Decriminalization, Safe Supply, and Legalization: How to Reduce Drug Overdoses through Policy

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Abstract

This paper was originally written for Dr. Tara Holland's Geography 266W course, *Geography in Practice.* The assignment asked students to develop a research question on a geographical topic of our choice, and then attempt to answer it through a review of relevant literature. The paper uses APA citation style.

This paper evaluates the successes and limitations of a drug decriminalization policy framework at addressing drug-related overdose deaths. Through a literature review on Portugal, a country that has decriminalized all illicit drugs since 2001, this paper argues that while decriminalization minimizes overdoses by facilitating access to harm reduction, it does not address the toxic illicit drug supply. Therefore, to dramatically reduce the risk of unintentional drug overdoses, a medically prescribed safe supply model must be implemented.

Between January and June of 2022, at least 1,095 British Columbians died from drug-related overdoses, an average of six a day (Government of BC, 2022). These overdoses are primarily driven by opioids, specifically fentanyl, which was responsible for 81% of overdose deaths from Jan-Aug 2022 (BC Coroners Service, 2022). In response, the City of Vancouver has successfully received a three-year exemption from the federal government to decriminalize a small amount (2.5g) of commonly abused illicit substances (City of Vancouver, 2022). The City of Vancouver (2022) argues that decriminalization will help to reduce the stigma surrounding drug use, encourage access to life-saving services, and reduce widespread harms related to the criminalization of drugs. Yet critics of the policy argue that decriminalization does little to address the foundational problem of a

toxic illicit drug supply and that a regulated safe supply is needed to reduce drug-related overdose deaths (Mae Nassar & Wong, 2022).

Decriminalization is not a novel approach to drug policy. Countries such as Portugal, Italy, Spain, and the Netherlands have experimented with various forms of decriminalization. Decriminalization can be broadly defined as any policy(ies) that remove or reduce criminal penalties related to the personal use of illicit substances (Rolles et al., 2021). Crucially, the commercial distribution of illicit substances remains criminalized under a decriminalization framework (Rolles et al., 2021). This is different from legalization, which permits the commercialization of a substance, either through state control or a free market system (Rolles et al., 2021). This paper will review literature written about Portugal, a country that implemented a decriminalization framework in 2001, as evidence to evaluate the successes and limitations of decriminalization on a national scale. Next, this paper will compare decriminalization with other drug policy approaches including legalization and safe supply to argue that while decriminalization is a good first step to addressing the overdose crisis, it does not address the toxic illicit drug supply and therefore is not a solution to the overdose epidemic.

This paper notably omits a discussion about the benefits of decriminalization, legalization, and safe supply beyond reducing drug-related overdoses. Literature on drug policy has shown that progressive drug policy frameworks can have positive economic and social effects (Bonn et al., 2020; Hughes & Stevens, 2010; Russoniello, 2012; Vicknasingam et al., 2018; Werle & Zedillo, 2018). To completely assess the value of alternative drug policy frameworks, these factors would need to be examined.

Decriminalization and Harm Reduction Services

To understand the effectiveness of decriminalization, this section of the paper will explore the connection between decriminalization and harm reduction services. Advocates for the decriminalization of drugs argue that decriminalization reduces drug-related overdoses by facilitating access to harm reduction measures, such as naloxone, safe injection sites, and needle exchange programs (Bonn et al., 2020; Rolles et al., 2021; Vicknasingam et al., 2018). Harm reduction is understood as any approach that attempts to reduce the harm associated with drug use (Vearrier, 2019). Notably, harm reduction does not legitimize or condone drug use, but rather attempts to minimize the risks associated with illicit drug use.

The literature on harm reduction conclusively establishes that harm reduction measures reduce drug-related overdoses (Gehring et al., 2022; Milaney et al., 2021; Rolles et al., 2021; Vearrier, 2019). Yet, access to harm reduction services is often limited by fear of criminalization. In a study analyzing the willingness to call emergency services during an overdose event, Kieyit et al., (2022) found that ten percent of surveyed drug users in British Columbia would not call for help during an overdose event, from fear of criminalization. Xavier et al., (2022) also found that people who use drugs have consistently had negative experiences with law enforcement during overdose events, which contributes to uncertainty about calling for emergency services. Therefore, decriminalization may reduce drug overdoses by facilitating access to harm reduction services by minimizing the fear of criminalization for people who use drugs.

Drug Decriminalization in Portugal

History/Background

The next section of the paper will evaluate literature on Portugal as a case study to understand the successes and limitations of decriminalization on a national scale. Portugal has been a global leader in drug policy since 2001 when it decriminalized the use and possession of all illicit drugs (Hughes & Stevens, 2010). The move to decriminalize all illicit substances was driven by the dual threat of increasing rates of drug-related overdoses, primarily driven by opioids, and exponential increases in infectious diseases such as HIV, AIDS, and Hepatitis B and C associated with injection drug use (Hughes & Stevens, 2010; Russoniello, 2012). In response, the Portuguese government removed criminal penalties for all illicit drugs and established a network of public health centres designed to support and treat people dependent on illicit drugs. Portuguese drug policy is based on the premise that drug addiction is an illness, rather than a moral failing, and criminalization alone does little to address the root cause of the addiction (Hughes & Stevens, 2010).

Effects on drug use

Evaluating the role of decriminalization on drug use is challenging due to the many factors impacting drug use. In addition, broadly analyzing trends in drug use creates the perception that all drug use is equally damaging. In reality, problematic drug use, which includes drug use among minors and injection drug use for all age groups, is a more useful measure of the health implications of trends in drug use (Hughes & Stevens, 2010).

The literature on trends in Portuguese drug use has been predominantly positive about the effects of drug decriminalization on public health. National statistics on drug use in Portugal from 2001 (the year of decriminalization) to 2007 show that the total number of individuals that have used *any* drug increased moderately (Greenwald, 2009; Hughes & Stevens, 2010; Laqueur, 2015). Yet this increase was primarily driven by an increase in the use of cannabis, which is much less harmful than other forms of drugs (Hughes & Stevens, 2010; Schauer et al., 2022). Problematic drug use has decreased nationally, which is not the case in Italy and Spain, two neighbouring European countries that maintained a criminalized drug framework (Greenwald, 2009; Hughes & Stevens, 2010; Laqueur, 2015). Most importantly, the total number of deaths associated with drug overdoses decreased in the years following decriminalization in Portugal, indicating that Portuguese public health measures were successful in reducing the most dangerous forms of drug use (Gonçalves et al., 2015; Greenwald, 2009; Laqueur, 2015).

Critics of Portuguese drug policies have primarily focused on details of the implementation of drug decriminalization in Portugal, rather than drug decriminalization as a whole. For example, Rego et al., (2021) are critical of the limited implementation of harm reduction measures such as public drug testing, needle exchange programs, and naloxone distribution in Portugal. More broadly Rego et al. (2021) argue that Portuguese drug policy is still fundamentally based on the premise that drug use is harmful, and that Portugal should be a drug-free society.

Portuguese drug policy has also been criticized by advocates for a safe supply or legalized drug framework. Decriminalization addresses the harms related to drug use by minimizing the effects of stigma and criminalization, yet does not address the issue of a toxic drug supply (Rolles et al., 2021). In comparison, legalization or safe supply would replace the toxic illicit drug supply with a source of regulated and quality-controlled drugs for people who are dependent on a substance, drastically reducing the risk of unintended overdose (Rolles et al., 2021). Advocates for legalization or safe supply use Portugal as an example of the way that overdoses continue under a decriminalization framework and that legalization or safe supply are the only true solutions to the toxic drug crisis (Block & Obioha, 2012). Nevertheless, contextualized national health statistics provide unequivocal evidence that the decriminalization of drugs in Portugal has reduced the number of overdose-related deaths and the general harm

associated with drug use by minimizing problematic drug use and establishing national infrastructure to support people struggling with addiction.

Alternative Drug Policy Frameworks

As mentioned above, the decriminalization of drugs reduces drug-related overdoses by enhancing public health support networks and facilitating access to harm reduction measures and emergency services. Yet, decriminalization fails to address the toxic supply of illicit drugs responsible for overdoses. Given this inherent limitation within a decriminalization framework, the following section of the paper will explore legalization and safe supply as two alternative drug policy frameworks.

Safe Supply

Safe supply is defined as a "legal and regulated supply of mind- or body- altering substances that traditionally only have been accessible through the illicit market" (Bonn et al., 2020, p. 557). For opioid users, this can range from the provision of opioid alternatives such as methadone or buprenorphine in a medically supervised clinic to the unsupervised administration of pharmaceutical-grade heroin. Safe supply only provides access to regulated substances for people that are already dependent on illicit substances.

Just like decriminalization, the effectiveness of safe supply programs is based on the details of the implementation of the program (Bonn et al., 2020; Ivsins et al., 2020). The literature on safe supply emphasizes the need for low-barrier services, which seek to make the acquisition of safe drugs as easy as possible for people who need them. An example of a low-barrier safe supply program is a pilot project called "MySafe" in Vancouver that uses an "opioid vending machine" to dispense pharmaceutical-grade illicit drugs daily to participants with a prescription (Thibault, 2020 as cited in Ivsins, 2020). MySafe is projected to be a successful form of safe supply because it is easy to access, free, and allows participants to access substances for as long as they need (Bonn et al., 2020; Ivsins et al., 2020).

In comparison, high-barrier safe supply services often require medical supervision, are difficult to physically access, and provide limits on the amount of time that a user can access the service (Ivsins et al., 2020). A prominent example of a high-barrier safe supply service is opioid agonist therapy or opioid substitution therapy (OAT and OST, respectively). These services aim to reduce opioid dependency with medication that can either serve to replace illicit opioids

or reduce the cravings associated with opioid withdrawal. The implementation of OAT and OST varies jurisdictionally and directly affects the effectiveness of the treatments; however, the literature on OAT and OST is generally critical of the efficacy of these therapies (Demaret et al., 2016; Ivsins et al., 2020; Nordt & Stohler, 2009).

Legalization

Legalization allows for the commercial sale of illicit substances, either through a regulated or free market (Rolles et al., 2021). In Canada, both alcohol and cannabis are psychoactive substances regulated through a legalized framework. Both of these substances are recognized to cause some social- and health- related harms; however, these costs are minimized through state regulation. Proponents of legalization also cite economic, social, and moral arguments for the legalization of drugs (Cussen & Block, 2000; Nadelmann, 1989). Engaging with the broader argument for the legalization of drugs is beyond the scope of this paper but is important to consider when entertaining all possible drug policy frameworks.

There is limited literature that provides a legitimate argument to escalate beyond a safe supply framework to a fully commercialized framework based on the goal of limiting drug-related overdoses. Earp et al. (2021) argue for an expanded form of government-regulated safe supply that combines harm reduction infrastructure with comprehensive drug education programs. In the article Earp et al. (2021), use the term "legalization" to reference their proposed drug policy framework, yet consistently refer to a government-regulated "safe supply" of drugs, leading to the criticism that their policy better aligns with a medically prescribed safe supply system (Rieder, 2021).

The literature on legalization provides little evidence that a legalization framework would reduce drug-related overdoses beyond a regulated safe supply; however, there are potential significant moral, economic, and social benefits that are associated with legalization but not decriminalization. In addition, legalization has historically functioned as a relatively successful form of regulation for less toxic substances such as cannabis and alcohol.

Conclusion

This paper evaluated the literature on various drug policy frameworks including decriminalization, legalization, and safe supply to determine the effect of each approach on drug-related overdose deaths. In the context of an escalating toxic drug crisis, solutions are desperately needed to save the average of six people per

day that perish from the toxic illicit drug supply in British Columbia. This paper was written two months before British Columbia will become the first province in Canada to legally decriminalize a small amount of illicit drugs, therefore, this paper attempts to evaluate the successes and limitations of decriminalization. Decriminalization was evaluated using a combination of public health statistics and literature about the effects of decriminalizing drugs in Portugal, a policy that has been in place since 2001. While Portugal continues to suffer from the toxic drug crisis, the literature demonstrates that the decriminalization of drugs resulted in reduced problematic drug use and fewer drug-related overdoses.

Stepping back from Portugal, the literature on drug decriminalization argues that decriminalization increases access to harm reduction services. Under a criminalized system, drug users have less access to harm reduction services such as naloxone, clean needles, and safe injection sites which increases the risk of overdose as well as other harms related to drug use. In addition, drug users are less likely to call emergency services during an overdose event due to fear of criminalization, which can be the difference between life and death. Decriminalizing drugs increases access to harm reduction services and reduces the risk of criminalization for users, which contributes to safer drug use.

While the benefits of the decriminalization of drugs are clear, other forms of drug policy such as safe supply or legalization have the benefit of transitioning from a toxic illicit drug supply to a safe regulated drug supply. The literature conclusively establishes that a patient-focused safe supply framework has the potential to drastically reduce drug-related overdoses. Therefore, while adopting a decriminalization framework is a step forward for the City of Vancouver, a low barrier medically prescribed safe supply program is needed to save the countless lives that are unnecessarily lost every day to toxic drugs.

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