Emergency Response to Overdose Calls in BC
October 2017

The federal Good Samaritan Drug Overdose Act (GSDOA) became law in May 2017. The goal of the Act is to encourage people to call 911 in the event of an overdose without fear of charge or arrest. When the Act was before parliament, Pivot Legal Society was supportive of the underlying premise of the Act, but raised concerns it did not go far enough to protect the most vulnerable drug users.

The Act has been characterized as a mechanism to “encourage and protect people who are witnessing an overdose so they can seek help, and ultimately, save lives”. Unfortunately, in BC that laudable purpose is being undermined by law enforcement practices that contravene both the letter and spirit of the Act.

Since the Act came into force in May 2017, Pivot Legal Society is aware of incidents where the police:

1. Arrested a man at the scene of his own overdose for possession of a controlled substance;
2. Arrested a homeless man at the scene of his own overdose for possession for the purpose of trafficking;
3. Used information gathered or discovered at the scene of an overdose to inform and justify later enforcement activities; and,
4. Used their attendance at overdose calls to detain and search people present at the scene.

These actions create an atmosphere of fear among people who are already struggling with addictions. Every time someone is arrested at the scene of an overdose, the broader community becomes less likely to call 911 in the future. Pivot is seeking federal reforms to the Act, however, there are a number of steps the provincial government can take to ensure police in BC are adhering to the Act, and to address the shortcomings of the current law in order to build trust with people living with addictions, and save lives.

Recommendations

Pivot recommends that BC take the following immediate actions:

1. Ensure that the Policing and Security Branch of the MPSSG, works with municipal police forces and RCMP E-Division to confirm that all police forces across the province understand the harm caused by police attendance, investigation, and arrests at the scene of overdoses, and to ensure any such attendance is in compliance with the provision of the Act
2. Develop a province-wide policy for police related to attendance at overdoses, which includes:
   a. a policy of non-attendance in the event of an illicit drug overdose, except where requested by Emergency Health Services—usually in the event of a fatality or threats to public safety; and
   b. a clear statement that the role of law enforcement at the scene of illicit drug overdose is to deliver first aid if they are the only responders available, or to protect the safety of Emergency Health Services and members of the public, not to investigate the individuals or circumstances at the scene unless police determine that there is an urgent
3. That the Attorney General work with BC’s Prosecution Service to direct Crown counsel as follows:
   a. In all cases where any person was arrested or any evidence was obtained as a result of law enforcement attendance at an overdose, the prosecution shall consider the overwhelming public interest in ensuring that people continue to call 911 in the case of an overdose and shall only prosecute charges where it is reasonable to believe that doing so does not pose a risk of deterring people from calling 911 in the future.
   b. When determining whether it is in the public interest to approve a charge arising from the scene of an overdose, Crown counsel must consider the potential negative impacts of the prosecution on people with addictions, and on future decisions to call 911 in the event of an overdose.
   c. It is not in the public interest to prosecute an individual on charges for which they were arrested at the scene of their own overdose.
   d. It is not in the public interest to prosecute non-violent breaches of parole, pre-trial release, probation or conditional sentence order for those who are arrested while present at an overdose.

Pivot further recommends that BC encourage the federal government to amend the Act to:

1. Extend immunity to include all non-violent breaches of parole, pre-trial release, probation or conditional sentence order.
2. Extend immunity from arrest for all charges under the Controlled Drugs and Substances Act and warrants for non-violent offences in relation to the person suffering the overdose.
3. Extend immunity to include possession for the purpose of trafficking (PPT).
4. Extend immunity to including all warrants issued as a result of a failure to attend court pursuant to subsection 145(2) of the Criminal Code.

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