

October 13, 2020

**Office of Mayor Muriel Bowser**

John A. Wilson Building  
1350 Pennsylvania Ave. NW  
Washington, DC 20004

**Chairman Phil Mendelson**

The Committee of the Whole  
The Council of the District of Columbia  
1350 Pennsylvania Ave. NW  
Washington, DC 20004

**Chairman Charles Allen**

The Committee on the Judiciary and Public Safety  
The Council of the District of Columbia  
1350 Pennsylvania Ave. NW  
Washington, DC 20004

**CC:** Councilmember Kenyan R. McDuffie, Councilmember Anita Bonds, Councilmember David Grosso, Councilmember Elissa Silverman, Councilmember Robert C. White, Jr., Councilmember Brianne Nadeau, Councilmember Mary M. Cheh, Councilmember Brandon T. Todd, Councilmember Vincent C. Gray, Councilmember Trayon White, Sr., Deputy Mayor Wayne Turnage

**Re: Promote public health by expanding access to harm reduction supplies during the COVID-19 emergency and removing criminal penalties**

The COVID-19 emergency has led to increased overdose deaths and barriers to life-saving services, exacerbating an already existing, fatal overdose crisis in the District. Last year, overdose surged 24% locally, which preliminary data estimates 2019 to be the second-deadliest year for people who use drugs since the District’s opioid crisis began.<sup>1</sup> With estimates showing an 18% increase in overdose deaths during the pandemic nationally – along with increased deaths and barriers to services locally – this unprecedented moment we are in demands that we break away from the status quo, and take common sense steps toward improving public health and the health of people who use drugs.<sup>2</sup> **Over 30 undersigned national and local public health, justice reform, and directly impacted-led organizations urge you to swiftly expand access to harm reduction supplies by decriminalizing items currently prohibited by the District’s paraphernalia statute and allow for the distribution of “safe administration” kits by community-based organizations.**

The District’s criminal paraphernalia law leads to riskier behavior and prevents the District and community organizations from taking simple steps to reduce overdose deaths and promote public health. Currently, possession of drug paraphernalia is a misdemeanor punishable by up to six

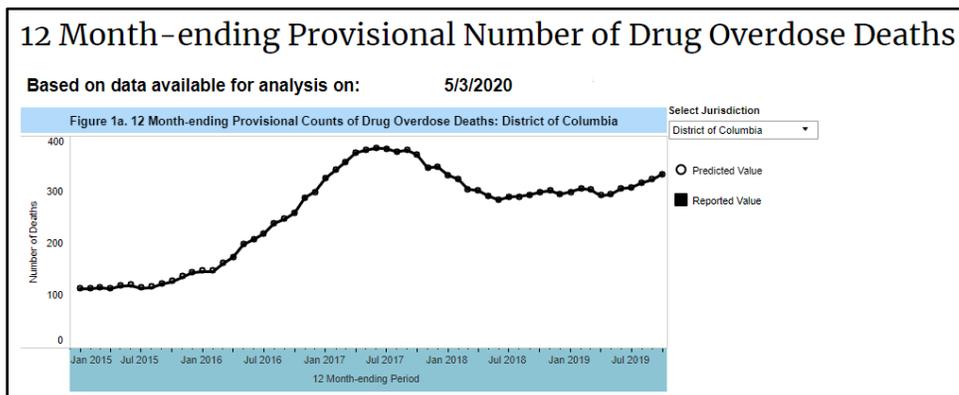
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<sup>1</sup> [https://www.washingtonpost.com/local/dc-news/dc-opioid-deaths-are-surg-ing-again-reversing-previous-years-decline/2020/01/30/332d8788-4388-11ea-b503-2b077c436617\\_story.html](https://www.washingtonpost.com/local/dc-news/dc-opioid-deaths-are-surg-ing-again-reversing-previous-years-decline/2020/01/30/332d8788-4388-11ea-b503-2b077c436617_story.html)

<sup>2</sup> <https://www.aamc.org/news-insights/covid-19-and-opioid-crisis-when-pandemic-and-epidemic-collide>

months in jail and/or a \$1,000 fine.<sup>3</sup> The threat of punishment serves no productive purpose in reducing drug use or overdoses. Instead, it has contributed to arbitrary and inequitable enforcement, increased the potential penalties and collateral consequences for drug users, and exposed more individuals to the risk of wrongful convictions.

The overdose crisis continues to be severe in the District. The city continues to have drug overdose death rates well above average for the United States as a whole and rates of HIV diagnosis that are almost twice the national rate.<sup>4</sup> Through the expansion of syringe exchange services, new HIV cases among people who inject drugs (PWID) have decreased from 32 new



cases in 2013 to 11 in 2018.<sup>5</sup> However, even as greater attention has been focused on overdose deaths nationally, overdoses have continued to rise in the District.<sup>6</sup> And as you know, we have lost over 570 District residents to the COVID-19 virus and over 11,000 residents have tested positive.

The public health needs arising from these epidemics are vast and must be met with compassion, a willingness to innovate, and partnership with community-based partners. In this time of extraordinary need it is essential that efforts focused on harm-reduction be permitted to do everything possible to keep people safe, including helping to save the lives of substance users.

The District’s paraphernalia statute hinders such efforts. People who use drugs are often already more vulnerable to severe illness from the virus than the population at large, and the sharing of smoking devices or other tools for ingesting substances may increase exposure to saliva and respiratory droplets. Community based organizations in many cities are distributing “safer smoking” and “safer snorting” kits in cities across the nation. However, the District’s

<sup>3</sup> D.C. Code § 48-904.10.

<sup>4</sup> National Institute on Drug Abuse, Washington D.C. Opioid Summary, <https://www.drugabuse.gov/drugs-abuse/opioids/opioid-summaries-by-state/washington-dc-opioid-summary>, April 2020 (last visited May 20, 2020).

<sup>5</sup> Vulnerability Assessment, DC Department of Health

<sup>6</sup> Center for Disease Control, <https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm> (last visited May 20, 2020).

paraphernalia statute, D.C. Code § 48–1103, makes it “unlawful for any person to deliver or sell, possess with intent to deliver or sell, or manufacture with intent to deliver or sell drug paraphernalia.”

The District has already made some exceptions to that prohibition, by decriminalizing drug-testing kits, allowing a syringe-exchange program, and permitting some paraphernalia for the cultivation and use of cannabis. We appreciate the Council’s acknowledgement, in passing the “Opioid Overdose Treatment and Prevention Omnibus Act” and allowing the distribution of test kits, that harm-reduction tools are necessary and vital to saving lives; but it is necessary and in fact imperative that the Council go further.

The paraphernalia statute, § 48–1103, is not only unnecessary, it is overbroad. It criminalizes weighing devices, plastic bags, purity-testing equipment, ceramic and water pipes, hypodermic syringes, cigarette rolling papers, and many other items designed for a range of uses but also capable of use for administering a controlled substance. The difference between possession of small ziplock bags for gardening and those intended for drug use is generally left to the arbitrary, often biased inferences of law enforcement.

That broad police discretion to decide when to criminalize everyday tools such as smoking devices, medical supplies, kitchen scales and ziplock bags has resulted in extreme racial inequities. From 2010 to 2016 more than 82 percent of those arrested for possession of drug paraphernalia were Black. That disparity mirrors the broader racial inequities of the criminal justice system in the District, where black individuals are arrested at far higher rates (ten times higher in recent years) than white individuals for relatively minor offenses.<sup>7</sup>

Washingtonians should not continue to die from preventable overdose or contract diseases connected to drug use. the most effective and humane way to prevent the spread of disease, to protect both substance users and the community at large, is to increase the availability of clean, single-use “safe smoking, “safe snorting” and other such devices.

As is often the case, the simplest solution is the best. We urge you to introduce and quickly pass legislation that would remove criminal penalties for the possession of drug administration devices (paraphernalia) for personal use. Short of complete decriminalization of paraphernalia, the Council must at least exempt community-based organizations from the section prohibiting the distribution of clean supplies.

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<sup>7</sup> See “Racial Disparities in D.C. Policing,” ACLU Report (revised 2019), available at [https://www.acludc.org/en/racial-disparities-dc-policing-descriptive-evidence-2013-2017#\\_ftnref6](https://www.acludc.org/en/racial-disparities-dc-policing-descriptive-evidence-2013-2017#_ftnref6) (last viewed May 20, 2020).

In its current form D.C. Code § 48–1103(b)(1A) allows only a narrow exception for the distribution of “test kits” by community based organizations.<sup>8</sup> We urge you to advance emergency legislation that would expand that exception to allow qualifying to community based organizations to provide devices for “use, ingesting, inhaling, injecting, or packaging small personal-use quantities of a controlled substance.”

We appreciate your consideration of these legislative proposals and would welcome opportunities to discuss this and other policies that prioritize science, compassion, health and human rights over criminal punishment.

Sincerely,

AIDS United  
Baltimore Harm Reduction Coalition  
BYP100 DC Chapter  
Charm City Care Connection  
Collective Action for Safe Spaces  
CURE-DC  
DC DanceSafe  
Drug Policy Alliance  
Everyone Home DC  
Family and Medical Counseling Service, Inc.  
Graduate Employees Organization at the University of Illinois at Urbana-Champaign (GEO at UIUC)  
Health in Justice Action Lab, Northeastern University School of Law  
HIPS  
Law Enforcement Action Partnership  
National Association of Criminal Defense Lawyers  
National Council on Alcoholism and Drug Dependence- Maryland Chapter  
National Harm Reduction Coalition  
National Viral Hepatitis Roundtable  
Pathways to Housing DC  
Public Defender Service for the District of Columbia  
SWOP Baltimore  
Texas Overdose Naloxone Initiative  
The Chosen Few  
The George Washington University Chapter of Students for Sensible Drug Policy  
The Washington Legal Clinic for the Homeless

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<sup>8</sup> § 48–1103(b)(1A)

Trystereo New Orleans Harm Reduction Collective  
Urban Survivors Union  
Veterans Cannabis Coalition  
Virginia Harm Reduction Coalition  
Washington Office on Latin America (WOLA)  
Whitman-Walker Institute  
Whose Corner Is It Anyway