“Conditions” are the everyday term for a set of court- or police-imposed rules that people who are involved with the criminal justice system, but not incarcerated, are obliged to follow. Conditions prohibit or make mandatory certain behaviours like abstinence from alcohol or drugs, carrying harm reduction equipment, setting foot in a specific geographic area, or being out of one’s place of residence past specified hours. Failure to adhere to conditions can put a person at risk of criminal conviction.

Being charged or convicted of failing to adhere to one’s conditions is often referred to as a “breach” or “breaching.” For many living in poverty and homelessness, especially people who rely on drugs and alcohol, court- and police-imposed conditions play a ubiquitous role in shaping their lives.

During research for Project Inclusion, we asked people if they were subject to conditions and, if so, how those conditions were impacting their daily lives.

We learned:

- short-term jail stays for breaching conditions can have long-term, serious, or life-threatening consequences;
- people living homeless experience uniquely negative impacts of various conditions;
- conditions can create homelessness or housing precarity; and
- some conditions cause more harm than others:
  - abstinence conditions criminalize people with addictions;
  - prohibitions on carrying so-called “drug paraphernalia” criminalize health care and put people’s health at risk; and
  - area restrictions (better known as "red zones") prohibit people from accessing the services, spaces, and communities that they rely on.

Conditions are intended to address the specific circumstances of an accused or convicted person in light of the particular offence at issue. While they vary from person to person, they are not uniquely customized to each person. Conditions are often chosen from a set number of common options including: curfews, abstinence from drugs or alcohol, prohibitions on carrying weapons or phones, reporting to a corrections or bail official, or not changing residential address without giving notice.

The conditions we address here are not those designed to stop a convicted sex offender from loitering in parks, nor are they about restricting a violent offender’s access to a weapon. The conditions we examine in Project Inclusion are what we call “behavioural conditions” – conditions that control the everyday activities of people who are working in the grey economy, experiencing
Behavioural conditions often do not properly reflect how the intersections of poverty, substance use, addiction, mental health, disability, and racism shape people’s lives and daily activities. Our research found that while adhering to behavioural conditions is impossible for many of the people we interviewed, breaching them puts them at risk for criminal sanction. Homelessness, and/or using substances. Behavioural conditions often do not properly reflect how the intersections of poverty, substance use, mental health, disability, and racism shape people’s lives and daily activities. Our research found that while adhering to behavioural conditions is impossible for many of the people we interviewed, breaching them puts them at risk for criminal sanction.

We will review how conditions are imposed on people and the philosophy behind reliance on conditions, by discussing each of these issues in turn.

In the course of writing this report, the federal government released Bill C-75, An Act to amend the Criminal Code, the Youth Justice Act and other Acts and to make consequential amendments to other Acts (C-75). Critique of C-75 has rolled in from many corners of the legal profession. While many aspects of C-75 will impact the lives of participants in Project Inclusion, we are focused here solely on the impact of behavioural conditions on participants.

In this section, we focus on sharing the stories of how various types of conditions are harming people. We will also briefly on how C-75, which is not yet law, may or may not improve their circumstances.

WHERE DID ALL THE REAL CRIMINALS GO?

It’s easy to vilify someone labelled a criminal. We can all conjure the image of a criminal mastermind or a violent predator. Yet once we scratch the surface of the “criminal” label, we find something more complex and often more benign than villainous pop culture representations suggest. We find people making the best choices available to them while navigating a life impacted by poverty, trauma, racism, colonization, homelessness, ill health, and substance use.

Pre-trial detention is now outpacing the rate of people in sentenced custody.

During the course of our work, we spoke with a defence counsel, a lawyer who represents accused people and ensures they have a fair trial. She told us that after decades of this work, she rarely sees actual crime in these courts anymore. She just sees poverty. Her experience is reflected in what Pivot sees every day. The other thing we saw is how behavioural conditions actually make certain behaviours criminal that otherwise wouldn’t be in absence of a court order or police-imposed condition. For example, by making drinking alcohol or staying out late illegal through the imposition of conditions, the criminal justice machine is actually producing criminalization that otherwise would not exist. In one Senate report, these offences were described in part as ones that “rarely involve harm to a victim” and “do not involve behavior that is popularly considered ‘criminal.’”

Over the last decade, our justice system has made a “significant transition to the ‘front end’ of the justice process,” meaning that police and courts are focusing more on how people are controlled and policed while they are on bail—before they are convicted of a crime. This has resulted in both an increased reliance on behavioural conditions and proactive enforcement of those conditions by police. As these behavioural control tactics have increased, so too have criminal charges for breaching behavioural conditions, which have become the most common criminal offence cycling through our courts. As a result, the rate of pre-trial detention is now outpacing the rate of people in sentenced custody.

Research for Project Inclusion included extensive interviews with people whose bail and probation conditions have negatively impacted their lives. While bail and probation conditions are often justified by the courts as measures that maintain

---

143 Marie-Eve Sylvestre et al, Red Zones and other Spatial Conditions of Release Imposed on Marginalized People in Vancouver (University of Ottawa, Simon Fraser University, Université de Montréal: 2017) at 13 and 55.
144 1st Sess, 42nd Parl, 2018 (C-75).
146 Standing Senate Committee on Legal and Constitutional Affairs, Delaying justice is denying justice: an urgent need to address lengthy court delays in Canada (Final Report), June 2017 at 139.
147 William Damon, Spatial Tactics in Vancouver’s Judicial System (M.A. Geography, Simon Fraser University, Burnaby, 2014) [unpublished] at 22, online: http://summit.sfu.ca/item/14152.
148 Damon at 2, 22-26.
Many Indigenous participants had been jailed for breaching a condition. One man explained the long criminal record he lives with because he has breached conditions. “It all started when I was 12 years old...I got like 52 breaches, a bunch of theft-unders [shoplifting]” (102),” he said. He told us he accumulated this large quantity of breaches because of “no-drinking stipulations on me,” in other words, behavioural conditions. Such conditions failed to recognize the lifetime of alcoholism he has struggled with, and how untenable a no-drinking condition is for this man. “I was alcoholic since I was, like, eight (102),” he told us. “Because my parents are.” To impose a no-drinking condition on a person living with severe alcohol addiction is to ignore the complexities of substance use disorder, to ignore the life-threatening aspects of alcohol withdrawal when experienced with no supports, and, ultimately, to set a person up for failure.

People like this man, and so many others we heard from, are treated by the criminal justice system as prolific offenders. Their records expand year over year, breach after breach—often starting with things like petty theft for stealing food when they were hungry, or using drugs to dull the pain of homelessness, injury, or illness. These are the so-called “criminals” who now crowd our prisons.  

### WHEN EVERYDAY ACTIVITY BECOMES ILLEGAL

As a result of such conditions and an increasing focus on enforcement by police, our local cells, courts, and provincial institutions are filled with people guilty of crimes that equate to “late for an appointment,” “late for bed,” “being there,” and “forgetting their homework.”

Our local cells, courts, and provincial institutions are filled with people guilty of crimes that equate to “late for an appointment,” “late for bed,” “being there,” and “forgetting their homework.”

In Canada between 2001-2012, charges for failure to comply with a court order (often breaching a bail condition) increased by 58.3%. Charges for breach of probation conditions increased 47.4%. During the same period, overall charges for all criminal offences increased only 4.1%.

In BC the data “shows an even more important increase. While there has been an overall decrease of 19% in the number of completed [criminal] cases between 2005-2006 and 2013-2014 in BC, the number of completed cases including at least one Administration of Justice Offence [breach] increased by 10.8% during the same period (from 13,010 cases in 2005-2006 to 14,413 cases in 2013-2014), representing now over 40% of all the cases.”

This increased focus on imposing and enforcing behavioral conditions coincides with a 17% decrease in the number of adults in the corrections system (in correctional institutions or under community supervision, for example on probation) between 2012-2013 and 2016/2017. What this means is that we are seeing a drastic increase in the number of people charged with crimes for engaging in everyday behaviours such as going downtown, drinking, or coming home late during a time period where cases for substantive crimes actually legislated in the Criminal Code are decreasing. There are, to put it plainly, “fewer crimes being committed, and those that are committed are less violent than they were in the past.”

The increase in people arrested and convicted for breaching conditions may be linked to the “substantial increase in police resources and the general decline in crime levels” over the last many years, freeing police to engage in proactive enforcement using conditions as a means to control the behavior of people involved in the justice system.

---


150 Abby Deshman & Nicole Myers, Set up to Fail: Bail and the Revolving Door of Pre-trial Detention (Canadian Civil Liberties Association, 2014) at 62-63.

151 See example Sylvestre (2017) at 67.


154 These figures are not adjusted for population growth.

155 Damon at 23-24.


158 Deshman & Myers at 7.

159 Cowper (2012) at 279.
How Conditions Work

Conditions can be imposed at different stages in the criminal justice process;

1. People who have not been found guilty of an offence and are not kept in custody pending trial may encounter one of two scenarios: they will either be released by a police officer or they will be brought into the court system to resolve the terms of their release (better known as “bail”):

   a. Release by a police officer

      Police officers have legislated obligations regarding the release of persons they arrest with and without a warrant. Where there is no warrant for the arrest, and absent extenuating circumstances necessitating detention, officers are to release people without arresting them or as soon as practicable after arrest. In doing so, officers are required to release people with the least restrictions possible placed on their liberty. Officers may, however, in some circumstances impose conditions listed in the Criminal Code including: remain within the jurisdiction, abstain from communicating with the victim, deposit one’s passport, inform police of a change in address, abstain from drugs or alcohol, and any other condition that the officer in charge considers necessary to ensure the safety and security of any victim of or witness to the offence. Officers do not, however, have unfettered discretion to impose other conditions.

      Police officer-imposed conditions are immediately enforceable, even though they have not been endorsed by the court or reviewed by a prosecutor, and even before a decision has been made as to whether or not any charges will be laid against the individual. People must either wait until their first court appearance, which can be months away, to request changes to these conditions or they have to make a request to the court to appear at an earlier date to vary their conditions.

   b. Interim release or “bail”

      People who are not released by police will not be brought before the court to resolve the terms of their release or will negotiate their release by consent with a prosecutor (Crown). Both are forms of judicial interim release (bail). In most circumstances, the court is required to release people unconditionally unless the Crown can demonstrate that detention is justified or that imposing conditions on release is reasonable. Courts have broader discretion than police to impose conditions including: remain within the jurisdiction, do not communicate with the victim or witness, deposit passport, inform police of a change in address, refrain from going to any specified place, report at a specified time. Courts may furthermore impose conditions necessary to ensure the safety and security of any victim or witness or other reasonable conditions specified in the order as the justice considers desirable. Despite the discretion given to courts, they are required to release people on the least restrictive conditions reasonable in the circumstance and reflect fundamental Charter rights to reasonable bail and the presumption of innocence.

      There are three purposes to imposing pre-trial conditions: to ensure attendance at trial; to protect public safety; or, to maintain confidence in the administration of justice.

      People subject to conditions upon release by police or on bail have not been convicted of any offence and conditions are not intended to be imposed in order to rehabilitate or punish people.

      For ease of understanding, we will refer to both police-imposed conditions and court-imposed conditions as “bail” and will differentiate between police-imposed and court-imposed conditions only where necessary.

2. People who have been found guilty of an offence may have conditions imposed on them where they are sentenced to probation or conditional sentence orders, or when exiting prison on parole.

   a. Probation

      Probation is a criminal sentence that is served in the community and is rehabilitative in nature. Conditions imposed, in addition to legislatively required conditions, must “be reasonable and aim at protecting the society and facilitating the offender’s reintegration. They cannot be primarily punitive.” Further, there must be “a nexus between the offender, the protection of the community, and his reintegration into the community.”

   b. Conditional sentence orders and parole

      A conditional sentence order (CSO) is a sentence of imprisonment that a person is ordered to carry out in

---

160 People who are not released by police will not be brought
161 Criminal Code, ss 496, 497, 498, 503.
162 See also Deshman & Myers at 15.
164 Criminal Code, s 503 and Antic at para 67.
165 Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982; c 1, ss 11(d) and 11(e) [Charter].
166 See Omeasoo at para 31.
167 These include “keep the peace and be of good behaviour,” do not communicate with victims or witnesses or go to any specific place except with consent of the individual or order of the court, appear before the court as required, notify the court of changes in name, address or employment. See example Criminal Code s 732.1.
remains uncertainty as to the effect Since the judgement in 2017, there for every condition to be imposed. unconditionally, absent justification require that people be released in the future behaviour of an individual and probation is intended to be “a rehabilitative sentencing tool...It is not considered punitive in nature.”

In relation to court bail, the Supreme Court of Canada (SCC) has recently reiterated in R v Antic the requirement that people be released unconditionally, absent justification for every condition to be imposed. Since the judgement in 2017, there remains uncertainty as to the effect this is having on day-to-day judicial practice. Regarding consent-based court bail, the SCC has dictated that these same principles should guide the actions of Crown in cases where conditions are imposed by consent. Due to difficulties in tracking trends in consent-based court bail over time, there has been little opportunity to systemically assess whether this has had an impact on the actions of Crown in seeking bail with conditions by consent.

Despite these legislated and common law limitations on the purposes and use of conditions under both bail and probation, the imposition of conditions on some community members remains a prevalent issue, for a variety of reasons discussed below. For example, between 2005 and 2012 in the Vancouver Provincial Court alone, 96.9% of all court-imposed bail orders included conditions and 78.6% had between two and eight conditions. Across BC in 2016/2017, red zones and abstinence conditions were amongst the top ten conditions imposed on people released on bail. Red zones were imposed in 58% of bail orders (25,118 orders) and abstinence conditions were imposed in 38% of bail orders (16,246).

The heavy use and reported punitive effects and harms associated with these conditions have led to multiple recent efforts by academics and civil liberties advocates to bring these issues to light. Conditions have also been the subject of analysis by various entities of government. Despite these critiques and in the face of the significant impacts on the community, commonly referred to as “house arrest.” Because this is imprisonment within the community CSOs do include the imposition of terms that are punitive and limit the liberty of the person. Parole is the process by which people can be released from imprisonment prior to the completion of their sentence.

Project Inclusion participants did not talk about CSOs or parole. Our analysis of the impact of conditions generally does not relate to those imposed in order to protect family members from violence or to protect the public from people likely to commit sexual offences, etc.

The conditions that Project Inclusion participants talked about were almost exclusively bail and probation conditions. Regardless of the mechanism by which conditions are imposed on an individual, our analysis is limited to conditions that are harmful or ill-advised on the basis of addiction, limit access to necessary health services, are incongruous to someone's social or housing status, or are incompatible with the real needs and circumstances of the individual, resulting in criminalization for behaviours that are necessary, inevitable, or reasonable in the circumstance.

Book Law Versus Street Justice

Bail conditions are to be imposed only where necessary and, where necessary, only to address concerns related to releasing a person on bail, such as ensuring attendance in court, public safety, and confidence in the administration of justice. Probation conditions are imposed to influence the future behaviour of an individual and probation is intended to be “a rehabilitative sentencing tool...It is not considered punitive in nature.”

In relation to court bail, the Supreme Court of Canada (SCC) has recently reiterated in R v Antic the requirement that people be released unconditionally, absent justification for every condition to be imposed. Since the judgement in 2017, there remains uncertainty as to the effect this is having on day-to-day judicial practice. Regarding consent-based court bail, the SCC has dictated that these same principles should guide the actions of Crown in cases where conditions are imposed by consent. Due to difficulties in tracking trends in consent-based court bail over time, there has been little opportunity to systemically assess whether this has had an impact on the actions of Crown in seeking bail with conditions by consent.

Despite these legislated and common law limitations on the purposes and use of conditions under both bail and probation, the imposition of conditions on some community members remains a prevalent issue, for a variety of reasons discussed below. For example, between 2005 and 2012 in the Vancouver Provincial Court alone, 96.9% of all court-imposed bail orders included conditions and 78.6% had between two and eight conditions. Across BC in 2016/2017, red zones and abstinence conditions were amongst the top ten conditions imposed on people released on bail. Red zones were imposed in 58% of bail orders (25,118 orders) and abstinence conditions were imposed in 38% of bail orders (16,246).

The heavy use and reported punitive effects and harms associated with these conditions have led to multiple recent efforts by academics and civil liberties advocates to bring these issues to light. Conditions have also been the subject of analysis by various entities of government. Despite these critiques and in the face of the significant impacts on

171 See Criminal Code ss 810-810.2.

172 Antic at para 67 (j) and Sylvestre (2017) at 17. See also Criminal Code subsection 515(10).
174 These are conditions that both parties agree to; however, little consideration is given to the power dynamics between Crown or police and a person facing arrest or detention. Those conditions make true consent illusory in many cases.
175 Antic at para 44.
176 Sylvestre (2017) at 43. This includes both Drug Treatment Court and Downtown Community Court projects.
177 Juristat at 10.
178 See Sylvestre (2017); Damon; Deshman & Myers; and John Howard Society, Reasonable Bail? (Toronto: John Howard Society, 2013). Note that the Sylvestre (2017) report situates their analysis geographically, providing considerable social context for the Downtown Eastside of Vancouver. While this analysis is accurate, the issues of poverty, addiction, homelessness, vulnerability to HIV and Hepatitis C are not geographic issues – they are social issues. Participants in Project Inclusion face the same societal imposed social context as people in the Downtown Eastside; however, many do so in smaller communities where they are less visible to policy makers due to their numbers and often have even less access to services and face stricter, more oppressive police- and court-imposed conditions.
179 See Cheryl Marie Webster, “Broken Bail” in Canada: How We Might Go About Fixing It (Research and Statistics Division, Department of Justice Canada, 2015); Cowper (2012); Cowper (2016); and Standing Senate Committee on Legal and Constitutional Affairs at 134, 138-140.
liberty and health, little seems to have changed.

There remains considerable indication that conditions are, at times, being imposed for improper purposes (or purposes beyond their lawful scope), or are resulting in consequences that are contrary to their stated purpose. For example, some bail conditions have been assessed as being geared towards so-called “character modification or improvement”\(^\text{180}\) rather than public safety or attendance in court. This motivation goes beyond the purposes of bail.

Additionally, as we see clearly in our data, conditions can send people into a cycle of arrests for breaches of their conditions, even where they have not been, and may never be, convicted of an underlying offence. Further, probation conditions are increasingly placing people back into the criminal justice system rather than serving their intended purpose, which is to support people's reintegration into our communities.

Outside of the strictures of court-imposed conditions, it seems clear that police continue to leverage their ability to arrest as a means of imposing conditions on people that are not always necessary, transparent, or warranted. For some participants, agreeing to unnecessary and unmanageable conditions has been the only way to avoid jail.

They automatically red-zoned me from the area when they arrested me. They basically said it was my choice whether I was going to walk or be jailed...this is the RCMP—and that's how the red-zoning came about, whether I signed that paper to be red-zoned or not. If I didn't sign it I would go to jail. – 427

The law requires that anyone who refuses to sign such police-imposed conditions and is arrested must be brought before the court within 24 hours of their arrest to determine if they will be further detained or released. Based on what we heard from participants, however, many people will sign conditions that are unreasonable to avoid even 24 hours in custody, due to fears of withdrawal, losing belongings on the street, or losing income, amongst many others. Other people may sign because they fear that they will be detained much longer once brought into custody. Either way, participants told us that they did not feel they had a choice when presented with police-imposed conditions.

Their experience is supported by other literature that analyses the bail system\(^\text{181}\) and by local defence counsel in the Lower Mainland, who reported to us that some police officers release people on highly onerous conditions that a judge would be very unlikely to impose and then schedule an accused person’s first court appearance months in the future. This means people are subject to overly harsh conditions for a significant period of time before even attending court where a judge may vary their conditions or before requesting a review by a prosecutor—an onerous mechanism that we did not hear was an effective tool for people affected. Moreover, if Crown later decides not to approve charges, people will have spent months subject to those conditions without charges ever being laid against them.

Further, sometimes these police-imposed conditions are written down as part of an appearance notice, as described above. Sometimes they are only verbal warnings. These verbal warnings are not legally enforceable, but we heard that people often feel bound by them in order to avoid harassment by police, or that they were unsure whether they had received a warning or an enforceable condition.

All of this results in uncertainty and fear for people who do not know

\(^{180}\) Deshman & Myers at 50. See also Sylvestre (2017) at 32; Cowper (2012) at 149; and R v Reid, 1999 BCPC 12 at para 58.

\(^{181}\) See Deshman & Myers at 24.
what conditions have been imposed on them. Indeed, many Project Inclusion participants shared that, due to the fear and stress they were experiencing while interacting with the police, they could not keep track of the conditions imposed upon them.

The conditions process can be likened to contract law. Think about the last time you signed a contract without reading it in full because you were in a rush, or desperately needed the service that was being offered. Now, consider: what would you be willing to sign if you were taken into jail cells, and signing an agreement was the only way out?

In both police-bail and consent-based court-bail, both police and Crown hold institutional authority that fundamentally alters the nature of “consent” or “voluntary agreements.” As a result, they are able, whether intentionally or unintentionally, to impose unreasonable and unjustifiable conditions on people who will agree to nearly anything in order to secure their release, regardless of what the legislation or case law dictates.

These so-called “consent” arrangements and police bail conditions are rarely subject to in-depth scrutiny by courts. They are not tracked in ways that would allow for a quantitative assessment. The experiences of people subject to these decisions, however, make clear that people are being set up to fail.

During the interview process for this study, we sat with people as they described substance use withdrawal—the sweating, shaking, insomnia, diarrhea, and debilitating pain. Some described it as feeling sicker than the worst flu imaginable. The experience is torturous; the drive to feel better is overwhelming. That is the context in which many people are asked to consent to many of these conditions.

One man we spoke with described signing his name on a set of bail conditions. As he signed, he knew he’d been set up for failure. But it was his only choice in the moment because of the pain and suffering he was experiencing due to opioid withdrawal and because he knew this was his opportunity to avoid another night in custody. He, like many others, signed whatever was put in front of him; in other words, he made a perfunctory agreement to the conditions, all while knowing that he was making promises he couldn’t keep. When asked if he meant it when he promised to stay abstinent or go to treatment, he responded, “No. I just wanted out to go get better.”

The complex set of harmful outcomes, which we explore further below, mandates that Crown and police must be held to an impeccable standard in determining what, if any, conditions to offer someone as a consent release or to impose instead of arresting someone.

Crown and police need to be “wary of the detainee’s pro forma [perfunctory] agreement to abide by an abstinence clause (whether
realistic or wholly unrealistic) simply to secure his or her immediate release from custody. This is equally true of other conditions.

The fact that people give perfunctory agreements is not evidence of personal shortcomings such as dishonesty or a lack of trustworthiness. These widely accepted stereotypes about people involved with the criminal justice system prevent us, as a society, from taking a closer look at the systemic barriers that colour their lives. In the moment of signing one's name on a set of conditions that they cannot follow, perfunctory agreements are less about the signer actively disobeying the law and more about a human thrust to make choices to best protect one's health and safety while managing chronic substance use.

For police and the Crown, imposing stricter conditions than necessary or failing to acknowledge an individual's social circumstances at this stage means making someone choose between jail or conditions that set them up to fail—which is, in reality, often no real choice at all.

**Even Short-Term Detention Can Have Lasting Negative Consequences**

Spending just a few days in jail for breaching a condition means losing your liberty. It can also mean being subjected to other harms associated with incarceration. The fact that detention related to assessing bail or breaching conditions may be short-term, anywhere from a day to a few months, does not alleviate the harms of such detentions nor does it justify the over-use or over-policing of conditions.

**Overdose Risk and Lack of Harm Reduction**

Short-term jail stays can mean going through viciously painful withdrawal and increasing one's risk of overdosing upon release. Rates and timing of withdrawal range according to the kind of substance being used and the circumstances of the individual. For fast-acting opiates (heroin), onset of withdrawal can range from 8-24 hours after last use; for long-acting opioids (methadone), 12-48 hours after last use. Thus even a day or a few days in custody can send a person into painful, sometimes debilitating withdrawal or death. For pregnant women, opioid withdrawal can cause miscarriage or premature delivery.

Also, the correlation between incarceration and risk of overdose is distressingly strong. This is particularly clear in the weeks following discharge. Of 1,854 reported overdose deaths in BC between January 2016 and July 2017, based on Coroner data publicly available as of April 2018, 18% of people died while under community corrections supervision (for example, they were on probation in the community) or within 30 days of release from a correctional facility.

One 2016 Toronto-based study found that people are at almost 12 times greater risk of a fatal overdose after they are released from custody compared to the rest of the Ontario population.

---

182 Omeasoo at para 40. See also Webster at 7.
184 Shane Darke, Sarah Larney, & Michael Farrell, “Yes, people can die from opiate withdrawal” (2017) 112:2 Addiction at 199. Notably, while we’ve focused largely on opioid withdrawal, alcohol withdrawal is also common and can be very dangerous, even deadly. For a person with alcohol dependence, symptoms of withdrawal can peak at 24-36 hours, and later symptoms include seizures and delirium tremens, which can be deadly. See United States Federal Bureau of Prisons, Detoxification of Chemically Dependent Inmates, Federal Bureau of Prisons Clinical Guidance (Washington DC: Federal Bureau of Prisons, 2014) at 5, online: https://www.bop.gov/resources/pdfs/detoxification.pdf.
185 World Health Organization, at 34.
Being in a correctional institution is also an independent driver of both HIV and HCV. For example, the HCV infection rate inside federal institutions\(^{188}\) is between 20 and 50 times higher than in the general population.\(^{189}\) This is no coincidence. One study focused on Vancouver's Downtown Eastside showed that incarceration doubled the probability that a person would engage in needle sharing.\(^{190}\) This risk disproportionately impacts women\(^{191}\) and impacts Indigenous women more than any other group of people.\(^{192}\)

Available data on HIV and HCV risks in correctional institutions often focuses on federal facilities, where people spend two years or more. Data on this issue is less available for provincial correctional institutions. This may be due in part to the short length of time that people are usually detained, ranging from a few days to a few months. Provincial institutions and local jails, however, are where people who rely on injection drugs are more frequently detained. For example, in 2017, Diane Rothon, Medical Director for British Columbia Corrections, told the National Observer that about one-third of prisoners in provincial institutions are now on some kind of opioid treatment program and that there is still “a big unmet need for drug treatment in jails.”\(^{193}\) There is a need for further focus on the experiences of people cycling in and out of provincial institutions and local cells, and on their relative risk of contracting HIV and HCV infection as a result of their short-term incarceration.

**Any Incarceration Leads to Stigma**

Beyond the significant harm to the health and security of people cycling in and out of our correctional institutions, these short-term bouts of incarceration and criminalization drive stigma against people, decreasing their resources to reintegrate into communities.

Of a sample of employers canvassed in Ontario in 2014, close to half of the respondents reported negative and stigmatizing characterizations of people with criminal records, regardless of the contents. Employers described people with criminal records as “less reliable” and posing a “greater risk/liability” compared to other workers. The majority, 61%, stated that they had never knowingly hired an individual with a police record.\(^{794}\)

For people experiencing poverty, homelessness, or unemployment, the stigma associated with having a police record can create a vicious cycle that further ensnares them in poverty.

**Short-Term Jail and Homelessness**

Short-term incarceration can mean losing income, housing, or employment.\(^{195}\) For people we heard from who are already experiencing homelessness, time in jail can often mean having all of their possessions confiscated, stolen, or destroyed. It can also mean leaving a loved one alone on the street. People who live on the streets rarely have access to secure spaces in which to store their belongings. They rely heavily on their own ability to protect their possessions, ranging from tents and clothing to irreplaceable personal items to medications. This requires them to be near their belongings at all times or to rely on friends and family to watch over them. These survival tactics are stymied when people are incarcerated even for a day or two, which can result in losing all of their possessions, including their shelter.

**Why We Over-Rely on Conditions**

Here we provide a cursory review of the philosophy behind reliance on conditions in BC and Canada more broadly. In doing so, we have focused primarily on area restrictions, better known as red zones. Much of the existing literature on conditions relates to red zone conditions and how they control people's access to space. Other conditions, like prohibitions on drug paraphernalia, remain largely unstudied.

**Stigma**

The overuse of conditions can be traced to stigma against people who use substances, people living in poverty and homelessness, and people engaging in sex work. In 1979, the BC Supreme Court upheld red zoning sex workers out of Vancouver’s West End due...
to stigmatizing fear that allowing them to stay in the neighbourhood would mean they would “accost any and all males.” Very little has changed over the past 40 years. In a 2017 report on the use of red zones, perspectives of various legal actors (judges, crown, police—the very group of people empowered to impose conditions) reflected ongoing societal stigma facing people who rely on public space and people who use substances.

For example, one justice system official referred to a local community park as a place where “no pro-social activities…happen.” Characterizing the park as a site of “drug use and drug dealing” seemed to justify routinely red zoning people from it. Likewise, people talked about the need to keep people out of a neighbouring geographic area because “there are schools, daycares...like, it is a community.” These stereotypes devalue low-income community members and dismiss the importance of public spaces as places of community, harm reduction, and social inclusion. This line of thinking promotes a false, divisive dichotomy between low-income people and the broader community, as though they cannot both be valid groups sharing the same space.

These perceptions, held by those empowered to impose conditions, are stark examples of the depth of misunderstanding underlying the overuse and non-discriminating application of conditions such as red zones, which will be discussed in detail below.

We know that displacing people who are homeless, use substances, and engage in sex work puts their lives at risk. When people who are homeless are displaced from their communities, they are put at increased risk of assault and have decreased access to the services they rely upon. When people who use drugs fear criminal sanction, they risk overdosing “alone and far from medical help.” When sex workers are displaced, their lives are put in danger because their displacement means moving their work to more dangerous environments, farther from support networks and ready help.

We have seen the chilling consequences of such displacement for sex workers play out in Vancouver’s Downtown Eastside. After sex workers were displaced from the rapidly gentrifying West End of Vancouver between 1975 and 1985, partially through the imposition of red zones on individuals engaged in sex work, they were left with few options but to work in poorly lit industrial zones in the Downtown Eastside. There, 67 women engaged in sex work disappeared from the area and were murdered by convicted serial killer Robert Pickton. These are just some of the myriad ways in which stigma against people living vulnerably becomes more harmful than benign dislike; it becomes a mechanism of law that puts lives and safety in danger.

Stigma also drives historical and contemporary attempts to control or render those labelled as “homeless,” “prostitute,” “addict,” or “drunkard” invisible. Laws that attempt to control the location, behaviour, and visibility of people who lack what is conventionally understood as legitimate employment or housing have a long and complex history. Despite significant changes in the language and nature of these laws, there are common threads that can be followed through to today’s laws, including the use of conditions.

Between the 16th and 18th centuries, criminalizing so-called “vagrants” was common and extensive. In 16th century England, for example, the most common punishments for vagrants included repatriation to one’s parish, essentially being displaced and banished, or, in current terms, red-zoned. Such laws proved ineffective, merely resulting in the passing of “vagrants” from parish to parish. Despite this, we continue to see the reproduction of these very practices and harms in our contemporary justice system.

One need only look at Canada’s history with alcohol and drug prohibition to see how stigma, colonization, and racism continue to impact how our laws treat people who use substances. For example,
alcohol prohibition against anyone labelled a “Status Indian” began in 1868, almost 40 years before alcohol prohibition was imposed on others in BC.\(^{206}\)

Even as we’ve moved away from alcohol prohibition, we continue to see how Indigenous people who use alcohol are over-policed and over-incarcerated. We also maintain, to this day, prohibitions on other substances, leading to the heavy-handed management and control of the bodies of people who use substances, especially where substance use intersects with poverty and race.

Drug prohibition began in Canada in 1908 with the passage of the Opium Act, which was deeply informed by anti-Chinese racism. It developed into a fulsome scheme of prohibition in relation to many substances and activities throughout the 20th century.\(^ {207}\)

Even as we have moved away from alcohol prohibition, we continue to see how Indigenous people who use alcohol are over-policed and over-incarcerated. We also maintain, to this day, prohibitions on other substances, leading to the heavy-handed management and control of the bodies of people who use substances, especially where substance use intersects with poverty and racialization. This includes the imposition and policing of conditions such as abstinence from alcohol or drugs and prohibitions on carrying drug paraphernalia.

**Bail Reform and the Move to Rabble-Management Policing**

Tracing stigma against people who have long been labelled as societal outsiders and policed throughout history reveals how the bodies of certain people continue to be policed and criminalized. In 1972, Canada passed the *Bail Reform Act*, SC 1970-71-72, c 37, with the goal of curtailing the “vast numbers of people [who] were being unnecessarily detained prior to trial.”\(^ {208}\)

What has been observed since then, however, is a failure to adequately account for people’s experiences of poverty, racism, colonization, disability, homelessness, and trauma in making determinations as to who will get bail and on what terms. This failure increases barriers to being released on bail for people with mental health concerns or people who use substances, people living in poverty or with homelessness, and Indigenous people. When members of these groups are released, many are disproportionately burdened with court-imposed behavioral conditions.\(^ {209}\)

Since bail reform in the 1970s, the criminal justice system has gradually moved towards a “rabble-management” model of policing, bail, and sentencing. These decisions rely heavily on assessment of the risk posed by a given individual. How we define risk, however, can itself be rooted in stigma, meaning that benign activities like sleeping in a doorway, personal activities like taking substances, or poverty-related income generation, like street-based sex work, become seen as inherently risky or dangerous. The people engaged in such “risky” activities are then labelled as “rabble,” and policing is directed towards the management of even their everyday behaviours.\(^ {210}\)

Rabble-management policing has led to equating minor offences, like breaches of conditions, with an actual risk or danger to public safety; studies of court-imposed conditions and breaches suggests this is often a false equivalency.\(^ {211}\)

A 2012 review of BC’s criminal justice system posited that many conditions may be “unrealistic,” yet police aggressively enforce them nonetheless.\(^ {212}\) A 2016 update to that analysis found that increases in breach offences continue, pointing to the need for a “system-wide response” to this trend.\(^ {213}\)

The increase in rabble-management policing is reflected in the experiences of Project Inclusion participants. Many interviewees reported leniency and understanding on the part of the probation officers or bail supervisors, while noting aggressive enforcement, surveillance, and harassment by police.


\(^{207}\) Boyd at chapter 3.

\(^{208}\) Deshman & Myers at 4.

\(^{209}\) See Deshman & Myers at 72-79.


\(^{211}\) Sylvestre (2017) at 61.

\(^{212}\) Cowper (2012) at 27.

\(^{213}\) Cowper (2012) at 27.
**Service Providers Speak Out**

As part of Project Inclusion research, we conducted an online survey and heard from over 100 service providers who work with people experiencing homelessness, poverty, and violence across BC. Some of the people they work with use substances and some have significant health issues.

Service providers had much to tell us about behavioural conditions. The following are excerpts from some of the online survey responses we received.

**ON RED ZONE CONDITIONS**

- “Red zoning is a common event in our community. Many clients are unable to access health and social services in the downtown core.”
- “Red zoning has a huge impact on our client base—often cutting off our participants from community supports they have come to rely on.”
- “Red zones can prohibit people from accessing health and social services.”
- “I do not find red zoning to be beneficial. While I understand the logic in throttling access to certain community areas, I see my clients either thwarting the order and ending up in more trouble, or...suddenly...caught in a spiral of risk behaviours due to a disconnect from the services they depend on.”

**ON ABSTINENCE CONDITIONS**

- “Clients being incarcerated for breach of probation when the breach is alcohol—in such cases incarceration further stigmatizes the client and adds to the instability in many areas of their lives.”
- “Conditions on release are a huge problem: ‘abstain from drugs and alcohol, et cetera.' This is an impossible task and results in long periods of incarceration for people with substance use problems.”
- “People with addictions have been put on sobriety conditions, which is a setup for failure and has resulted as such. These clients would have been jailed if it weren't for [the] tireless advocacy work of staff.”
- “The sobriety conditions are a huge stumbling block... Indigenous men and women are the most frequently profiled.”
- “Sobriety conditions seem ridiculous as people are addicted and can't just stop because the RCMP tell them to...there is trauma and all sorts of reasons people use and having these conditions does not help people!”
- “Sobriety conditions may result in women not calling for help when it is needed. There have been many circumstances of a lack of understanding by law enforcement regarding the cycle of violence and/or victim blaming language when women report abuse or violence—including sexualized violence.”

**ON NO-CARRY DRUG PARAPHERNALIA CONDITIONS**

- “Participants who are forbidden from carrying paraphernalia have often not curbed use, but instead are resistant to accepting harm reduction supplies on the chance they’ll be randomly stopped.”
- “Prohibitions on carrying drug paraphernalia has led to situations where clients we are aware are involved in active addiction refuse harm reduction supplies.”

---

**WHAT RESULTS FROM BEHAVIOURAL CONDITIONS: AN ONGOING CYCLE OF CRIMINALIZATION**

Sitting on the side of the road, watching the police roll by and request someone’s ID, we waited for a bylaw officers to leave so we could continue interviewing people for Project Inclusion. Watching this unfold, we reflected upon how an individual’s spiral into criminalization can happen over many years, or sometimes, just a matter of months. One man in his thirties told us he had been living outside for just over a year, but before that, he owned his own house. Things changed drastically when, as he described it, “I got into heroin. My wife was stealing my painkillers and the pharmacy called my doctor and said I was abusing my pain meds and they cut me off. A week later I was shooting heroin (396).”

We chatted for almost two hours as he talked about his job, his family, his home, his workplace injury, and the car accident that almost killed him many years ago. He was in a coma for a month. Today, he still struggles with “memory concentration, cognition, comprehension—all sorts of things,” he said. He was on a pain management plan until his doctor cut him off his medications just over a year ago, sending him to the streets to find the opioids he relies on. Since then, he had lost his home, spent his first Christmas without his children, and overdosed six times in just one day.

Over the last year he had become known in his community as a “helper,” a “babysitter,” and as “Narcan Man” for his dedication to carrying harm reduction supplies and administering naloxone to those who are overdosing. Then he picked up his first criminal charge. He was arrested for drug possession while he was using in a park; it was the first time he’d been in trouble with the law in over a decade and a half.

With that first charge came a host of conditions that, within just a year, sent him into a cycle of criminal charges. As he traced the red zone out on a map, he said because he was picked up on a drug charge he
The red zone, he said, is “where all your services are. That’s where your food is, that’s where your doctors are, that’s where mental health is, that’s where the library is, that’s where your harm reduction is.” In other words, “That’s where basically any kind of service for street people or homeless or low income [people], that’s where it is.” – 396

was “automatically red-zoned” from the entire downtown, a massive geographic area. From one drug charge, the red zone summarily cut him off from connections that were, and are, essential to his wellness. The red zone, he said, is “where all your services are. That’s where your food is, that’s where your doctors are, that’s where mental health is, that’s where the library is, that’s where your harm reduction is.” In other words, “That’s where basically any kind of service for street people or homeless or low income [people], that’s where it is.”

This red zone, like many others we encountered through Project Inclusion participants, is not tied to a specific safety concern or the needs of the victim of any crime. It is a general area restriction imposed on an individual because he uses drugs and he doesn’t have a home in which to use them in privacy.

On top of his red zone, the drug charge meant that he was ordered not to carry drug paraphernalia—clean syringes and other harm reduction equipment—a condition that he ignored entirely because of how important it is to him to make sure people have clean gear. He was also ordered to abstain from using drugs, an impossible task for a man managing a complex pain condition and addiction without proper medical care.

When asked if he told the judge it would be impossible for him to abstain from using drugs because of his pain and his addiction, he replied, “Yeah, they don’t care.”

In just one year, he’s gone from homeowner to spending 62 days in jail after picking up over a dozen charges. A few of those charges are for possessing the drugs he uses to manage his pain. Notably, however, most of the charges are for breaching his red zone. He continues to enter this red zone to get the services he needs and because “the only people I know [are] down here.” – 396

For this man, being isolated from his community of friends triggers anxiety, which negatively impacts all aspects of his life. “I got bad anxiety, social anxiety now from the accident, from being isolated for so long,” he said.

Despite the red zone, he kept going to the place he knew best, where he could access help and find friends during one of the worst years of his life. As a result, he’s now caught in a web of criminal convictions that risk dragging him further away from his family and the life he wants to return to.

In just one year, he’s gone from homeowner to spending 62 days in jail after picking up over a dozen charges. A few of those charges are for possessing the drugs he uses to manage his pain. Notably, however, most of the charges are for breaching his red zone. He continues to enter this red zone to get the services he needs and because “the only people I know [are] down here.” – 396

His experience exemplifies how conditions have “exclusionary and criminalizing effects, expanding the boundaries of the criminal law to criminalize mundane behaviours and regulate public space primarily in areas of entrenched poverty.”

Many other people told us about the never-ending cycle of breaches. One participant succinctly described the end result as “spending more time in jail for breaches than anything to do with the charge to begin with (304).”

---

214  Damon at 22.
Other participants expressed exasperation at the impact of behavioural conditions prior to even finding out if they were being prosecuted for an alleged offence. They could, after all, end up having the charges dropped for their original offence “by the time I get to court (208),” as one participant described it.

Some people had trouble remembering back to their last actual offence, having spent the last two or more years accruing 12 or even 18 breaches. This cycle can go on for years. As one Indigenous participant explained, “I’ve been on probation for nine years of my life...because I just been nothing but breaching...drinking yeah, I gotta pull it off [have the condition lifted] so they can’t breach me anymore (12).”

Conditions are sometimes held out as a way of minimizing the use of incarceration, but this is far from the reality. In fact, conditions are onerous sanctions, often imposed on people who have not actually been convicted of a crime. It is important to remember that the starting point for these individuals is not incarceration; it is release into the community.

For this reason, it is most accurate to view each condition added to a person’s release as an additional burden, rather than a reprieve from jail. It is not a better alternative to incarceration, as some people coming before the courts are led to believe. The bail system, except in very specific circumstances, presumes that people will be released unless their detention can be justified. Justification is also required for every condition imposed. That, however, is not how it is experienced by many of the people we heard from. Participants expressed feeling forced to consent to harsh conditions for fear that the alternative would be to remain in jail—rather than be released on more reasonable conditions. Even in cases where a person has been found guilty and sentenced to probation, the imposition of these conditions can create impossibilities for some people that lead them into the criminal justice system so frequently that some have come to refer to it as “life on the installment plan.”

Conditions create impossible situations for people already living vulnerably. Many participants told us about the futility of signing their names on a set of conditions, alongside the frustration that there are no alternatives to agreeing to a contract that sets them up for failure. As one person put it, “I just know that when I’m signing that paper I’ll be back (28).”

**Conditions have Harmful, Well-Hidden Daily Impacts**

The impacts of these conditions are often only considered once someone appears in court. For many people, that comes far too late because the harmful impacts are felt from the moment the conditions are imposed and every day of a person’s life while subject to them. “My whole life has been organized around trying to appease these people (304),” one participant said.

In another recent study, even lawyers have expressed frustration at the impossible burdens conditions place on people’s lives.

I look at some of those orders and think if I were told to do as many things as these guys were told to do, and I got arrested every time I was late, I’d be in jail all the time too. It becomes overwhelming the numbers of requirements...and you are dealing with a person who probably has a drug or alcohol addiction, who often has a mental illness, who doesn’t have a solid living environment and being told to keep more appointments then I could handle keeping in a week. And they probably don’t have an alarm clock either. So how in the world do we expect them to comply with those kinds of things?...It would be difficult for the people that are imposing those orders to live by some of those orders.215 – Defence counsel, Vancouver

It is true that some people manage to avoid conviction where the Crown or the court determines their breach is acceptable or justifiable. That does not, however, mean that people don’t still end up spending days in jail.

As one woman explained to us, “I spent five days in jail waiting for the judge to come back. I went to the 7-Eleven. I know. I needed tampons and my boyfriend wasn’t home. So, I went to get tampons and that’s what my lawyer had to say in court. It was embarrassing as hell (439),” she said. “Yeah, but they found it an acceptable breach. So, they let me go, but I did five days.” Another woman told us that she spent 18 days in cells for trying to get to the hospital with a broken foot (409).

We explore how conditions intersect with participants’ daily realities in detail below.

**How Conditions Intersect with Homelessness**

The anxiety in people’s voices is palpable as they describe the challenges of navigating an already complicated set of life circumstances while additional court-mandated expectations pile up on them.

It’s the freaking distress that builds up when you got to worry about shit like that, like it’s crazy...Oh it makes me just want to just want to die basically—like give up, right. Yeah it’s fucked up. – 59

We heard from many people experiencing homelessness about how hard it was to abide by their conditions and how often they were charged with breaching them. We were not, however, able to access quantitative data that might demonstrate the negative intersection of having multiple bail or probation conditions and being homeless because police and courts simply do not track that data. What we do know is that almost everyone

---

215 Sylvestre at 60.

Pivot Legal Society
we talked to had experienced homelessness and many participants were trying to manage multiple conditions while living on the streets. This is an impossible task, according to participants. "How can you follow [conditions] if you have no place to stay (96)?" asked one participant.

Another woman shared the circumstances that shape repeated breaches of conditions and missed court appearances.

Because I’m homeless and it makes it really hard to get ready and be up on time to go to probation meetings. Like, I’m on the street. I don’t have an electrical outlet to plug in an alarm clock to get up and be ready at a certain time. Like if I sleep, I’ll sleep right through probably till the next day then realize, oh shit — like fuck — I guess I have warrants again. I’m already late. So basically like— yeah, like a constant breaching.

We heard from people experiencing homelessness how days blend together, hours are lost, and sleep can be a rare but coveted reprieve. The result is that many people are late for court or to mandated appointments with a bail or corrections supervisor or they miss those appointments entirely—the system is not designed for them. The result is that they are repeatedly subject to criminal sanction for being late or failing to appear at an appointment or court date.

We were surprised to hear how often people who were homeless or very marginally housed were subject to either curfews or residency requirements. Curfews require people to be in their residence or another designated place during certain hours, usually overnight. Ostensibly, these are used to mitigate risk of an accused person reoffending. We heard from many participants, however, that they were given curfews, even when they had no direct relation to the accusations they were facing.

Curfews, in particular, can perpetuate homelessness or leave people in dangerous living conditions. One woman described her untenable living situation while living with a curfew that stipulated she had to stay in her place of residence alone overnight, even though her place of residence was “terrifying” to her.

I was living in rat-infested, shitty, disgusting, no running water, no plumbing trailer...And I was terrified there. I locked myself off from the other people living in the house, because one of the men there...tried to kick down my door and beat me up...But I couldn’t leave there, because I had a curfew. So, I was terrified to be at home, but I had to be there. They would turn the power off on me. So, I would be sitting in the pitch-black dark by myself from 8:30 pm until 6 am and I won’t lie. I left many times well before it was 6 am. I think one night I didn’t even come home. I just took a chance. I couldn’t do it.

This woman had few alternatives. Living in a small community means having limited housing options, particularly on a fixed income and
especially if you're looking for housing after having been homeless for any period of time.

For her, the curfew made her only housing option, the one place she could have lived "no questions asked," nearly impossible. Her fear of bringing police attention to her neighbours was so significant that she worried her "neighbours are going to probably kill me and set my house on fire (362)."

Curfews may also fail to take into consideration the survival strategies of women on the streets who rely on a network of friends and boyfriends to keep them safe, and who will risk jail not to lose those connections. "I was always out with my so-called boyfriend, he wouldn't let me go back [to the shelter], he'd say we're done if you go back to that place (289a)," one woman told us. "So I would stay out for him."

Courts need to be alive to the realities people are living in and turn their minds to the harms they may be causing by either isolating women or putting them in conflict with their social safety networks through the imposition of behavioural conditions.

Several participants shared that they struggled to find housing because of a curfew condition. As one man explained, the already arduous challenge of finding housing while homeless is compounded when one also risks being falsely reported to police by a roommate for breaching curfew. "I don't really want to rent a room because maybe the people that don't like me and answer the door and [say] 'he is not here'. I have had that happen twice (59)."

Knowing that the police may come by to check someone's curfew can make people undesirable as roommates. "I can't go and find a room to rent because I feel like I have to tell the people that the cops could be showing up (59)," he told us. "And it's like, who is going to want to rent to someone where the cops could be showing up anywhere before 12 at night because 12 o'clock is going to be my curfew."

Staying in a homeless shelter can become a risky or impossible proposition if you have a curfew condition. Keeping one's bed at a shelter is a constant challenge given that shelters generally provide only temporary beds or mats as accommodation and it would be challenging for a person to secure a shelter bed over the entire period of time they are subject to a curfew.

Curfew conditions further endanger people who are already facing barriers to meeting their essential needs such as shelter and income. One study participant was ordered to stay at a shelter from which he'd been banned. We also heard from a person about the shelter calling the police on people who were late for their curfew. "They called [police] for a girl that wasn't in on time. They called the cops and I was there, the cops were waiting and she was only 10 minutes late. Like nine o'clock (289b)," one person said. "She had a curfew."

When people are camping out, abiding by a curfew is even more challenging. The same man who was struggling to find housing because of his curfew also described to us how he navigated his conditions while being homeless in the streets.

I went to jail for three months and I got out, a year of curfew, right, and I was homeless. I told my probation officer this. I was phoning the police station every day to say this is where I am staying and I had so much anxiety, right, and it was getting bad. I was having seizures at the time too, right, because of all the stress. And so I am like freaking out all day, like I don't want to go back to jail, so then it's like curfew and the crimes weren't even committed in the nighttime, right. - 59

For other participants, a curfew condition meant either going without income or putting themselves at greater risk of harassment from other community members while trying to earn income during the day.

"I had a curfew from 6 at night 'til 9 in the morning...it was hell (439)," one woman told us. "I couldn't go anywhere. I couldn't go bottling. We tend to bottle at night, because people don't bug you so much." Instead of binning at night, when she is safe from harassment and threats of violence from members of the public, she was left with the choice to bin during the day—an unsafe proposition for her—or to go without that necessary source of income.

Our interviews revealed that some people, particularly those impacted by poverty, homelessness, and disability, are ordered to always carry a paper copy of their court conditions as a reminder of their obligations. In principle, it sounds reasonable to ask that someone carry a reminder of their conditions, especially when people struggle with memory loss, cognitive impairment, and brain injury. But mandating a person to have their papers with them at all times becomes impossible when living homeless. We detail the frequency with which people experiencing homelessness lose their personal possessions due to theft, or have their belongings discarded by city staff, police, or members of the public in Part 1.1

It’s worth noting that police do not rely on people’s papers to monitor their conditions. Police in BC share a common database used by every policing agency in the province called the Police Records Information Management Environment (PRIME-BC). Police can use that database to access a person’s list of conditions anytime they’re at work. While we discuss some of the problems related to a lack of timely updates to the database below, the fact that such a database is readily available to any police officer working in BC underscores the redundancy of expecting people navigating homelessness to hold onto the pieces of paper listing their conditions. That they also risk criminal sanction for losing them,
especially when they and police are aware their behavioural conditions are accessible through PRIME-BC, seems to run contrary to serving the interests of justice.

One woman we spoke with told us about spending a week in jail because she failed to produce the papers listing her conditions. "Seven days, and I had no methadone (416)," she told us. "I didn't have my down [heroin] on me, it was torture." She was aware, like other study participants, that her conditions were in the police database, which made her incarceration seem even more ludicrous and unnecessary, particularly since she knows she struggles with memory loss due to health issues.

“What the hell is with this ‘carrying your papers’ business? You’re in the computer,” she said. When she failed to produce her papers to the police, the officer immediately used PRIME-BC to look up her conditions. “That’s what he did right away,” she said. “He told me what my conditions were... and I’m like, ‘Okay, that’s good that you know, then I don’t have to worry about it,’ and he’s like ‘No, you don’t have your papers, that means you’re going to jail.’ And I’m like ‘Oh my goodness.’”

PARAPHERNALIA PROHIBITIONS: ALL HARM, NO GOOD

You must not possess drug paraphernalia including but not limited to pipes, rolling papers and syringes. – Provincial Court of British Columbia, “Bail Picklist,” May 1, 2017.216

In BC, we have shown a strong commitment to public health by building a reasonably robust system to connect the people who use drugs with harm reduction supplies and other harm reduction services. Yet on a daily basis, our criminal justice system is explicitly prohibiting the people who need them most from carrying harm reduction supplies and accessing harm reduction services. As a result, those who make the choice to follow public health advice and to protect themselves and others from infection or overdose risk criminal sanctions.

Millions of dollars are spent by our ministries of health on harm reduction supplies (namely syringes, clean water, and pipes) to reduce risk and spread of HIV and HCV, to improve health outcomes, and to reduce overall risks to public health. We’ve known for decades that these are some of the most effective and cost-efficient ways to provide basic health care and to improve public health for entire communities.217 And yet courts can make accessing health care illegal.

In 2012, BC’s Ministry of Health created a vision that “the next generation of British Columbians will grow up AIDS free.”218 Updates on progress, contained in From Hope to Health progress reports, continue to support the vision of a future AIDS-free generation.219 This aspirational vision, however, will surely fail if BC’s justice system continues to criminalize some of the most effective health care interventions available to people at risk of contracting or spreading HIV.

People brought into the court system know that courts are asking them to sacrifice their health in order to follow these conditions. Almost everyone we heard from said they breached their paraphernalia conditions, preferring to protect themselves against infections such as HIV or HCV, even at the risk of going to jail for breaching.

One man laid bare the inherent conflict in these types of conditions.

“I’ve had conditions like ‘no paraphernalia’ and things like that, where harm reduction becomes an issue. I actually worked my way around that last one because when they said, ‘no paraphernalia,’ I looked at the judge in the courtroom and said, ‘What about harm reduction supplies?’ He said, ‘Well, you got me there.’ He put something down on paper. It was ‘No paraphernalia other than harm reduction supplies.’ Which, what is paraphernalia but harm reduction supplies, right? I found a loophole, I guess. - 74

We can’t rely on people like him to fight the system alone, especially when the human and societal costs are so high.

The people subject to these conditions know what they need to do to keep themselves and their friends safe. Despite the risk of criminal sanction, they engage in harm reduction every day. "I have[a] ‘no paraphernalia’ clause and I don’t think that it matters. I would rather help my friends be safe (362)," one participant told us.

Another person passionately shared their commitment to reducing the harms of using substances, even if they risk criminal sanction. “If I’m going to fucking use drugs, I’m not just going to ignore fucking using

216 Picklists are lists of standardized terms used to craft court-imposed conditions. Provincial Court of British Columbia, “Bail Orders Picklist”, May 1, 2017, online: http://www.provincialcourt.bc.ca/types-of-cases/criminal-and-youth/links#Q7.


clean shit, just sneaking around and using whatever I can to get away with...I'm going to fucking get clean shit and have it on me all the time (349)," they said. "Whether the cops like it or not, I don't care. I mean it's stupid; like, fucking, they breached me for having a needle on me that's clean...I'm an addict, I'm going to use, I'm going to relapse, I'm going to have slips, you know, whether I'm trying or not, it's going to happen, so I'd rather do it where it's safe."

One of the primary stated goals of imposing conditions on people is for the protection of public safety. Prohibiting people from carrying harm reduction supplies does the opposite. It is clear that people who regularly use substances are not compelled or reasonably able to stop using a substance simply because of a court condition. Asking them to do so in a dangerous way does nothing to promote their safety or that of the public.

Rather than not accessing clean supplies, some people told us, regretfully, that they found themselves disposing of their syringes less safely out of fear that they'd get stopped, searched, and charged. One participant told us how he hastily disposed of his harm reduction supplies to avoid charges for carrying them. “Pop them in the bush whatever right, was that a cop? Chuck. Keep walking, just leave it there (59),” he said. “I have probably done that a few times, I am sorry to say.”

No one wants to find improperly discarded syringes, including the people who use syringes themselves. People do not set out to transmit disease or to harm another person. Court conditions that increase the risk of finding improperly discarded harm reduction equipment fail to benefit anyone.

Anti-paraphernalia conditions remain so common that they are included in a 2017 Provincial Court document standardizing conditions, making it easier for judges to impose them by picking them off a set list.220 Based on data accessed through a Freedom of Information request, between October 1, 2014 and September 30, 2017 alone, BC courts imposed prohibitions on carrying paraphernalia (in bail and probation) 3,868 times on 2,505 different people—meaning some individuals faced this condition multiple times over that time period.

Courts do not, however, track the specific details of the breach charges laid against people. Therefore, it was impossible for us to assess how many of those people were actually charged and convicted for possessing life-saving health supplies. As we learned from the people we interviewed, much of the harm is already done even if people are not arrested for breaching their condition.

No one wants to find improperly discarded syringes, including the people who use syringes themselves. People do not set out to transmit disease or to harm another person. Court conditions that increase the risk of finding improperly discarded harm reduction equipment fail to benefit anyone.

Anti-paraphernalia conditions create an atmosphere of fear that causes people to make decisions that have negative consequences for public health and safety beyond the risk of sharing or reusing a syringe.

ABSTINENCE CONDITIONS SET PEOPLE UP FOR FAILURE

You must not possess or consume alcohol, drugs or any other intoxicating substance, except in accordance with a medical prescription. – Provincial Court of British Columbia, “Bail Picklist,” May 1, 2017.221

Not all people who use substances have addictions. Not all people who meet the medical criteria for having an addiction identify as “addicts” or people with disabilities. Medicalizing all substance users as people with addictions is itself stigmatizing. However, there are people, including people we heard from, who repeatedly find themselves tangled in the criminal justice system because addiction, a legally recognized disability, is criminalized.222

Behavioural conditions are a routine means through which people with addictions are penalized, stigmatized, and tethered to the criminal justice system.

In medical terms, addiction is a chronic, relapsing, remitting disease.223 A cornerstone of addiction is the fact that a person will continue to use the substance to which they are addicted in spite of a host of reasons why people rely on substances. Addiction is not a question of willpower or moral conviction. It is a health and social issue, and one that is regularly criminalized. One way in which addiction is criminalized through the justice system is the imposition of abstinence conditions on people living with addictions.

People we heard from are regularly unable to abide by abstinence conditions. Their failure to abide is not a question of disrespect for the court system; it is a reality of living with a serious health condition, often while living without housing or necessary health care.

Almost everyone we asked told us that abstinence conditions do not help to discourage substance use. “How can you make conditions based off of a disease? I don’t get that. That’s not fathomable (45 focus group),” one participant said. “It doesn’t make any sense. You have a disease, but [the courts are] going to make it so that if you have a disease, you’re fucked.”

In part, abstinence conditions do not curtail use because they fail to address the underlying reasons for use in the first place. As one person told us, “They can’t stop me from... can’t stop me from being who I am. They don’t understand the circumstances behind the reason that I am who I am, and I do what I do (155).”

Many participants told us about the added stress that abstinence conditions place on their lives when they’re already struggling. “It doesn’t cure me...it’s hindering me (208).”

To many people we spoke with, abstinence conditions felt like an exercise in futility in their failure to recognize the realities of their lives and the role that drugs or alcohol play in them. “I’m not perfect (349),” one participant said, explaining the relapsing nature of her addiction, which has shaped her life for almost 20 years. “I’m not just going to walk away out of my life and fucking never look back at it...I’ve had drugs in my system for the last 18 years.”

Abstinence conditions are at odds with the medical science relating to relapse. They fail to properly consider not only the dangers and hardship associated with withdrawal from drugs and alcohol,225 but also the legitimate reasons why people use and rely on substances in their daily lives. People who have used substances most of their lives know that using drugs or alcohol is no longer about being “drunk” or “high”; it is a way to feel normal, not sick, and to be able to get through the day. It’s not about partying, but about functioning. As one participant put it, “I’m an addict; I’m sober even when I’m high (74).”

For people living with addictions, abstinence conditions ask them to do the impossible. Even where conditions are not technically impossible to follow, they may be functionally impossible. The Provincial Court of Alberta explained


222 This cycle has been identified by officials within the law enforcement sphere. For example, in 2007 a member of the Canadian Association of Chiefs of Police is in noted in the Standing Senate Committee on Legal and Constitutional Affairs report stating that “requiring that alcoholic individuals abstain from alcohol as a condition of release from detention is likely to result in a breach of that condition and further interaction with the criminal justice system.” See Standing Senate Committee on Legal and Constitutional Affairs at 140.


such conditions in Omeasso, comparing abstinence conditions being imposed on a person living with alcoholism to impossible financial obligations: “An example of that would be to release the impecunious accused on $1 million cash bail on the basis that he could buy a lottery ticket and potentially win enough money to post that cash bail.”

Alcohol or drug-related abstinence conditions drove extensive involvement in the criminal justice system for Indigenous study participants. It was not possible, based on data obtained from Court Services BC through a freedom of information request, to determine whether or not Indigenous people are overwhelmingly impacted by abstinence conditions; however, nearly half of the Indigenous people we heard from reported having been given an abstinence condition at some point.

Based on what we heard, abstinence conditions were often imposed even where the offence for which they’d been charged was not alcohol- or drug-related.

What is clear from our interviews is that abstinence conditions do not properly account for the generational impacts of trauma, colonization, poverty, and addiction. They appear to be at odds with efforts towards reconciliation and remediying the overrepresentation of Indigenous people in our jails and courts. In Section 718.2(e) of the Criminal Code, judges are required to take “the circumstances of aboriginal offenders” into account in sentencing, especially to look at “all available sanctions other than imprisonment that are reasonable in the circumstances”. In R. v. Gladue, [1999], the Supreme Court of Canada (SCC) laid out principles for courts to employ in considering alternative sentencing options, known as the ‘Gladue Factors’ and directed the courts to consider broad systemic and background factors that affect Indigenous people generally and the offender in particular. Despite these instructions, in 2012, the SCC in Ipeelee, Lebel J. noted that the “cautious optimism [in Gladue] has not been borne out. In fact, statistics indicate that the overrepresentation and alienation of Aboriginal peoples in the criminal justice system has only worsened.” In Ipeelee, the SCC reaffirmed the importance of Gladue, and confirmed that it applies in all contexts.

Within the scope of the participants in this report, the imposition of abstinence conditions on Indigenous participants and the negative impact of such conditions on those participants was notable, despite existing legal requirements that courts consider the unique circumstances of Indigenous people coming before the Court.

Despite these concerns, data from Court Services BC, obtained through a Freedom of Information request, reflects the ongoing and rampant use of such conditions. Between October 1, 2014 and September 30, 2017, 31,914 abstinence conditions were imposed across BC in the context of bail and probation, on 21,413 different people, meaning some people were subject to that condition more than once during that time frame.

Far from assisting people to stop using drugs or alcohol, some people noted that the pressure of conditions, abstinence in particular, increased their need for a coping mechanism. “The pressure makes you want to drink, drink, drink (278),” one person told us.

Regarding alcohol in particular, expecting someone who drinks heavily to become abstinent can be life-threatening, causing severe (grand mal) seizures, high blood pressure, delusions, and hallucinations. The “kindling phenomenon” is particularly relevant, and refers to the fact that that repeated withdrawal for those who are alcohol dependent, can not only intensify the symptoms, but can also contribute to alcohol-related long-term brain damage and cognitive impairment.

Further, omitting an abstinence condition from a court order where the individual is not able to comply with it “does not place the community in any greater danger,” because the person will use substances regardless. Imposing such conditions, however, puts the

226 Omeasso at para 33.
227 This is also reflected in data from other jurisdictions in Canada, see Deshman & Myers at 75-76.
228 R v Ipeelee, 2012 SCC 13 at para 62 [Ipeelee].
230 A percentage of conditions reflected in this quantitative data are imposed on people who are casual substance users – such as the young person drinking too much and fighting outside a bar on Friday night. Further, some may be reasonable and necessary where a person is in a position to stop using substances and where their substance use is integral to their offence – such as a person who drinks occasionally to excess and is violent towards their partner when intoxicated. It is impossible to determine the circumstances of all people subject to these conditions based on the data available from Court Services BC. We can however see that these conditions are in common usage and we know from our interview data that they are imposed on people with addictions, many people are subject to more than one abstinence condition, and some of those people are subject to criminal sanction for breaching such conditions.
231 Norman Miller, M.D. & Steven Kipnis, M.D., Detoxification and Substance Abuse Treatment; A treatment improvement protocol TIP 45 (Rockville: Substance Abuse and Mental Health Services Administration Center for Substance Abuse Treatment, 2006) at 52-53.
233 Omeasso at para 39.
person at risk of criminal sanction if they take a drink or a hit. It can also have the effect of driving substance use further underground for fear of penal sanction or police detection, a particularly dangerous prospect given the ongoing opioid crisis and the dangers of using street drugs alone.

The courts are not a place of treatment. We will always hear the occasional success story resulting from bail or probation conditions; however, there is no way to know whether abstinence conditions actually lead to rehabilitation, and clear and compelling evidence exists that, for some people, they perpetuate a cycle of harm and criminalization that can last years or even decades.

---

**In Focus: How Abstinence Conditions Impact Lives**

When we met for our interview, the day was new; it was only 9am. But for the man we interviewed, the past number of hours had already been an ordeal. His face is swollen, and a prominent bruise on his cheekbone was fresh and raw. The injuries were from last night’s trip to the drunk tank. He told us he sustained his injuries when police dropped him on his face while his hands were cuffed behind his back.

He’s an easy target for police. He was homeless and living in the bush at the time of our interview, relying on public space for his basic needs. That means police surveil him daily, regularly pick him up, and put him in the drunk tank. His history with abstinence conditions has shaped his everyday life, leaving him with an extensive criminal record and landing him in custody more often than he could have ever imagined.

Like others who have used substances most of their lives, using alcohol is a means by which this man can feel functional throughout the day. “I had to have a couple of drinks before I came in here (102),” he explained, “to just feel better.”

He’s frustrated at how his abstinence conditions are at odds with the realities of his life as a person living with an alcohol addiction that he’s had since he was a child.

“The only reason I got all those breaches is because I was put [on] no-drinking stipulations...and I was alcoholic since—I was alcoholic since I was like eight because my parents are, and I used to steal their beer,” he explains. He reports he has been convicted of breaching his conditions 52 times.

His abstinence conditions have put him in daily contact with the criminal justice system. He is frustratingly aware that the criminalization of his substance use is the primary reason for that.

“If I was sober, I would never have a record,” he says. “That’s what everybody tells me. That’s what all the RCMP tell me, and the lawyers, and the judge and everything, because I’m a well-educated and smart and respectful person. But yeah, just the alcohol, that gets me.”

Even when he was a teenager, he knew that an abstinence condition was as good as a one-way ticket back to jail. It was only after he’d been repeatedly criminalized for years due to his alcohol use that the court would consider alternatives.²³⁵

I told the judge—when I was like a teenager and right now, and that’s why they don’t put those conditions on me no more. When I was a teenager I was like, I can’t—I told him I can’t comply with an abstinence-from-alcohol condition. And they go like, ‘Oh, we’re putting it on you anyway.’ You know what—it’s just setting me up for failure. And then like two days later, I’m back in. And that’s why I’ve got such a long record. It’s all mostly breaches. I got a couple of assaults and stuff in there.

Now, with a lengthy criminal record, he is well known to the court and local judges who have decided to stop imposing abstinence conditions on him. This, at least, is some reprieve from facing further criminal convictions for breaching an abstinence condition. It has not, however, stopped police from regularly detaining him overnight in the drunk tank. These criminal justice responses to his alcohol use do not protect him; rather, they subject him to harassment and violence by police without providing him the health and social services he needs.

Other Project Inclusion participants shared similar experiences of how abstinence conditions are impossible for them to maintain. “It’s all just conditions to set me up to fail to put me in jail longer (28),” one person told us. “Every single time you get released on bail, they say stay away from people in the drug scene, no alcohol use,” he added. But those conditions don’t work for a person who, as he described it, is “coming from an alcoholic family (28).”

Another participant was frank about the futility of their abstinence conditions. “I was drinking anyways (12),” he said. “Yeah, and then I got 18 breaches...[of] not drinking. Yeah, 18 breaches on that, and so they decided to send me there [to counselling].”

Abstinence conditions are often impossible for people to abide by, particularly for people who have been using substances for most of their lives. Abstinence conditions do nothing to address the fact that substance use is, for people living with few other supports, a tool for survival and a means by which to maintain daily functioning, especially in the face of inadequate income assistance, housing, health supports, and social services.

---

²³⁵ Data from another Canadian jurisdiction also indicates a positive correlation between the imposition of abstinence conditions and subsequent breach charges. See John Howard Society (2013) at 12.
As an Alternative to Abstinence Conditions, Harm Reduction Works

Community-based, non-coercive interventions show positive results when compared to the impacts of impossible-to-maintain abstinence conditions on the lives of the people on whom they are imposed. Whether harm reduction shows up in the form of access to needle exchanges, methadone, prescription heroin or hydromorphone, or access to safe and managed alcohol, the positive health outcomes are extensive and well documented. Basic supports such as income assistance and housing alongside health care and especially peer-driven services, must be made more available to people across BC rather than relying on the criminal justice system to manage people living with the impacts of homelessness and complex substance use issues.

These interventions need not be medicalized or institutionalized. One of us spent some time with members of a drinkers’ lounge (Lounge) and a managed alcohol program (MAP). Both were groups comprised of people who have chronically used alcohol most of their lives, and whose circumstances, including intersections of poverty and criminalization, have led them to use non-beverage alcohol. They represent a group of people who have been criminalized for using a substance, alcohol, that is legal in most circumstances in Canada and they need safe alternatives to this criminalization. In the MAP, people with entrenched relationships to alcohol are provided a controlled dose of alcohol every few hours through a service provider.

At the Lounge, a peer-centred group, people trade in their non-beverage alcohols, such as hand sanitizer, rubbing alcohol, or mouthwash, for safer alternatives. One participant told us that 80% of Lounge members had quit drinking non-beverage alcohol because they now had access to a safer alternative. He told us, “We’re saving lives here (91 focus group).” A mother told us how the Lounge improved things dramatically for her son. “My son got to live two years longer (91 focus group),” she said. He was drinking rubbing alcohol before he found the Lounge; his mother had spent years trying to help him curb his addiction on her own, sinking $70,000 into rehabilitation attempts that were unsuccessful. The Lounge


gave him two good years. "He just passed away in July."

Her friend piped in, "We miss him. Yes, we do."

Overwhelmingly, participants told us that harm reduction programs like these create a loving and caring community in which people can share their stories, relate to one another, and provide support without facing criminal consequences or police harassment. They save people's lives, decrease their criminal justice involvement, improve their health, and foster self-determination in participants.240

When such programs are available, it seems untenable that we would choose instead to punish and incarcerate.

RED ZONES EXILE PEOPLE FROM LIFE’S NECESSITIES

"The red zone makes poor people feel poorer."241

Geographic area restrictions, colloquially known as red zones, are among the most well-researched behavioural conditions. A geographic area restriction, like all court- and police-imposed conditions, is supposed to be linked to the specific circumstances of an alleged offender and offence. But in many communities we visited, Project Inclusion participants indicated it was the other way around. Rather than tailoring a red zone to an alleged offender or offence, the red zone is a predetermined geographic area from which people get banned when charged with an offence, particularly poverty- or drug-related offences. Many people we interviewed could draw the red zone on a map or list the streets that comprise its boundaries.

In some municipalities, there appears to be a phased red zone process, with people being exiled from expanding areas of the city.

Red zones differ greatly from “no-go” conditions. Red zones have a much broader impact on a person’s life, health, and safety. A “no-go” may be imposed to prohibit a person from attending a specific location; for example, a “no-go” condition may be applied to the store from which a person shoplifted, or to ensure the safety of people who’ve experienced violence by prohibiting a person from visiting someone’s home or a child’s school.

Justice system actors imposing these conditions often focus on the desire to stop the drug flow into a geographic area or to stop “non-addicted” dealers from entering an area. These rationales, however, do not align with the lived experience of the people we met.

“No-go” conditions, while at times problematic, can be better tailored to address specifics of the alleged offence, the circumstances of the accused, and the safety needs of people impacted by the accused’s actions. Red zones, by contrast, exclude people from large swaths of their communities. Based on our data and other studies, red zones are often imposed on a more global basis for some offences, particularly drug offences,242 without specific analysis of the alleged offence, the circumstances of the accused, and any actual public safety concerns.243

Actors within the criminal law system, including judges, defence attorneys and prosecutors, give various rationales for imposing red zone conditions. Typically, proponents state that red zones:

• prevent crime and recidivism;
• are issued in certain hotspots tied to drug supply;
• are issued for rehabilitative purposes;
• are issued for policing purposes; and
• are issued to protect the public interest.244

Justice system actors imposing these conditions often focus on the desire to stop the drug flow into a geographic area or to stop “non-addicted” dealers from entering an area.245 These rationales, however, do not align with the lived experience of the people we met. We could not identify any correlation to a decrease in drug availability over time, and certainly found no correlation to a decrease in overdoses and drug use-related harms.

The BC Provincial Court has previously found that the use of red zones does not reduce drug trafficking in a given area, or in a city more broadly. It may, however, mean that new dealers take over when street-level traffickers, who are often people living with multiple barriers, including mental health and addiction issues, are red-zoned.246

Given the toxic, unregulated drug supply on our streets, knowing your

---

241 Witness testimony in R v Reid, 1999 BCPC 12 at para 12.
242 See Sylvestre (2017) at 4, 53% of bail orders issued for drug offences included a red zone.
243 See also Reid at para 48.
244 Sylvestre (2017) at 54.
245 Sylvestre (2017) at 54.
246 Reid at paras 21, 23, 25, 45, 50, 82.
dealer can be an important safety measure. Red zones, while not fulfilling the public safety purpose of reducing drug trafficking, reduce the ability of substance users to protect themselves from overdose by buying from a known source.

We cannot overstate the impact of geographic area restrictions on the lives and wellness of Project Inclusion participants. Red zones can ban people from accessing shelters and low-barrier housing options, health care and overdose prevention services, food, opportunities for income generation, and community—in other words, the necessities of life.

Red Zones can Cause Homelessness

For people who have few options for housing, red zones can create housing insecurity and homelessness as they can drive people already living vulnerably closer to the margins and farther away from the only supports they have.

One man we spoke with lost his housing after he was red-zoned from it due to a drug raid. He told us about how the red zone deepened his vulnerability.

Well, I had nowhere else I could go stay, so I had to hit the streets. Like, all my friends, in that sense, were living actually in the apartment building as well. So, there was nowhere for me to go, couch surf, or sleep, so I had to tent it. – 459a

Not only did the red zone cause him to lose his housing, it also cut him off from his primary social network, where he would otherwise have turned in a time of crisis for emergency housing. Without access to that community, he turned to living outdoors in a tent. Other study participants shared similar experiences of being red-zoned from their communities of support.

Red Zones Isolate People from Essential Services

Previously in this chapter, we detailed how behavioural conditions can drive people into a cycle of criminalization. Red zones are an example of this phenomenon, particularly in instances where the person subjected to a red zone is navigating intersecting barriers like homelessness, poverty, substance use, and/or mental health issues. In those cases, red zones force them to choose between compliance with the order and meeting basic health and safety needs when the red zone cuts them off from accessing the services and community connections that they rely upon.247

One participant explained it this way: “Being homeless and then red zone[d] from downtown, I had nowhere to go to sleep. I couldn't go eat because where they go eat down here at [service provider], everything is downtown. So, that was a pretty rough two years for me (266).” When we asked if it affected his ability to access harm reduction supplies, he replied, “Yeah. I got really sick because of my HIV, I ended up in hospital twice because…they wouldn't even let me go to see my doctor because my doctor is downtown and [they] told me if I had to go to see my doctor for anything I’d have to go to emergency.”

Another participant told us how red zones feel like traps because, for people in their community, it’s impossible not to violate the condition because the red zone is the only place where they can access food. He told us how the “big red zone” in his community contains food banks and other essential services people need to access daily for survival. “I mean, how are you supposed to go and have lunch if you’re not allowed to go in there (28)?” he asked, adding he’s seen police sitting outside food lineups waiting for people with red zones.

With all of this stacked against him, it seemed to this participant that “red zones are set up, basically, to make people to go jail.”

Red Zones Increase Isolation

As we travelled across the province to conduct research for Project Inclusion, we visited spaces where people created community, often on sidewalks, in parks, and near service providers. We heard about the devastation they experience when community falls away, for people living with few resources, tenuous support systems, and the impacts of trauma, a rising sense of isolation can mark a breaking point. For the people we heard from, red zones exile people from their communities and the vital social connections that help keep them well.

One woman made a point of countering the popular misconception that forcing a person out of the “wrong crowd” or a “tough neighbourhood” can be the tough love they need to move somewhere safer and make better friends. For this woman and those she holds dear, red zones that keep them away from the people that mean the most to them only create more loss and fear.

“I got caught once in my red zone and I pleaded with [the police], like come on you guys, I have got nowhere to go… I have no place to go, I have no family out here, and… I’m fucking, basically (427),” she told us. But she didn’t feel her concerns were taken seriously. For her, packing up and leaving the only community to which she feels a sense of belonging would be disastrous. “They’re telling me… Oh, there is lot of places you can go, like get out of the city, right…I didn’t feel her concerns were taken seriously. For her, packing up and leaving the only community to which she feels a sense of belonging would be disastrous. “They’re telling me… Oh, there is lot of places you can go, like get out of the city, right… I shook my head and said, that’s not possible… I’m terrified to go anywhere else… I don’t know anybody… it’s just I’ve heard so many horror stories… anywhere else outside this area.”

It is possible that red zoning could benefit a small minority of people, such as people who are otherwise well-supported and who are not deeply enmeshed in the community from which they are being red-

247 See also Reid at paras 9, 51, 59.
What red zones seem to do more often, however, is isolate people from the few supports and services they have. The effect of this can be to "inhibit, not help" the successful future of the individual. Police, Crown, and courts imposing such conditions are turning a blind eye to the already highly limited set of resources available to people experiencing poverty, homelessness, and substance use.

In small communities, red zones can span such a broad geographic area that the experience of adhering to one is tantamount to banishment. "The whole town (108)," one participant said, of the area that his red zone covered. He said he had to move out of the town completely.

It is impossible to know how often people are effectively banished from their communities due to the challenges in data tracking, but we know such all-encompassing red zones are used on occasion, leaving people without support or community. The man whose red zone forced him to move out of town was only able to vary his red zone upon promising to live under house arrest at the homeless shelter.

Banishment orders leave people without support and community, and they push people in need of services from one community to another in a way that "violates basic consideration for the rights of others and should not be tolerated." These experiences are also reflected in academic literature. As Herbert and Beckett note:

The banished repeatedly emphasize the challenges they face in maintaining their social networks, in accessing needed services, and in ensuring their economic and physical security. It is no simple matter to quit the places to which they are complexly and deeply attached.

The isolation caused by red zones can create dangerous conditions for people. We heard from some people, primarily women, that being near

---

248 See Reid at paras 26, 76.
249 Reid at para 83.
250 Reid at para 83.
251 Steve Herbert and Katherine Beckett, "'This home is for us': questioning banishment from the ground up" (2010) 11:3 Social and Cultural Geography at 231-239.
people they know and staying close to the areas with which they are familiar are primary safety tactics for them. Being prohibited from entering those areas doesn’t mean women will suddenly find family, resources, and friends they did not previously have. It does, however, make them an easier target when they are on the street.

And anybody that knows that if they’re red-zoned, then they’re most susceptible to being jacked by beat cops and from looky-lous and people that work for the police, the informants, and all that sort of shit. 252 – 56

Our courts have recognized that displacement and isolation, particularly of women who are street involved, increases the risk of them experiencing assault, robbery, or even murder. 253

Red Zones can Cause Serious Health Consequences

People seeking assistance to treat addictions often have few options for medical treatment. Many people spoke to us about the difficulty of finding doctors who would treat them and the limited availability of methadone and other addictions treatment in their communities. The consequences for a person who is red-zoned away from those health services, therefore, can be dire. As one participant put it, “I was red-zoned for two years… I ended up in hospital twice because [of that] (266).”

For people who need to access methadone daily, do not have ready access to transportation, and have other physical ailments that impact their mobility, being prohibited from their community clinic can create barriers to their success in addictions treatment. 254

One woman we spoke with shared her experiences with being red-zoned from her methadone clinic, which forced her to make a difficult daily journey to receive methadone from a downtown doctor. When she advocated on her own behalf to not be subjected to a red zone that included her methadone clinic, she was told, “Well, you got to work around it (395).”

If people are to avoid committing crime and create supportive networks to keep them away from the criminal justice system, red zoning them from medical treatment for addiction is poor policy, and in the context of the current overdose crisis, it can be life-threatening.

Increased Police Surveillance—in the Name of Public Safety?

Red zone breaches are unique in their capacity to increase powers of police surveillance. One need do nothing more than be physically present in a location in order to attract criminal sanction. This can lead people to avoid services or disguise themselves, trying to avoid detection as they enter the red zone to access what they need. This has even greater implications for people living in smaller communities, where small populations mean that citizens are familiar to one another and people lack privacy over their identity.

One man, who lost his housing when he was cut off of his pain medication, told us that he does not have the luxury of walking down the street like we do because the police know him and can target him on sight for breaching his red zone. He told us he doesn’t breach his red zone to harm anyone; he breaches it to access the spaces and communities that he relies on. Breaches have now become a regular, negative fixture in his life (362).

His experiences were familiar to other study participants. “They know you, right, and recognize you… as soon as they see you in your red zone, immediately breach (396),” another person told us.

It seems police can even visibly identify a person in their red zone, note the occurrence, and not inform the individual at the time that they’ve been caught in their red zone. One participant told us about attending court one day to find out he was being charged with multiple red zone breaches, long after he’d breached them. “They don’t even have to come up to you and give you a ticket, they can just breach you from seeing you (396),” he said. “I had a bunch of breaches when I was in court handed to me from that, that I never even got tickets from.” He was given no notice to change his behaviour and no warning that he could be facing a slew of new criminal charges if he couldn’t have his red zone varied. Though such charges may be hard to prove where no arrest occurred at the time, they can nonetheless bring people back into the criminal justice system again and again.

One man we spoke with had been convicted of breaching his conditions not to carry drug paraphernalia, resulting in him being red-zoned. His red zone resulted in years of entanglement with the criminal justice system. His time in jail led to profound disconnect and isolation from anyone he knew.

“I’ve been red-zoned. It fucked me right up. It kept me in the system for… years. I did a four-month fucking bit with 18 months probation on there. I did like a year, all in jail, from… breaches. It went from 18 months to… four years. Finally I got done, and by that time I lost right touch with everyone. – 332 (focus group)

Our research strongly suggests that red zones can result in a cycle of warrants, arrests, incarceration, and more stringent release conditions that exacerbate the cycle of criminalization. The magnitude of this
harm compared to the underlying offences we heard about are disproportionate.

**NO SAFETY IN EXEMPTIONS OR VARIATIONS**

While it is possible to secure a variation of one’s bail or probation conditions from the court or to request specific exemptions from a bail or corrections supervisor that could make an individual’s circumstances more workable, our research indicates there is no real sanctuary for people in securing an exemption or variation. Delays mean that the harms people endure before they are able to do so alter the course of their lives and the realities of criminalization often make seeking such alterations unrealistic.

One woman we spoke with told us about how a judge had found she had more than served her time because of all the time she spent in custody for breaches of her probation—six breaches later. “They just kind of threw my probation order out (313),” she said. But this decision came only after years of suffering and continuing to breach her red zone because of ongoing substance use issues. “They just said, obviously, it’s not going to be doing her any good to keep breaching her,” she remembers. That decision arrived so late that much of the harm of living with a behavioural condition had already been done.

Similar harms were noted by several Indigenous participants who, after being in the court system for an extended period, and after being convicted of multiple breaches, were finally able to convince a judge to vary their conditions, removing conditions that were setting them up to fail such as abstinence conditions.

On a more regular basis, people are told by either courts or police that they can manage the conditions placed on them by requesting an exemption letter from their bail supervisor or probation officer excusing them from a specific condition during a limited timeframe or for a specific purpose. What we heard, however, is that such letters do not stop people from being detained by police, nor are they always possible to secure.

They tell you, ‘Oh, you can go get a note…so you can go eat, then you got to get out of the red zone afterwards.’ But that’s bullshit because when I did try—I need to go [into my red zone] to eat—[I was told] ‘No no, you go somewhere else, or buy food.’ I don’t have a place to live. Where am I going to keep my, you know, it’s too tiring. For people that are homeless that’s even harder for them. – 266

People trying to access necessary services will miss important opportunities to improve their lives and health if they are required to seek red zone exemptions each time an opportunity arises. Many people we interviewed opt instead to risk breaching their condition. “It’s just quicker (63),” one person said. “I just found out I could go see a doctor that day and I didn’t want to go through all the bullshit [of securing an exemption].”

In BC, the Provincial Court has found that getting an exemption from a bail supervisor or probation officer may not be viable for all people.256 When it comes to accessing harm reduction services such as obtaining clean syringes, people are particularly reluctant to ask permission because doing so means admitting to a bail supervisor or corrections officer that you are planning to break the law by possessing drugs for consumption or breaching an abstinence condition.257

Where people need daily medical treatment, the strictures of an exemption can create barriers to accessing care. One person told us about receiving a red zone exemption to access methadone treatment. “They basically only allowed me within that one-hour time period to get in there, get your methadone, get out (427),” she said. “It didn’t necessarily mean I had the whole hour to do so…they would watch me like a hawk.”

At a time when thousands of people are dying from using unregulated illicit drugs across BC, it is untenable to ask that people request exemptions from bail or probation in order to access basic, life-saving services, such as clean syringes, methadone, or supervised consumption services, that must be accessed on a daily basis.

**BAD DATA CAUSES REAL HARM**

There’s little accountability around the imposition of conditions, particularly those issued by the police. A more accountable system would require that police register the conditions they impose into a database by the type of condition, not only the name of an accused person, allowing the public to access information regarding the frequency with which different conditions are imposed by police. A more accountable system would also require that the justice system track specific breach allegations coming before the court in a manner allowing for aggregated data to be made easily accessible to the public. Neither is currently the case.

Police-imposed conditions are almost impossible to track by researchers through Freedom of Information requests and they currently cannot be subject to internal police review or oversight because they are not logged in any database in a way that is searchable based on the types of conditions imposed.

When courts impose conditions, it is very challenging to assess how they are being used and enforced.

255 See also Reid at para 38.
256 Reid at para 50.
257 See e.g. Reid at para 42.
All adult and youth criminal matters are administered, managed, tracked, and documented through a database called the JUSTIN Justice Information System (JUSTIN), a system containing BC Courts information. There is currently no way, however, to track what conditions are being breached on a statistical level without the use of complex computer science analysis tools, as doing so would require individually reviewing every single breach allegation that comes before the courts. This is not inherent to the nature of breach allegations nor to the court’s process; it is caused by how breaches are logged in JUSTIN.

Due to the manner by which tracking occurs, we are unable to discern exact numbers of breach charges laid or convictions entered in relation to particular conditions. Our Freedom of Information request returned data on the number of times a particular condition had been imposed and the number of individuals upon whom such conditions has been imposed. The numerical data did not, however, accurately capture the number of times people were charged or convicted for breaching specific conditions. That is because all breach of bail charges (for all conditions) are laid pursuant to one section of the Criminal Code, section 145, and all breaches of probation are laid pursuant to section 733.1. The specifics of each breach charge are not tracked in a way that allows numerical data to readily be extracted for breaches of each type of condition.

Tracking such data would allow us, for example, to easily assess how often people are charged or convicted for carrying harm reduction equipment or breaching abstinence conditions. Further, our own data request reflects the need to better track how often conditions are imposed, who is being subject to them, and how often people are being convicted for breaching various offences. For example, data is not available to assess how often curfew conditions are imposed on people experiencing homelessness.

Shortcomings in accountability mechanisms also impact people directly. People we spoke with often told us that they found it difficult to understand what specific offence their conditions were tied to, how long their conditions applied, and how they were to be enforced. Some study participants told us they were unaware when their conditions had been lifted. Without that knowledge, they had continued to deal unnecessarily with red zones and breaches, even in cases where the Crown never approved the underlying charges.

This lack of accountability extends to what seems to be an uneven landscape of police database updates. The result is that PRIME-BC may not always reflect recent changes to people’s conditions, including when they are lifted.

One person we spoke with described how they were arrested for a breach, even after they’d completed bail or probation. We found this to be a shared experience among some other participants and heard similar stories from some criminal defence counsel.

I got nailed for [a] paraphernalia charge and it wasn’t even in my conditions anymore. It was in my previous conditions that had ended six weeks before I got arrested. And they picked me up on a paraphernalia [breach] and charged me. – 153

**BILL C-75: LAW REFORM AND UNCERTAINTY**

The proposed reforms put forward in C-75 are wide-ranging. The proposed reforms to court-imposed conditions and bail are particularly relevant to Project Inclusion. We are mindful that at the time of writing, C-75 was only at second reading. It may go through significant amendments, and may never become law.

C-75 proposes to streamline the bail process, ostensibly with the aim to decrease the number of conditions to which people are subjected, decreasing the number of criminal convictions for breaches of conditions, and reducing the time people spend in courts and jails for those breaches. How these proposed amendments will operate is, however, unclear and some portions of C-75 raise preliminary concerns for us.

C-75 reiterates and reinforces the existing requirement that people be released under the least restrictive terms, including without conditions, unless Crown justifies the imposition of each condition. It also legislates the requirement to consider the overrepresentation of Indigenous people in the criminal justice system in determining whether or not to release a person on bail. It extends such considerations to other vulnerable populations overrepresented in the criminal justice system and who are disadvantaged in obtaining release on bail. This is a powerful step towards recognizing the systemic injustices against Indigenous people resulting in their drastic overrepresentation in prisons. It will hopefully also benefit other racialized people who are more likely to be detained and are overrepresented in the criminal system. C-75 does not define its use of the phrase “vulnerable population,” so it remains to be seen whether people living with addictions, experiencing homelessness, or deep poverty will also benefit from this amendment.

Two amendments in particular may have unintended negative
consequences for the people we heard from in Project Inclusion.

Rather than limiting the use of harmful red zones, C-75 explicitly adds red zones as an optional condition that may be imposed upon people who are released by the court. While this practice already occurs, Pivot Legal Society is of the opinion that adding red zones as an optional condition listed in the Criminal Code only encourages what we see as harmful practice, rather than curtailing it, which we argue is necessary.261

Further, C-75 contains a new initiative allowing police to compel a person to attend court for a suspected breach of a condition without charging them criminally where the breach does not involve violence, harm, or property or economic damage. The intention of these amendments is to decrease the number of charges laid for non-violent/damaging breaches. These amendments could have unintended negative consequences, however, if they encourage police officers to issue appearance notices on people for behavior so minor that the officer may have previously taken no action at all.

Far from limiting the number of people appearing in court for breaches of conditions, these amendments could encourage even more people to be brought into the system where they may face multiple appearance notices that they cannot adhere to, and where their liberty may be further infringed upon without being convicted of a crime.

Finally, Project Inclusion participants told us that the myriad conditions to which they are subjected are complex and confusing. They include bail conditions, but also probation and police-imposed conditions, often leading people to be confused about what conditions they are subject to and who imposed them. C-75 does not adequately address this concern and so, regardless of the Bill’s trajectory, we are concerned that this issue will persist.

**FINAL WORDS: CONDITIONS DON’T CORRECT BEHAVIOUR—THEY PUT PEOPLE AT RISK**

Behavioural conditions impose inordinate complexity and negative impacts on the lives of the people to whom they have been issued, often at times when they are the most vulnerable and have the least access to resources. Each of the conditions identified in this chapter can lead to harmful results unto themselves, but when they are layered one upon another,262 their potential to send a person into a spiral of riskier behaviours, to alienate them from services and community, and to keep them entrenched in the criminal justice system compounds.

A federal government study has noted the absurdity created by the current system of conditions. In 2015, the Research and Statistics Division of the Department of Justice published a report finding that the current bail system creates barriers to being re-released, adds to criminal charges, and creates a likelihood that anyone re-released will be subject to even more onerous conditions.

This feedback loop becomes especially disconcerting when one recalls that many of the original bail conditions may have been unnecessary, unreasonable, or clearly setting up the accused for failure (e.g., imposing a condition to abstain from drugs/alcohol on an accused person who has clear substance abuse issues; requiring an accused suffering from Fetal Alcohol Spectrum Disorder (FASD) and experiencing homelessness to report to a police station on a specific day each week).263

Through the course of our research for Project Inclusion, we found that behavioural conditions put both individuals and their communities at risk of harm. Many participants told us about the people in their lives who rely on them and whom they rely upon for support, resources, and companionship. Risking criminal sanction and incarceration for breaching a condition creates ripple effects that can endanger the people close to the individual charged for a breach. One participant put it this way: “A friend of mine... kind of depends on me. He has autism and doesn’t have any family and I’m his only friend. And we’re staying in the shelter together and I, you know, I don’t want to leave him, you know, without having me around, because he trusts me (304).” Risking incarceration for breaching a condition puts both this participant and his friend at risk. “I don’t really know what to do,” he said. “I’m going to have to go to my court appearance. Is there a way to find out whether or not there’s a warrant for me before I walk in there?”

In every community we visited while conducting research for this project, most people we talked to found their behavioural conditions to be inordinately punishing given their personal situations. Where police, Crown, or courts issue behavioural conditions with the eye towards behavioural modification motivated by the risk of criminal sanction, that approach carries consequences that work against its intended purpose because of its negative impact on people’s lives. Those impacts show up in a number of ways, from a person going hungry because they are unable to access their only food source, to a man afraid to carry clean harm reduction supplies, to a terrified woman cowering alone in a dark trailer waiting for morning to come. These are not reasonable or justifiable applications of the criminal law.

---

261 C-75 at cl 227 amending ss. 515 of the Criminal Code.
262 Sylvester (2017) at 49.
263 Webster at 8.
**Recommendations**

1. The Government of Canada must amend the *Criminal Code* to prevent the use and prosecution of discriminatory or destructive behavioural conditions of interim release and sentencing, specifically:
   a. legislate that conditions imposed on interim release be reasonable and proportionate to the nature and seriousness of the alleged offence and the circumstances of the accused;
   b. define “drug paraphernalia” as harm reduction medical equipment and prohibit the imposition of conditions that would interfere with the ability to access or possess harm reduction equipment;
   c. prior to imposing an abstinence condition, require that courts consider a person's dependence on drugs or alcohol. Abstinence conditions shall not be imposed on people living with addictions, except where doing so is necessary to protect the safety of a victim, witness, or the public, and harm-reduction measures shall be preferred over abstinence;
   d. limit “red zone” conditions to situations where there is a substantial likelihood that, if released without a red zone, the accused will commit an offence involving violence or serious harm within the red zone and ensure that any red zone is tailored to the alleged offence, the principles of judicial interim release or probation, and circumstances of the individual;
   e. remove paragraph 504(2.1) (g), the power for police to impose “abstinence” conditions; and
   f. eliminate criminal sanctions for non-violent breaches of behavioural conditions.

2. The Governments of BC and Canada must amend their prosecutorial policy, specifically:
   a. amend the BC Crown Counsel Policy Manual to include a policy on “Conditions of Release” that:
      i. aligns with the *Criminal Code* requirement that an accused be released unconditionally unless their detention or the imposition of conditions is justified;
      ii. reflects Supreme Court of Canada jurisprudence requiring that conditions of release be minimally onerous and that every imposition of more restrictive conditions must be individually justified; and
   b. amend the BC Prosecution Service Information Sheet “Bail (Conditional Release)” to reflect the presumption of unconditional release; and
   c. amend the Public Prosecution Service of Canada Deskbook Part 3.18 sections 2 and 5 to:
      i. more clearly reflect the *Criminal Code* requirement that an accused be released unconditionally unless their detention or the imposition of conditions is justified; and
      ii. take into consideration the potential harms of imposing certain conditions on certain individuals based on their social condition, race, ability status, housing status, and substance use.

3. The Provincial Court of British Columbia should:
   a. establish a Practice Direction re-affirming the presumption of unconditional release and the requirement that Crown individually justify the imposition of every restriction on release;
   b. amend the Provincial Court of British Columbia, “Bail Orders Picklist”, May 1, 2017 and Provincial Court of British Columbia, “Probation Orders Picklist” May 1, 2017 to:
i. remove “Drug Paraphernalia” conditions;
ii. restrict the use of “No Alcohol or Drugs” conditions in relation to people with addictions;
iii. remove “banishment” conditions entirely;
iv. ensure that all “red zone” conditions are imposed only where doing so is required to protect the safety of a victim, witness, or the public from violence or serious harm. In doing so, red zones must be tailored to the alleged offence and the circumstances of the individual. Under no circumstances are standardized red zones appropriate; and
v. prohibit the imposition of behavioural or geographic conditions that would interfere with the ability to access health or social services, including harm reduction health services.

c. Create a Provincial Court resource outlining “harm reduction services,” including a definition of:
   i. “drug paraphernalia” as harm reduction equipment;
   ii. “Safe Consumption Sites” and “Overdose Prevention Sites”;
   iii. needle exchange;
   iv. opioid substitution treatment; and
   v. low-barrier health services.

4. Police Services must create a provincial practice direction for police officers upon release of an accused, adopting the following recommendations of the Canadian Civil Liberties Association:264
   a. police should make increased use of their power to release and ensure that any conditions imposed are constitutional and legally permissible under the Criminal Code;
   b. individuals released from police custody should be proactively informed of the procedures that can be used to vary police-imposed conditions under the Criminal Code; and
   c. police should release individuals under the most minimally restricting conditions available in the circumstance, taking into consideration an individual’s need to access shelter, social services, health care, and community, as well as the possible disability status of the individual, including addiction.

5. The Ministry of Justice and/or Court Services Branch must update any Ministry of Justice databases (e.g. JUSTIN) and related practices, policies, and technology platforms, to ensure that the imposition of bail and sentencing conditions can be tracked in correlation with housing status and race, and that breaches of bail or sentencing can be properly recorded and searched based on the type of condition breached.

6. Relevant policing stakeholders must update database systems, e.g. PRIME-BC, to:
   a. require that all police-imposed conditions are electronically registered, including:
      i. the date of imposition;
      ii. the date or causal mechanism by which the condition will expire;
      iii. the specific content of the condition; and
      iv. the underlying reason for imposing the condition.
   b. ensure that PRIME-BC can be searched to track all police-imposed conditions in the aggregate, rather than only being tied to an individual’s file.

---

264 See Deshman & Myers at 83.