Prosecuting Fentanyl Trafficking Offences
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The BC government must take swift and meaningful action to address the tragic overdose crisis. However, a focus on harsh sentences for trafficking in fentanyl is not the answer. The increased use of manslaughter charges, and the pursuit of stricter sentencing for people convicted of trafficking in fentanyl is contrary to best evidence. These practices are not only ineffective, they are counterproductive and will serve only to harm people already at risk of fatal overdose. We are particularly concerned about the impact of this approach on drug users who are engaged in trafficking as a result of their own poverty and addiction.

There is substantial evidence from a range of jurisdictions which demonstrates that drug prohibition laws and policies, including the use of incarceration, can negatively impact health and social outcomes among persons living with addiction. Here in BC, law enforcement efforts have not resulted in a decrease in overdose deaths. For example, between 2011 and 2016 police investigations of heroin possession increased 409%. During that same timeframe, fatal overdoses increased 334%. Law enforcement responses are not curtailing the crisis and are causing harm to the people we mean to protect.

Pivot Legal Society is Hearing Directly from the People Impacted

Over the past six months Pivot has interviewed nearly 100 people from around BC who are impacted by addiction and poverty. Here is what we have learned from people identifying as drug users and people with addictions:

- People are often unaware of whether there is fentanyl in the drugs they purchase, but fear that fentanyl is “in everything” including drugs that are not purported to be opiates.
- People have become addicted to fentanyl and some people seek it out because it is stronger than heroin and is now the only drug that stops some people from experiencing severe withdrawal.
- Incarcerating street-level drug dealers, including people who are living with addictions, can increase the risk of death for people with addictions. In the midst of such an unprecedented crisis, knowing a relatively trustworthy dealer is a way of reducing risk and harm.
- The more people feel they are at risk of arrest, the more likely they are to use alone, use in isolated circumstances, or rush when using—all of which increase their risk of overdose.
- People living with poverty and addiction often resort to selling small amounts of the same drugs they are addicted to as a survival technique. It is largely people living in poverty, homelessness and with addictions who are being arrested and charged. Law enforcement disproportionality targets the most marginalized of street-level dealers. This is the same group of people who are devastated by the daily loss of friends and family and are at great risk themselves of fatal overdose.

Sending a tough on crime message in the midst of this crisis will have a net negative impact on the public health of communities that we are all trying to protect.
The Evidence of the Harms is Clear

There is substantial scientific evidence demonstrating that laws and policies prohibiting illegal drug use, including incarceration, can negatively impact health and social outcomes among persons living with addiction. Incarceration is associated with:

- increased risk of HIV and Hepatitis C infection and transmission as a result of increased syringe sharing and risky drug use in correctional settings;
- delays initiating and interruptions to opioid addiction care including prescription options such as methadone, suboxone, hydromorphone, or even diacetylmorphine during incarceration and following release;
- reduced tolerance to drugs resulting in a three to eight-fold increased risk of overdose death within the first two weeks of release from a correctional facility; and
- loss of legal income, eviction and homelessness, and increased likelihood of being involved with alternative, higher-risk income generating activities such as sex work, property crime and drug dealing.

Recommendations

Pivot recommends that BC take the following immediate actions:

1. Work with the Office of the Premier to redirect governance priorities in relation to the fentanyl crisis towards evidence-based harm reduction and addiction treatment options and away from ineffective and damaging criminal enforcement approaches.
2. 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 targeting low-level drug users and dealers who are involved in drug trafficking as a result of their own addiction; and
3. Work across Ministries to issue a directive that confirm that targeting low-level drug users and dealers who are involved in drug trafficking as a result of their own addiction are a low law enforcement priority in all BC jurisdictions.

Pivot further recommends that BC encourage the federal government to:

1. Create sentencing guidelines for federal crown counsel when handling drug prosecutions. Sentencing guidelines should recognize that addiction is an illness that involves engaging in drug acquisition or drug use behaviours on an ongoing basis even when it is against the law, and there is risk of harm and negative consequences associated with these behaviours. Guidelines should state that alternatives to incarceration should be considered and prioritized in cases where stiffer sentencing is unlikely to have any consequential impact on behaviours like low-level involvement in the drug economy (e.g., drug-dealing) or other illegal income generating activities, and where other public health or social factors (i.e. Indigenous or Inuit person) are at issue.
2. Amend the Controlled Drugs and Substances Act to decriminalize the possession of all controlled substances for personal use.
3. Establish a working group of experts to research and develop a framework to legalize and regulate illicit substances.

It is through evidence-based approaches and regulation of the currently illicit market that solutions to the crisis will be found; not by incarcerating those most in need of our protection.
Contact Information

Katrina Pacey
Executive Director, Pivot Legal Society
604-729-7849
kpacey@pivotlegal.org

121 Heatley Avenue
Vancouver, BC
V6A 3E9
www.pivotlegal.org