Canadian HIV/AIDS Legal Network | Réseau juridique canadien VIH/sida

Backgrounder
Document d'information

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MANDATORY MINIMUM SENTENCES FOR DRUG OFFENCES: MYTHS VS. REALITY

MYTH: **Putting people who use drugs in prison will get them off drugs.**

REALITY: Evidence shows that there is widespread injection drug use in federal and provincial prisons in Canada. Even Correctional Service Canada admits that drugs enter prisons, despite efforts to keep them out.

MYTH: **Putting people who use drugs in prison will reduce drug use.**

REALITY: There is no evidence to support this view. The United States has had mandatory minimum sentences for drug offences for some time. Despite tougher sentences, the drug problem in the U.S. is only getting worse.

Putting people who use drugs in prison may actually increase the number of overall drug users. Prisoners live in close quarters and in often adverse conditions. In such circumstances, drug use may seem like a ready escape from adversity, not just to people already using drugs, but also to people who have not used drugs before. One Irish study reported that 20 percent of people who use illegal drugs began injection drug use in prison.

MYTH: **Mandatory minimum sentences for drug offences will make our streets and communities safer.**

REALITY: A detailed 2002 examination conducted for the Department of Justice Canada concluded that mandatory minimum sentences are "least effective in relation to drug offences," noting that "drug consumption and drug-related crime seem to be unaffected, in any measurable way, by severe [mandatory minimum sentences]."

Jurists and scholars from across the political spectrum have said there is no evidence that any form of mandatory sentencing is effective for drug offences.

MYTH: **Providing needle exchange programs in prison will encourage drug use by prisoners.**

REALITY: Experience with prison syringe programs in other countries has been rigorously evaluated, and all evaluations conclude that these programs do not in any way encourage drug use or lead to initiation of drug use.

Injection drug use is already a reality in Canadian prisons. Implementing prison needle exchange programs would simply mitigate the harms resulting from this reality by better protecting prisoners' (and therefore the public's) health.

MYTH: **What goes on in prisons doesn't affect me.**

REALITY: Since the vast majority of incarcerated people who use illegal drugs are eventually released from prison, what goes on in prisons does have an impact on the community at large. In this context, protecting public health necessarily includes protecting prisoners' health.

Higher incarceration rates lead some people to start injecting drugs while in prison. The lack of prison needle exchange programs means the potential for transmission of blood-borne diseases like HIV and hepatitis C is greater in prison. Higher rates of HIV and hepatitis C infection result in greater health care costs. HIV and hepatitis C transmission also impose further suffering upon the families of those who are or have been in prison.

In addition, avoiding new cases of HIV infection by avoiding mass incarceration of people who use illegal drugs — and all of the extensive costs associated with additional policing and imprisonment — makes more economic sense than incurring costs for treating people after they contract HIV in prison. National cost estimates for HIV treatment are not available, but in Vancouver alone, using the older and lower estimate of cost per infection, at current rates of HIV infection among people who inject drugs, the lifetime cost of medical expenditures is estimated at $215 million. This estimated lifetime cost is projected to rise to approximately $350 million if HIV infection rates are allowed to reach levels seen in U.S. cities where law enforcement measures targeting drug users are most severe. The total cost of treating hepatitis C, which

is much more prevalent than HIV among people who inject drugs, will be even greater.

MYTH: **Safe needle exchange programs in prison will threaten the safety of prison staff, especially prison guards.**

REALITY: Prison staff are much safer when they are not at risk of being stuck by a contaminated needle while they perform pat-downs or cell searches. Experience in other countries, especially those in Europe, has shown that prison guards, though initially sceptical of sterile syringe programs in prisons, eventually support them as a workplace safety measure. In those countries where sterile syringe programs have been operating for years, there has never been a reported incident of a needle from the needle exchange program being used as a weapon against guards.

MYTH: **Prisoners give up their rights when they're convicted for their crimes.**

REALITY: People in prison have a right to the same range of health services as people outside prison; prisoners retain all rights that are not taken away expressly or by necessary implication as a result of their incarceration. This principle is reflected in Canadian and international law.

MYTH: **This issue is a criminal issue, not a public health issue.**

REALITY: Research shows that the incarceration of people who inject drugs is a factor driving Canada's worsening HIV epidemic. A recent study found that the number of known HIV cases in Canadian prisons has risen by 35 percent in the last five years, suggesting that HIV may be spreading in prisons.

MYTH: **Mandatory minimum sentences will target only drug dealers, not drug users.**

REALITY: This distinction between drug dealers and drug users is artificial, particularly when harsh minimum sentences are mandated for dealing in any quantity of drugs.

The real profiteers in the drug market — those who traffic in large quantities of illegal drugs — distance themselves from more visible drug-trafficking activities and are rarely captured by law enforcement efforts. Instead, it is people who are addicted and involved in small-scale, street-level drug distribution to support their addictions who commonly end up being charged with drug

trafficking and would bear the brunt of harsh mandatory minimum sentences for any drug dealing.

"Get tough" approaches that use mandatory minimum sentences serve primarily to penalize people who are themselves addicted, rather than large-scale traffickers. Mandatory-sentencing policies take power out of the hands of judges, who are meant to be impartial, and put it into the hands of prosecutors, who can offer deals to offenders who have information to trade. Small-scale drug consumers are rarely privy to this kind of information, but larger-scale dealers are able to negotiate lower sentences. In the U.S., this perverse result has been documented: Mandatory minimums are avoided most readily by the biggest dealers and least readily by the most minor offenders.

Pretending that a policy of mandatory minimum sentences will target only drug dealers is misleading. In practice, mandating harsh minimum sentences for dealing in any quantity of an illegal drug has the consequence of incarcerating some of the most marginalized people who use drugs, while doing little to penalize large-scale traffickers.

MYTH: **The law enforcement community, including police, supports mandatory minimum sentences.**

REALITY: Law Enforcement Against Prohibition (LEAP) is an organization of police, parole, probation and corrections officers that opposes mandatory-sentencing policies. The U.S.-based organization also includes judges, prosecutors, prison wardens, and former FBI [Federal Bureau of Investigation] and DEA [Drug Enforcement Administration] agents who have seen first hand the damage done by mandatory minimum sentences and the ongoing failure of the "war on drugs" to address the real problems of drug use and addiction.

MYTH: **Serious crime must mean serious time.**

REALITY: Alternatives to enforcement and imprisonment have been shown to be many times more effective in terms of improving health and reducing the fiscal costs associated with illegal drug use.

Mandatory sentencing is an extremely expensive measure with little return and great potential to be counterproductive, due to massive public costs stemming from:

- policing, prosecution and incarceration;
- potential abuses of the human rights of people accused;
- subsequent treatment of HIV infections; and
- other harms related to drug use initiated in prisons.

The science in this area is compelling. Evidence shows that mandatory minimum sentences only worsen the health-related harms associated with incarceration by increasing the transmission of infectious disease in prisons.

Given the evidence showing that treatment is more cost-effective than law enforcement, policy-makers should reallocate funds from largely ineffective policing interventions towards addiction treatment strategies. This more responsible use of public funds avoids harshly penalizing people addicted to drugs and targets those who profit from the drug trade by reducing the demand for illicit drugs.

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