

## **Submission to Health Canada on Proposed Amendment to Schedule 1 of the *Controlled Drugs and Substances Act* (Addition of MDPV)**

**July 6, 2012**

### **Background**

The Canadian Drug Policy Coalition (CDPC) is an independent civil society network of organizations and individuals working to improve Canada's drug policies. The CDPC envisions a safe, healthy and just Canada in which drug policy and legislation as well as related institutional practices are based on evidence, human rights, social inclusion and public health. The CDPC aims to achieve a society that understands the complexity of substance use and embraces a policy framework that recognizes that problem drug use is a complex social, economic, cultural and health issue.

The intention of this submission is to consider the regulatory environment for 3,4-Methylenedioxypyrovalerone (MDPV) in response to the Health Canada's proposal to prohibit possession and distribution of this drug by placing it in Schedule 1 of the *Controlled Drugs and Substances Act*. We suggest that prohibition of this substance will have unintended negative effects, and alternative models for regulating MDPV should be sought that will balance the need to protect the health of Canadians against the potentially negative effects of prohibition. We also draw attention to the important distinctions between prohibition and regulation of drugs. The current federal proposal to prohibit MDPV forgoes the possibility of regulating and thereby reducing harms from this substance in any meaningful way.

The CDPC is concerned about the health and societal risks posed by MDPV. But for the reasons described below, we suggest that the proposal to place this drug in Schedule 1 of the *CDSA* will not achieve the intended outcome of reducing the use of MDPV, and will have unintended negative consequences for people who do use this substance. CDPC encourages a more fulsome discussion of the models and options available to regulate all psychoactive substances, drawing on lessons learned from other public health policy issues. We are concerned that this proposal is also premature given the limited amount of available information about the science of this drug, the current limited scale of its use, and the media hyperbole surrounding its emergence as a new substance cast as a "demon drug".

### **Limited Scientific Data**

The proposal to prohibit this substance is based on limited scientific information and extremely limited data on the scale of use of MDPV in Canada. Though scientific reports about the relative toxicity and health effects of this substance are emerging, to-date these studies are based on small sample sizes and are mostly retrospective (i.e. based on reports

from emergency room visits).<sup>1</sup> Many of these studies do not indicate the dose, route of administration, duration and context of use among people presenting to emergency rooms.<sup>2</sup> Nor do these studies provide adequate risk assessment tools for a substance such as MDPV.

At present, little is known about the long-term effects of MDPV and its potential contraindications with medications and other drugs. Little to no data is available on the proportionality of harms from MDPV compared to other legal and illicit drugs (such as heroin and cocaine, which are included in Schedule 1). There is also little data on the potential effects of prohibiting MDPV on its future use patterns and consequent harms - such as whether users would simply cease using it, source it from other places (such as the inevitable illegal market supplied and controlled by organized crime), or switch to other potentially more dangerous drugs. The last two possibilities could lead to other harms to the health of users, as well to criminalizing users and creating a new illicit drug market. There is also no data on the likely benefits to the community and health services from prohibiting MDPV.

## Media Reports and Public Policy

In June 2012, MDPV was the subject of lurid and inaccurate media reports in North America. Media coverage of “bath salts” (which can refer to MDPV, as well as other synthetic stimulants such as methylenedioxymethamphetamine, or mephedrone) has been precipitated by unsubstantiated speculation by a Miami police officer that a cannibalistic face-eating incident suggested “bath salts” intoxication. In the U.S. media, “bath salts” were immediately and widely reported as being linked to the attack, and were typically represented as a “new kind of LSD”, a very different kind of substance. The violent attack in Florida took place in the U.S., where MDPV is banned, and the Miami coroner’s toxicology report determined the suspect had only cannabinoids (from marijuana) in his system.<sup>3</sup> A similar story in the *National Post* claimed that ‘bath salts’ was responsible for violent incidents in Toronto and Calgary, though a report in the *Toronto Star* quoted police assertions that there was no demonstrable link to this drug in the Calgary case.<sup>4</sup> These unfounded and hyperbolic “bath salts” stories are not unusual, as the media tend to over report *illegal drug* deaths, as opposed to deaths from all kinds of psychoactive substances, including alcohol and tobacco, legal products whose dangers are well known and demonstrably kill many more than MDPV has (in relative or absolute terms).<sup>5</sup> Lurid and exaggerated reporting of drug stories can inflame public and political perceptions of danger, but ultimately damage the potential for sound, evidence-based public health responses to emerging drug issues.

## The Policy Costs of Prohibiting MDPV

There is no information available on the costs associated with the prohibition of MDPV, including direct financial (e.g., enforcement) costs and indirect health and social costs. Nor is there information on how this drug is synthesized, thus making it difficult to determine what


<sup>1</sup> Murray et al., 2012; Spiller et al., 2011; Thornton et al., 2012.

<sup>2</sup> Spiller et al., 2012, p. 501.

<sup>3</sup> Hiassen & Nadege, 2012.

<sup>4</sup> *National Post*: Visser, 2012; *Toronto Sun*: Kaufman, 2012.

<sup>5</sup> Giesbrecht, et al., 2011; Nutt et al., 2010; Canadian Public Health Association, 2011; World Health Organization, 2009.



enforcement strategies would be required to eliminate the manufacture and sale of this drug. One significant social cost of prohibition will be the making of some Canadians into law-breakers for consuming or possessing a psychoactive substance. Placing MDPV in Schedule 1 will mean that the harshest criminal penalties can be applied to the possession, manufacture and selling of this drug. This could impact on the educational, employment, travel and other future prospects of individuals arrested and convicted for mere possession of MDPV.

Making some drugs illegal does not stop people from using substances. Criminalization of substance use further stigmatizes people who use drugs, making it more difficult to engage them in health care. Criminalization also fosters social marginalization and encourages high-risk behaviours, such as injecting in unhygienic, unsupervised environments, poly-drug use and bingeing. Placing MDPV in Schedule 1 may lead to pushing it further underground, raising prices, and creating incentives for underground chemists to create new substances that may be even more dangerous.

Because research on this drug is incomplete does not mean that banning this drug will benefit the public health and public safety of Canadians.

MDPV is one of a number of emerging “legal highs” in North America, Europe and the U.K. This term refers to a wide variety of substances derived from both organic and synthetic compounds that are considered by users to fall outside of drug regulatory laws. They are generally labeled “not for human consumption” to avoid regulatory control. For example, 49 new psychoactive substances were detected in the European Union in 2011.<sup>6</sup> The emergence of an increasing number of unregulated psychoactive substances available for purchase through the Internet poses challenges to currently existing legislative frameworks. Because new substances are emerging quickly, it is difficult to accurately assess the risks of these drugs. The speed at which new drugs appear on the market challenges established procedures for monitoring, responding to, and controlling the use of new psychoactive substances. Placing each new substance in Schedule 1 will create unknown costs related to enforcement strategies and social costs to people who use these drugs.

## **Further Questions about the Effects of Prohibition**

Banning drugs and relying on enforcement based supply-side approaches to discourage their use has not stemmed the increase in drug use or the increase in drug supply. Despite Canada’s significant investment in drug control efforts, drugs are cheaper and more available than ever.<sup>7</sup> There is a growing consensus among international experts that drug prohibition has failed to deliver its intended outcomes, AND has been counter productive. A drug free world is likely an unattainable world. It is time to consider an approach that helps to contain the negative effects of drug use, provides a variety of treatment modalities and harm reduction services, and avoids criminalizing those who choose to use drugs.<sup>8</sup>

Rather than reducing the supply of drugs, prohibition abdicates the regulation of drugs to criminal markets. This approach has several negative effects.

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<sup>6</sup> See European Monitoring Centre for Drugs and Drug Addiction: <http://www.emcdda.europa.eu/news/2012/2>.

<sup>7</sup> Institute for Scientific Study of Drug Policy, 2010.

<sup>8</sup> Toescu, 2012; Rolles, 2010; The Global Commission on Drug Policy, 2012.

- **Creation of unregulated drug markets:** The CDPC is concerned that access to drugs of unknown toxicity should be eliminated for persons under 19. Unfortunately, drug policies that prohibit some substances actually eliminate age restrictions by abandoning controls to an unregulated market. In addition, when we prohibit rather than regulate substances, it becomes impossible to control the purity and strength of drugs. Illegally produced and supplied drugs are of unknown strength and purity, increasing the risk of overdose, poisoning and infection.
- **Substance displacement:** As the United Nations Office on Drugs and Crime reports, if the use of one drug is controlled, by reducing supply, suppliers and users may move on to another drug with similar psychoactive effects, but less stringent controls.<sup>9</sup> In addition, studies of the effects of banning mephedrone (another cathinone analogue) in the U.K. suggest that people who used this drug before the ban either continued their use, or switched back to prohibited substances like ecstasy and cocaine, both of which are unregulated.<sup>10</sup> This research suggests that prohibiting MDPV may not have the intended effect of reducing substance use. Rather it may displace drug use to either new substances or older illegal substances of unknown purity or dose. The scientific reviews on the effects of the ban on mephedrone in the U.K., suggest that prohibition of this substance precipitated a return to higher levels of cocaine use with an increase in deaths related to this drug.<sup>11</sup> Research also suggests that the ban on mephedrone displaced provision of this substance from Internet and “head shop” supplies to street-level drug dealers, thus involving more people in this illegal activity.<sup>12</sup>
- **Market displacement:** In addition, studies suggest that geographically specific enforcement practices tend to displace drug markets to other locations rather than eliminate them.<sup>13</sup> These findings raise serious concerns about the capacity of law enforcement strategies to eliminate drug supply.
- **Medical applications:** MDPV may also have potential medical uses and benefits, but prohibition discourages and curtails scientific research into potential beneficial applications of controlled substances.

## Other Options and Recommendations

The Canadian Drug Policy Coalition does not support the initiation of an unregulated legal drug market. Clearly all drugs, whether legal or illegal, can be dangerous when used improperly. A new study by the University of Victoria’s Centre for Addictions Research of BC (CARBC) reveals an increase in BC hospitalizations as a result of alcohol and illicit drug overdoses between 2002 and 2009. The rate of alcohol overdose hospitalizations in the population rose by 16 per cent. There were 1,438 alcohol-related and 2,315 illicit drug-related overdose hospitalizations in BC between 2002-2009.<sup>14</sup> Though overdoses from all substances are unacceptably high, these statistics demonstrate that alcohol, a regulated substance, can be very dangerous when used improperly. This substance, however, is

<sup>9</sup> Count the Costs, 2012; Van Hout & Brennan, 2012.


<sup>10</sup> Van Hout & Brennan, 2012; Winstock, Mitcheson & Marsden, 2010.

<sup>11</sup> Toescu, 2012.

<sup>12</sup> Ibid.

<sup>13</sup> Kerr, Small, & Wood, 2005.

<sup>14</sup> Vallance, et al., 2012.



subject to regulatory controls including, pricing, age restrictions and dose. All of these regulatory mechanisms help to contain the negative public health and public safety effects of alcohol while avoiding the negative effects of complete prohibition.

The CDPC recommends consideration of the following options:

- **Regulation not prohibition of MDPV:** place this substance in the *Food and Drug Act* where it could be subject to penalties for sale in adulterated and/or unlabelled forms and where there is an expectation that it would be manufactured under safe and sanitary conditions. One of the key benefits of regulation is that it allows appropriate controls to be put in place over price and availability (location, times of opening and age restrictions) as well as controls over advertising and promotion. It is precisely because drugs pose risks that they need to be appropriately regulated to ensure that dosing and conditions of manufacture protect the safety and health of Canadians, especially young people.
- **New Schedule for the CDSA:** Alternatively, the CDPC recommends that an additional schedule be added to the CDSA for drugs currently under study. The penalties associated with this schedule would include fines for possession or production of this substance until such time as a full review of the scientific literature as well as the scope of the use of this drug are better understood. This new schedule would stipulate the period of time that this drug will be studied and outline the terms of reference for a review of this drug by an independent expert panel.
- **Consider increasing resources** for harm reduction and treatment especially related to new unregulated substances. These efforts could include increased research on effective emergency responses to overdoses, and new modalities for longer-term treatment options for newer substances.

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