

Legislation and CAMH Policy: Frequently Asked Questions and Answers

What does Decriminalization mean?

Decriminalization as was proposed in a recent bill (Bill C-17, Nov. 2004) represents a change in the penalties for the possession of small amounts of cannabis but does not legalize the possession, production, or trafficking of marijuana. Marijuana would still be under the Controlled Drugs and Substances Act with the penalty being governed under the Contraventions Act. Decriminalization has been described as a sentence reform measure that is intended to shift law enforcement measures for possession of small quantities of cannabis from the criminal court system to a broader range of options depending on surrounding or aggravating circumstances. It primarily means that possession of small amounts of cannabis is not a criminal offence anymore.

To illustrate, marijuana would continue to be an illegal controlled substance under the Controlled Drugs and Substances Act. However, possession of 15 grams or less could result in a ticket or fine of \$150 for an adult and \$100 for a youth. The penalty and use of a fine is administered outside of the criminal court process and in a fashion similar to the process for speeding tickets issued to drivers.

If a person is in possession of 15 grams or less but is also operating a motor vehicle under the influence or near a school where persons under 18 are in attendance, these “aggravating” factors would increase the fines to \$400 for an adult or \$250 for a young person.

In addition, Bill C-17 would create new categories of offenses and more stringent penalties for individuals involved in the cultivation of marijuana. Penalties would be imposed consistent with factors such as the number of plants being grown and the existence again of aggravating factors such as endangerment of children, safety hazards, and use of traps to elude police or intruders. (For more details about the categories of offences and penalties see PowerPoint presentation).

How does the current legislation work? How was Bill C-17 different from the current legislation?

Currently, the possession of marijuana in any quantity is illegal and offenses are processed as criminal offenses. The sentence for a first offense for possession can be up to six months in jail or a \$1000 fine; for subsequent offenses, the sentence can be up to 12 months in jail and a \$2000 fine. The cultivation of marijuana could result in a maximum sentence of 7 years imprisonment.

Charges for possession or cultivation are prosecuted through the criminal court system; convictions result in a criminal record that can have far reaching effects on a person’s life (eg. work, travel, stigma). There is a growing recognition that the harm caused by a criminal conviction as well as the costs of criminal enforcement outweighs the harm caused by use of cannabis in many situations.

Problems associated with the current system include the fact that the enforcement process is complex and inconsistently applied. In some jurisdictions, charges may be laid by the police but then discharged through the courts. Law enforcement and the processing of possession charges through the courts are costly and cumbersome. Public opinion also reflects declining support for the incarceration of individuals charged with possession of small amounts. In contrast, the sentences prescribed for cultivation and production are regarded as too lenient to effectively discourage production.

What is the CAMH policy position on decriminalization?

The Centre for Addiction and Mental Health has been active in supporting the decriminalization of cannabis possession and was involved in forwarding this position in submissions to the Special Senate Committee on Illegal Drugs in 2002. The CAMH position has been summarized as follows:

- CAMH supports the removal of criminal sanctions for possession of small amounts of cannabis for personal use
- This position arises out of a body of research and evidence suggesting that the current sanctions exact a disproportionately heavy cost on individual users and society relative to the known dangers of the drug and patterns of use. Criminal sanctions are also recognized as ineffective in deterring use
- Cannabis is not a benign drug; frequent and long-term use has been associated with negative health and behavioural consequences. However, most cannabis use is sporadic and experimental and therefore not associated with serious negative consequences.

Why does CAMH support decriminalization?

The CAMH position accepts that a certain level of substance use is inevitable and believes that the dangers can be most effectively addressed through a public health oriented policy approach. In addition, the CAMH approach to treatment advocates a harm reduction policy to reduce the adverse health and social consequences without necessarily requiring cessation of drug use.

Patterns of use of marijuana are tied to various factors. Data collected to monitor drug use over a number of years reflects fluctuations in use patterns for various age groups in spite of the existing criminal sanctions. The resources spent on enforcement and the processing of offences related to cannabis have proven ineffective.

CAMH believes that these resources could be redirected in part to prevention and treatment initiatives to achieve greater impact.

What impact would decriminalization have on use patterns?

It is difficult to predict accurately what the impact of decriminalization will have on patterns of use. It appears that a variety of factors impact patterns of use. Criminal sanctions have not been proven to be effective deterrents and therefore their removal may not be as significant as some might speculate. Evidence from other jurisdictions that have introduced similar legal strategies does not suggest an increase in use as a result.

Confusion has been created because of recent legal decisions and enforcement issues related to the current legislation. However, the clarification of the intent and the eventual

enactment of this kind of legislation has the potential to create a system of sanctions that is more functional and balanced. CAMH recommends careful monitoring to evaluate the impact of this new legal framework and to inform future policy decisions.

Current status of legislation

With the federal government changing during the most recent election, Bill C-17 is no longer on the government agenda. The current government did not support the bill while in opposition. During the 2006 election campaign, the current party in power said it would implement mandatory minimum sentences for most serious drug crimes. Offenders involved with trafficking, importing/exporting, or producing large amounts (more than 3kg) of marijuana or hashish, would face mandatory minimum prison sentences of at least two years. Official announcements about proposed legislation have not been made (April 2006).

What are the current patterns of use among young people?

According to the Ontario Student Drug Use Survey, in 2005, 26.5% of Ontario students reported using cannabis in the previous 12 months. This represents about 286,000 students. Thirty one percent reported having used in their lifetime. Use does not significantly differ between males and females or by region. Among all students, 15% report using cannabis six times or more during the past year.

What are the rates of cannabis related offenses for young people?

According to crime reporting survey statistics, cannabis offenses have risen 81% in the decade between 1992 and 2002. Most of these recorded offenses were for simple possession. Rates of 502 per 100,000 for individuals between the ages of 18-24 and 478 per 100,000 for youth between 12 –17 years of age were the highest reported for all age groups. Offence rates however, are primarily an expression of police activity, not necessarily use activity.

In effect, young people are most frequently at risk of being “criminalized” for their substance use behaviour. While the use of cannabis may be transient and representative of the developmental need to take risks and assert autonomy, the consequences in the form of a criminal record and conviction are far reaching. CAMH is involved in the current debate out of concern that current public policies and the prohibitionist response do not work for adolescents.

What initiatives does CAMH support in regard to cannabis use and youth?

CAMH remains concerned about the short term and long-term well being of young people. Harm reduction strategies focused on getting accurate and unbiased information on the harm of use to potential users to help them make informed decisions and to minimize their risk are proposed as the more effective use of resources.

CAMH is also concerned about young people using substances such as cannabis to cope with mental health issues and advocates early identification and treatment of children and youth to potentially prevent substance use and mental health problems.