the expression and activity of DNA epigenetic machinery, particularly within the brain areas associated with reward circuitry.⁵ Consequently, there is increasing evidence that the vulnerability to addiction may have an epigenetic basis, as certain addiction susceptibility phenotypes are linked to distinct DNA epigenetic signatures in the brain.⁶ These findings suggest that addiction vulnerability may be partially rooted in epigenetic mechanisms. This highlights the complex interplay between genetic predisposition and environmental influences in the development of SUDs.

Psychological Factors

Under the Diagnostic and Statistical Manual of Mental Disorders Fifth Edition (“DSM-5”), SUDs are part of a class of disorders, and these classes are not fully distinct from one and other.⁷ The unifying characteristic of these classes is that they involve compulsion use of substances which directly stimulates the brain’s reward system. This system is crucial for reinforcing behaviours and facilitating memory formation.⁸ This intense activation can be so powerful that it leads individuals to neglect normal activities.⁹ Therefore, individuals with SUDs exhibit a pronounced focus, often referred to as an addiction, on consuming specific

⁴ G. Kaplan et al., “DNA Epigenetics in Addiction Susceptibility” (2022) 13:806685 *Frontiers in Genetics* at p 5.

⁵ *Ibid* at p 11.

⁶ *Ibid.*

⁷ American Psychiatric Association “Diagnostic and statistical manual of mental disorders” (5th ed.) (2013) at p 227.

⁸ *Ibid.*

⁹ *Ibid.*

substances.¹⁰ This excessive preoccupation can significantly impair their ability to function in daily life.¹¹

A diagnosis often requires a thorough evaluation which includes an assessment by a psychiatrist.¹² The DSM-5 sets out the current criteria for a diagnosis. It is noteworthy that the release of the DSM-5 included several changes in the diagnostic criteria. Notably, the previous edition included “recurrent substance-related legal problems” as part of the criteria, thereby treating arrests for substance-related disorderly conduct were considered in the diagnosis of individuals for a SUD.¹³ The criterion was subsequently removed due to low endorsement and the inadequate discrimination of this item.¹⁴ Some clinicians expressed concerns that the removal of the legal problems criterion could result in certain patients being undiagnosed.¹⁵ However, patients reported that this criterion was not their sole consideration and that they did not lose their diagnosis in its absence.¹⁶ Therefore, this criterion was deemed to be ineffective.

The removal of the legal problems criterion from the DSM-5 reflects the broader global shift away from associating SUDs with criminality. Unlike earlier editions, the DSM-5 focuses on interpersonal and social functioning rather than relying on external consequences—such as legal problems—as indicators of a disorder. This change signifies the movement toward a health-oriented approach that views substance use through a clinical, rather than punitive, lens.

Moreover, the change reveals that the scientific understanding of SUDs is influenced by societal

¹⁰ B. Torrise, “What is a Substance Use Disorder?” *American Psychiatric Association* (April 2024) online: <psychiatry.org> at para 1.

¹¹ *Ibid.*

¹² Mayo Clinic Staff, “Drug addiction (substance use disorder)” *Mayo Clinic* online: <mayoclinic.org > at para 1.

¹³ C. Glasheen, K. Batts, & R. Karg, “Impact of the DSM-IV to DSM-5 Changes on the National Survey on Drug Use and Health” (2016) *Substance Abuse and Mental Health Services Administration* at p 5.

¹⁴ D. S. Hasin et al., “DSM-5 Criteria for Substance Use Disorders: Recommendations and Rationale” (2013) 170:8 *The American Journal of Psychiatry* at p 837.

¹⁵ *Ibid.*

¹⁶ *Ibid.*

attitudes, reminding us that diagnostic criteria—despite their emphasis on being objective—are inevitably shaped by broader historical and cultural contexts.¹⁷ Historically, prevailing societal attitudes toward substance use led to legislation that criminalized possession and distribution, reinforcing the link between addiction and crime.¹⁸ For over thirty years, the DSM included legal problems as part of its diagnostic framework.¹⁹ Thus, the removal of this criterion represents not only an evolution in psychiatric practice but also a recognition that criminalization stems more from cultural and legal constructs than from the inherent nature of SUDs.

Social Factors

SUDs are not solely the result of psychological or biological factors, they are also deeply influenced by social conditions. While individual mental health and genetic predispositions play a role, broader societal factors can contribute to the development of SUDs. For instance, adverse family environment during childhood have been linked to the onset of illicit substance use.²⁰ Individual social factors, such as socioeconomic status, may also influence patterns of alcohol consumption and misuse.²¹ Furthermore, social network norms have been associated with various stages of substance use.²² Therefore, social environments, socioeconomic status, and social network norms can shape patterns of substance use.

Closing

Taken together, the biological, psychological, and social factors illustrate that SUDs are complex, multidimensional conditions rather than issues of personal failure or moral weakness.

¹⁷ S. M. Robinson & B. Adinoff, “The Classification of Substance Use Disorders: Historical, Contextual, and Conceptual Considerations” (2016) 6:8 *Behavioral Sciences* at p 15.

¹⁸ *Ibid* at p 7.

¹⁹ *Ibid*.

²⁰ S. Galea, A. Nandi & D. Vlahov, “The Social Epidemiology of Substance Use” (2004) 26 *Epidemiologic Reviews* at p 48.

²¹ *Ibid*.

²² *Ibid* at p 49.

Understanding these interrelated influences underscores the importance of approaching substance use through a compassionate, evidence-based, and health-oriented framework.

However, despite growing recognition of the biopsychosocial nature of addiction, Canadian law and policy have historically relied on punitive measures that criminalize individuals struggling with substance use. The following section will examine how these historical legal frameworks developed and how they continue to shape the contemporary relationship between substance use and the criminal justice system.

Canada's Historical Legal Implications of Substance Use Disorders

The legal system's approach to substance use has historically been shaped by various social and political factors. Canada has an extensive history regarding substance use and criminalization that dates back to the 18th century. During this period, the implementation of prohibition served as a method of social control over racialized nations and communities.²³ In the 19th century, the increasing influence of Protestantism contributed to concerns regarding medical practices associated with racialized individuals, which were perceived as threats to moral standards of the white middle-class. This perspective led to the labeling of certain substances as dangerous.²⁴ Therefore, this shift in public attitude established a foundation for laws and policies that emerged in subsequent decades, solidifying prohibition as a policy and contributing to the health and social challenges that we observe today.²⁵

Throughout the 20th century, various legislative measures were introduced to address substance use, beginning with the *Opium Act* of 1908 which created the first drug prohibition.²⁶

²³ S. Boyd, "History of Drug Policy in Canada" *Canadian Drug Policy Coalition* (2017) online: <drugpolicy.ca/about/history>

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ Canada Parliament, D. Riley, Canadian Foundation for Drug Policy & International Harm Reduction Association, *Drugs and Drug Policy in Canada A brief review and commentary*, 36th Parl 2nd Sess (November 1998) (Chair: Pierre Claude Nolin).

The Opium and Narcotic Drug Act of 1929 became Canada's main instrument of drug policy²⁷ until it was replaced in 1996 by the *Controlled Drugs and Substances Act* ("CDSA").²⁸ From the 1950s to the 1980s, there was a period of intensified criminalization aimed at reinforcing prohibition. This included the implementation of stricter penalties for drug offenses,²⁹ restrictions on certain substances, such as LSD,³⁰ and more severe penalties for drug trafficking and production.³¹ This was largely influenced by the political climate of neo-liberalism, as Canada aligned its approach to the "war on drugs" with that of the United States during the 1980s.³²

However, harm reduction strategies began to gain traction on the international stage also during the 1980s.³³ Canada followed these harm reduction strategies, despite the drug laws at the time, by opening the first needle exchange programs in Vancouver, Toronto, and Montreal in order to save lives. In the early 1990s, Vancouver experienced a significant increase in HIV/AIDS cases and drug overdoses, prompting activists to establish unofficial safe injection sites in contravention of existing laws due to the pressing public health crisis.³⁴ Additionally, their initiatives led the Vancouver-Richmond Health Board to declare a public health emergency in 1997 and facilitated the establishment of Canada's first official supervised injection site in 2003 as a response.³⁵

²⁷ *Ibid.*

²⁸ *Controlled Drugs and Substances Act*, SC 1996, c 5.

²⁹ *Supra* at note 23.

³⁰ The Economic and Social Council of the United Nations, *Convention on Psychotropic Substances*, GA Res 366(IV) (1971); *Supra* at note 23.

³¹ *Supra* at note 23; *Supra* at note 26.

³² *Supra* at note 23.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*

Despite this, the Conservative government introduced their *National Anti-Drug Strategy* in 2007, which firmly opposed harm reduction in favor of a law enforcement-centered approach, relying on longstanding stereotypes and misconceptions about substance use to further their anti-drug agenda.³⁶ This was their attempt to close Canada's first safe injection site, however, they were unsuccessful in court.³⁷ The Supreme Court of Canada determined that doing so would be unconstitutional as it would violate section 7 of the *Charter*.³⁸

When Canada experienced a change in government, it resulted in a transition toward a harm reduction and health-oriented framework regarding substance use. This ended a decade of federal resentment towards harm reduction and signaled the government's readiness to support provincial and territorial initiatives aimed at enhancing access to harm reduction services.³⁹ *The Cannabis Act* SC 2018 c 16⁴⁰ made Canada the second country globally to officially legalize cannabis.⁴¹ This legislation aims to protect youth and enhance public health and safety, while also ensuring that profits do not benefit criminals.⁴² Furthermore, the *Canadian Drugs and Substances Strategy* replaced the *National Anti-Drug Strategy*, shifting the focus towards prevention, treatment, harm reduction, and enforcement.⁴³ Collectively, these policy changes mark a pivotal moment in Canada's approach to substance use, reflecting a growing recognition that public health strategies are more effective than punitive responses.

³⁶ *Ibid.*

³⁷ *Ibid*; *Canada v PHS Community Services Society*, 2011 SCR 134 at para 136.

³⁸ *Ibid.*

³⁹ E. Hyshka et al., "Harm reduction in name, but not substance: a comparative analysis of current Canadian provincial and territorial policy frameworks" (2017) 14:50 *Harm Reduction Journal* at p 3.

⁴⁰ *The Cannabis Act* SC 2018 c 16.

⁴¹ B. Sapra, "Canada becomes second nation in the world to legalize marijuana" *CNN Health* (20 June 2018) online: <cn.com>

⁴² Canada, Department of Justice, "Cannabis Legalization and Regulation" (7 July 2021) online: <justice.gc.ca/eng/cj-jp/cannabis>

⁴³ Canada, Health Canada and the Public Health Agency of Canada, "Horizontal Evaluation of the Canadian Drugs and Substances Strategy: Evaluation Report" (August 2023) online: <canada.ca/en/health-canada.html>

How the Criminal Justice System Handles Substance Use

While there is a growing trend to address substance use as a public health concern rather than a criminal matter, challenges still persist for individuals with SUDs who become involved in the criminal justice system. The criminalization of substance use has long been a central feature of Canada's legal response to drug-related issues. The *revolving door* phenomenon is frequently used to describe individuals with SUDs, as they tend to cycle in and out of the criminal justice system due to offences related to their addiction. This section will examine the situation in British Columbia, focusing on Vancouver, to illustrate how criminalization of substance use has not effectively tackled the root causes of criminal behaviour among individuals with SUDs. Instead, it creates barriers that contribute to the perpetuating cycle of entrapment within the criminal justice system. Additionally, it will assess public concerns and the impact on their quality of life related to crimes committed by individuals with SUDs.

The Revolving Door Phenomenon

The *revolving door* phenomenon in a criminal justice context refers to the recurring cycle in which individuals frequently re-enter the system often resulting in elevated rates of recidivism.⁴⁴ Chronic offenders in Canada are defined as individuals “who have been charged with five or more offences in the past year or convicted five or more times in the past four years.”⁴⁵ According to Vancouver Provincial Court data in 2003-2004, approximately 70% of adult offenders who were charge with street crime offences met the definition of a chronic offender.⁴⁶ The term *street crime* generally refers to criminal or disorderly behavior that is highly

⁴⁴ J. E. Humphries et al., “Understanding the Revolving Door of Conviction, Incarceration, and Recidivism” *Cato Institute* (30 October 2024) online: <cato.org>

⁴⁵ E. Burgess, “Beyond the Revolving Door: A New Response to Chronic Offenders” *Street Crime Working Group* (2005) at p 9 & 33.

⁴⁶ *Ibid.*

visible and has a negative impact on the quality of life in the community.⁴⁷ These types of crime often include drug trafficking, robbery, auto theft, as well as, violations of probation and bail, and failure to appear in court; all of which contribute to the *revolving door* problem.⁴⁸

How Substance Use is a Factor in Contributing to Street Crimes

Substance use is a significant contributor to street crimes. A 2004 report found that Vancouver had over 9,000 intravenous drug users, with 74% having criminal records and 61% admitting to committing crimes regularly to fund their drug use.⁴⁹ For example, one offender reported breaking into about 20 vehicles per day in order to support their drug habit.⁵⁰ Chronic offenders with substance use problems are responsible for a substantial portion of the street crimes in Vancouver.⁵¹

However, it is crucial to recognize that many of these individuals also face additional hardships including poverty and homelessness.⁵² Another offender stated that their criminal activities were driven by the need to survive, as they were unemployed and homeless, turning to drugs as a means of coping.⁵³ Rather than addressing these underlying issues, the criminal justice system reinforces these hardships by penalizing individuals instead of providing necessary support. In the Downtown Eastside of Vancouver, data shows that 43% of substance users who were convicted received a jail sentence, with 26% of those sentenced to more than 30 days.⁵⁴ This creates significant barriers to recovery, as individuals caught in the criminal justice system face limited access to healthcare, stable housing, and employment opportunities; which further

⁴⁷ *Ibid* at p 23.

⁴⁸ *Ibid* at p 24.

⁴⁹ *Ibid* at p 9 & 10.

⁵⁰ *Ibid* at p 24.

⁵¹ *Ibid* at p 19.

⁵² *Ibid* at p 31.

⁵³ *Ibid* at p 33.

⁵⁴ *Ibid* at p 34.

entrenches them in a cycle of substance use and crime. These conditions demonstrate that criminal behavior among individuals with SUDs is closely tied to systemic barriers, not personal choice, and that punitive responses exacerbate these challenges rather than address their underlying causes.

The Ineffectiveness of Incarceration as Response to Substance Use

Although substance use is associated with certain criminalized behaviours, evidence shows that incarceration does not mitigate these harms; instead, it creates conditions that place individuals with SUDs at higher risk of vulnerability and instability, particularly in the period immediately following their release. Research on post-release outcomes in British Columbia demonstrates that incarceration significantly worsens health and safety among individuals with SUDs.⁵⁵ People experiencing repeated incarcerations show markedly higher rates of both overdose-related and all-cause mortality.⁵⁶ This indicates that repeated contact with the justice system compounds health and social instability, rather than addressing the underlying causes of substance use. Those with concurrent mental illness face an even greater risk, with post-release mortality several times higher than individuals without these conditions.⁵⁷ Most striking is the sharp spike in overdose deaths within the first two weeks after release; which is a period marked by decreased drug tolerance and insufficient continuity of care.⁵⁸ These patterns show that incarceration not only fails to reduce harms associated with substance use but actively generates conditions that increase the likelihood of preventable death—directly reinforcing the cycle of instability and criminalization at the core of the *revolving door* phenomenon.

⁵⁵ S. A. Kinner, W. Gan & A. Slaunwhite, “Fatal overdoses after release from prison in British Columbia: a retrospective data linkage study” (2021) 9:3 *CMAJ Open* at p 909.

⁵⁶ *Ibid* at p 909-910.

⁵⁷ *Ibid* at p 911.

⁵⁸ *Ibid* at p 912.

The ineffectiveness of incarceration extends beyond health outcomes and into the realm of recidivism. National correctional trends demonstrate that substance use intersects with broader structural disadvantages that incarceration is ill-equipped to address. Historical enforcement practices—such as those seen during the “war on drugs” —combined with economic downturns, illustrate that recidivism is shaped as much by social inequities as by individual behaviour.⁵⁹ Federal recidivism data further show that Indigenous offenders—who are more likely to experience poverty and higher rates of SUDs—reoffend at disproportionately high rates.⁶⁰ These patterns reinforce that criminalization targets individuals already facing profound social inequities, and that incarceration merely compounds these vulnerabilities rather than resolving them. By contrast, treatment-based interventions—such as Drug Treatment Courts—demonstrate significantly lower rates of reoffending compared to traditional criminal processing.⁶¹ These findings collectively illustrate that punitive measures do little to disrupt the pathways that link substance use and crime; whereas treatment-based interventions more effectively reduce reoffending by connecting these individuals with the supports they need.

However, it is important to note that substituting incarceration with coercive or compulsory treatment does not completely resolve these issues. Evidence from multiple jurisdictions shows that forced treatment does not consistently reduce substance use or criminal offending and, in some cases, increases the risk of harm.⁶² This may be attributed to the fact that involuntary interventions often lead to negative health outcomes, including an elevated risk of

⁵⁹ L. A. Stewart et al. “A comprehensive study of recidivism rates among Canadian federal offenders” (2019) *Correctional Service Canada* at p 51.

⁶⁰ *Ibid* at p 52.

⁶¹ Drug Treatment Court Funding Program “Recidivism Study” (2021) online: <justice.gc.ca/eng/rp-pt/cp-pm/eval/rep-rap/2021/drug-drogue/rs-er.html>

⁶² D. Werb et al. “The effectiveness of Compulsory Drug Treatment: A systematic review” (2015) 28:1 *Int J Drug Policy* at p 9.

overdose following discharge.⁶³ This underscores that the effectiveness of treatment is contingent on voluntary participation and stable community supports, not coercion. As a result, the most promising approaches are those grounded in voluntary, community-based treatment and harm reduction. These models address the underlying biopsychosocial factors driving substance use and offer a meaningful alternative to the punitive responses that currently dominate the criminal justice system.

Public Concerns and the Impact of Substance Use-Related Crime on the Community

A recent report highlighted the growing public concern across British Columbia regarding community safety and the effectiveness of the justice system. The findings reveal widespread dissatisfaction, with 68% of residents lacking confidence in the justice system and 47% expressing distrust in law enforcement.⁶⁴ Public safety fears are also prevalent, with 50% of respondents fearing for their own safety and 58% actively avoiding certain areas in their communities.⁶⁵ Furthermore, public perception also suggests that many crimes go undocumented, as 88% believe crimes go unreported.⁶⁶ This aligns with the law enforcement belief that only 25% of thefts from vehicles are being reported.⁶⁷ People are reluctant to report crimes not only because they have little confidence in the justice system, but also because of slow police response times and minimal consequences for offenders.⁶⁸ These statistics emphasize the public's frustration with the current approach to crime and highlighting the need for more effective substance use interventions.

⁶³ Canadian Centre on Substance Use and Addiction “Involuntary Treatment for Severe Substance Use Disorders” (February 2025) online: <csa.ca/sites/default/files/2025-02/Involuntary-Treatment-Evidence-Brief-en.pdf> at p 4.

⁶⁴ Save Our Streets, *Province-Wide Save Our Streets Survey Shows British Columbians Want More Action and New Approaches to Address Addiction, Public Safety and Retail Crime* (24 September 2024) online: <saveourstreets.ca> at p 1.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Supra* at note 44 at p 24.

⁶⁸ *Ibid* at p 27.

The downtown Vancouver area, in particular, has experienced significant declines in their quality of life due to increasing incidents of street crime and disorderly conduct.⁶⁹ Business owners have reported that public fear regarding crime is leading to closures, as customers perceive the area to be unsafe.⁷⁰ Several businesses have felt compelled to hiring private security, as they believe that law enforcement is either unwilling or unable to provide adequate protection.⁷¹ Additionally, business owners often choose not to report crimes due to a lack of confidence in the justice system's ability to deliver meaningful outcomes;⁷² which further reflects the broader reluctance among the public to report crime. This dynamic creates a self-perpetuating cycle in which crime undermines trust in the justice system, leading to underreporting; that underreporting, in turn, hinders law enforcement efforts, further eroding public confidence and heightening community fear.⁷³

It is evident that individuals with SUDs present significant problems to society. They are linked to higher mortality and elevated rates of suicidality.⁷⁴ Notably between 1992 and 2002 nearly 20% of all drug-related homicides in Canada occurred in Vancouver.⁷⁵ The public recognizes that the root causes of crime, such as individuals with SUDs, must be addressed through comprehensive and rehabilitative approaches.⁷⁶ The business community has also expressed that incarceration alone is not an effective solution to street crime and disorderly conduct.⁷⁷ It is clear that the criminal justice system alone cannot resolve these complex social

⁶⁹ *Ibid* at p 22.

⁷⁰ *Ibid*.

⁷¹ *Ibid*.

⁷² *Ibid*.

⁷³ *Ibid*.

⁷⁴ D. C. Daley, "Family and social aspects of substance use disorders and treatment" (2013) 21:4 *Journal of Food and Drug Analysis* at p 574.

⁷⁵ *Supra* at note 46 at p 31.

⁷⁶ *Ibid* at p 37.

⁷⁷ *Ibid* at p 19.

issues, as it was never designed to address the underlying factors driving chronic offending.⁷⁸ To restore public confidence and improve community safety a collaborative effort between the justice system and social services is necessary to develop more effective strategies for addressing SUDs and its connection to crime.⁷⁹

Solutions & Legal Reforms: What Works?

As Canada shifts toward a public health-oriented approach regarding SUDs, a range of legal and social interventions have emerged aimed to tackle the root causes of SUDs and crime. This shift reflects the growing public acknowledgment that substance use should be treated as a public health issue rather than solely a criminal matter. This section will first explore the current government policy initiatives in addressing individuals with SUDs and crime. This includes an analysis of the recent policy reforms implemented by the Canadian government, as well as an overview of British Columbia's Decriminalization Pilot Program—which aims to address the ongoing overdoses crisis. It will then analyze harm reduction policies, including supervised consumption sites, with a focus on Insite as a key illustration of their effectiveness in reducing overdoses. By analyzing these approaches, this section will demonstrate how the shift away from punitive measures towards health-oriented strategies can lead to more effective responses to substance use in Canada.

⁷⁸ *Ibid* at p 37.

⁷⁹ *Ibid* at p 37.

Government Policy Initiatives & Their Approach to Substance Use Reform

Canada is currently facing the worst illegal drug overdose death epidemics in its history.⁸⁰ Since 2016 there have been over 49,105 opioid-related deaths, with the majority of deaths occurring in British Columbia.⁸¹

Canadian Government Policy Reform

The Government of Canada has expressed its commitment to adopting a comprehensive public health and safety approach in response to the illegal toxic drug and overdose crisis.⁸² The primary focus of this approach is on harm reduction, saving lives, and providing individuals with the necessary support. Recent federal measures have included increased funding for various community-based and government initiatives, enhancements in prevention, expanded treatment options, and harm reduction efforts.⁸³ Notably, the recent government report on its current federal actions in addressing the overdose crisis ordered health-oriented strategies at its forefront of the report, while placing criminalization and substance control initiatives at the bottom.⁸⁴ This emphasizes the government's acknowledgment that substance use should be addressed as a health issue rather than a punitive matter.

Canada has enacted Bill C-5, which introduced reforms to the sentencing provisions under the *Criminal Code* and the *CDSA*.⁸⁵ These reforms aim to address the overrepresentation of Indigenous peoples and members of marginalized communities within the criminal justice

⁸⁰ S. Boyd, “Heroin and the illegal drug overdose death epidemic: A history of missed opportunities and resistance” 91 *International Journal of Drug Policy* at para 1; Canada, Health Canada, “The Canadian Drugs + Substances Strategy: The Government of Canada’s approach to substance use related harms and the overdose crisis” (30 October 2023) online: <canada.ca/en/health-canada> at p 1.

⁸¹ Canada, Health Canada, “Federal actions on the over dose crisis” (December 2024) online: <canada.ca/en/health-canada> at p 1.

⁸² *Supra* at note 64 at p 1.

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

system.⁸⁶ The legislation includes the repeal of mandatory minimum penalties that have significantly contributed to the overincarceration of these groups.⁸⁷ While the intent of these reforms is to foster a fairer and more effective justice system while prioritizing public safety,⁸⁸ future statistical analyses will be crucial in determining their actual impact.

Additionally, the Canadian Government has issued guidelines to assist prosecutors in determining the appropriate approach to prosecuting cases of possession of a controlled substance in violation of section 4(1) of the *CDSA*.⁸⁹ One key principle emphasizes that if the possession of drugs is associated with SUDs, alternatives to prosecution should be prioritized.⁹⁰ However, research indicates that the official annual medical diagnoses of SUDs are generally lower compared to the self-reported rates documented by Statistics Canada.⁹¹ This confirms that individuals with SUDs often go undetected and untreated.⁹² Consequently, individuals facing prosecution may be undiagnosed. Therefore, leading to a lack of awareness among prosecutors regarding their potential condition. As a result, the appropriate principles may not be applied effectively, further contributing to the ongoing cycle of criminalization experienced by those with SUDs.

British Columbia Government Policy Reform

Recently, British Columbia became the first and only province in Canada to decriminalize the possession of illicit drugs. This decision was a response to the prolonged and

⁸⁶ Canada, Department of Justice, “Statement by Minister Lametti on Royal Assent of legislation that addresses systemic racism and discrimination in the criminal justice system” online: <canada.ca/en/departement-justice.html>

⁸⁷ *Ibid.*

⁸⁸ *Ibid.*

⁸⁹ *Supra* at note 64 at p 1.

⁹⁰ Canada, Public Prosecution Service of Canada, “5.13 Prosecution of Possession of Controlled Substances Contrary to s. 4(1) of the Controlled Drugs and Substances Act” online: <ppsc-sppc.gc.ca> at s 3 2(a).

⁹¹ C. Huynh et al., “Measuring Substance-Related Disorders Using Canadian Administrative Health Databanks: Interprovincial Comparisons of Recorded Diagnostic Rates, Incidence Proportions and Morality Rate Ratios” (2022) 67:2 *The Canadian Journal of Psychiatry* at p 126.

⁹² *Ibid.*

severe drug crisis that has affected the province for many decades. Currently, British Columbia is experiencing their worst overdose crisis, as over 2,500 lives have been lost due to drug-related deaths.⁹³ Health Canada has granted British Columbia a three-year exemption under the *CDSA*, allowing for the decriminalization of individuals who use drugs.⁹⁴ This exemption permits the possession of small amounts of certain illicit drugs for personal use in designated locations. However, it remains illegal to use or possess these drugs in public spaces.⁹⁵ This initiative is part of the three-year Decriminalization Pilot Program by the federal government, which means that after its conclusion, there is a possibility that the previous legal status may be reinstated.⁹⁶ However, three-years may not provide sufficient time to observe significant outcomes, as evidence from other countries indicates that substantial health and social changes often take years to materialize.⁹⁷ For instance, in Portugal, following decriminalization, there was a notable reduction in drug-related deaths over a five-year period.⁹⁸ Therefore, to achieve a positive outcome it is imperative that the federal government renews and extends this pilot program, allowing sufficient time to observe and analyze its full impact.

Harm Reduction as a Public Health-Oriented Response for Substance Use

The current overdose crisis has led to the implementation of new harm reduction policies and related services. Harm reduction is an evidence-based public health approach that focuses on minimizing the negative health, social, and economic consequences associated with substance

⁹³ Victoria, “More than 2,500 lives lost to toxic drugs in 2023” (24 January 2024) *BC Gov News* online: <news.gov.bc.ca>.

⁹⁴ British Columbia, “Decriminalizing people who use drugs in B.C.” (24 March 2025) online: <2.gov.bc.ca/gov/content/overdose/decriminalization>.

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ British Columbia, “Decriminalization Data Report to Health Canada” (February 2025) online: <2.gov.bc.ca> at p 5.

⁹⁸ *Ibid.*

use.⁹⁹ The federal government and the provinces and territories have shared responsibility over health, as each province and territory has legislation governing its health system.¹⁰⁰ Therefore, harm reduction policy frameworks vary widely across jurisdictions.¹⁰¹ Examples of harm reduction services include, but are not limited to, providing drug checking services and distributing naloxone kits.¹⁰² In response to these challenges, the federal government has revitalized its commitment to harm reduction through the *Canadian Drugs and Substances Strategy*, which has shifted primary responsibility for the approach on substance use back to the Department of Health.¹⁰³

Insite

British Columbia was the first region in North America to establish a sanctioned supervised drug consumption site.¹⁰⁴ Insite obtained a federal exemption from Health Canada under section 56 of the *CDSA* to operate as a sanctioned site.¹⁰⁵ Insite has played a crucial role in addressing health emergencies faced by marginalized members of its community, saving thousands of lives by providing a clean and safe environment for individuals to consume illicit drugs.

In 2008 the exemption expired due to the Minister's reluctance to renew it, which prompted a legal challenge on both federalism and *Charter* grounds.¹⁰⁶ The Supreme Court of Canada ruled in favor of Insite, stating that when a law poses a risk to health by obstructing

⁹⁹ *Supra* at note 64 at p 12.

¹⁰⁰ *Supra* at note 39 at p 2.

¹⁰¹ *Ibid* at p 8.

¹⁰² *Ibid*.

¹⁰³ *Supra* at note 39 at p 3.

¹⁰⁴ Insite, "Insite" online: <[pfs.ca/program/insite](http://phs.ca/program/insite)>.

¹⁰⁵ *Ibid*; R. Diab, R. Morgan & R. Young, "The opioid crisis and section 7: Charter implications of safe supply and simple possession" 55:2 *UBC Law Review* at p 413.

¹⁰⁶ *Ibid* at p 414.

access to healthcare, it constitutes a deprivation of the right to security of the person.¹⁰⁷ The court further noted that when a law endangers both the health and lives of individuals, this deprivation is even more apparent.¹⁰⁸ Thus, the refusal to grant the exemption was deemed arbitrary and grossly disproportionate.¹⁰⁹ The court's decision reinforced the principle that harm reduction measures are essential to protecting public health and individual rights, setting a critical legal precedent for future harm reduction initiatives in Canada.

Conclusion

The intersection of SUDs and the criminal justice system highlights how deeply substance use is shaped by biological, psychological, and social factors, rather than by individual choice or moral failing. As demonstrated throughout this paper, SUDs are best understood as complex biopsychosocial disorders that require a public health response grounded in scientific evidence rather than punitive assumptions. Yet Canadian law has historically treated substance use as a criminal issue, relying on punitive strategies that overlook these underlying determinants. This reliance on criminalization has entrenched cycles of incarceration, reoffending, and social inequities—patterns especially visible in Vancouver, where the *revolving door* phenomenon remains persistent. The resulting disconnect between scientific knowledge and legal practice has contributed to ineffective, inequitable outcomes for individuals with SUDs and for the broader community.

The evidence presented in this paper makes clear that criminalization has not resolved the challenges associated with SUDs, but rather it has intensified them. The *revolving door* phenomenon, persistent recidivism, and the heightened health risks experienced after release all

¹⁰⁷ *Supra* at note 37 at para 93.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid* at para 113.

underscore how punitive responses fail to stabilize individuals or reduce substance-related harms. At the same time, substance-use-related street crime in Vancouver is deeply connected to structural factors such as poverty and homelessness—conditions that criminalization does nothing to resolve. These pressures also manifest at the community level, where declining public confidence, heightened fear, business closures, and widespread underreporting reflect frustration with a system that neither protects the public nor supports those struggling with addiction. Together, these patterns demonstrate that punitive measures compound the very inequities that fuel both substance use and crime. In contrast, evidence consistently shows that treatment-based interventions and community supports produce more meaningful and lasting outcomes, reinforcing the need to replace punitive practices with a health-oriented, evidence-based framework.

Recent ongoing legal and policy developments reflect a gradual shift toward a health-oriented approach to substance use in Canada, yet they remain only partial steps toward meaningful reform. Federal initiatives—such as Bill C-5, increased investments in harm reduction, and prosecutorial guidelines encouraging alternatives to charging individuals with SUDs—signal growing recognition that criminalization has failed to reduce drug-related harms. At the provincial level, British Columbia’s Decriminalization Pilot Program further embodies this shift by reframing personal drug possession as a health matter amidst an unprecedented overdose crisis. Complementing these reforms, harm reduction measures, including supervised consumption sites such as Insite, have demonstrated clear effectiveness in preventing overdose deaths and protecting the health and *Charter* rights of people who use drugs. Despite these advances, substantial gaps remain: the pilot program is temporary, public safety concerns persist, and punitive practices continue to shape legal responses.

In this context, sustained advocacy remains essential. Organizations such as PIVOT Legal Society and the Canadian Drug Policy Coalition play a critical role in challenging punitive drug laws, advancing human-rights-based approaches, and promoting evidence-informed policy reform. Through litigation, public education, and collaboration with communities and policymakers, these organizations work to ensure that substance use policy aligns with scientific evidence and the lived realities of people most affected. Their efforts underscore that lasting progress requires more than isolated policy changes; it demands ongoing structural transformation that prioritizes rehabilitation, harm reduction, and social supports over criminalization.

In conclusion, effectively addressing the cycle of substance use and recidivism requires moving beyond criminalization toward a coordinated, health-focused legal framework. Continued investment from both the government and communities in harm reduction, voluntary treatment pathways, and evidence-based policy reforms is vital to ensuring individuals with SUDs are supported rather than criminalized, and to finally breaking the cycle of entrapment within the justice system.

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