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Nollaig 2022

Joint Committee on Justice

Report on an Examination of the Present Approach to Sanctions for Possession of Certain Amounts of Drugs for Personal Use

33/JC/27

December 2022

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CATHAOIRLEACH'S FOREWORD

The Committee was pleased to facilitate an examination of 'the present approach to sanctions for possession of certain amounts of drugs for personal use.'

In selecting this topic, the Committee recognised the ongoing and significant problems with drug addiction in Ireland and the tragic impact this has on societies, communities and families. The Committee heard figures during its public engagement that the rate of drug deaths in Ireland ranks at three times the European average and that these figures are among the highest within the EU. The Committee also recognised calls from some organisations and individuals for the need to evaluate the current approach and the application of the criminal justice system surrounding the use or possession of drugs.

Upon deciding to explore this topic in further detail, the Committee reached out to stakeholders to gain their perspectives on the topic and held a public engagement on the subject, in order to allow for further discussion and dialogue.

The written submissions and witnesses provided the Committee with an insight into several areas where it was felt that Ireland's approach towards drug policies could be re-examined. Among these areas include the potential to decriminalise the possession of certain amounts of drugs for personal use; the potential to introduce a regulatory model surrounding drug usage; the potential benefits or drawbacks of such approaches, and the experiences and policies of other jurisdictions in relation to drug use and possession.

The Committee has made a number of recommendations for these areas and a copy of this report will be sent to the Minister for Justice. The Committee looks forward to working proactively and productively with the Minister to engage with the issues and recommendations identified within its report.

I would like to express my gratitude on behalf of the Committee to all the witnesses who attended our public hearing to give evidence and those who forwarded written submissions to the Committee.

James Lawless TD (FF) [Cathaoirleach]
December 2022

COMMITTEE MEMBERSHIP

Joint Committee on Justice

Deputies

James Lawless TD (FF) [Cathaoirleach]

Jennifer Carroll MacNeill TD
(FG) [Leaschathaoirleach]

Patrick Costello TD
(GP)

Alan Farrell TD
(FG)

Pa Daly TD
(SF)

Aodhán Ó Ríordáin TD
(LAB)

Martin Kenny TD
(SF)

Thomas Pringle TD
(IND)

Niamh Smyth TD
(FF)

Senators

Robbie Gallagher
(FF)

Vincent P. Martin
(GP)

Michael McDowell
(IND)

Lynn Ruane
(IND)

Barry Ward
(FG)

Notes:

1. Deputies nominated by the Dáil Committee of Selection and appointed by Order of the Dáil on 3rd September 2020.
2. Senators nominated by the Seanad Committee of Selection and appointed by Order of the Seanad on 25th September 2020.
3. Deputy James O'Connor discharged and Deputy Niamh Smyth nominated to serve in his stead by the Fifth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 19th November 2020.
4. Deputy Michael Creed discharged and Deputy Alan Farrell nominated to serve in his stead by the Fifteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 28th June 2022.
5. Deputy Brendan Howlin discharged and Deputy Aodhán Ó Ríordáin nominated to serve in his stead by the Nineteenth Report of the Dáil Committee of Selection as agreed by Dáil Éireann on 8th November 2022.

COMMITTEE RECOMMENDATIONS

The following recommendations were made by the Committee in relation to the topic:

1. The Committee acknowledges the harms associated with pursuing a criminal justice led approach to drug use and misuse and recommends that a health led approach is prioritised in both policy and practice.

2. The Committee recognises the role that poverty, inequality and trauma can play in the prevalence of problem drug use and addiction, and, accordingly, recommends the implementation of a poverty and trauma-informed approach in the development and delivery of our addiction services.

3. The Committee recommends the expansion of the Medical Cannabis Access Programme (MCAP), to ensure that more people affected by chronic illness can access cannabis in circumstances where other treatments have failed to relieve symptoms.

4. The Committee recommends that, in acknowledging drug addiction as a health issue, increased investment should be made into programmes, services and treatments which address addiction and the harms associated with it, paying particular attention to harm reduction, improved social interventions and dual diagnosis services.

5. The Committee recommends that a fact-based, educational campaign on drug use and harm reduction should be implemented nationwide as soon as possible, which incorporates the changing nature of drug use.

6. The Committee calls for a rapid expansion of the drug testing pilot-scheme, first trialled in Ireland at the Electric Picnic Music and Arts Festival, in Stradbally Co. Laois, in 2022.

7. The Committee recommends that a detailed multi-year plan is developed, specifying the measures that Government intends to take, in terms of both the health and justice systems, in order to reduce drug-related harms and addiction.

8. The Committee recommends that a policy of decriminalisation is pursued, in line with emerging international best-practice, in respect of the possession of drugs for personal consumption, through appropriate legislation reform, in favour of a health-led approach to problem drug use.

9. The Committee recommends the practice of cultivation of currently illicit substances at a modest, non-profit level be examined in light of above recommendations in order to regulate such activity.

10. The Committee recommends that steps are taken to introduce a regulatory model for certain drugs.

11. In circumstances where the decriminalisation of the possession or cultivation of certain drugs for personal use is pursued, the Committee recommends that in developing a Spent Convictions framework, that the provisions of the Spent Convictions legislation would apply.

12. The Committee recommends the commission of a comparative study that examines approaches towards drug possession and consumption in other jurisdictions including, *inter alia*, Spain, Portugal, Malta, Switzerland, the United States, and Canada, to see which of the policies applied in these jurisdictions could be effectively implemented in an Irish context.

13. The Committee recommends that further research be carried out into the benefits and drawbacks of ‘community collectives’ or ‘social clubs’ as a means through which to grow personal supplies of cannabis or other drugs outside of the black market.

14. The Committee urges that the planning objections in relation to the opening of Ireland's first medically supervised injecting centre (MSIC), as provided for under the *Misuse of Drugs (Supervised Injecting Facilities) Act 2017*, be resolved and that this centre be opened as soon as possible.

15. The Committee recommends that mobile overdose prevention clinics be funded to provide services in areas lacking established treatment centres.

16. The Committee recommends that all emergency medication including injectable and nasal Naloxone be made available to opioid users without the need for a medical prescription. Additionally, the drug, and training to administer it, should be made widely available as a matter of urgency, in order to reverse opioid overdoses in our communities.

17. The Committee recommends prioritising the roll-out of mobile, medically-supervised safe consumption facilities, especially in light of the significant delays in the development of fixed medically-supervised consumption facilities.

18. The Committee calls for significant increased investment in community and voluntary projects, including in local drug and alcohol task forces, which support people in addiction, their families and their communities.

19. The Committee calls on the Department of Health to support the continued expansion of Ireland's Opioid Substitution Treatment (OST) programme, to ensure that the treatment is more widely available in communities across the country. Specifically, the Committee calls for the development of a specialty training structure for the programme, so that more General Practitioners can treat opioid addiction at source.

20. The Committee calls for an evaluation of the role that non-medical prescribers could play in treating opioid addiction in Ireland, by increasing access to Opioid Substitution Treatment (OST).

21. The Committee calls for support to the prescription of heroin assisted treatment (HAT) by suitably qualified medical practitioners, to reduce the risks and harms associated with the consumption of black-market heroin.

22. The Committee recommends that the proposed Citizen's Assembly on drugs be held as soon as possible, in order to engage in a wider discussion on the approach towards drug possession and drug use in Ireland.

SUMMARY

In selecting the topic of ‘an examination of the present approach to sanctions for possession of certain amounts of drugs for personal use’ from its Committee Work Programme for further examination and discussion, the Joint Committee on Justice acknowledged the need to change the current approach and the developments that had occurred in recent years in relation to Ireland’s drug policies.

Among these includes the HSE’s intention of using a harm reduction strategy towards drugs and drug usage, outlined in *Reducing Harm, Supporting Recovery. A health-led response to drug and alcohol use in Ireland 2017-2025*; the introduction of the first drug testing service at the Electric Picnic festival in summer of this year; and the proposed establishment of a Citizen’s Assembly on Drugs, which is scheduled to commence in early 2023.

In light of such ongoing developments and acknowledging the significant problems that remain with problem drug use and addiction in Ireland, the Committee decided to analyse this topic in more detail and invited written submissions seeking the views of various stakeholders on this topic.

Stakeholders, in addition to any general points on the topic, were asked to comment on whether they believe the criminal justice system is the most appropriate avenue for dealing with possession of small quantities of drugs for personal use; whether the current approach towards drugs is counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes; and whether there are particular jurisdictions with alternative drug policies from which Ireland could learn.

Based on the evidence provided to the Committee, it is clear that there are several alternative approaches towards drug policies aside from the current approach, among them the potential to decriminalise the possession of certain amounts of drugs for personal use and the regulation of drug usage.

The Committee heard that Portugal's experience in decriminalising drug use in 2001 had a significant impact on decreasing the levels of drug-related deaths in Portugal. Portugal's changed approach also resulted in significant investments being made into health-based treatments for drugs, and the need for significant improvements in relation to health-based interventions in Ireland and long-term planning to reduce drug related harms were also highlighted by stakeholders and witnesses.

The discussion surrounding the approach towards drug use in Ireland and potential solutions to the issues identified are outlined in the following section.

CHAPTER 1 - Engagement with Stakeholders

Introduction

The Joint Committee on Justice invited submissions from stakeholders on the topic of 'the present approach to sanctions for possession of certain amounts of drugs for personal use'.

On 12th July 2022, the Committee held a public engagement with several of these stakeholders, as laid out in the table below:

Table 1: List of public engagements with Stakeholders

Organisation	Witnesses
Cannabis Risk Alliance	Professor Bobby Smyth, Child & Adolescent Psychiatrist Dr. Hugh Gallagher, GP Specialising in Addiction Medicine
Dr. Garrett McGovern	Medical Director of Priority Medical Clinic Dundrum
Patients for Safe Access	Mr. Martin Condon, Director Mr. Kenny Tynan, Executive Director
Crainn	Mr. Brendan Minish, Board Member
Dr. Nuno Capaz	Director of the Portuguese Dissuasion Commission

The primary focus of this meeting was to allow for an engagement between the Members and stakeholders, to discuss the current approach towards possession of drugs for personal use in Ireland and to discuss the advantages and disadvantages of alternative approaches towards drug use and possession.

This report summarises the engagements and the key points considered by the Committee when drafting the recommendations set out in this report.

A link to the full transcript of the engagement can be found here.

CHAPTER 2 - Summary of Evidence

In the course of the public hearing, a number of important points were raised. A summary of the main areas discussed in evidence to the Committee follows.

1. Observations in relation to Ireland's current drugs policy

In discussing the current approach towards drug use and possession in Ireland, the majority of witnesses agreed that the current approach is clearly not successful. This argument was based on figures which demonstrate that the rate of death drugs in Ireland is the fourth worst in Europe and is three times the European average.

Some witnesses argued that, based on such figures, it is essential that alternative approaches towards Ireland's drug policies be discussed, both in terms of the need to increase treatments and supports for drug addiction and in terms of the potential to discuss and change the current approach towards the regulation of drugs.

Among the alternative approaches identified by witnesses for further consideration, include the potential to decriminalise the possession of certain amounts of drugs for personal use (see Point 2) and the potential to introduce a regulatory model around the use of drugs (see Point 5).

2. Decriminalisation of the possession of certain amounts of drugs for personal use

The Committee heard suggestions that the possession of certain amounts of drugs for personal use should be decriminalised. In discussing this, witnesses distinguished between the *decriminalisation* of drugs, which would remove criminal sanctions for the possession of drugs while other sanctions, e.g. administrative sanctions, may still be applied; and the *legalisation* of drugs, which would remove both criminal and non-criminal sanctions for drug usage.

The following arguments in favour of decriminalisation were put to the Committee:

- **Lack of evidence that criminalisation deters drug usage**

The Committee was told there is little evidence internationally that criminalising drug usage stops people from using drugs, as addiction is influenced by many factors, including psychological, socio-economic, social and chemical factors. It was highlighted that the criminalisation of drugs can deter individuals from seeking treatment in the first instance, due to the shame or stigma of having a drug addiction.

As a result, the majority of witnesses agreed that criminalisation is a punitive and ultimately unhelpful approach towards those suffering from addiction.

- **Criminalisation may impact on harm reduction and better interventions for drug usage**

The Committee heard that criminalisation of drugs may be having a wider and negative impact on the introduction of better inventions for drug addiction or other harm reduction measures. It was suggested that criminalisation has slowed down access to treatments for drug addiction, for example, the provision of naloxone in Ireland. It may also have influenced the delay regarding the introduction of safe injection facilities provided for under *the Misuse of Drugs (Supervised Injecting Facilities) Act 2017*, as objections to the opening of this centre are ongoing.

- **Stigma of a criminal conviction**

It was put to the Committee that criminalisation of drugs has a stigmatising effect, as those who have a criminal conviction for drugs possession or drug use carry this for life, limiting their educational, employment, volunteering and travel opportunities.

Witnesses recommended that adopting a policy of decriminalisation would reduce the stigmatising effect of drug usage and addiction and would help encourage individuals to come forward and seek treatment for their drug usage.

- **Use of criminal justice system for simple possession is disproportionate**

Witnesses told the Committee that it is clear that many people use drugs for their own enjoyment or for escapism and compared the criminalisation of this activity with the criminalisation of consuming alcohol or smoking. It was argued that putting an individual with a simple possession charge through the criminal justice system is disproportionate, given the significant impact that a criminal charge can have on an individual's life and the likelihood that such an intervention will typically have no impact on whether this individual uses drugs again or not.

Arguments against decriminalisation

Some witnesses expressed concerns about the removal of the regulation of drug usage from the criminal justice system, as it was argued that a reduction in sanctions for drug use may result in an increase in the consumption of drugs and an increase in the associated risks to health.

Some witnesses argued that research has shown that the sanctions under a criminalised model have an impact on whether young people decide to use drugs or not, while other witnesses pointed to the relatively high proportion of young people

that self-reported drug use in a recent drug use in higher education in Ireland study (DUHEI).

It was pointed out that the criminal justice system has a role in other areas of public health to direct citizens away from risky behaviours, for example, in terms of the enforcement of road traffic offences.

3. Experience of drug decriminalisation in Portugal

The Committee heard of the drug policies and experiences of other jurisdictions, in particular Portugal, which changed its policy towards drugs in 2001 through decriminalising drug possession and introducing a health-led system to treat drug users.

Portugal’s approach places harm reduction as its core principle and saw an increase in the wrap-around social supports that were provided to help those addicted to drugs.

Witnesses advised the Committee that, following this change of approach towards drug use, the rates of drug-related deaths, HIV and viral hepatitis transmission, overdose, and drug-related crime in Portugal have decreased significantly.

The Committee was informed of the following main points regarding Portugal’s system of decriminalisation:

- In Portugal possession of drugs is still illegal, but not criminalised;
- Possession of up to 10 days’ worth of drugs is an administrative offence, but not a criminal one;
- Those found in possession of drugs will be referred to the Dissuasion Commission, which is a diversion scheme under the Ministry of Health that conducts a risk assessment of an individual and then decides if any administrative sanction or further health referral should be made for their case;
- Individuals found in possession of over 10 days’ worth of drugs are classified as supplying drugs and this will be treated as a criminal offence and referred to the criminal justice system;
- Some individuals found possessing drugs will also be charged with supplying drugs if it is determined that other factors are involved which could indicate this is occurring, e.g. if the drugs found are divided into individual portions or if the individual is found with a significant amount of cash on their person.

Witnesses told the Committee that, while decriminalisation in Portugal has not eliminated drug use, it has helped to better manage problem drug use, drug addiction and drug related harms.

During the presentation, the Committee heard how harmful cannabis is, that the drug causes psychosis and other mental health problems. The Committee also heard that while the majority of cannabis users use the drug without many problems, a significant minority develop consequences of addiction, including mental health problems. However, the Committee heard that whatever views people may have on legalising cannabis, there is no justification for criminalising people who use the drug if criminalisation is not a deterrent.

In looking to drug policies in other jurisdictions, in order to inform Ireland’s own policies, witnesses recommended that the policies of each jurisdiction should be assessed carefully and in further detail, to evaluate the elements of each policy that could be implemented most successfully in an Irish context.

4. Risk of decriminalisation of drugs contributing to the black market or to organised crime

In discussing the potential to decriminalise drugs, Members questioned the potential for this to contribute to increased profits within the black market and for organised crime gangs who are involved in the black market drugs trade.

Some witnesses pointed out that Portugal's policies of decriminalisation still prohibit the sale of drugs and do not allow for any safe supply. It was suggested that the decriminalisation of drug usage may have contributed towards increased profits being made on the black market in Portugal, as more individuals will have relied on the black market to buy their drugs.

The Committee heard from other witnesses that drug users should not be viewed as those who are responsible for the presence of the black market in supplying drugs, as the illegality of drugs has resulted in the black market becoming the main provider for the supply of drugs.

Witnesses said that drug supply and the drug user should be distinguished as two separate elements, pointing to the example of Portugal and how its health-led approach has had a positive impact on the lives of those who are addicted to drugs, while its criminal justice system still focuses on targeting the illicit sale of drugs.

The Committee was informed of other methods by which drugs can be procured, outside of relying on the black market.

The Committee was told of 'community collectives' or 'social clubs' where a local community or group grows cannabis for those within their community who request it. Such collectives occur in Malta, Spain, California and in some jurisdictions, including Switzerland, growing of drugs for personal use is permitted. The Committee was informed that there are other substances such as mushrooms or opiates which can be grown naturally.

Witnesses suggested that, if permitted, individuals or groups could grow their own drugs, providing an alternative route through which substances can be supplied rather than sourcing them from the black market.

Witnesses also spoke of the potential for drugs, when grown in their natural form and not concentrated or injected with further chemicals, to be less harmful than more processed versions of the substance that are available. As one example, witnesses spoke of a coca leaf tea café in Vancouver, where people who are addicted to cocaine may choose to drink this tea as a method of weaning themselves off of their addiction.

Witnesses put to the Committee that, in some instances, the black market and organised crime elements are causing more harm to society than the effect the substances themselves have on society. It was argued that the presence of social clubs or collectives should be viewed as being preferable to supporting elements of organised crime.

Witnesses said that if regulation of drugs were to occur, then growing of drugs for one’s personal use could provide a short-term alternative to the black market, as it may take some time to provide drugs through a different regulated avenue, as the black market has been relied upon so heavily to provide the supply of drugs up until now.

5. Introducing a regulatory model for drugs

The Committee heard suggestions from witnesses on the proposal to introduce a regulatory model, which would regulate the usage of drugs in a similar way to how alcohol is currently regulated.

Several witnesses and Members drew comparisons between the introduction of a regulatory model for drug usage and the existing regulatory approach surrounding the consumption of alcohol, with some witnesses in favour of this approach and others critical of its potential effectiveness.

There were differing views expressed by witnesses in relation to whether the harms associated with consuming alcohol were worse or better than those associated with consuming other drugs.

Arguments in favour of regulating drugs included that:

- Regulating drug usage would ensure access to a safe supply of drugs and allow the State to regulate the potential harms of drugs. This would also decrease the amount of these substances which are provided through the black market or organised crime;
- It is difficult to conduct accurate research on both the benefits and drawbacks of drugs like cannabis when they are currently classified as illegal substances;
- The example of alcohol prohibition in the US was referenced. It was argued this had demonstrated that people had started to consume beverages with a higher alcohol percentage as these were easier to obtain and suggested that the same is happening in terms of current drug usage.

Arguments against include that:

- Witnesses told the Committee that regulating access to substances does not diminish all of the harms these substances cause and argued that normalising the usage of a substance could increase the number of people who use it. Alcohol kills more people per year than illegal drugs and it was argued that

this is more due to the normalisation of and access to alcohol, than due to any inherent dangers;

- It would be very difficult to undo the regulation of drugs if issues with this approach were subsequently identified;
- Some witnesses argued that they would have little reason to support the additional regulation of drugs, until the regulation of alcohol is more effective and its associated impacts on health are reduced.

6. Need to improve treatment services and interventions for drug addiction

In discussing alternate approaches towards current drugs policies, Members and witnesses recognised that, while there may be a link between the approach of certain drug policies and the availability of treatments for addiction (see Point 2), conversations around a particular policy do not need to take priority over conversations discussing the general and urgent need to reduce the harms associated with problem drug use through improved treatment services and interventions for drug addiction, independent of which policy is in place.

This includes, among other suggestions, enhanced education surrounding drugs, funding towards mobile overdose prevention clinics for areas lacking in treatment infrastructure and safe-consumption facilities and the need for a detailed and multi-year plan with clear goals about how Ireland will reduce drug-related harms.

The need to improve social interventions was also highlighted as witnesses claimed that this is an essential part of treatment for drug addiction and misuse. Witnesses told the Committee that the models used by Portugal and Iceland have proven successful in increasing engagement in sports, music and similar activities, while reducing drug use and social problems.

CHAPTER 3 - Summary of Submissions

The Committee received submissions from the following stakeholders:

- Ana Liffey Drug Project
- Citywide Drugs Crisis Campaign
- Youth Workers Against Prohibition
- Merchants Quay Ireland
- Cannabis Risk Alliance
- Dr. Garrett McGovern, Medical Director of Priority Medical Clinic Dundrum
- Dr. Nuno Capaz, Director of the Portuguese Dissuasion Commission
- Cork Cannabis Activist Network
- Patients for Safe Access
- Crainn

These submissions highlighted, among other areas, whether the current system towards possession of drugs is counter-productive in terms of dissuading drug use; whether administrative sanctions, rather than criminal sanctions for possession of drugs would be more appropriate and cost effective; how other jurisdictions approach the possession of drugs for personal use; and whether a health-focused approach to drug use would be a better alternative to the current approach.

1. Is the Criminal Justice system appropriate for dealing with possession of small quantities of drugs for personal use?

Nearly all stakeholders were unanimous in their belief that the criminal justice system is not appropriate for dealing with those who are found with a possession of small quantities of drugs for personal use.

This was highlighted for the following reasons:

- Criminalisation is **stigmatising**
    - Criminalising individuals in such situations is stigmatising, which can have lasting impacts on how these individuals are perceived by society, their future opportunities and their personal lives and relationships. Criminalising drug users isolates them and can discourage vulnerable people who may need help with their drug use from seeking this help (see Point 2).
    - In addition, leaving people with a criminal record that remains after their punishment has ended will, in fact, act as a barrier preventing them from successful reintegration in future.
- Criminalisation is an **ineffective approach to decrease drug use**
    - There has been no appreciable decrease in drug use in Ireland since the policy on criminalisation of simple possession was introduced in 1977 and the substances these policies intended to ban are still available and being used. For example, the Drug Use in Higher Education in Ireland (DUHEI) Survey 2021 showed that over half of third-level students have used some form of illegal drug, mainly cannabis.
- **Punishing drug users is not effective**
    - It was argued that the approach of the criminal justice system to 'punish' drug users for their perceived wrongdoing is not effective, as it assumes that this individual will not repeat this wrong, which doesn't correlate with drugs usage and will not aid those suffering from drug addiction. This is particularly true for the 90% of individuals that use drugs recreationally and therefore do not believe that their drug use is

problematic in the first instance. It was stated that systems that 'reconnect' with drug users are more effective than those that isolate drug users and that diversion schemes can be effective in this regard.

- Criminalisation is an **ineffective use of time and resources**
  - Submissions highlighted the use of time and resources that is spent on processing cases of possession for personal use through the criminal justice system and it was argued that this money and the time used by Gardaí to detect these drugs could be used more effectively in other areas. For example, when the UK reclassified cannabis in 2004 to a class C drug, this resulted in a 33% drop in cannabis cases and saved over 199,000 police hours.
- Possession for personal use is **not an offence that impacts all people all people equally**
  - Submissions commented that although drug use affects all sectors of society, drug convictions disproportionately impact those from disadvantaged areas which see higher levels of policing, unemployment, family issues and addiction and that much of the crime prevalent in these areas is a result of more systemic issues.

However, the submission from the Cannabis Risk Alliance underlined their belief that the criminal justice system does have an appropriate role in discouraging people from using drugs, for the following reasons:

- The Alliance believes that the criminal justice system should play a role in supporting health-led efforts to deter people from ever starting to use drugs and from beginning to use drugs on a more regular basis.
- The Alliance pointed out that the illegality of drugs appears to coincide with greatly reduced demand for and use of these substances. They highlighted international studies which demonstrated that young people mentioned their concerns about potential criminalization as a factor which influenced them to avoid drug use and found that rates of adolescent cannabis use increased where certain types of penalties were eliminated.

- The submission also compared the involvement of the criminal justice system in drug usage with its involvement in other issues relating to public health, for example, its involvement in the behaviour of drivers. It was argued that society is justified in intervening in such behaviour where the decisions that drivers make can cause harm to others as well as themselves and it was underlined that the criminal justice system has played a significant role in achieving large reductions in injury and mortality associated with driver behaviours over the past 40 years.
- The Alliance was not in favour of increasing the punishments currently used for simple drug possession and argued that imprisonment for simple possession is as an excessive and unreasonable sanction.

2. Is the current system counter-productive in dissuading people from drug use and encouraging engagement in rehabilitative programmes?

Stakeholders discussed whether the current approach towards drugs is effective in dissuading people from drug use, in preventing drug-related health problems and in encouraging engagement in rehabilitative programmes from individuals that may need this.

Submissions that were critical of the current system outlined some of the following alternative approaches that they believed would be more effective:

- Personal possession of drugs should be decriminalised in order to remove the stigma and shame associated with drug use, which can deter vulnerable individuals from seeking addiction treatment. Alongside this, better investments should be made into support services to help such individuals.
- Proper regulation of certain drugs, like cannabis, would be a more effective approach than prohibiting them. Some submissions highlighted the dangers associated with cannabis, as certain people can become dependent on it and it can also trigger psychotic episodes. It was argued that if cannabis was regulated, this would
    - Allow users to know the ratio of THC (which is the psychoactive constituent) and CBD (which is the medical constituent which counteracts many negative effects).
    - Eliminate adulterants which are often included in illegal drugs and can cause serious harm or prove fatal
    - Could also eliminate synthetic cannabis (or ‘Spice’) which is particularly detrimental to an individual’s mental health.
    - Proper regulation could improve the research into cannabis’ positive and negative impacts.
- It was pointed out the criminalisation of drugs has resulted in the drugs market being completely unregulated, which is particularly problematic in terms of cannabis supply, as the HSE has pointed out that there has been an increase in counterfeit cannabis products which contain harmful chemicals that can

cause serious health complications or prove fatal. The EU's drug monitoring agency also examined the increase in contaminated black-market cannabis supplies and noted Ireland in this regard. The lack of regulatory checks on cannabis supply in Ireland allows these harmful contaminants to circulate within the cannabis supply without any forewarning or accountability by those responsible.

- Ireland's drug policy should work on reducing the harms of drugs. This can be achieved through sharing harm reduction education, like the HSE's website drugs.ie has done for users of MDMA. An educational model to reduce harm will require adequate policy and funding to ensure it is spread throughout the country.
- The example of 'drug-testing' tents at UK festivals was mentioned, which are tents that allow those attending the festival to have their drugs tested there and then and receive harm reduction information. It was pointed out that one particular festival saw a 95% reduction in drug-related hospital admissions that year.

However, the Cannabis Risk Alliance argued against claims that a criminal record for drug possession discourages individuals from entering addiction treatment, stating that they have seen no evidence to support this theory. They underlined that in Ireland only 3% of people seek treatment for addiction to alcohol, which is the same percentage that seek treatment for a dependence on cannabis. In contrast to these figures, between 50-70% of individuals with heroin dependence access treatment annually.

They argued that many other factors aside from the illegality of drugs would influence whether someone engages in drug treatment and that more pressing factors include the accessibility of treatment and the perceived harmfulness of the addiction in question to the individual. They also argued that the criminal justice system often refers people into addiction treatment, particularly in cases where the individual is being given a charge such as theft or assault but where drug use was identified by Gardaí, probation officers or judges as being a significant contributory

factor in this crime. They highlighted that when people successfully engage with treatment upon these referrals, the criminal justice system views this positively and they encouraged this approach.

The Alliance argued against a narrative by proponents of drug legalisation, which argues that legalisation would eradicate the black-market and criminality associated with drug use, as it was pointed out that some states within the US have legalised cannabis for 5-10 years but the market still retains in the region of 70% of the total cannabis trade.

3. Are administrative sanctions more appropriate and cost effective than criminal sanctions?

Submissions held differing views as to whether an administrative sanction would be more appropriate and cost effective than a criminal sanction in relation to drugs for personal use.

Cannabis Risk Alliance argued that they support the use of sanctions which are not excessively punitive, (for example, they oppose the imprisonment of those that are found in possession of drugs for personal use), once these sanctions are relatively effective at keeping the proportion of citizens who engage in drug use to a minimum. It was pointed out that no law can be 100% effective and that this is not expected in other areas of legislation and deterrence.

It was argued that there has been a growing complacency about drug use amongst sections of the public, which has been fuelled by pro-drug propaganda in recent times and that if sanctions are reduced it might feed into this idea. The Alliance pointed out that there is no rationale for lesser sanctions to be used for possession of cannabis compared to other drugs as this would perpetuate the idea that cannabis is a more harmless drug than others. It was underlined that cannabis is causing more drug-related admissions to psychiatric hospitals than any other illegal drug in Ireland and that cannabis addiction is the main addiction treatment that under 25-year-olds in Ireland are seeking and that there is even more demand in this age group for cannabis treatment than for alcohol addiction treatment.

Other submissions argued that neither an administrative nor criminal sanction is appropriate when deciding policies around drug use, as it demonstrates a clear lack of compassion towards drug addiction and a misunderstanding of how to effectively treat problematic drug use and addiction as the health problems that they are. It was argued that sanctions will have a disproportionate impact on the most marginalised, who are more affected by drug addiction. This will serve to breed more discontent among these groups, negatively impacting on their likelihood of accessing supports and thus increasing the harms of drugs.

In terms of the cost effectiveness of an administrative sanction over a criminal one, it was highlighted that a cost efficiency study conducted in Portugal after the decriminalisation of drug possession for personal usage demonstrated that the cost of an administrative offence at the Dissuasion Commission cost nearly half of what a similar procedure would have costs if progressed through the courts system.

Other submissions agreed that an administrative sanction would be less costly as it would involve less Garda resources being used and less time spent in court. However, it was pointed out that this advantage would be undermined if people who do not have a problem with their drug use are being sanctioned as this would divert resources away from those who need it. In addition, the majority of interactions between the Garda Síochána and citizens in possession of drugs do not result in charges or court appearances and are dealt with informally.

Stakeholders argued that it is immaterial if a switch to an administrative sanction results in lower costs to the State as this will not result in lower rates of drug addiction and mortality. It was highlighted that Ireland has one of the highest drug-related morality rates in Europe, having ranked 4th highest in the EU in 2017 and stakeholders urged that these startling rates of addiction and mortality be urgently addressed. Rather than use of sanctions, it was recommended that funds from the criminal justice system should be diverted into safe consumption centres, more needle programmes, heroin assisted therapy, investment into adequate treatment centres and rehabilitative assistance and appropriate, evidence-based regulation of substances.

4. Approaches of other jurisdictions

Many submissions pointed to the example of drug policies in Portugal, where drugs have been decriminalised since 2001.

Stakeholders pointed to the success of Portugal's approach, highlighting statistics which demonstrated that before 2001 Portugal had one of the highest rates of fatal overdose death and HIV, while now it has one of the lowest fatal overdose rates in Europe and cases of HIV and viral Hepatitis have dramatically decreased. Drug related crimes have also decreased and the rate of prisoners sentenced for such crimes decreased from 45% to 15%.

However, submissions also pointed out that part of Portugal's success in decreasing drug related deaths and incarceration was because Portugal concurrently expanded its drug treatment services, thus equipping the health-focused branch of its drug policy approach with the tools to support drug addiction. This involved investments in harm reduction measures, prevention campaigns and accessibility to treatment, for example increasing methadone clinics, clean needle handouts (Portugal distributes 1.3 million clean needles per year), programs to encourage small businesses to hire addicts in treatment, and a pan-ministerial network of support for those struggling to stay off drugs.

Stakeholders welcomed the compassionate approach adopted by Portugal's drug policy and its re-prioritisation of drug usage as a health problem. It was recommended that lessons from this jurisdiction be adopted in Ireland.

Other stakeholders disagreed that the example of decriminalisation in Portugal has been successful. It was stated that prior to decriminalisation being introduced, incarceration was not a large part of the Portuguese response to personal drug use. In the seven years prior to 2001 there were an average of 18 people in prison at a time for personal drug use, which accounted for 1% of all drug related imprisonments, with the majority of those being for drug trafficking. It was also pointed out that drug use is still prohibited in Portugal, as those found to possess drugs are referred to a Dissuasion Commission, where they may face further criminal

justice sanctions if they fail to cooperation with this Commission but face no criminal record or sanctions if they do cooperate with the Commission.

It was argued that, as stated above, the decline in drug related deaths in Portugal is more likely due to the investment that was concurrently made into providing good quality, accessible and socially supported harm–reduction focused treatment to people with severe addictions, rather than due to decriminalisation.

Stakeholders referenced the following successful drug policies adopted in other jurisdictions:

- **Malta**

Malta has recently legalised cannabis use among its adult population, which differs from the decriminalisation adopted in the US, for example, as Malta's approach avoids commercialisation and focuses on personal growing and 'cannabis clubs'. It was argued that this move will ease pressure on Malta's criminal justice system and monies saved from this can be put towards investment into increasing addiction clinics and needle outlets throughout the country. In addition, Malta appointed a 'cannabis czar', who has a background in addiction and harm reduction services, to monitor this rollout and to design the licensing process and rules surrounding adult use of cannabis. She argues that this regulatory model will have risk reduction as its main aim to protect users of cannabis in Malta.

Stakeholders highlighted the similarities between the Irish and Maltese approach to drug use, as over 75% of drug arrests in 2017 in Malta were for personal possession and there were a limited number of needle outlets across the country. Stakeholders stated that Malta's changed approach to drug policy could be easily adopted in Ireland.

- **Switzerland**

The Swiss drug approach changed in the 1980s and 90s after an acute heroin epidemic and is based off of the four pillars of 'harm reduction, treatment, prevention and repression'. Their approach includes the use of safe consumption rooms and heroin-assisted therapy, which they argue has been successful for drug users and has diverted drug use from the streets, also benefitting the public. While they do not follow a decriminalisation approach, their policing focus shifted from drug users to large drug dealers, which saw a significant reduction in theft rates by up to 98%.

- **Vancouver**

Following elevated rates of drug overdose in 2016, Vancouver intends to decriminalise drugs based around a voluntary referral system, following the four pillars key to the Swiss model. This policy was devised after significant engagement with relevant stakeholders and impacted groups including police, addiction doctors, research scientists and those who use drugs.

It was recommended that Ireland should base its drug policy around a series of four pillars, similar to the Swiss model, where harm reduction is the centre of this policy. In addition, funding towards heroin-assisted therapy and safe consumption rooms should be increased and a voluntary referral system to health services should be introduced rather than use of sanctions for cases of personal drug use.

5. Health-focused approach to drug possession or drug use

Nearly all submissions were unanimous in the belief that a health-based approach to drug possession and drug use is a better alternative than addressing these through the criminal justice system.

Submissions pointed out that scientific data and international research has highlighted that addiction is a health problem and not a criminal problem and therefore should not be treated as one. A health focused approach would centre on the drug user and not the substance itself and aim to improve the quality of life of the user by focusing on the health issues associated with drug usage. Stakeholders underlined the 'dual diagnosis' of drug abuse, where over half of those with substance abuse problems are also suffering with another mental health condition.

Submissions underlined that the majority of drug users do not require medical intervention for their drug use and that this should be reflected in Government policy. It was recommended that any mandatory enrolment into drug treatment services should be avoided so that these resources can be geared towards drug users that need treatment the most.

Stakeholders did acknowledge that there has been a shift in drug policy in the last ten years towards exploring a health led approach rather than a criminalising one. For example, the *Misuse of Drugs (Supervised Injecting Facilities) Act 2017* was introduced to provide for Ireland's first medically supervised injecting centre (MSIC) to open. Research shows that such centres, of which there are about 100 internationally, have been successful in averting fatal overdoses, decreasing the amount of drug equipment on public streets and in connecting vulnerable drugs users with other services. However, it was pointed out that due to planning objections in relation to this centre it has yet to open. Stakeholders urged that these problems be resolved so that this centre can be opened as soon as possible.

In addition, it was recommended that a Heroin Assisted Treatment (HAT) centre be opened to assist vulnerable users of heroin where conventional opioid substitution treatment (OST) has failed in helping them, as international research has shown these centres assist in treating hard to reach heroin users.

Submissions also highlighted the Medical Cannabis Access Programme (MCAP) which allows certain individuals with chronic medical conditions to use cannabis where their other treatments have not helped. Stakeholders were critical of the narrow criteria surrounding who could avail of this treatment as, for example, sufferers of chronic pain are not deemed eligible for this scheme and submissions criticised the fact that a hospital consultant must be the one to enrol individuals for this programme.

6. Additional recommendations

Submissions outlined the following additional measures that they believed would be useful regarding approaches towards the possession of drugs for personal use and methods to effectively tackle drug addiction:

- The proposed Citizen's Assembly on drug laws should be held as soon as possible.
- The Minister responsible for drug policy should meet with relevant stakeholders that are working in the areas of addiction and drug use in Ireland. They should also consult with international ministries where differing drug policies have been adopted, to learn the approaches of other jurisdictions.
- There should be a comprehensive, multi-year plan that details areas of funding, envisaged steps and support to help reduce the significant rate of drug-related deaths in Ireland.
- The number of clean needles and other clean drug equipment outlets for addicts to reduce disease should be increased. Mobile outlets for therapy and equipment should also be considered.
- An educational model to reduce the harm of drugs should be funded and rolled out throughout the country.
- Some stakeholders recommended that cultivating one's own plant-based drugs should be legal once the amount is consistent with personal use only and once there are no additional factors, such as black-market involvement.

APPENDICES

APPENDIX 1- ORDERS OF REFERENCE OF THE COMMITTEE

Standing Orders 94, 95 and 96 – scope of activity and powers of Select Committees and functions of Departmental Select Committees

Scope and context of activities of Select Committees.

94.(1) The Dáil may appoint a Select Committee to consider and, if so permitted, to take evidence upon any Bill, Estimate or matter, and to report its opinion for the information and assistance of the Dáil. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum, and may appoint a date upon which the Committee shall report back to the Dáil.

(2) It shall be an instruction to each Select Committee that—

(*a*)it may only consider such matters, engage in such activities, exercise such powers and discharge such functions as are specifically authorised under its orders of reference and under Standing Orders;

(*b*) such matters, activities, powers and functions shall be relevant to, and shall arise only in the context of, the preparation of a report to the Dáil;

(*c*) it shall not consider any matter which is being considered, or of which notice has been given of a proposal to consider, by the Joint Committee on Public Petitions in the exercise of its functions under Standing Order 125(1)[1]; and

(*d*) it shall refrain from inquiring into in public session or publishing confidential information regarding any matter if so requested, for stated reasons given in writing, by—

(i) a member of the Government or a Minister of State, or

(ii) the principal office-holder of a State body within the responsibility of a Government Department or

(iii) the principal office-holder of a non-State body which is partly funded by the State,

Provided that the Committee may appeal any such request made to the Ceann Comhairle, whose decision shall be final.

(3) It shall be an instruction to all Select Committees to which Bills are referred that they shall ensure that not more than two Select Committees shall meet to

[1] Retained pending review of the Joint Committee on Public Petitions

consider a Bill on any given day, unless the Dáil, after due notice to the Business Committee by a Chairman of one of the Select Committees concerned, waives this instruction.

Functions of Departmental Select Committees.

95. (1) The Dáil may appoint a Departmental Select Committee to consider and, unless otherwise provided for in these Standing Orders or by order, to report to the Dáil on any matter relating to—

(*a*) legislation, policy, governance, expenditure and administration of—

(i) a Government Department, and

(ii) State bodies within the responsibility of such Department, and

(*b*) the performance of a non-State body in relation to an agreement for the provision of services that it has entered into with any such Government Department or State body.

(2) A Select Committee appointed pursuant to this Standing Order shall also consider such other matters which—

(a) stand referred to the Committee by virtue of these Standing Orders or statute law, or

(b) shall be referred to the Committee by order of the Dáil.

(3) The principal purpose of Committee consideration of matters of policy, governance, expenditure and administration under paragraph (1) shall be—

(*a*) for the accountability of the relevant Minister or Minister of State, and

(b) to assess the performance of the relevant Government Department or of a State body within the responsibility of the relevant Department, in delivering public services while achieving intended outcomes, including value for money.

(4) A Select Committee appointed pursuant to this Standing Order shall not consider any matter relating to accounts audited by, or reports of, the Comptroller and Auditor General unless the Committee of Public Accounts—

(a) consents to such consideration, or

(b) has reported on such accounts or reports.

(5) A Select Committee appointed pursuant to this Standing Order may be joined with a Select Committee appointed by Seanad Éireann to be and act as a Joint Committee for the purposes of paragraph (1) and such other purposes as may be specified in these Standing Orders or by order of the Dáil: provided that the Joint Committee shall not consider—

(a) the Committee Stage of a Bill,

(b) Estimates for Public Services, or

(c) a proposal contained in a motion for the approval of an international agreement involving a charge upon public funds referred to the Committee by order of the Dáil.

(6) Any report that the Joint Committee proposes to make shall, on adoption by the Joint Committee, be made to both Houses of the Oireachtas.

(7) The Chairman of the Select Committee appointed pursuant to this Standing Order shall also be Chairman of the Joint Committee.

(8) Where a Select Committee proposes to consider—

(a) EU draft legislative acts standing referred to the Select Committee under Standing Order 133, including the compliance of such acts with the principle of subsidiarity,

(b) other proposals for EU legislation and related policy issues, including programmes and guidelines prepared by the European Commission as a basis of possible legislative action,

(c) non-legislative documents published by any EU institution in relation to EU policy matters, or

(d) matters listed for consideration on the agenda for meetings of the relevant Council (of Ministers) of the European Union and the outcome of such meetings, the following may be notified accordingly and shall have the right to attend and take part in such consideration without having a right to move motions or amendments or the right to vote:

(i) members of the European Parliament elected from constituencies in Ireland,

(ii) members of the Irish delegation to the Parliamentary Assembly of the Council of Europe, and

(iii) at the invitation of the Committee, other members of the European Parliament.

(9) A Select Committee appointed pursuant to this Standing Order may, in respect of any Ombudsman charged with oversight of public services within the policy remit of the relevant Department consider—

(*a*) such motions relating to the appointment of an Ombudsman as may be referred to the Committee, and

(*b*) such Ombudsman reports laid before either or both Houses of the Oireachtas as the Committee may select: Provided that the provisions of Standing Order 130 apply where the Select Committee has not considered

the Ombudsman report, or a portion or portions thereof, within two months (excluding Christmas, Easter or summer recess periods) of the report being laid before either or both Houses of the Oireachtas.[2]

2 Retained pending review of the Joint Committee on Public Petitions.

Powers of Select Committees.

96. Unless the Dáil shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers:

(1) power to invite and receive oral and written evidence and to print and publish from time to time—

(a) minutes of such evidence as was heard in public, and

(b) such evidence in writing as the Committee thinks fit;

(2) power to appoint sub-Committees and to refer to such sub-Committees any matter comprehended by its orders of reference and to delegate any of its powers to such sub-Committees, including power to report directly to the Dáil;

(3) power to draft recommendations for legislative change and for new legislation;

(4) in relation to any statutory instrument, including those laid or laid in draft before either or both Houses of the Oireachtas, power to—

(*a*) require any Government Department or other instrument-making authority concerned to—

(i) submit a memorandum to the Select Committee explaining the statutory
Instrument, or

(ii) attend a meeting of the Select Committee to explain any such statutory instrument: Provided that the authority concerned may decline to attend for reasons given in writing to the Select Committee, which may report thereon to the Dáil,
and

(*b*) recommend, where it considers that such action is warranted, that the instrument should be annulled or amended;

(5) power to require that a member of the Government or Minister of State shall attend before the Select Committee to discuss—

(a) policy, or

(*b*) proposed primary or secondary legislation (prior to such legislation being published),

for which he or she is officially responsible: Provided that a member of the Government or Minister of State may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil: and provided further that a member of the Government or Minister of State may

request to attend a meeting of the Select Committee to enable him or her to discuss such policy or proposed legislation;

(6) power to require that a member of the Government or Minister of State shall attend before the Select Committee and provide, in private session if so requested by the attendee, oral briefings in advance of meetings of the relevant EC Council (of Ministers) of the European Union to enable the Select Committee to make known its views: Provided that the Committee may also require such attendance following such meetings;

(7) power to require that the Chairperson designate of a body or agency under the aegis of a Department shall, prior to his or her appointment, attend before the Select Committee to discuss his or her strategic priorities for the role;

(8) power to require that a member of the Government or Minister of State who is officially

responsible for the implementation of an Act shall attend before a Select Committee in relation to the consideration of a report under Standing Order 197;

(9) subject to any constraints otherwise prescribed by law, power to require that principal office-holders of a—

(*a*) State body within the responsibility of a Government Department or

(*b*) non-State body which is partly funded by the State,
shall attend meetings of the Select Committee, as appropriate, to discuss issues for which they are officially responsible: Provided that such an office-holder may decline to attend for stated reasons given in writing to the Select Committee, which may report thereon to the Dáil;

and

(10) power to—

(*a*) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairmen under Standing Order 120(4)(*a*).'

APPENDIX 2 - LIST OF STAKEHOLDERS AND SUBMISSIONS

The Committee received submissions from the following stakeholders

- Ana Liffey Drug Project
- Citywide Drugs Crisis Campaign
- Youth Workers Against Prohibition
- Merchants Quay Ireland
- Cannabis Risk Alliance
- Dr. Garrett McGovern, Medical Director of Priority Medical Clinic Dundrum
- Dr. Nuno Capaz, Director of the Portuguese Dissuasion Commission
- Cork Cannabis Activist Network
- Patients for Safe Access
- Crainn

[Submissions are available in the online version of the Committee's Report, which will be accessible at https://www.oireachtas.ie/en/committees/33/justice/].

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Introduction

This document is a submission to the Joint Committee on Justice on the topic of "*An examination of the present approach to sanctions for possession of certain amounts of drugs for personal use*".

This submission has been structured to respond to each question as laid out within the letter '*Invitation to make Written Submission'* dated 12th May 2022 addressed to Mr. Tony Duffin, CEO Ana Liffey Drug Project.

The submission has been prepared by Tony Duffin and is made on behalf of Ana Liffey Drug Project.

About Ana Liffey

Ana Liffey Drug Project is a social inclusion and addiction funded service with a 'Low Threshold – Harm Reduction' ethos. Ana Liffey provide direct services to people who use drugs in Dublin City and the Midwest Region of Ireland. Established in 1982 as the first organisation founded on the principles of Harm Reduction in Ireland, Ana Liffey marks its 40th anniversary in 2022 and its tenth year of operations in the Midwest.

Ana Liffey is an active member of civil Society and, in this regard, we participate in a number of relevant local, national and international fora, including the Civil Society Forum on Drugs (EU); the National Voluntary Drug and Alcohol Sector (IE); the National Oversight Committee of the National Drug Strategy (IE); the Correlation - European Harm Reduction Network (EU); and more.

Dublin Services

In 2021 the Dublin Services Team was made up of 19 team members who worked with a total of 1,301 individuals across multiple projects - including Private Emergency Accommodation Inreach; Granby Clinic Inreach; Outreach Overdose Prevention Programme; Low Threshold Stabilization Programme; and Dual Diagnosis support work. Upon assessment by team members the presenting needs were identified as, but not limited to - housing; drug use; social welfare; alcohol use; mental health ; physical health; meaningful use of time; and legal issues. In addition to all of the above, and prior to the development of a dedicated Homeless COVID Response Team (see below), the Dublin Services Team continued to provide COVID-19 supports.

In 2021, the Ana Liffey management team, based locally in Dublin, continued to provide specialists COVID-19 supports to the homeless sector across Dublin city and county. In quarter three of 2021, a standalone team of five staff was hired to take over and continue this work within the Ana Liffey, in close collaboration with the HSE Clinical and Operational Leads for COVID-19 in Dublin. Notably, as part of this work throughout 2021, Ana Liffey managed and coordinated service user transportation in relation to the COVID-19 response for the homeless population in the HSE CHO9 area.

The Dublin city based Assertive Case Management Team, made up of 5 team members, worked intensively with 127 individuals in 2021. Of these 64 people availed of key working or case management supports; 63 availed of harm reduction interventions, signposting and brief supports; 35 individuals were identified and assessed through assertive outreach; and 29 were direct referrals from the Gardaí.

Midwest Services

In 2021 the team of 5 staff in the Midwest registered 145 new service users and worked with 352 people across the region – providing key working, case management and harm reduction interventions.

During 2021, the team provided 2,908 Needle and Syringe Programme interventions – which includes overdose prevention interventions; the provision of sterile crack pipes; education & training on the safer disposal of drug paraphernalia; and the provision of Naloxone training & product. Significantly the team provided over 17,000 syringes during the course of the year.

About Tony Duffin

Tony Duffin is the CEO of Ana Liffey Drug Project, a position he has held since 5th November 2005. Prior to this, he held a number of senior management roles in the addiction field, including playing a key role in opening Ireland's first emergency accommodation for young people who inject drugs; and Irelands first wet residential service for entrenched street drinkers. A graduate of the Diploma in Drug Dependence from the Addictions Department of Kings College London. He also holds an MSc in 'Drug and Alcohol Policy' from Trinity College Dublin, and a Postgraduate Diploma in 'Research in Health Practice' through the University of Bath.

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Submission:

Question 1. In your opinion, is the Criminal Justice system appropriate for dealing with possession of small quantities of drugs for personal use?

No, the Criminal Justice system is not appropriate for dealing with possession of small quantities of drugs for personal use. In this regard we draw the Committee's attention to an excerpt from the report, '*NOT CRIMINALS - Underpinning a health-led approach to drug use*':

> "Criminal law, which carries with it the state's authority to deprive people of their liberty and punish them in other ways, is meant to be reserved for society's more serious offenses. In general, criminal sanctions are meant to serve a number of objectives, including the:
>
> - deterrence of future criminal conduct;
> - incapacitation of criminals and criminal activities through incarceration;
> - rehabilitation of the offender; and
> - retribution for wrong-doing (punishment for the sake of punishment).
>
> Insofar as achieving these objectives is concerned, there is little evidence that criminalisation of minor drug possession is a deterrent to future drug use or possession in any sustainable way, something that has been recognised for some years by policy makers and legal and criminal justice scholars. The Global Commission on Drug Policy have noted that:
>
>> "Criminalization of drug use and possession has little to no impact on levels of drug use in an open society."
>
> This was echoed by the UK Home Office in 2014:
>
>> "The disparity in drug use trends and criminal justice statistics between countries with similar approaches, and the lack of any clear correlation between the 'toughness' of an approach and levels of drug use demonstrates the complexity of the issue. Historical patterns of drug use, cultural attitudes, and the wider range of policy and operational responses to drugs misuse in a country, such as treatment provision, are all likely to have an impact".
>
> Moreover, some have argued that criminalisation of minor offenses in particular undermines the capacity of criminal law to deter more serious offenses."[i]

Ana Liffey is supportive of the implementation of the State's health led approach to the possession of drugs for personal use[ii] as outlined in the National Drug Strategy[iii]. We are clear that successful implementation of such a health led approach will require that drug use be a health issue every time a person is found in possession of drugs for personal use. That said, in August 2019 the government launched its policy on Ireland's approach to the possession of small amounts of drugs for personal use. Announcing the adoption of a staged approach to dealing with possession i.e. the first time a person is caught, they will be diverted for a (mandatory) health assessment with HSE; the second time, the Gardaí will have the option to apply an adult caution under the adult cautioning scheme; and the third time, the person will have used all their chances and will face criminal prosecution. This policy is yet to be implemented and we hope that upon further reflection the State will provide people every opportunity to benefit from an appropriate health intervention outside of the criminal justice system

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i.e. divert people, found in the possession of drugs for personal use, away from the Criminal Justice system as the default response every time.

Question 2. In your opinion, is the current system, which can result in a criminal record, counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes?

Yes, the current system, which can result in a criminal record, is counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes. Through our research we "*have found that, relatively few criminal justice systems have been able to demonstrate that they offer lasting rehabilitation of people in prison or otherwise detained based on sanctions imposed for drug possession"*[iv].

Question 3. In your opinion, do you think that a type of administrative sanction would be appropriate to a criminal sanction?

Yes, a type of administrative sanction would be more appropriate to a criminal sanction. In this regard, we agree with the findings of the 'Joint Committee on Justice, Defence and Equality' a cross-party parliamentary committee in 2015:

> "The Committee strongly recommends the introduction of a harm reducing and rehabilitative approach, whereby the possession of a small amount of illegal drugs for personal use, could be dealt with by way of a civil/administrative response and rather than via the criminal justice route."[v]

Question 4. In your opinion, do you think that an administrative sanction would be more cost-effective to the Exchequer rather than a criminal sanction?

Yes, we think that an administrative sanction would be more cost-effective to the Exchequer rather than a criminal sanction. However, there are few resources which are specifically on point in relation to Cost Benefit Analysis (CBA) and decriminalisation. In this regard, we draw the Committee's attention to '*NOT CRIMINALS - Underpinning a health-led approach to drug use*', which concluded:

> *"One study which may be of use in considering a CBA framework which could be applied to the Irish experience is that conducted by Zábranský in the Czech Republic, which carried out a CBA in relation to a policy change whereby simple possession was criminalised, where this had previously not been the case. This study utilised previous work which had established the total costs to society related to illicit drug use. This was then analysed in the context of the change in policy and the consequences of that change. The study concluded that:*
>
> > *"In the short-term perspective […] the implementation of penalization of possession of illegal drugs for personal use was economically disadvantageous and incurred redundant costs, that is, it caused the society to expend resources that could have been used in a different manner."*
>
> *And that:*
>
> > *"It is very likely that the implementation of penalization of possession of illicit drugs for personal use was very economically disadvantageous in the long-term perspective."*[vi]

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Question 5. Do you believe Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere, if so what?

Yes, Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere. Portugal's drug policy is a good example; however, "a worthwhile caveat to keep in mind is that drug use is complex. Both proponents and detractors have been criticised for seeking soundbites to support their position – such an approach is often misrepresentative and unhelpful."[vii] In this regard, we draw the Committee's attention to '*NOT CRIMINALS - Underpinning a health-led approach to drug use*':

> *"…, it is not possible to state definitively that any trends observed since 2001 have been caused by decriminalisation or the broader strategy. Nevertheless, the statistical indicators and key informant interviews that we have reviewed suggest that, since 2001, the following changes have occurred [in Portugal]:*
>
> *a. Reductions in reported illicit drug use among the overall population.*
> *b. Increase in cannabis use in adolescents, in line with several other European countries.*
> *c. Reductions in problematic drug users.*
> *d. Reduced burden of drug offenders on the criminal justice system.*
> *e. Increased uptake of drug treatment.*
> *f. Reduction in drug-related deaths and infectious diseases.*
> *g. Increases in the amounts of drugs seized by the authorities."*[viii]

Question 6. In your opinion, do you think that a health-focussed approach to drug use is a better alternative?

Yes, there is good evidence that a correctly implemented health-focussed approach to drug use is a better alternative. For example:

> *"…, in the Czech Republic, as in Portugal, there are better health outcomes for people who use drugs under a decriminalised system. Per the Home Office:*
>
> > *"…the evaluation of the criminalisation of drug possession in the Czech Republic observed that adverse health outcomes for users increased following criminalisation. This finding informed a policy shift towards greater focus on treatment and public health responses, although the evaluation acknowledged that the changes could not be attributed to the approach to possession alone." "*[ix]

Question 7. Do you think that anyone who refuses to engage in any proposed administrative system should then be referred to the Criminal Justice system?

No, anyone who refuses to engage in any proposed administrative system should not then be referred to the Criminal Justice system. As per our response to Question 1, above,

> "*provide people every opportunity to benefit from an appropriate health intervention outside of the criminal justice system i.e. divert people, found in the possession of drugs for personal use, away from the Criminal Justice system as the default response every time."*

A good example is the Portuguese model; in which all incidents of *possession of drugs for personal use* are referred to the Dissuasion Commission. However, the Dissuasion Commissions can refer people to the Courts, and vice versa, on a case-by-case basis.

Question 8. Are there any other supports and resources which might be considered useful to this discussion?

On 20th January 2017, the 'Dublin Drug Policy Summit' brought together leading figures from Europe, North America and Australia to discuss two topical issues in drug policy – supervised injecting facilities and decriminalisation. The resulting report of the 'Dublin Drug Policy Summit' can be downloaded here aldp.ie/resources/downloads/

In this submission we have referred to our comprehensive report 'Not Criminals' several times; Ana Liffey published this report in partnership with the London School of Economics in 2018. A copy of the report can be downloaded here aldp.ie/resources/downloads/

The report on 'Policing in Changing Policy Environments' event was published by Ana Liffey in June 2019; the event brought together experts working at the intersection of law enforcement, public health and community safety from a variety of jurisdictions and backgrounds. A copy of the report can be downloaded here aldp.ie/resources/downloads/

#SaferFromHarm is a civil society campaign to decriminalise people who use drugs. Visit saferfromharm.ie

Finally

Thank you for the opportunity to make this submission. As stated above, and within Ana Liffey's current strategic plan[x], Ana Liffey supports the implementation of the State's health led approach to the possession of drugs for personal use.

So, it is clear that in Ireland we are working together towards the possession of drugs for personal use being responded to as a health issue[xi]. In this regard we take this final opportunity to draw the Committees attention to the following important value, which we believe is essential for the successful implementation of a health led response to people found in the possession of drugs for personal use – *drug use is not just a health issue the first or second time, it is a health issue every time*.

References

[i] NOT CRIMINALS - Underpinning a health-led approach to drug use. (2018); Ana Liffey Drug Project and London School of Economics; Page 35.

[ii] 'TURNING WORDS INTO ACTIONS - THE STRATEGIC PLAN OF ANA LIFFEY DRUG PROJECT 2021 & 2022' (2020); Ana Liffey Drug Project; Page 9.

[iii] Strategic priorities for implementing the national drugs strategy 2021-2025. (2021); Department of Health; Page1.

[iv] NOT CRIMINALS - Underpinning a health-led approach to drug use. (2018); Ana Liffey Drug Project and London School of Economics; Page 36.

[v] Houses of the Oireachtas Joint Committee on Justice, Defence and Equality, Report of the Committee on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs (Oireachtas Eireann, 2015); Page 10.

[vi] NOT CRIMINALS - Underpinning a health-led approach to drug use. (2018); Ana Liffey Drug Project and London School of Economics; Page 51.

[vii] NOT CRIMINALS - Underpinning a health-led approach to drug use. (2018); Ana Liffey Drug Project and London School of Economics; Page 42.

[viii] NOT CRIMINALS - Underpinning a health-led approach to drug use. (2018); Ana Liffey Drug Project and London School of Economics; Page 42.

[ix] NOT CRIMINALS - Underpinning a health-led approach to drug use. (2018); Ana Liffey Drug Project and London School of Economics; Page 45.

[x] 'TURNING WORDS INTO ACTIONS - THE STRATEGIC PLAN OF ANA LIFFEY DRUG PROJECT 2021 & 2022' (2020); Ana Liffey Drug Project; Page 9.

[xi] Strategic priorities for implementing the national drugs strategy 2021-2025. (2021); Department of Health; Page1.

DPU_02

CITYWIDE DRUGS CRISIS CAMPAIGN

SUBMISSION TO THE JOINT COMMITTEE ON JUSTICE

An examination of the present approach to sanctions for possession of certain amounts of drugs for personal use

2nd June 2022

Introduction

Citywide Drugs Crisis Campaign is a national network of community organisations that are involved in addressing the drugs issue and it represents the community sector on the National Oversight Committee of the National Drugs Strategy (NDS). Citywide first highlighted the concern in our communities about the negative impact of criminalisation on drug users and their families in our 2012 Strategic Plan and organised a conference in 2013 called "Criminalising Addiction – is there another way?" We presented to the 2015 Oireachtas Committee on Justice on the issue and worked for the inclusion of an action in the current NDS, *Reducing Harm, Supporting Recovery* to set up a Working Group on Alternative Approaches to Possession for Personal Use. We have continued to debate the issues through our community networks, through political briefings and in public and policy statements on the drugs issue.

Based on our extensive experience and ongoing engagement with the issues, we do not believe any person should be deemed a criminal simply because he/she uses a drug. It is Citywide's view that drug use should be decriminalised and should be addressed as a social and health issue rather than as a criminal justice issue. We believe that decriminalisation of drug use is an essential element in implementing the government commitment in RHSR to a health-led approach to the drugs issue.

This paper is set out under the following headings:

1. The distinction between decriminalisation and legalisation
2. Negative effects of criminalisation in Irish drugs policy
3. Background to the International experience of decriminalisation
4. What Ireland can learn from the experience of Portugal
5. Conclusions and Recommendations

1) Distinction between decriminalisation and legalisation

Based on our experience to date of debating and discussing the issue of decriminalisation, it is important at the start of the discussion to make a clear distinction between decriminalisation and legalisation, as the two are often confused and conflated. **Decriminalising** drug use means that the actual use of a drug would not be a criminal offence; a person found in possession of drugs for personal use would not be considered as a criminal and would not be dealt with through the criminal justice system.

This is clearly distinct from the concept of '**legalising**' or '**regulating**' drugs, where using, buying, importing and selling drugs would become a market regulated by the state in the same way as alcohol and tobacco. With decriminalisation, the individual drug user and his/her use of a drug is no longer treated as a criminal offence but the drugs trade remains illegal and subject to criminal law and no drug that is currently illegal is made legal.

In our experience of debating the issue over the last few years, the vast bulk of objections to decriminalisation arise as a result of confusing it with legalisation and are not about decriminalisation per se.

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2) Negative effects of criminalisation in Irish drugs policy

Citywide launched the anti-stigma campaign https://stopthestigma.ie/why-stigma-matters/ in 2018 to highlight and address the stigma and discrimination that is experienced by people who use drugs. The current policy of criminalisation is a fundamental contributor to this debilitating stigma, which can prevent people from seeking help and can have a negative impact on their experience of services when they do seek help. Families also share in this stigma and can feel isolated and powerless because of the shame attached to criminalisation of a loved one.

- Over 70% of convictions for drug offences in Ireland are for possession of drugs for personal use and in total between 1996 and 2020 there has been more than a quarter of a million (257,765) recorded crimes for possession of drugs for personal use. Most convictions for possession do not result directly in a prison sentence; however, there is a significant cost to the state through use of police, legal aid, probation, DPP and court resources. These costs are being incurred despite the fact there is no evidence that conviction for drug possession reduces the rate of drug use and these resources could be better invested in health and social services.

- Drug convictions have a potential negative impact for a person's whole life and across many aspects of their lives, including gaining employment, accessing training or education, being able to travel and getting insurance. An increasing number of employment positions and voluntary activities in Ireland require Garda vetting – many former drug users will not even consider applying for positions that require Garda vetting as they believe most employers will not give them a chance if they see a drugs conviction on a vetting form.

- Research carried out by Citywide with our network members has highlighted the barriers to rehabilitation, including criminalisation, which are experienced by people on Drug Rehabilitation Projects and how time, effort and resources are

invested by the projects and their participants in working to overcome these barriers. This experience highlights how different branches of the state are currently at odds in their policy objectives in relation to drug use. On the one hand, the NDS promotes rehabilitation and re-integration of people who use drugs as a key objective but, on the other hand, the current policy of criminalising people who use drugs acts as a barrier to meeting this objective.

- We are becoming more aware all the time of the link between drug use and trauma and of the need for a trauma-informed approach in how we develop and deliver our services. Yet, at the same time, we are maintaining a policy of criminalisation that serves to increase and compound the trauma that people are often trying to cope with by using drugs. In the light of our knowledge and understanding of the impact of trauma, this policy is simply not defensible.

- The conflict in policy objectives is also evident in relation to youth work services. The aim of these services, in particular in our most disadvantaged communities, is to divert young people away from the criminal justice system, yet under our current laws if a young person is found to be using drugs, they will be channelled into that system. Criminalisation for drug use is particularly inappropriate and damaging for a young person whose key needs are for support and diversion.

- Including the voice of people who use drugs in our local, national and regional structures is a key objective of the NDS, so that the development of services and policies can be informed by lived experience. Criminalisation is a serious barrier to supporting and promoting the development of this voice and the absence of this lived experience in our NDS remains a serious gap.

3) Background to the International experience of decriminalisation

Citywide participates in a number of EU and global networks, including the EU Civil Society Forum on Drugs, the IDPC and the VNOGC. Our participation in these networks has enhanced our knowledge and understanding of the international situation in relation to decriminalisation and the extent to which policies of decriminalisation are being enacted in many countries across the world. It is not just a recent trend; some countries have had decriminalisation policies in place since the early 1970s and others never criminalised drug use and possession to begin with.

There are between 25 and 30 countries now having some form of decriminalisation in place and the recent trend towards decriminalisation has not been centred on one continent or in richer or poorer nations. Countries as disparate as Belgium, Chile, the Czech Republic, Estonia, Jamaica, Mexico, Portugal, Switzerland and Uruguay among others, have all adopted some form of decriminalisation policy in the last

decade or so. There have been no significant increases in overall levels of drug use evidenced as a result of this broad increase in decriminalisation and UK Home Office study in 2014 on International Comparators concluded that there is no direct correlation between the "toughness" of a country's approach and levels of drug use.

In January 2019 the UN Chief Executives Board (CEB), representing 31 UN agencies and including the World Health Organisation (WHO) and the UN Office of Drugs and Crime (UNODC), expressed strong and unanimous support for the decriminalisation of possession and use of drugs.

The UN statement calls on member states to "promote alternatives to conviction and punishment in appropriate cases, including the decriminalization of drug possession for personal use".

4) What Ireland can learn from the experience of Portugal

In 2001 Portugal decriminalised the personal possession of all drugs; this means that it is no longer a criminal offence to possess drugs for personal use, but it is still treated as an administrative violation, with a civil or administrative sanction. The intervention by 'Commissions for the Dissuasion of Drug Addiction', is based on directing people away from drug use and on the view that a health assessment is likely to be far more effective at doing this than a criminal justice intervention. The most recent figures show the following:

- Drug-related deaths have remained below the EU average since 2001
- The proportion of prisoners sentenced for drugs has fallen from 40% to 15%
- Rates of drug use have remained consistently below the EU average
- There are significant decreases in drug-related deaths, HIV, Hep C and B amongst drug users

The Working Group looked at the experience in Portugal and reached the conclusion that a similar model could not be implemented in Ireland due to our different legal systems. However Citywide believes that there are some key elements of the Portuguese model that are of particular relevance to the Irish context.

- Concerns have been expressed that removing the criminal sanction in Ireland for drug possession for personal use will mean that there will be no intervention to prevent a person, in particular a young person, from going on to develop a more serious drug problem. But it is clear that, in Portugal, the fact that possession for personal use is no longer a criminal offence does not mean that there is no intervention. What has changed under decriminalisation is that it is now a public health intervention rather than a criminal justice intervention.

- The intervention which takes place enables a distinction to be made between first time drug use, repeat drug use and problematic drug use. This is crucial, as different types of service will be appropriate depending on the nature of the drug use. Citywide has consistently made the case that we don't have just one type of drug use or drug problem in Ireland, we have a range of types of problematic drug use that are different in nature. Therefore, it is important that people are directed at the earliest stage towards the level of service that is most appropriate to their needs – some may not be in need of any intervention, while others may require an intensive level of supports. This approach leads to the best outcomes for the drug user and is also the most effective use of resources.

- When decriminalisation was introduced in Portugal, it was recognised by government that it needed to be accompanied by a significant level of investment in services. The engagement of a range of professionals on the Dissuasion Committees, including health professionals, psychologists, sociologists and social workers is intended to provide a comprehensive service for people who use drugs and to provide the opportunity to address any underlying issues. We are a long way from having anything like this level and range of services in Ireland and a significant increase in investment in services would be required to put anything like this level of service in place.

- The Portuguese experience has highlighted the importance of local availability of services as part of an effective response. Under the NDS, Ireland has also favoured a model of having locally based services in the community, but recent years have seen serious challenges to maintaining this model. There have been significant cuts in the budgets of existing community services and a lack of support for development of new services. There are also many parts of the country where there are effectively no local services and these gaps need to be urgently addressed.

- A key feature of the Portuguese model is the pro-active approach to providing employment opportunities for recovering drug users, with incentives to employers to take on and support people in their transition. Lack of housing was also recognised as a major barrier to rehabilitation and reintegration and this is very much mirrored by the current experience in Ireland. In Portugal the need for a specific intervention was recognised and access to transitional housing is provided.

- The Portuguese model is crucially dependent on an interagency approach based on co-operation across state departments and agencies engaged in social, health, education, justice, employment and housing services. This will sound familiar to us in Ireland, where an interagency partnership approach is set out as underlying the implementation of our NDS. However, the difficulties in implementing this interagency approach over recent years have been well documented by Citywide

and others and it is essential that these difficulties are addressed for a model of decriminalisation to be delivered effectively.

- In Portugal there has been a strong national structure (now General-Directorate for Intervention on Addictive Behaviours and Dependencies) responsible for overall co-ordination and implementation of the interagency approach and headed by a Director with overall responsibility for the National Drugs Strategy. The clarity of co-ordination, accountability and leadership that is required has not been evident in the Irish NDS for some time, despite the existence of structures, and this needs to be urgently addressed.

5) Conclusions and recommendations

Those who are responsible for drugs policy in Portugal do not overclaim for decriminalisation and do not present it as a solution to the drugs problem. Citywide is also very clear that decriminalisation will not "solve" the problem, but what it will do is end the very significant harms that are being caused by the current policy of criminalisation, which is only making things worse. We concur with the view in Portugal that decriminalisation is one crucial element of an overall policy approach and that the introduction of decriminalisation will provide a legal framework to begin implementing our response to drug use through a social and public health approach rather than through a criminal justice one.

Implementing a decriminalisation policy means that the capacity is required to direct people who use drugs away from the criminal justice system and into health and social services. It cannot be emphasised enough that this will only be effective if the relevant services are in place. The Portuguese experience shows us that it is essential to invest significantly not only in drugs services but in a broad range of health and social services and securing this level of investment represents a major challenge in the Irish context.

The importance of interagency working is also highlighted through the Portuguese experience, as indeed it has been in Ireland throughout successive NDSs. It is essential that in parallel with the introduction of decriminalisation, there is strong political leadership in reviving the interagency partnership approach which has not been supported in recent years and in putting in place the day to day leadership within the NDS structures to ensure that this approach is implemented in reality.

The introduction of decriminalisation in Portugal in 2001 was an acknowledgement that criminalisation and marginalisation often go hand-in hand and it coincided with a significant expansion of the Portuguese welfare state in an effort to counter marginalisation and poverty. While it was recognised in Ireland in the mid-1990s that massive state investment in disadvantaged communities was the real solution to the

serious drugs problem, any political commitment to implement this has long since disappeared. Citywide believes that we should use the decision to introduce decriminalisation in Ireland as an opportunity to refocus and re-invest in our national drugs strategy and also to refocus on the underlying social and economic causes of the drugs problem.

Based on a recommendation in the Report of the Working Group on Alternative Approaches to Possession, the Government announced its plans in 2019 for a Health Diversion Programme which has not been put in place yet. In our view, this model is not evidence based and it is seriously flawed in that it further marginalises those with the most serious drug problems by limiting the option of being referred for a health assessment to the first and second instances of being caught in possession for personal use.

It is time now for us to move beyond the rhetoric of a health-led approach and for government to commit to ending the criminalisation of drug use in all instances and to develop an appropriate legal/social/health framework that will support this.

References

- *Citywide Drugs Crisis Campaign, April 2014*
  Barriers or Bridges? Drugs Rehabilitation Projects – the Road to Recovery
- *UK Home Office Policy Paper:* Drugs; International Comparators 2014
- *Niamh Eastwood, Edward Fox and Ari Rosmarin, Release UK, March 2016:*
  A Quiet Revolution: Drug Decriminalisation Policies in Practice across the Globe
- *UN Chief Executives Board (CEB), 2019* Position Statement on Drugs Policy Jan 2019
- *Dept of Health, 2019* Report of Working Group on Alternative Approaches to the Possession of Drugs for Personal Use
- *Transform Drug Policy Foundation, May 2021* Drug Decriminalisation in Portugal: setting the record straight

Submission prepared by:

Anna Quigley, Citywide Drugs Crisis Campaign

1. The Youth Workers Against Prohibition (YWAP) thank the Joint Committee on Justice for the invitation to make a written submission on the theme of “An examination of the present approach to sanctions for possession of certain amounts of drugs for personal use”. From the onset the YWAP want to highlight that we are calling for policy development wider than decriminalisation of drugs for personal use. In our view the criminalisation of drugs and the subsequent harm it causes to young people and their communities is connected to the failed policy of prohibition and the wider ‘war on drugs’ (Rolles, 2017, Global Commission on Drug Policy, 2018). Therefore, we are calling for an end to drug prohibition in Ireland, through the regulation of ‘illicit’ drugs by the State. We recognise this is a radical approach and will demand legislative change. While there is no doubt the decriminalisation of drugs for personal use will reduce some of the harms associated with the criminalisation of drugs e.g., risks associated with a criminal record, this is not enough. This approach does not remove the illegal drug market, and related drug gang activity, destructive to the lives of young people (Taylor, Buchanan et al. 2016).

2. 1. In your opinion, is the Criminal Justice system appropriate for dealing with possession of small quantities of drugs for personal use?
3. No, the criminal justice system is not appropriate for dealing with the possession of drugs for personal justice. Drugs are a health issue and require a health-led response. The acceptance that substance use is a health issue reflects current Irish drug policy and is explicitly named in the National Drugs Strategy: Reducing Harm, Supporting Recovery (Department of Health, 2017) ‘ The new strategy will also advocate a harm reduction approach, but will place a greater emphasis on supporting a health-led response to drug and alcohol use in Ireland’. In our view, the criminalisation/prohibition of drugs conflicts with the ‘health-led response’ of Reducing Harm, Supporting Recovery. This conflict is evident in the recommendation of ‘Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use’ (Department of Justice, 2019) that drug use for personal use should be managed through the ‘Adult Cautioning Scheme’ In essence, as this reflects a criminal justice approach, it is not decriminalisation and is at odds with a health-led approach. In our view, the recommendations of the Oireachtas Joint Committee on Justice, Defence and Equality (House of Oireachtas, 2015) that drugs for personal use should be managed through a ‘harm reduction and rehabilitative approach’, and ‘small amounts of illegal drugs for personal use, could be dealt with by way of a civil/administrative response, rather than via the criminal justice route’ are reflective of a health approach.
4. As youth workers, we see first-hand the untold damage that the criminalisation of drug use has on young people in Ireland. Vulnerable young people are the forgotten victims of the ‘war on drugs’ as they are exploited by drug gangs to store, sell and consume their products. We see the devastation that unregulated drugs are inflicting on communities as young people have no idea of the content, purity or consequences of what they are taking (Hutton 2021; Measham 2020). Drugs are so prevalent that many young people find them easier to obtain than alcohol or

cigarettes (Petter, 2018). YWAP believes that state regulation of the drugs market is by far the best way to make a significant impact on this situation.

5. 2. In your opinion, is the current system, which can result in a criminal record, counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative Programmes?
6. Yes, the current system is counterproductive. The possession of drugs for personal use is a significant issue, for example in 2020, 16,114 people received a sanction for the use of drugs (CSO, 2020). The fact that these figures represent a 9% increase on the 2019 statistics (14,696) suggest that the criminalisation of drugs is not a deterrent. The majority of people who use drugs do so in a recreational manner. However, the impact of criminal sanctions is damaging and counterproductive on this group. A view accepted by the Oireachtas Joint Committee on Justice, Defence and Equality. The committee's final report on a 'Harm reducing and Rehabilitative approach to possession of small amounts of illegal drugs (2015) states: 'There was a general consensus that the application of criminal sanctions to certain drug users could be counter- productive. Criminal sanctions also stigmatise the person and can have far-reaching consequences such as difficulties gaining employment and access to services e.g., local authority housing, travel visas etc'. YWAP regularly works with young people with criminal convictions relating to drug possession and supply. The negative impact this has on their short and long term life choices cannot be understated and will only hinder their ability to positively contribute to society in the future.
7. Criminalisation is also counter-productive for people who use drugs in a problematic manner. In fact, evidence suggests that criminalisation compounds harm by deterring individuals living with addiction from approaching services for support or sharing information about their drug use (Rolles and Eastwood 2012, Ana Liffey Drug Project 2019). While for the Irish Penal Reform Trust (IRPT, 2015) employing a criminal justice approach as a response to addiction is counter-productive 'both for the individual and for the community and does little or nothing to tackle the root causes of drug use or abuse'.

8. 3. In your opinion, do you think that a type of administrative sanction would be appropriate to a criminal sanction?
9. The position of YWAP is that drugs require regulation by the state, therefore we are against criminal sanctions. While prohibition remains in place our view is that administrative sanctions are preferable because of their potential to be less harmful than criminal sanctions. Our thinking on administrative sanctions is reflective of the position of the Ana Liffey Drug Project and its view that sanctions should not be harmful or punitive but constructed as 'health based, supportive, voluntary and with as many opportunities afforded to the individual as needed. The sanctions chosen should recognise that not all drug use is problematic, and where possible, utilise

existing structures and services, with defined pathways and interventions set in advance' (Keane et al, 2018).

10. 4. In your opinion, do you think that an administrative sanction would be more cost-effective to the Exchequer rather than a criminal sanction?
11. When considering costs, it important to consider both the social and financial costs of criminalisation. In terms of the social harm, a criminal sanction for using/possessing drugs can have a significant impact on a person's life. We must also consider the wider social damage of drug use on families and communities e.g., overdose, violence etc. Regarding the financial cost of administrative sanctions the evidence is more nuanced. For the Irish Penal Reform Trust (IRPT) the decriminalisation of drugs for personal use, because it reduces costs linked to imprisonment, court costs and police time is cost effective and costs less than a criminal justice approach (IRPT, 2015). However, the recommendation of mandatory diversion to health services as an alternative to criminal sanction (formed part of the final report of 'Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use) is assessed as 75% higher than the existing policy. While the cost of the proposed health diversion approach is significant. The report does offer a caveat about the long term impact of spending on health: 'It seems reasonable to assume that an effective treatment and education service would help to reduce problematic drug use and drug-induced mortalities in the long term– albeit, the measurable economic costs involved may be substantial' (Department of Justice, 2019).
12. For YWAP the regulation of drugs has the potential to generate income for the state that can be reinvested public services, particularly into communities most harmed by prohibition. This is line with the policy approach of 'Justice re-investment' a policy decision and related practices that seek to re-balance the criminal justice spend by deploying funding that would otherwise be spent on the criminal justice system into community based initiatives which tackle the underlying causes of much crime (IRPT, 2015).
13. 5. Do you believe Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere, if so what?
14. Regarding Cannabis use, Ireland should look at Canada where cannabis has been legalised. Early reports show there has not been a large increase in cannabis use amongst younger people as many feared. Canada legalised cannabis for two main reasons (i) to reduce its availability to young people; and (ii) to destroy the illegal trade of the drug. Since legalisation, studies show that cannabis use among young people pre and post legalisation is down to 10% (from 20%) among those aged 15-17 (Kaufmann 2020).
15. While decriminalisation should be looked at as a step in the right direction, YWAP believes examples from jurisdictions such as Portugal show that it does not go far enough. While there are tangible improvements in overdose deaths and the living conditions of many people who use drugs, many of the harms caused by prohibition remain. The drugs trade is still run by criminal networks that use vulnerable children to sell their products and quality control is still non-existent.

16. 6. In your opinion, do you think that a health-focussed approach to drug use is a better alternative?
17. Yes, the rationale for this view is covered in question 1. To summarise the current National Drugs Strategy: Reducing Harm, Supporting Recovery (Department of Health, 2017) frames drugs as a heath issue and advocates a health-led approach. In our view the criminalisation of drugs is not compatible with a health-led approach. YWAP believes that adult drug use should be controlled and regulated by the state to make it legal and as safe as possible for adults who choose to take drugs. These forms of regulation include for example Cannabis through a dispensary model and the option of Heroin Assisted Treatment (HAT).
18. Under regulations proposed by YWAP, drugs will still be illegal for anyone under 18. A health lead approach will allow for appropriate drug education in schools and youth projects to teach young people about the significant risks involved with drug use. This will
19. 7. Do you think that anyone who refuses to engage in any proposed administrative system should then be referred to the Criminal Justice system?
20. No, there is no evidence that criminal sanctions deter drug use or reduce its prevalence. Indeed, sanctions are counter-productive as they stigmatise people who use drugs, deter people who use drugs from approaching health and social services for support and limit the opportunities of people who receive a sanction form the courts.
21. The concept of voluntary participation is central to youth work practice. It is our belief that threatening young people with a criminal sanction is absolutely the wrong way to challenge their drug use. Young people who are using drugs need education and support to change and YWAP believe that a health lead approach that safely regulates drugs is the best way to achieve this.
22. 8. Are there any other supports and resources which might be considered useful to this discussion?
23. https://www.ywapireland.com/
24. https://issuu.com/senatorlynnruane/docs/open_letter_-_ca_on_drugs.docx
25. Global Policy Commission on Drug Policy
26. https://www.globalcommissionondrugs.org/reports/time-to-end-prohibition
27. Ending War on drugs -LSE
28. LSE-IDEAS-Ending the Drug Wars
29. This is for us to look at to reinforce my argument decriminalisation and govt is done -
30. https://www.justice.ie/en/JELR/Pages/Report_of_the_Working_Group_to_Consider_Alternative_Approaches_to_the_Possession_of_Drugs_for_Personal_Use
31. Transform Drug Policy
32. https://transformdrugs.org/
33. Drug Policy Alliance
34. https://drugpolicy.org/
35. https://www.unodc.org/documents/commissions/CND/2019/Contributions/Civil_Society/Shadow_Report_FINAL_ENGLISH.pdf
36.

37. References

Ana Liffey Drug Project. (2019). *Human Rights of People Who Use Drugs.* Ana Liffey Drug Project.

Department of Justice. (2019). *Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use.* Department of Justice.

Department of Health. (2017). *Reducing Harm, Supporting Recovery: A health-led response to drug and alcohol use in Ireland 2017-2025*. Government of Ireland.

Global Commission on Drugs Policy. (2018). *Regulation The Responsible Control of Drugs.* http://www.globalcommissionondrugs.org/reports/regulation-the-responsible-control-of-drugs

Houses of the Oireachtas. (2015). Joint *Committee on Justice, Defence and Equality: Report on a Harm Reducing and Rehabilitative approach to possession of small amounts of illegal drugs*. Government of Ireland.

Hutton, F. (2021) Drug Checking at New Zealand Festivals, Final Report, November 2020, Victoria University of Wellington, Open access Drug Checking at New Zealand Festivals (Final Report) (wgtn.ac.nz)

IPRT.(2015). *Submission to the Joint Committee on Justice, Defence and Equality, Houses of the Oireachtas, Ireland on Drug Policy Reform*. Irish Penal Reform Trust.

Measham, F. (2020) City checking: Piloting the UK's first community-based drug safety testing (drug checking) service in 2 city centres, BJCP, Vol. 86 Issue 3 City checking: Piloting the UK's first community‐based drug safety testing (drug checking) service in 2 city centres - Measham - 2020 - British Journal of Clinical Pharmacology - Wiley Online Library

Petter, O. (2018) How Buying Drugs Became As Easy As Buying Ice Cream, The Independent, UK, Friday 05 January

Rolles, S. and N. Eastwood. (2012). Drug decriminalisation policies in practice: A global summary. Harm Reduction International.

Taylor, S., Buchanan, J., & Ayres, T. (2016) ‘Prohibition, Privilege and the Drug Apartheid: The failure of drug policy reform to address the underlying fallacies of drug prohibition’ Criminology and Criminal Justice, An International Journal, September 2016, Vol. 16, No. 4, pp.452-469.

Merchants Quay Ireland
Homeless & Drugs Services

Merchants Quay Ireland (MQI)

Submission to the Joint Committee on Justice on the topic of *"An examination of the present approach to sanctions for possession of certain amounts of drugs for personal use"*

Introduction

1. Merchants Quay Ireland ('MQI') is a national organisation providing services in a range of locations across Ireland. We believe in a just society where no-one has to face homelessness or addiction alone, and where everyone has the support they need to reduce the harm caused by homelessness and addiction and to build a better life. Our mission is to offer people dealing with homelessness and addiction in Ireland, accessible, high quality and effective services, which meet their complex needs in a non-judgemental and compassionate way.
2. My name is Paula Byrne. I am the Chief Executive Officer of MQI and I make this submission to the Joint Committee on Justice ('the Committee') on behalf of the organisation.
3. This submission follows the guidance set out in the letter of invitation, using numbered pages and paragraphs for ease of reference. The letter of invitation indicates that the Committee seeks input on eight questions as follows:
   i. In your opinion, is the Criminal Justice system appropriate for dealing with possession of small quantities of drugs for personal use?
   ii. In your opinion, is the current system, which can result in a criminal record, counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes?
   iii. In your opinion, do you think that a type of administrative sanction would be appropriate to a criminal sanction?
   iv. In your opinion, do you think that an administrative sanction would be more cost-effective to the Exchequer rather than a criminal sanction?

v. Do you believe Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere, if so what?

vi. In your opinion, do you think that a health-focussed approach to drug use is a better alternative?

vii. Do you think that anyone who refuses to engage in any proposed administrative system should then be referred to the Criminal Justice system?

viii. Are there any other supports and resources which might be considered useful to this discussion?

4. This submission addresses each of the questions in turn.

In your opinion, is the Criminal Justice system appropriate for dealing with possession of small quantities of drugs for personal use?

5. In the opinion of MQI, the **criminal justice system is not appropriate** for dealing with possession of small quantities of drugs for personal use. There are several reasons as to why we believe this to be the case, as set out below.

6. First, criminalisation is stigmatising. As the Director of Public Prosecutions notes:

   "The decision to prosecute or not to prosecute is of great importance. It can have the most far-reaching consequences for an individual. Even where an accused person is acquitted, the consequences resulting from a prosecution can include loss of reputation, disruption of personal relations, loss of employment and financial expense, in addition to the anxiety and trauma caused by being charged with a criminal offence." [1]

7. Thus, the negative consequences of criminalisation do not end at simple punishment for an offence. Rather, they endure as stigma, affecting how people are perceived by society, their opportunities and their personal lives. For this reason, criminalisation is not a course that should be taken lightly – it should only be the state's response where absolutely necessary. Possession of small amounts of drugs for personal use is not such a case.

8. Equally, criminalisation is an ineffective approach. The committee should ask itself *"What does the state hope to achieve by criminalising simple possession? Towards what end is the policy directed?"* If the stated aim is to discourage people from using drugs, the policy is clearly

[1] Director of Public Prosecutions (2019), Guidelines for Prosecutors (5th Ed.); Dublin: DPP; para 4.1. Available online at https://www.dppireland.ie/app/uploads/2021/01/Guidelines-for-Prosecutors-5th-Edition-eng.pdf

not working - no serious commentator on drug policy would make the case that drug use is less of an issue in Irish society now than it was when simple possession was criminalised in 1977. The figures from the Health Research Board's National Drug and Alcohol Survey (NDAS) 2019–20 show that over 7% of people over 15 in Ireland used an illegal drug in the last year.[2] In order to use the drug, each of those people must first have possessed it, thereby committing the offence of possession for personal use. Thus, approximately 289,000 individuals in Ireland used an illegal drug at least once during the surveyed period, and in doing so committed the offence of possession for personal use. It is clear that many, many people in Ireland do not respect the law as it pertains to possession for personal use. The simple reality is that criminalising simple possession does not deter people from using drugs.

9. As much as criminalisation is ineffective, it is also expensive. Although the episodes of use will far outnumber detections, there were still 15,776 detections of possession for personal use in 2020. Each and every one of these involved the application of Garda time and resources. Further, it is not the case that these detections were ancillary to some more serious offence – under the primary offence rule, such detections are only counted for the purpose of crime statistics where they are the *most serious* offence in the episode.[4] IGEES has estimated that the cost of personal possession offences to the criminal justice system (and excluding forensic analysis costs) is c. €7m per annum.[5] This is a significant amount of taxpayer's money that could be much better utilised elsewhere.

10. Finally, and from the perspective of Merchant's Quay Ireland, most importantly – possession for personal use is not an offence that necessarily impacts all people equally. It is relatively easy to avoid detection, and although drugs are used in all sectors of Irish society, in our experience those who are detected are often those who are most visible – people who are

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[2] Mongan D, Millar SR, and Galvin B (2021) The 2019–20 Irish National Drug and Alcohol Survey: Main findings. Dublin: Health Research Board; page 5. Available online at https://www.hrb.ie/fileadmin/2._Plugin_related_files/Publications/2021_publications/2021_HIE/Evidence_Centre/The_2019-20_Irish_National_Drug_and_Alcohol_Survey._Main_findings.pdf

[4] An Garda Siochana (August 2020). Guide to How Crime is Recorded and Counted by An Garda Siochana; page 6. Available online at: https://www.cso.ie/en/media/csoie/releasespublications/documents/ep/recordedcrimedetection/2020/guide-to-how-crime-is-counted-and-recorded.pdf

[5] Irish Government Economic and Evaluation Service (IGEES) and Department of Justice and Equality. Costings of an alternative approach to personal drug possession, page 18. Available online at https://www.justice.ie/en/JELR/ANNEXE_III_-_Costings_of_an_alternative_approach_to_personal_drug_possession.pdf/Files/ANNEXE_III_-_Costings_of_an_alternative_approach_to_personal_drug_possession.pdf

struggling with their drug use, are experiencing homelessness and who do not have the luxury of their own accommodation and are thus engaged in drug use in the public domain.

In your opinion, is the current system, which can result in a criminal record, counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes?

11. In the opinion of MQI, yes - **the current system, which can result in a criminal record, is counter-productive** in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes.
12. As noted at paragraph 8, above, the current system is ineffective in discouraging people from drug use – 7% of the population over 15 are estimated to have used illegal drugs in the previous 12 months.
13. In considering the second issue – whether criminalising people for simple possession is counter-productive to encouraging engagement in rehabilitative programmes – I would ask committee members to undertake a simple thought experiment and to put themselves into the position of someone who is struggling with their drug use. Does the fact that you are – solely by virtue of the fact that you possess drugs for your own personal use – deemed to be a criminal in the eyes of the state, with all of the attendant risks and stigma that being a criminal brings, make it more likely or less likely that you will reach out and seek support?
14. Framed in this way, it becomes obvious that criminalisation is a barrier to seeking support. This is also what we see in the literature. The Czech Republic examined the effects of a move from a decriminalised to a criminalised system, and *"the reform was also found to reduce treatment seeking due to increased stigma of people who used drugs"*.[7] The simple truth is that criminalising a behaviour encourages secrecy around it, and drives those who engage in it away from – not towards – help.
15. However, the effect criminalisation has on help seeking behaviour impacts not just people who use drugs, but also those services and organisations who exist to support them. As the

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[7] Hughes, C., Stevens, A., Hulme, S. & Cassidy, R. (2018). Review of approaches taken in Ireland and in other jurisdictions to simple possession drug offences. A report for the Irish Department of Justice and Equality and the Department of Health. UNSW Australia and University of Kent; page 39. Available online at justice.ie/en/JELR/ANNEXE_I_-_Hughes_Stevens_Hulme_Cassidy_-_2018_-_Review_of_approaches_taken_in_Ireland_and_in_other_jurisdictions_to_simple_possession_drug_offences.pdf/Files/ANNEXE_I_-_Hughes_Stevens_Hulme_Cassidy_-_2018_-_Review_of_approaches_taken_in_Ireland_and_in_other_jurisdictions_to_simple_possession_drug_offences.pdf

committee is aware, section 19 of the Misuse of Drugs Act 1977 provides for a range of permissive offences, including making it an offence for the occupier of a premises to permit possession of drugs contrary to section 3 on premises under their control. This necessarily impacts the way that services – both NGO and state – engage with people who use drugs, given that if a person is in possession of drugs in a service, it is not just them, but also the staff of the service, that are committing an offence. As the committee can appreciate, this unavoidably complicates matters for healthcare staff at clinics, hospitals and community-based services, who must be cognizant of their own potential legal liability under the Act instead of being free to focus on providing care to patients and clients.

In your opinion, do you think that a type of administrative sanction would be appropriate to a criminal sanction?

16. In the opinion of MQI, **no – an administrative sanction would be no more appropriate than a criminal sanction**. The underlying thesis here is the state can address the unwanted behaviour (possession of drugs for personal use) by threat of sanction, whether criminal or civil. However, this is not correct.
17. As noted earlier, the existing criminal sanctions – which can have far reaching and lasting consequences on an individual's life - do little to deter the unwanted behaviour. For a sanction to be effective, it needs to be credible. Current efforts to address drug use by focusing on punitive approaches at the individual level are simply not credible. We do not detect, let alone punish, more than a negligible amount of the episodes of possession that occur in the state every year. Switching from a criminal to an administrative punishment regime will not change this. It will, however, add more cost, more bureaucracy, more unnecessary monitoring and tracking of citizens, and – ultimately – more cost to the taxpayer for little return.
18. Further, the threat of punishment is not required to support behaviour change. Consider smoking - between 2015 and 2019, the percentage of current smokers in Ireland declined from 25% to 17%.[8] To achieve this, Ireland did not need to resort to threats of punishment - we did not criminalise smoking, nor did we use administrative measures such as fines to punish people for the mere fact that they smoked.

[8] See, for example https://www.rcpi.ie/news/releases/no-smoking-day-2021-tobacco-use-still-irelands-biggest-chronic-public-health-issue/

19. Equally, it is telling that in the Criminal Justice (Psychoactive Substances) Act 2010 – a piece of legislation passed by the Oireachtas *per* the Act's own preamble *"to prevent the misuse of dangerous or otherwise harmful psychoactive substances",*[9] the legislature did not deem it necessary to enact measures, whether criminal or administrative in nature, aimed at the level of the consumer to achieve the policy aim. It is not a crime to possess for personal use a small amount of a drug, so long as that drug is not one that is specifically controlled under the 1977 Act.
20. In short, the policy focus for individuals who use drugs does not have to be – and should not be – on punishment. It should be on supporting engagement and dialogue, and on providing person centred healthcare interventions where necessary and appropriate.

In your opinion, do you think that an administrative sanction would be more cost-effective to the Exchequer rather than a criminal sanction?

21. As noted above, MQI does not believe that sanctions – of any kind – are the appropriate policy response to individual level drug use. In terms of cost effectiveness, it is not possible to say whether one approach would be better than another without having a detailed description of both approaches which would facilitate analysis.

Do you believe Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere, if so what?

22. In the opinion of MQI, **yes, Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere.**
23. We can note that removing sanctions for small quantities of drugs for personal use from the ambit of the criminal law is unlikely to have any major effect of rates of drug use. The available evidence shows that prevalence rates of drug use in a society are not simply a function of whether simple possession is illegal.[10] Drug use is complex, and driven by many other factors – socioeconomic disadvantage, isolation, marginalisation, trauma – it does not lend itself to simple narratives. The notion of being 'soft on drugs' or 'hard on drugs' may have political

[9] Criminal Justice (Psychoactive Substances) Act 2010. Available online at: https://www.irishstatutebook.ie/eli/2010/act/22/enacted/en/print

[10] See, for example, Hughes, C., Stevens, A., Hulme, S. & Cassidy, R. (2018). Review of approaches taken in Ireland and in other jurisdictions to simple possession drug offences. A report for the Irish Department of Justice and Equality and the Department of Health. UNSW Australia and University of Kent

currency, but does not translate simply into effective policy solutions. Looking at the experiences of other countries can help us avoid generalisations and preconceptions and engage with the lived experience of drug use.

24. In this regard, evidence from other countries indicates that a change in the law can help reduce stigma. Currently, people who use drugs are criminals. That is the message that the state sends to those people, to their loved ones, their communities and to society at large. Such a message is stigmatising, unhelpful and – importantly – not consistent with Ireland's stated 'health-led' approach to drug use as framed in the National Drug and Alcohol Strategy.[11] Reducing stigma can help encourage help-seeking behaviour among those who may need help. As the Czech authorities have noted of their system:

    "Because drug use is not considered as an offence, the REITOX focal point believes that drug users are more confident to seek for help without feeling stigmatised and without worrying to be arrested. This liberal policy has impacted positively drug-related health issues and drug related crime violence in the country." [12]

25. Finally, a pragmatic approach – where the state recognises that people do use drugs, and will continue to do so, regardless of the policy choices a state makes – can help maximise value for taxpayers. One paper, which was awarded a European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) scientific award for high quality research has estimated that the social cost of drug use in Portugal reduced by 18% in the 11 years following the introduction of the new strategy there.[13]

In your opinion, do you think that a health-focussed approach to drug use is a better alternative?

26. In the opinion of MQI, **yes, a health-focussed approach to drug use is a better alternative.** On this point, it is worth noting that the stated policy approach of the Irish state *is* that of a health focus. In the preamble to the National Drugs Strategy, then Taoiseach Dr. Leo Varadkar TD notes that the strategy *'emphasises a health-led response to drug and alcohol use in Ireland'*, and that :

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[11] Reducing Harm, Supporting Recovery (2017). A health-led response to drug and alcohol use in Ireland 2017-2025. Dublin: Roinn Sláinte

[12] Directorate General for Internal Policies, Policy Department C: Citizens' Rights and Constitutional Affairs, A review and assessment of EU drug policy, (European Parliament, 2016), 79. Available online at http://www.europarl.europa.eu/RegData/etudes/ STUD/2016/571400/IPOL_STU(2016)571400_EN.pdf

[13] Ricardo Gonçalves, Ana Lourenço and Sofia Nogueira da Silva, "A social cost perspective in the wake of the Portuguese strategy for the fight against drugs," International Journal of Drug Policy, 26 (2015) 199–209. Available online at https:// www.ijdp.org/article/S0955-3959(14)00231-X/pdf

> *"Treating substance abuse and drug addiction as a public health issue, rather than as a criminal justice issue, helps individuals, helps families, and helps communities. It reduces crime because it rebuilds lives. So it helps all of us."*[14]

27. Similarly, speaking in relation to the Mid-Term Review of the National Drug Strategy, Mr. Frank Feighan, TD, Minister of State for Public Health, Well Being and the National Drugs Strategy, notes that:

> *"…the government is championing an alternative health-led approach for the possession of drugs for personal use."* [15]

28. However, the delivery, as evidenced by the committee's own question as to whether a health focused approach is a better alternative, falls somewhat short of the vision. The reality is that people who use drugs were criminals when Dr. Varadkar wrote the introduction to the NDS; they were criminals when Minister Feighan spoke in relation to the Mid-Term Review of the NDS; and they remain criminals today. For an approach to be truly health-focussed, it cannot have either its roots or its end point in the criminal law. Unfortunately, even if the approach to simple possession noted by Minister Feighan was fully implemented, it is only health-focussed insofar as the first time a person is found to be in possession of drugs for personal use, they receive a mandatory referral to the Health Services Executive; if they are caught a second time, An Garda Siochana need the leave of the DPP to deal with the issue outside the criminal justice system; third and subsequent offences remain to be dealt with through the criminal justice system. This is not a health-focused approach.
29. Further, this approach has other difficulties. First, the mandatory nature of referrals to the HSE is unnecessary – only a small proportion of people who use drugs will actually require any sustained input or treatment. Second, the policy will not benefit those who need a health focused approach most – people who genuinely struggle with their drug use. In thinking about this, the committee might consider who is likely to be caught in possession for personal use three times? As we have seen, most incidences of possession are never detected. Those who can use in their own homes, those who are not visible on the street, those who can blend in easily – these people use drugs, but they can hide it and are unlikely to be detected once, never mind three times. It is those who struggle, who do not have homes, who are visible in

[14] Reducing Harm, Supporting Recovery (2017). A health-led response to drug and alcohol use in Ireland 2017-2025. Dublin: Roinn Sláinte; page 3. Available online at https://health.gov.ie/wp-content/uploads/2017/07/Reducing-Harm-Supporting-Recovery-2017-2025.pdf

[15] See, for example, https://www.gov.ie/en/press-release/1dda3-minister-feighan-publishes-mid-term-review-of-national-drugs-strategy-and-strategic-priorities-for-2021-2025/

the public domain that will end up being criminalised, an experience that will further narrow their opportunities and increase the sigma and marginalisation they face. This is not a good approach.

30. For a health-focussed approach to be truly implemented, we need to move away from the idea that people need to be punished – either criminally or civilly – for nothing more than possessing drugs for personal use. Instead, we need to focus on encouraging open communication, effectively supporting people to address the harms their drug use may be causing and changing the social discourse so that people who use drugs are not thought of as "criminals" or "others" or "less than" any other member of Irish society.

Do you think that anyone who refuses to engage in any proposed administrative system should then be referred to the Criminal Justice system?

31. In the opinion of MQI, **no, anyone who refuses to engage in any proposed administrative system should not be referred to the Criminal Justice system.** For the reasons already noted, punishment is not an effective policy in addressing individual level drug use.

Are there any other supports and resources which might be considered useful to this discussion?

32. **Yes.** The most important group the state can hear from is from people who use drugs. This is for two reasons. First, to hear from people first hand about the negative impacts of criminalisation on their lives, and to listen to the lived experience of people who have been punished and excluded for no other reason than they were in possession of drugs for their own use. Second, to better understand how widespread drug use is in Irish society. People from all walks of life use drugs, and for many different reasons. Many may not share their stories – drug use is still very stigmatised – but some will; their insights are important to how policy can develop in this area.

33. Finally, I would urge the committee to consider the views of the Irish people on this issue. When the government previously examined the issue possession for personal use through the formation of a working group on alternative approaches, there was a public consultation which received over 20,000 respondents. Of this consultation, the working group noted:

    "The overall finding was that the vast majority of respondents would support the removal of criminal penalties for the offence of simple possession, which is contained within Section 3 of the Misuse of Drugs Act. Nearly 90% of respondents indicated that

they would be in favour of removing these criminal penalties. Eighty eight per cent of respondents did not agree with the current approach where people found in possession of illegal drugs for personal use can be prosecuted before the courts and, if convicted, receive a criminal conviction."[16]

Conclusion

34. Merchants Quay Ireland believes that drug use can cause harm, and that it is something that society – and legislators – should consider carefully. However, drug use is a relatively common phenomenon, with 7% of Irish people over the age of 15 – almost 300,000 individual- estimated to have used illegal drugs in the last year. The vast majority of such drug use goes by undetected. The idea that meaningful enforcement is possible, or desirable, with relation to such a large group of people lacks credibility.
35. Further, where possession is detected, the negative consequences of criminalisation far outweigh any negligible deterrent effect. Punishing people is not the answer – in the general case of people who do not need support for their drug use, it serves only to marginalise and isolate them, impacting negatively on their opportunities and relationships. In the specific case of people who do need support around their drug use, it also makes reaching out for help more difficult – pushing people away, where we should be pulling them closer.
36. I thank the committee for the opportunity to make this submission. MQI acknowledges and respects the Committee's proactive approach in considering this important issue, and we are grateful for the opportunity to share our views.

[16] Report of the Working Group to Consider Alternative Approaches to the Possession of Drugs for Personal Use, para. 7.1.3. Available online at https://www.gov.ie/en/publication/27bbbd-working-group-to-consider-alternative-approaches-to-the-possession-o/

The Cannabis Risk Alliance (CRA) constitutes an informal group of doctors who are united in sharing a concern about the extent of cannabis related harm in Ireland. We include doctors from all parts of Ireland and from a range of specialities including psychiatry, addiction, general practice and emergency medicine. In 2019, we highlighted the increase in health harms associated with cannabis, including increased presentations of cannabis dependence at our addiction services and increased cannabis related admissions to both psychiatric & general hospitals.(1, 2) As doctors, we strongly support a health led approach to cannabis and wider drug policy. We recognise that the criminal justice system often plays a role in achievement of positive outcomes in many areas of public health including efforts to curtail mortality and injury related to road traffic collisions and most recently during Covid epidemic. Criminal justice and health are not opponents.

The CRA has no funding and employs no staff. The doctors who contribute to it do so as a matter of personal and professional interest. There is a well funded international campaign which is driving the cannabis legalization agenda.(3) We have expressed concern that both the medical cannabis campaigns and decriminalization campaigns have been co-opted by this wider drug legalization agenda and function as Trojan Horse strategies in pursuit of the overarching goal of cannabis legalization and commercialization, likely to then be followed by legalization of other drugs.(1) We have no ideological problem with drug legalization. We have an evidence problem with it however. If we were persuaded that it would result in less overall harm arising from drug use, we would support it. We are convinced that the bulk of the evidence points in the opposite direction and that legalization will result in an increase in overall harms.

While the term decriminalization has no clear agreed definition, we utilise the definition proposed by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).(4) Under this definition, drug use remains prohibited, but the sanction used moves from a criminal sanction to an administrative sanction. Legalization is fundamentally different in that drug use is permitted. We note that many of the individuals and groups who had been leading the call for 'decriminalization' in the past decade have now made it clear that their real goal is this fundamentally different policy of legalization and regulated sale.

In the request for a submission, we note that this occurs in the context of the Committee's desire to examine the present approach to sanctions for possession of drugs for personal use. We note also the 2019 report by the Working Group to consider alternative approaches to the possession of drugs for personal use. This Working Group recommended a move away from criminal convictions and towards use of health referrals and adult cautions.

The consultation document circulated by the Joint Committee on Justice posed eight questions. A subgroup of the CRA sought to respond to each of these questions below.

1. In your opinion, is the Criminal Justice system appropriate for dealing with possession of small quantities of drugs for personal use?

Yes, we recognise that the criminal justice (CJ) system has a role in a wide range of issues relevant to public health, ranging from the behaviour of drivers and cyclists on our roads to challenges such as that posed by Covid recently. Consistent with that role which the CJ system plays in deterring citizens from engaging in unhealthy and risky behaviours, it seems reasonable that it could play a role in deterring use of drugs. Across all of these various public health issues, the CJ system works alongside a suite of other actions across society, including public education and information

Covid reminded us of the important role which the CJ system plays in supporting major health-led societal issues. There is an unhelpful narrative propagated by those pushing for drug legalization which

seeks to create the impression that a health led issue can have no input from criminal justice. We recognise that the criminal justice system can be an ally of health and is certainly not necessarily an opponent of health.

In all cases where the CJ system is being used to incentivise adherence to health advice and to deter behaviours which are associated with adverse health outcomes for the individual &/or those around the person, questions must be asked about the effectiveness of the CJ interventions and the proportionality of interventions.

The vast majority of adults in Ireland demonstrate a willingness to use psychoactive substances with potential to cause both intoxication and addiction, 80% reporting some use of alcohol in the past year. Despite this, only about 8% of adults report any past year use of any of the wide range of other psychoactive substances which are illegal.(5) In a recent survey of university students, over 5000 students who had never used illicit drugs were asked to identify reasons for their non-use. Almost half (47%) of this group highlighted "legal implications" as a factor.(6) That survey also included over 2000 students who reported previous drug use but no use in the past year, and 13% of these reported "concerns about the legal implications of drug use" as a factor in that decision to desist from use. This is consistent also with international studies which have highlighted the fact that young people include concerns about criminalization as a factor in their decision to avoid drug use.(7, 8)

Given that the illegality of drugs seems to coincide with greatly reduced demand for and use of these substances in marked contrast with alcohol, the issue then moves on to that of proportionality. There is a balance to be struck in finding a style of criminal justice intervention to any risky health behaviour which is effective but not excessively intrusive or punitive.

We argue that the primary role of the CJ system is in supporting the health led efforts to deter both (a) initiation of drug use and (b) progression to more regular patterns of use. The majority of people who use drugs are not addicted. They are of course at risk of developing addiction if their use becomes more regular.

Part of the rationale which justifies society's intrusion into the drug use decisions of autonomous adults relates to the issue of harm to others in addition to the risk of harm to self. The harms to others include issues such as road traffic collisions caused by drug impaired drivers, other accidents caused by drug intoxicated individuals and the contribution of drug use and addiction to domestic violence and child abuse and neglect. Ultimately, the black market and all of the violence and intimidation which it invites into communities exists because a minority of citizens chose to use drugs against the express wishes of their fellow citizens.

The myth that the black market and criminality can be eliminated is sometimes propagated by proponents of legalization as a rationale for regulating sale. We have now observed 5-10 years of legalization of cannabis use is some States in USA but the black market continues to thrive there, probably retaining in the region of 70% of the total cannabis trade still. The youngest, poorest and heaviest users seem to be the people who are most likely to persist with use from criminal suppliers, as they are the most cost sensitive. The black market is always able to under-cut a taxed and regulated legal market.

2. In your opinion, is the current system, which can result in a criminal record, counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes?

As stated above, the risk of a criminal record seems to be one of the many factors which people consider when making drug use decisions.(6, 7)

We see no evidence that a criminal record for drug possession has in itself been a deterrent to entry into addiction treatment. It is often stated that the illegal status of drugs causes many people with addiction to avoid seeking addiction treatment. No evidence is provided to back up this theory. In Ireland we know that only about 3% of people with alcohol dependence seek alcohol treatment in any given year.(9) For cannabis dependence is seems to be a similar proportion who seek treatment.(10) In stark contrast, approximately 50-70% of people with heroin dependence in Ireland access treatment annually. There are a multitude of factors which influence treatment entry decisions, but primary amongst these are the perceived harmfulness of the specific addiction to the individual and the appropriateness and accessibility of the available treatment.

The criminal justice system is a frequent referrer of people into addiction treatment. This occurs most frequently in situations where a person is facing non-drug specific charges, perhaps relating to theft, assault or public disorder where substance use has been identified by gardai, probation officers or judges as a prominent contributor to the behaviour which resulted in the charges. Where people enter treatment in such circumstances, successful engagement with treatment tends to be viewed very favourably by the criminal justice system, and we strongly support this approach. Having stated above that a multitude of factors may contribute to a person's decision to seek and enter addiction treatment, encounters with an Garda Síochána can sometimes act as an incentive for same. The Tallaght Local Drug & Alcohol Task Force highlighted the role of the CJ system "to act as a catalyst for change" in their submission to the aforementioned working group led by Justice Garret Sheehan on this topic.

3. In your opinion, do you think that a type of administrative sanction would be [an] appropriate [alternative] to a criminal sanction?

Ultimately, we would support use of the sanctions which are minimally intrusive/punitive while still showing an acceptable level of effectiveness. This could include move to a fine, such as that used where drivers excess speed limits.

No law or system of sanctions can be 100% effective. It would be unreasonable to expect any law to have universal impact. We have no such expectation of laws in other areas, so we must accept that some people will chose to use drugs no matter what rules or sanctions are put in place. Our health led goal as a society is to keep the proportion of citizens engaging in drug use, especially frequent drug use, to a minimum. If the sanction used is reduced, it will be important that the rationale for this is communicated clearly to the public. There is a growing complacency about drug use amongst large sections of the public who have been exposed to a great deal of pro-drug propaganda in recent years. The risk of reducing sanctions is that use may escalate. This risk could be reduced if it is made clear to people that drug use is still prohibited, albeit sanctioned in a different manner.

If criminal sanctions remain, we hold the view that imprisonment is an excessive and inappropriate disposal option for courts in cases of convictions for personal use. Whatever system of sanctions is utilised, we see no rationale for lesser sanctions to be used in the case of cannabis versus other prohibited drugs. To do so would only perpetuate the notion that cannabis is a relatively harmless substance, when in reality it is causing more drug related admissions to psychiatric hospitals than any other illegal drug in Ireland. Cannabis is the primary driver of demand for addiction treatment in Ireland for people under the age of 25 years, generating even more demand than alcohol dependence.

4. In your opinion, do you think that an administrative sanction would be more cost-effective to the Exchequer rather than a criminal sanction?

It could be but we have no strong opinion on this. However, at present the vast majority of interactions between an Garda Síochána with citizens found to be in possession of drugs do not result in criminal charges or court appearances. They appear to be dealt with informally or locally. If there is a move to a system of fines, administration of that system will clearly have costs associated with it.

5. Do you believe Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere, if so what?

In the past 30 years, a number of countries and jurisdictions have moved away from use of criminal convictions for personal drug use, some using alternative sanctions and some imposing no sanction at all.

The most widely discussed country is Portugal. There is an enormous amount of misinformation about Portugal in the public domain.(11) Firstly, drug use is still prohibited in Portugal. Where a person is detected by the police to be in possession of drugs, they are referred to a Dissuasion Commission. If they fail to cooperate with same, they may face further criminal justice sanctions. If they cooperate, they avoid any conviction or criminal record. It is important to understand the very small role which incarceration played in the Portuguese criminal justice response to personal drug use in the years before the law change. In the seven years before the law change in 2001, there were an average of about 18 people in prison at any one time for personal drug use in a population of 10 million people and these accounted for about 1% of all drug related imprisonments, the vast majority being for drug trafficking.(11)

This policy change commenced in 2001 applies to all drugs and occurred against a background of a major reorientation in treatment provision in the preceding couple of years. Portugal, like Ireland and many other European countries, experienced an upsurge in heroin addiction in the mid-1990s and this prompted the review of drug policies. Like Ireland, Portugal moved away from the addiction treatment model which demanded commitment to abstinence by all treatment entrants, and provided treatment such a methadone maintenance. They went further than Ireland in providing a range of additional social supports to people with addiction, including provision of incentives to employers to provide work opportunities to people with addiction issues. These policy changes have coincided with declines in drug related deaths. It is simply wrong to say that decriminalization caused the observed reduction in drug related deaths. It is much more likely to be related to the provision of good quality, accessible and socially supported harm–reduction focused treatment to people with severe addictions.

Rates of adolescent cannabis use have approximately doubled in the years since decriminalization in Portugal, past month use among 16 year olds rising from about 4.5% to about 7.5%.(12) There are a multitude of factors which can influence drug use decisions by adolescents, so it would be unfair to say that decriminalization caused this change. However, it is a reason for worry. A recent research paper by Benedetti et al which examined the relationship between drug policy changes and drug use across Europe reported that:-

> *"in the country implementing depenalisation through the facilitation of the closure of minor cases, the policy change is associated to a significant increase in the share of cannabis users (6.6 percentage points), whilst in those countries increasing the non-prison penalty the policy change is associated to a significant decrease (3.3 percentage points)."(13)*

In other words, the study found that rates of adolescent cannabis use increased where certain types of penalties were eliminated and decreased in jurisdictions where more punitive non-prison penalties were imposed.

A large Australian study which has been assessed as having a very low risk of bias, it was found that the prevalence of cannabis use increased by one eight after decriminalization.(14)

6. In your opinion, do you think that a health-focussed approach to drug use is a better alternative?

We believe that drug policy in Ireland is health focused and should remain health focused. As stated above, we see the criminal justice system as a tool of public health, as it was during Covid.

7. Do you think that anyone who refuses to engage in any proposed administrative system should then be referred to the Criminal Justice system?

If there is a move to an administrative system of sanctions, then non-cooperation with that system should be managed in the same manner as it is for other areas where administrative sanctions are utilised.

8. Are there any other supports and resources which might be considered useful to this discussion?

In summary,

Drug use is a behaviour which can cause and contribute to a wide range of health and other harms. Potential harms to the individual include development of addiction, injury or overdose during acute intoxication and a range of medical and psychiatrc problems. There is also potential for harm to others, especially family.

Given its potential to cause a range of health harms, drug policy is rightly a focus of public health and should be and is now health led in Ireland. The criminal justice system is often used to assist public health in achievement of goals. It has played a huge role in achieving large reductions in injury & mortality associated with driver behaviours over the past 40 years. Recently, criminal justice also worked actively alongside health during the Covid pandemic. Consequently, criminal justice input into our health led drug policy is entirely consistent with wider appraoches to public health.

In order to reduce harms arising from drug use, we seek to minimise the number of people who use drugs. We also seek to minimise the proportion of those who try drugs who then progress to more regular patterns of use. There is evidence that criminal justice input can support such goals, as a component part of a multifaceted, whole of society health-led drug policy. These other prevention efforts include measures to address individual, family and community risk factors for drug use and also universal and targeted education based prevention initiatives.

The Working Group to consider alternative approaches to the possession of drugs for personal use have recommended in 2019 that there should be a tiered response where people are found to be in

posession of drugs by Gardai. It is only on a third encounter that a person might be directed towards courts.

In assessing evidence from other jurisdictions, where penalties have been relaxed, the evidence is somewhat equivacol but there continues to be good reason to believe that penality reduction is associated with increased adolescent drug use. Such an outcome would contradict the health based goals of a public health approach to drugs. In the absence of any specific proposal related to this curent document is it difficult to assess its merits and risks.

If sanctions via criminal courts are to be maintained, we see no rationale for increasing penalty severity. We see no rationale for treating cannabis differently to other illegal drugs. While incarceration is used very rarely in modern Ireland for simple drug posession, we view imprisonment as an excessive and unreasonable sanction.

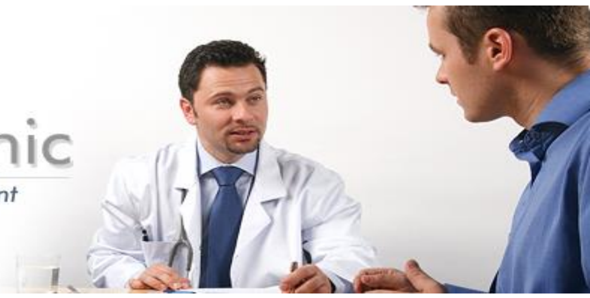
Sincerley & on behalf of the cannabis risk alliance,

______________________	______________________
Prof Bobby Smyth MCRN 015528	Dr Ray Walley MCRN 011971
______________________	______________________
Prof Mary Cannon MCRN 012327	Dr Hugh Gallagher MCRN 016955

References

1. Walley R, al e: Unspoken risks of cannabis use. in *Irish Times*, 2019. https://www.irishtimes.com/opinion/letters/unspoken-risks-of-cannabis-use-1.3896017
2. Smyth BP, O'Farrell A, Daly A. Cannabis use and Associated Health Problems – What's the Harm? Ir Med J. 2019;112:1000.
3. Smyth B, Barry J. Financial support by billionaires for research and policy analysis should be subject to disclosure rules. Journal of Studies on Alcohol and Drugs. 2019;in press.
4. EMCDDA. Motion graphic: What is decriminalisation of drugs. https://www.emcdda.europa.eu/media-library/motion-graphic-what-decriminalisation-drugs_en
5. Mongan D, Millar S, Galvin B: The 2019–20 Irish National Drug and Alcohol Survey: main findings. . Dublin, Health Research Board.; 2021.
6. Byrne M, Dick S, Ryan L, Dockray S, Davoren M, Heavin C, Ivers J, Linehan C, Vasiliou V: The Drug Use in Higher Education in Ireland (DUHEI) Survey 2021: Main Findings. Cork, University College Cork; 2022.
7. Hathaway A, Mostaghim A, Kolar K, Erickson PG, Osborne G. A nuanced view of normalisation: attitudes of cannabis non-users in a study of undergraduate students at three Canadian universities. Drugs: Education, Prevention and Policy. 2016;23:238-246.

8. Weatherburn D, Jones C, Donnelly N. Prohibition and Cannabis Use in Australia: A Survey of 18- to 29-year-olds. Australian & New Zealand Journal of Criminology. 2003;36:77-93.
9. Carew AM, O'Neill D, Lyons S, Smyth BP. Estimating need for alcohol treatment in Ireland using national treatment surveillance data. Irish Journal of Medical Science (1971-). 2021:1-9.
10. Mongan D, Carew AM, O'Neill D, Millar SR, Lyons S, Galvin B, Smyth BP. Comparing cannabis use disorder in the general population with cannabis treatment seekers using multi-source national datasets: who receives treatment? European addiction research. 2022;28:103-112.
11. Laqueur H. Uses and abuses of drug decriminalization in Portugal. Law & Social Inquiry. 2015;40:746-781.
12. Group E: ESPAD Report 2019: Additional Tables. Luxembourg; 2020.
13. Benedetti E, Resce G, Brunori P, Molinaro S. Cannabis policy changes and adolescent cannabis use: Evidence from Europe. International Journal of Environmental Research and Public Health. 2021;18:5174.
14. Williams J, Bretteville-Jensen AL. Does liberalizing cannabis laws increase cannabis use? J Health Econ. 2014;36:20-32.



Priority Medical Clinic

Specialists in Addiction Treatment

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DPU_06

6th June 2022

Joint Committee on Justice
Leinster House
Dublin 2

Re: Written submission to the Joint Committee

Dear Joint Committee,

I want to thanks you for the opportunity to make this written statement.

I am a GP Specialising in Addiction Medicine and Medical Director of the Priority Medical Clinic in Dundrum. I attach a brief biographical sketch below. I am making this submission in my own personal capacity as Medical Director of the Priority Medical Clinic.

I have worked in the field of addiction treatment since 1998. In that time the therapeutic landscape has changed significantly in response to the increase in prevalence and scope of drug use throughout the country. When I began treating addiction in 1998 the main drugs were heroin and powder cocaine. As the years progressed there has been a proliferation of new drugs both prescribed and illicit and this has created great challenges for agencies providing treatment. I encounter every single day the harms caused by these drugs. In terms of illicit drugs I also encounter the harms caused by the laws governing these drugs. Drug intimidation is decimating many communities in this country, communities already impacted by poverty and social inequality. Drug intimidation is a reflection of prohibition. The phenomenon does not exist with respect to the alcohol and tobacco markets.

Over the past ten or so years there has been a shift in drug policy towards exploring a health led approach and moving away from criminalising people who use drugs. Significant changes have occurred in this time. In 2017 legislation paved the way for Ireland to open its first medically supervised injecting centre (MSIC). There are about 100 of these centres internationally and research has shown that they have been very successful in intervening to avert fatal overdose, in reducing drug strewn paraphernalia on the streets and also in linking vulnerable injecting drug users with other services. Merchants Quay Ireland (MQI) won the tender to operate this centre but owing to legal wranglings around planning objections the centre has not opened. It is over five years since the legislation was passed. This is not acceptable and in that time there has likely been countless injecting drug users who might otherwise be alive today if they had access to a MSIC. I would perhaps go a step further and advocate for Heroin Assisted Treatment (HAT) for vulnerable injecting heroin users where

conventional opioid substitution treatment (OST) has failed. There are many of these centres internationally and they have been successful in treating hard to reach heroin users.

Last year, the Medical Cannabis Access Programme (MCAP) was established to allow people with certain chronic medical conditions to access cannabis in circumstances where other treatments have failed to relieve symptoms. Despite this, only a handful of people are benefitting from MCAP. Add to this the limited number of conditions that are permitted to be treated and also the fact that the prescriber needs to be a hospital consultant further reduce access to sufferers of a wide range of medical conditions. For example, chronic pain is not included in the list of conditions treatable under MCAP despite many chronic pain sufferers worldwide deriving benefit from cannabis. In the US over forty States in the country have cannabis available medically and/or for recreational use.

Regarding the availability of recreational cannabis it is my belief that proper regulation of this drug would be far safer than the current paradigm of prohibition. As a clinician I treat as much problems associated with the illegality of that drug as I do regarding its harms. Cannabis is not a harmless drug and some users, particularly heavier users, can experience a number of negative effects including dependence and the triggering of psychotic episodes. Criminalising these vulnerable people only adds to their problems and reduces the chances of them seeking treatment. If cannabis was regulated properly it would allow users to know the ratio of THC (the psychoactive constituent) and CBD (the medical constituent which counteracts many negative effects). A properly cultivated and manufactured product would also eliminate adulterants which are often added to many illicitly sold drugs and can cause huge harm and in some cases, death. Poper regulation would also improve the quality of research into cannabis's positive and negative effects. One further advantage of regulation would be the likely elimination of synthetic cannabis (a.k.a. Spice) which is particularly dangerous to mental health.

We have been promised a Citizens Assembly around our drug laws and this has suffered a number of delays. It is vital the citizens of Ireland are given the chance to give their views on our drugs problem and there should be no further delays.

I would like to finish this submission by advocating for the removal of criminal sanctions associated with drug possession. In 2001 Portugal changed its approach to drug use. Prior to this change in approach Portugal had one of the highest rates of fatal overdose death and HIV. The changes have been remarkable. Today, the country has one of the lowest fatal overdose rates in Europe. HIV and viral Hepatitis rates have dramatically reduced. Drug related crimes have also plummeted and the number incarcerated for possession have hugely reduced. The stigma in admitting a drug problem and seeking out treatment have been removed. Contrast this to Ireland, where stigma reigns heavily and there is a shame to acknowledging a drug problem for fear of being ostracised or losing a job. There are simply no grounds to criminalise people who use drugs as there is no evidence such sanctions deter users for using drugs anyway.

I want to thank you again for giving me this opportunity to make this submission and I look forward to watching this process unfold over the coming year.

Yours sincerely,

…………………………

Dr Garrett McGovern
Medical Director & GP Specialising in Addiction Medicine
MB BCh BAO (T.C.D.)
MSc. (Clinical Addiction, King's College London)
CISAM (Addiction Medicine)

MCRN 018275

Biography

Dr Garrett McGovern

Dr McGovern qualified in Medicine in 1995 from Trinity College Dublin and has worked as a GP specialising in the treatment of substance misuse since the implementation of the methadone treatment protocol in 1998. He provides care for opioid dependent patients in several HSE clinics throughout South Dublin and inner city. He is Medical Director of the Priority Medical Clinic, a private addiction treatment programme located in South County Dublin. He is ICGP Level 2 accredited in the treatment of opiate use. He has a caseload of over 500 patients with a range of addiction problems. In January 2022 he was appointed Clinical Lead for the HSE Addiction Services in Louth Meath & The Midlands. Dr McGovern holds a Master's degree in Clinical and Public Health Aspects of Addiction from The National Addiction Centre, King's College London (2006) and is a Diplomate of the International Society of Addiction Medicine (ISAM), having successfully passed the ISAM certification exam in Vancouver, Canada in 2018. ISAM certification is an accreditation assessment for physicians specialising in Addiction Medicine worldwide and is the international equivalent of the American Society of Addiction Medicine (ASAM) Board exam. Dr McGovern is also a founding member and Chair of the subcommittee for the Continuing Medical Education of General Practitioners specialising in Substance Abuse (GPSSA) and has served as a member of the GP committee of the Irish Medical Organisation. He is also one of the first members of the International Doctors for Healthy Drug Policies (IDHDP) which is an international group of medical addiction experts aiming to promote sensible drug policies. He has acted as an expert witness in a number of cases involving clinical practice in the field of addiction. He is a regular contributor to the medical and mainstream media on addiction related issues and occasionally peer reviews research papers prior to publication in scientific/medical journals.

DPU_07

Dear Alan,

Please find enclosed a submission on the topic of "*An examination of the present approach to sanctions for possession of certain amounts of drugs for personal use*" for the attention of the Committee.

I am happy to participate in any further discussions or public hearings the Committee finds useful.

Kind Regards,

Nuno Capaz.

Of particular interest to the Committee are the following areas:

1. In your opinion, is the Criminal Justice system appropriate for dealing with possession of small quantities of drugs for personal use?

No. The Criminal Justice system is based upon the assumption that if you do something, that the society perceive as, “wrong” you will be punished and therefore never do that “wrong” thing again. This doesn’t connect at all with drug usage. According to the UN figures, 90% of the people that use drugs worldwide do it without having any problem with it (basically recreational or non-problematic users) the other 10% of people that use drugs do it because they are addicted to them. Most importantly is that almost all of the drug users do not consider what they are doing as something “wrong” and therefore the punishment will not change their ways about the substance that they are using.

The criminal and judicial system, in the western European tradition, was not created to solve the personal problems that might lead someone to commit some criminal act. It was created and developed to deal with the social problems that criminals create to the environment they are a part of and that’s why if something goes “wrong” we remove the criminals (or at least revoke some of their liberties) from the society.

One of the key factors in achieving a good result with drug usage is the ability a system has to reconnect. Problematic drug usage walks hand-in-hand with “dysconnectivity” and the criminal justice system will only add to it, that’s why the majority of good results come from the so called “diversion schemes”.

2. In your opinion, is the current system, which can result in a criminal record, counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes?

Yes. The current prohibitionist system is in place for almost a century and it’s commonly accepted that it’s not producing the results expected. Usage figures are not going down as intended and the substances it was supposed to ban are still available and used.

Stigma is a Greek word that translates directly to “a mark made by a pointed instrument” and it was widely used in ancient Greece to brand criminals … that’s the direct relative of our modern day criminal record. If you want to reduce the stigma associated with drug usage, decriminalizing is the way to do it. No criminal sanctions, no criminal record, no stigma.

Traditionally, processing through the criminal justice system implies a record and that record will not go away after the punishment is dealt with, which will in the future work as a barrier to a more plentiful reintegration.

3. In your opinion, do you think that a type of administrative sanction would be appropriate to a criminal sanction?

Yes. Even better than an administrative sanction (that will not imply a criminal record but is still some way of punishment) is to provide alternatives to those administrative sanctions that might eventually increase the quality of life of the person in question.

Take the driving license infractions for example. In a system where points are taken from your drivers licence if you commit any infractions you have sanctions applied to you but you can also "regain" some of those points by attending any particular driving enhancement course that is devised to improve your driving abilities.

This can easily be translated to drug users if you provide alternatives that will aim to re-connect the drug users with structures that might eventually increase their quality of life and therefore of those around him also.

4. In your opinion, do you think that an administrative sanction would be more cost-effective to the Exchequer rather than a criminal sanction?

Yes. Portugal decided to decriminalize drug possession for personal usage (up to an amount of 10 doses for every illicit substance) and the cost/efficiency studies we conducted showed that the cost of a regular "administrative offense" at the Dissuasion Commissions cost nearly half a similar procedure would have costed in Court before 2001.

5. Do you believe Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere, if so what?

Yes. It's always possible to learn something, both from people that are doing the right things as well as with people that are not doing it right. You can learn "what to do" and also from "what not to do".

Portugal decriminalized the possession of small amounts of any illicit drug for personal usage in 2001 and is now accepted as a "good practice" example worldwide. But Portugal didn't JUST decriminalized drug usage back in the day. What we did was adopt a very comprehensive and conscious change in our drug policy recentring it as a health issue, decriminalizing was just one of the measures we adopted. It produced the results intended because we also made significant changes in harm reduction measures, prevention campaigns and accessibility to treatment.

Decriminalization it's only the "diversion scheme" part of the policy, the good results we got in Portugal was because we equipped that "diversion scheme" with appropriate tools to actually make it work in favour of the drug users and not just the simplistic approach where merely change the criminal sanction by an administrative sanction applied blindly.

6. In your opinion, do you think that a health-focussed approach to drug use is a better alternative?

Yes. It's now "common knowledge" that addiction is not a purely chemical issue. It's a multi factorial situation and banning the chemical substance will not eradicate drug

usage nor the harms associated with it. A Health focussed approach is centred on the drug user and not the substance and therefore it aims to improve the quality of life of the drug user.

Another benefit from a “health-focussed” approach to drug use is that it’s so much easier to “re-connect” drug users with structures that are not a “end of the line” structure like prisons. If prison doesn’t work what next? With drug usage there’s no “easy fix” or “silver bullet”, there’s no “one size fits all” measure that will magically solve the problem. It’s my personal opinion that the problem is not actually solvable, there is and always will be people willing or looking for ways to alter their state of mind (either by licit or illicit ways) but it’s also my firm belief that the problem is manageable or controllable if you focus on the health issues associated with drug usage.

7. Do you think that anyone who refuses to engage in any proposed administrative system should then be referred to the Criminal Justice system?

Not sure. I guess it all depends on the tools and resources the Criminal Justice system has available to deal with this type of population.

8. Are there any other supports and resources which might be considered useful to this discussion?

No. Because this is not a “discussion”! its just me answering questions …

DPU_08

CORK CANNABIS ACTIVIST NETWORK

Submission to The Joint Committee on Justice

An Examination of the present approach to sanctions for possession of certain amounts of drugs for personal use

By Natalie O'Regan BCL, LLM
& Nicole Lonergan BA, MA

Opening Statement

We thank the Justice Committee for the opportunity to make a submission on this very important topic. Drug policy in Ireland has been a topic largely ignored for many years and we welcome the opportunity to have an open discussion.

Our drug policy and approach to personal possession of drugs began in the 1970s through the introduction of the *Misuse of Drugs Act 1977*. At this time, drug consumption was concentrated in the Dublin area, whereas today people consume drugs all over Ireland and in every corner of society. In the past three years, we have criminalised over 42,000 people for purely personal possession alone. It is no longer an issue that is isolated to larger cities or more densely populated areas, it is an issue that has reached every person, every home and every corner of society. In almost 50 years, little, if any progress has been achieved in "the war on drugs". Criminalising people who consume drugs has not deterred drug use, has not minimised deaths, or curtailed the illegal market. We are now the fourth highest in Europe for drug-related deaths, with, on average, a person dying every day. Legislation that was introduced in the 1970s is not fit for purpose in 2022, especially given the abundance of evidence that shows a change in approach to how we, as a society, deal with drug consumption. A change in approach has been shown to improve the quality of life of people who consume drugs, improve society as a whole, and improve connections in the community.

With drug consumption increasing year on year, our "war on drugs" has become a war on people who consume drugs, with consequences - both societal and criminal - going far beyond the deterrence role that criminalisation is supposed to play. In a war on drugs, drugs will always win.

The theory behind criminalisation is to deter future activity and rehabilitate the person. There is little evidence that shows the criminalisation of personal possession has achieved these goals, instead people who consume drugs are often overrepresented in the criminal justice system. The costs associated with arrest, charge, Gardaí time, Judge's time, lawyers, legal aid and the monumental amount of paperwork associated with criminalisation are coming at a huge cost to the exchequer. Although most cases are dealt with at the District Court level, the cost of criminalising one person can run into thousands of euros, sometimes tens of thousands depending on the issue. These funds could be redirected to people, the community and youth programmes. Funding these programmes will have a better outcome than any criminalisation model.

The alternative approach is to decriminalise drug consumption and personal possession. In 2001 in Portugal, they took the giant leap of decriminalising personal possession and instead focused on the implementation of a drug strategy that was humanistic and person-centred. The focus was on education, harm reduction and improving treatment and any other relevant programmes that would aid people who consume drugs to restore their family, work, and

social connections in society. The package itself contained an integrated package of measures rather than focusing on decriminalisation alone.

In the first three years, studies have shown that in 80% of cases there was no evidence of addiction or problematic drug use, leading to a dismissal of any administrative sanctions. Instead, information regarding harm reduction and treatment options is given. The result of these measures was a decrease of 50% of people in prison for drug offences.

Although treating drug consumption as a health issue would be a welcomed step in our drug policy, we must be careful not to replace one stigmatising label of a criminal with one of an addict. Mandatory referrals to health interventions or reverting to a criminal sanction due to no engagement will have the opposite than the desired effect of removing criminalisation. People may not engage due to a multitude of reasons such as lack of childcare, transport, or work to name a few. The most important aspect is that non-judgemental help and support are available when and if needed.

We thank you again for giving us the opportunity to contribute to this discussion. Although evidence and research are abundant below, we are aware there is a limited time frame available for those invited as a witness before the committee.

Thank you,

Natalie O’Regan BCL, LLM
Nicole Lonergan BA, MA

Recommendations

Ireland has relied solely on criminal sanctions to address drug consumption, but it has not decreased the presence or use of drugs in society. Instead, it has resulted in extensive harm and stigmatisation of a substantial portion of the population. Drug consumption itself is not an isolated event, with many factors influencing consumption, such as poverty, social inequality, , trauma and recreational use. The vast majority of people who consume drugs will never require intervention or treatment. A sensible approach is long overdue. To achieve a well-rounded approach to personal consumption, decriminalisation alongside support services and treatment options is needed. Each should feed into the next with ease of access for those who request it.

We recommend the following approach:

- Decriminalise drug consumption and personal possession.
- No administrative measures.
- Voluntary referral options which emphasise a person-centred approach.
- Implementation of wide-ranging, fact-based educational campaigns on harm reduction.
- Wrap-around support services to work alongside treatment options.

1. In your opinion, is the Criminal Justice system appropriate for dealing with possession of small quantities of drugs for personal use?

In Ireland, controlled drug offences were the third most recorded crime in 2021[1] at 20,140 recorded offences, down from 23,175 in 2020[2], a drop of 13.5%, where personal possession accounts for much of the decrease. In comparison The CSO 2019 data[3] reveals that drug possession for personal use represented over 70% of all controlled drug incidents in Ireland in 2019[4], with 15,694 reported incidents for personal possession alone[5]. This statistic remains steady at between 70%-77% year on year[6]. It is also worth noting that these figures are subjected to the primary offence rule, which means that where two or more offences are committed, the primary incident is recorded, that being the one that would carry the greatest penalty upon conviction[7]. These figures illustrate that when a person is found or suspected to

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[1] CSO, Q4 Recorded Crime Statistics 2021. Public order offences and theft accounted for the top 2 most recorded crimes in 2021.

[2] The drop in figures could be associated with covid lockdown and the impact of the Adult Cautionary Scheme.

[3] All data under reservation. Due to irregularities in Garda reporting, the CSO has issued a warning regarding the accuracy of the data. For more information, please see https://www.cso.ie/en/methods/crime/statisticsunderreservationfaqs/

[4] Central Statistical Office, Recorded Crime Q4 2019 https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq42019/

[5] Central Statistical Office, Recorded Crime Q4 2019, Additional Statistics. https://www.cso.ie/en/releasesandpublications/ep/p-rc/recordedcrimeq42019/additionalstatisticaltables/

[6] Hughes, C., Stevens, A., Hulme, S. & Cassidy, R. "Review of approaches taken in Ireland and in other jurisdictions to simple possession drug offences." A report for the Irish Department of Justice and Equality and the Department of Health. UNSW Australia and University of Kent. (2018) at page 8.

[7] Details regarding the Primary Offence Rule can be found here on the CSO website https://www.cso.ie/en/methods/surveybackgroundnotes/recordedcrime/#:~:text=Primary%20Offence%20Rule%3A%20Where%20two,the%20greatest%20penalty%20on%20conviction.

be in possession of drugs for personal use, it is deemed the most serious crime to be addressed and not evidence of a larger pattern of criminal activity. In the past three years alone, we have criminalised over 42,000 people for personal possession.

Cases of personal possession are primarily dealt with by the District Court. Data available from the Court Service Reports[8] show that a small minority have a custodial sentence imposed, with the vast majority of cases either struck out, dismissed or a monetary fine imposed. This illustrates the amount of time and resources of the Court, Gardaí, and other factors, that are wasted purely on cases of personal possession. We believe criminalising people for the consumption of drugs should not be utilised. We trust people to exercise personal responsibility in relation to their bodily autonomy with the consumption of other legalised drugs such as alcohol, nicotine, caffeine, and medications. The same principle should apply. The use of every drug has the potential to have negative side effects, but we acknowledge that this can be significantly minimised with an educational approach that provides unbiased information on safe, responsible consumption.

The Ana Liffey Drug Project also highlighted the effects of criminalisation on people who consume drugs:

"*The criminalisation of possession of drugs for personal use is problematic on many levels. It infringes on the right to health because it creates a barrier to accessing health care services and support systems. Numerous cases from around the world show that criminalisation is inconsistent with the right to privacy. The subordination of a health issue to criminal justice interferes with the prohibition of discrimination in the context of vindicating rights [...] A policy of criminalisation deliberately and consciously generates social disapproval and stigma of people who use drugs. It is important to note that this is the intent of criminalisation and not merely a consequence of it. Stigmatisation is harmful – it can push people into unsafe environments, exposing them to health risks and isolation. It can have serious consequences for the physical and mental well-being and health of individuals, and can negatively impact their relationships, families and communities. In addition to stigma, criminalisation also creates unnecessary barriers to employment, housing, travel, education and other areas of life.*"[9]

Given the above information, we believe the criminal justice system is not appropriate for dealing with the issue of personal possession as it has caused untold damage to people of all ages, ethnicities and backgrounds and has exposed them to harms that are far beyond their drug consumption.

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[8] Courts Service Report 2019 , and 2020 Available at https://www.courts.ie/annual-report

[9] Scharwey, M., Keane, M. and Duffin T. (2019) "Ireland and the Human Rights of People Who Use Drugs". Dublin: Ana Liffey Drug Project. At page 4.

2. In your opinion, is the current system, which can result in a criminal record, counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes?

The theory behind criminalisation is that criminalising people will effectively function as a deterrent to any socially unacceptable and illegal behaviour. Additionally, it serves a number of other objectives, such as deterrence of any future criminal conduct, and rehabilitation of the individual[10]. There is little evidence that criminalising the personal possession of drugs is a deterrent for any future drug consumption[11]. With regard to rehabilitation, few systems in the world can offer long-lasting rehabilitation of prisoners[12]. People who consume drugs are overrepresented in the prison system, with drug consumption often more prevalent than in the general community[13]. Criminalisation is not something to be taken lightly in Ireland, it can have many far-reaching negative consequences, as the DPP notes:

> "*The decision to prosecute or not to prosecute is of great importance. It can have the most far-reaching consequences for an individual. Even where an accused person is acquitted, the consequences resulting from prosecution can include loss of reputation, disruption of personal relations, loss of employment and financial expense, in addition to the anxiety and trauma caused by being charged with a criminal offence*"[14]

It is clear here that the objectives that criminal law wants to meet are not achieved by the criminal justice system, the criminalisation of people for personal possession does not illustrate the best use of criminal law[15].

These criminal and punitive approaches to drug consumption have dominated the global approach to personal drug consumption. Criminalisation has had the opposite than desired effect. Despite the popularity of the approach, prohibition has failed to diminish drug consumption and its associated harms[16]. The harm that is associated with drug consumption also includes those harms caused by criminalisation itself and the so-called "war on drugs,"

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[10] Keane, Marcus and Csete, Joanne and Collins, John and Duffin, Tony "Not criminals. Underpinning a health-led approach to drug use." (Dublin: Ana Liffey Drug Project and London School of Economics, 2018). At page 36

[11] Please see, Husak, "Overcriminalization: The limits of the criminal law", (New York: Oxford University Press, 2008); Moore and Elkavich, "Who's Using and Who's Doing Time: Incarceration, the War on Drugs and Public Health", (2008) American Journal of Public Health, 98, S176–S180; MacCoun, "Drugs and the law: A psychological analysis of drug prohibition", (1993) Psychological Bulletin 113(3),497– 512,

[12] See generally, Rolles and Eastwood, "Drug decriminalisation policies in practice: A global summary", in Harm Reduction International, The global state of harm reduction 2012 (HRI: London, 2012), 157-65.

[13] Sander et al, "Overview of harm reduction in prisons in seven European countries" (2016) 13(1) Harm reduction journal 1. At page 4.

[14] Director of Public Prosecution, *Guidelines for Prosecutors*, 4th Ed, October 2016 (Dublin: Office of the Director of Public Prosecutions,2016) At para 4.1.1.

[15] Keane, Marcus and Csete, Joanne and Collins, John and Duffin, Tony "Not criminals. Underpinning a health-led approach to drug use." (Dublin: Ana Liffey Drug Project and London School of Economics, 2018) at page 37.

[16] Levy, Jay [INPUD]. (2014) The harms of drug use: criminalisation, misinformation, and stigma. London: INPUD; Youth RISE. At page 2.

with critics arguing that *"prohibition itself is responsible for a substantial portion of drug-related harm".*

It is our opinion, that to dissuade people from drug consumption, would be to introduce a nationwide education campaign on the harms associated with consumption, the harms associated with potentially contaminated products, potential harms of consumption with pre-existing physical and/or mental health conditions, and ways people can remain safe while consuming. Education is a tool not utilised in the discussion around drug consumption, with many notable examples from across the world, Ireland could learn a great deal[17].

3. In your opinion, do you think that a type of administrative sanction would be appropriate to a criminal sanction?

Our European neighbour Portugal introduced administrative sanctions for personal possession of drugs in 2001. Through their Drug Dissuasion Committee (discussed in more depth later), year on year an estimated 80% of cases that came before the Commission are suspended due to no evidence of addiction[18], rising to 90% in 2018[19], instead information about treatment and harm reduction is given to the individual. This illustrates that those administrative sanctions, although possible, are rarely used with education about harm reduction and treatment options as the preferred outcome. We do not believe that an introduction of administrative sanctions would be appropriate given the evidence of their limited use and effect in Portugal.

4. In your opinion, do you think that an administrative sanction would be more cost-effective to the Exchequer rather than a criminal sanction?

The cost of criminalising a person for personal possession would be far greater than any alternative measure imposed. The cost of bringing a person before the Courts system in Ireland can range into the thousands and potentially even tens of thousands when factoring in the Judge's time, the Gardaí's time, the paperwork, and legal aid (if needed), and the accused's time etc. The administrative measure would be more cost appealing, but as stated above, we do not see any benefit of introducing these measures. Additionally, in other jurisdictions, it is the police force that issues these sanctions, adding more to an already overstretched workload

[17] See Safer Drug Policies, Norway. Harm reduction campaign. https://saferdrugpolicies.com/harmreductioncampaign

[18] Instituto da Droga e da Toxicodependência de Portugal (Institute on Drugs and Drug Addiction of Portugal), "The National Situation Relating to Drugs and Dependency," 2005 Annual Report (2006), p. 87.

[19] SICAD, Serviço de Intervenção nos Comportamentos Aditivos e nas Dependências ,2018, Statistical Bulletin on Illicit Substance" at page 7. http://www.sicad.pt/BK/EstatisticaInvestigacao/Documents/2020/sinopses/SinopseEstatistica18_substanciasIlicitas_EN.pdf

and increasing the contact with the justice system for people who consume drugs which would be counterproductive to the aims to be achieved by removing the criminal aspect.

5. Do you believe Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere, if so what?

In 2001, Portugal decriminalised the personal possession of all illicit drugs. Pre-2001, drug consumption became one of the major social concerns[20] in Portugal and was the main cause of the high rate of incarceration with almost 4,000 people imprisoned for drug offences.[21]

In 1999 the Portuguese Government launched their National Drug Strategy[22] which was hailed as "a humanistic, pragmatic and health-orientated approach explicitly recognising the addict as a sick person rather than a criminal and acknowledging the inefficacy of criminal sanctioning in reducing drug use "[23]. Alongside this recommendation, the Commission recommended for the government's main focus on the implementation of this strategy to be on education, harm reduction and improving treatment and any other relevant programmes that would aid people who consume drugs to restore their family, work and social connections in society[24]. This strategy incorporated an integrated package of measures rather than focusing on decriminalisation alone.

The government took the radical step of responding to the increase in drug consumption by decriminalising the personal possession of all illicit drugs, limited to a 10-day supply and permitting the use and acquisition of said drugs[25]. By doing this, they became the first country in the world to embrace a multi-dimensional harm reduction policy that included not only a change in the law but also a change in the supports available. Originally labelled an "experiment"[26], almost 20 years later it is still attracting international attention.

Under this decriminalisation framework, the sale and importation of illicit drugs remain illegal as well as the trafficking of drugs to ensure compliance with International law. The removal of

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[20] European Commission, Eurobarometer, Public Opinion in the European Union, 1997, Report Number 47 at page 32.

[21] Portugal Drug Situation 2000, Report to the EMCDDA, Reitoc National Focal Point of Portugal, Instituto Português da Droga e da Toxicodependência at page 34.

[22] Portuguese National Drug Strategy 1999, Resolution of the Council of Ministers No 46/99. https://www.emcdda.europa.eu/system/files/att_119431_EN_Portugal%20Drug%20strategy%201999.pdf

[23] Laqueur, "Uses and Abuses of Drug Decriminalization in Portugal" (2015), Law & Social Inquiry, Vol 40, Issue 3, 746-781 at page 749 – 750.

[24] Portuguese National Drug Strategy 1999, Resolution of the Council of Ministers No 46/99. https://www.emcdda.europa.eu/system/files/att_119431_EN_Portugal%20Drug%20strategy%201999.pdf , Chapter 2, *principles, general objectives.*

[25] Decriminalisation of Drug Use Act (Decree Law no. 30/2000), Article 2(2).

[26] Van Het Loo, Beusekom, and Kahan. "Decriminalization of Drug use in Portugal: The Development of a Policy." (2002) The Annals of the American Academy of Political and Social Science, vol. 582, no, pp. 49-63. At page 49.

criminal sanctions for individuals who are found with drugs that would constitute personal use is now treated as an administrative violation, which results in no criminal record. Instead, the sanction available is limited to a monetary fine and recommended treatment options are given[27]. Alongside this and based on the Commission's recommendation, Portugal invested heavily in the health and social policy changes which have supported the shift towards a health-centred and person-centred approach to drug policy.

The removal of criminal sanctions did not mean the removal of all contact with the criminal justice system. Police still retain a role in the decriminalisation framework, remaining the main source of detection and referral. Officers that witness drug consumption or possession are now required to issue a citation to begin the administrative process by diverting the individual to the Drugs Dissuasion Commission, but they are not permitted to make an arrest[28].

Drug Dissuasion Commission

The Commission operates independently from the criminal justice system and consists of legal experts, doctors and social workers. The Commission is set in an informal way to distance themselves from the Court system. Usually, these take place in a room similar to a large office or meeting room, with parties sitting around a large table. The sanctions that can be imposed by the Commission range from a monetary fine, a warning, a ban on visiting certain places or associating with certain people, or direction to seek professional help, advice or treatment. The Commission does not have the power to mandate treatment or to impose imprisonment.

In the absence of any evidence of addiction, the Commission's role is to provide the individual with information about treatment and harm reduction that is available to support them. In addition, the Commission is mandated to suspend sanctions once the non-addicted person agrees to undergo and complete treatment[29]. Even with evidence of addiction, the Commission is vested with considerable discretion to suspend sanctions once the individual agrees to undergo and complete treatment[30]. If an individual does not agree to treatment or fails to complete the treatment, the Commission can impose sanctions such as a monetary fine or impose certain restrictions. Despite the heroin epidemic being the main driving force behind the radical policy shift, the majority of citations that have been issued have been to non-addicted cannabis users[31]. Year on year, an estimated 80% of cases that came before the

[27] Article 2 states that "The consumption, acquisition and possession for one's own consumption of plants, substances or preparations listed in the tables referred to in the preceding article constitute an administrative offence." Own consumption is defined in Article 2(2) as "not exceeding 10 days' supply".

[28] Greenwald, Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies. Washington, (2009), DC: CATO Institute at page 4.

[29] Decriminalisation of Drug Use Act (Decree Law no. 30/2000), Article 11(1) establishes that no sanction is to be imposed where the offender is not an addict and has no prior offences, but they agree to undergo treatment.

[30] Decriminalisation of Drug Use Act (Decree Law no. 30/2000), Article 11(3).

[31] Laqueur, "Uses and Abuses of Drug Decriminalization in Portugal" (2015), Law & Social Inquiry, Vol 40, Issue 3, 746-781 at page 756.

Commission are suspended due to no evidence of addiction[32], rising to 90% in 2018[33], instead information about treatment and harm reduction is given to the individual. As an example, the probable sanction under this framework for a cannabis user is a suspension of sanctions and information on treatment and harm reduction[34]. Each step of the process is designed to eliminate the stigma that arises from criminal proceedings and de-emphasise the guilt associated with drug consumption, while at the same time emphasising and encouraging health and suitable treatment options[35].

It is evident from the results of Portugal's Commission, that the vast majority of people who come before them are not addicted, with no need for treatment. Further studies have shown that 70% or more of people who consume drugs do not meet the criteria for drug addiction, with addiction affecting only 10-30% of people[36].

In our opinion, imposing mandatory treatment as an administrative sanction is counterproductive and serves only to reinforce the incorrect assumption that all people who consume illegal drugs are addicted.

Effects of Decriminalisation in Portugal

None of the horrors predicted as a result of decriminalisation came to materialise, the experiment was not a failure. The main fear was that there would be a dramatic rise in drug consumption[37]. Instead, the opposite happened, the level of drug consumption has declined, especially in the most at-risk category of those aged between 15-24[38], which is now lower than the European average[39]. Another fear associated with decriminalisation was that Portugal would become a haven of drug tourism. A BBC report in 2004 with Fernando Negrao, a former police chief and head of the Institute for Drugs and Drug Addiction, stated that the fears of Portugal becoming a drug paradise simply never happened[40]. The majority of individuals that

[32] Instituto da Droga e da Toxicodependência de Portugal (Institute on Drugs and Drug Addiction of Portugal), "The National Situation Relating to Drugs and Dependency," 2005 Annual Report (2006), p. 87.

[33] SICAD, Serviço de Intervenção nos Comportamentos Aditivos e nas Dependências ,2018, Statistical Bulletin on Illicit Substance" at page 7.
http://www.sicad.pt/BK/EstatisticaInvestigacao/Documents/2020/sinopses/SinopseEstatistica18_substanciasIlicitas_EN.pdf
(date accessed:23 June 2020)

[34] European Monitoring Centre for Drugs and Drug Addiction, "Illicit Drug Use in the EU: Legislative Approaches", (2005) p. 27.

[35] *Ibid.* (as above)

[36] Warner, Lynn A., et al. "Prevalence and Correlates of Drug use and Dependence in the United States: Results from the National Comorbidity Survey." *Archives of General Psychiatry*, vol. 52, no. 3, 1995, pp. 219-229. See also : Csete, Joanne, PhD, et al. "Public Health and International Drug Policy." *The Lancet (British Edition)*, vol. 387, no. 10026, 2016, pp. 1427-1480.

[37] Greenwald, Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies. Washington, (2009), DC: CATO Institute, at page 11.

[38] Balsa, C., Vital, C. and Urbano, C. (2013) 'III Inquérito nacional ao consumo de substâncias psicoativas na população portuguesa 2012: Relatório Preliminar', CESNOVA – Centro de Estudos de Sociologia da Universidade Nova de Lisboa, p. 59.

[39] European Monitoring Centre for Drugs and Drug Addiction, 'Drug Policy Profiles — Portugal' (2011), p. 20, see also Greenwald, Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies. Washington, (2009), DC: CATO Institute at page 11 – 15.

[40] Please see the BBC Report, January 22 2004 http://news.bbc.co.uk/1/hi/world/europe/3421523.stm

receive a sanction are Portuguese or from Portuguese colonies[41]. Enforcement statistics pre-decriminalisation show that between 1990 and 1999, the number of individuals criminalised for drug offences including drug trafficking tripled, from 3,586 to 13,020[42] resulting in Portugal having one of the highest rates of incarceration in Western Europe with the highest portion of drug offence prisoners[43]. Pre-decriminalisation, 43% of the prison population in Portugal was incarcerated for drug law offences, post-decriminalisation this figure has dropped to 21%, a decrease of some 50%[44]. It must be noted that these figures incorporate those who have had more than a 10-day supply and those low-level offenders involved in the drug trade.

We cannot judge the full effects of decriminalisation by looking at drug consumption and imprisonment figures alone. We must look at the wider picture of the effect on the quality of life of people who consume drugs. Ending criminalisation in Portugal was not the sole cause of the impressive improvement in the lives of people who consume drugs. The most striking aspect of the Portuguese policy was to focus on the individual as a person and their well-being from both a health and social well-being perspective.

Decriminalisation has addressed most of the social harms associated with drug consumption[45]. By removing the threat of criminal penalties, Portugal has erased a great deal of stigma that is associated with it. Portugal doubled its investment of public funds in treatment and prevention services[46], alongside decriminalisation and efforts to destigmatise drug consumption have led to an increased demand for treatment[47], thus reducing barriers to treatment and health services. Decriminalisation sends a message to society that people who consume drugs are not and are no longer deemed to be criminals and it has reformed the social perception of people who consume drugs. In general, it has contributed to a more tolerant attitude towards people who consume drugs, which is a result of *"reducing stigmatisation of drug consumption and increasing the opportunity of responses"*[48]. In our opinion, the underlying philosophy of eliminating stigma and a person-focused approach was the driving force for many of the advantages that we see today from a decriminalisation system, more so than any practical changes in the legal sphere.

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[41] 90-94% of all citations are given to those of Portuguese nationality, other EU citizens make up a very small number of citations given. See, Annual Report of Instituto da Droga e da Toxicodependência de Portugal (2006) at page 99.

[42] See European Monitoring Centre for Drugs and Drug Addiction, Statistical Bulletin 2004 http://stats04.emcdda.europa.eu/html.cfm/index5307EN.html

[43] Cunha, Manuela Ivone "From Neighbourhood to Prison: Women and the War on Drugs in Portugal." (2005) In Sudbury, "Global Lockdown: Race, Gender, and the Prison-Industrial Complex." (Florence: Routledge, 2014) at page 155.

[44]Laqueur, "Uses and Abuses of Drug Decriminalization in Portugal" (2015), Law & Social Inquiry, Vol 40, Issue 3, 746-781 85 at page 758.

[45] Greenwald, Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies. Washington, (2009), DC: CATO Institute at page 11.

[46] Hughes, and Stevens, "The effects of the decriminalization of drug use in Portugal. Discussion paper." The Beckley Foundation, Oxford, (2015) at page 2.

[47] Instituto da Droga e da Toxicodependência de Portugal (Institute on Drugs and Drug Addiction of Portugal), "The National Situation Relating to Drugs and Dependency," (2006) p. 3., see also Greenwald, Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies. Washington, (2009), DC: CATO Institute at page 15.

[48] Hughes and Stevens, "The Effects of Decriminalization of Drug Use in Portugal," (2007) at page 7.

6. In your opinion, do you think that a health-focused approach to drug use is a better alternative?

Treating drug consumption as a health issue rather than a criminal one would be a welcomed step in our drug policy. However, we must be careful not to replace one stigmatising label of "a criminal" with one of "an addict" by over-analysing drug consumption as a health issue. The vast majority of people who consume drugs do not require any form of intervention or treatment. Dr Carl Hart, Neuroscientist and Professor of Psychology at Columbia University, has emphasised that most drug consumption causes little to no harm with many recreational drugs being used safely[49].

Over-emphasising a health-led approach and the language used when speaking about people who consume illegal drugs both come with the danger of automatically inferring that every person who consumes drugs is an "addict ". As previously highlighted, in Portugal 80% of people did not require any health intervention for their drug use. We do agree that treatment should be available for those who need it and request access to it, but it should not be based on a mandatory referral system, as this replaces one stigmatising approach (criminalisation) with another (addiction). Again, education has been shown to have the most effective impact to influence responsible drug consumption.

7. Do you think that anyone who refuses to engage in any proposed administrative system should then be referred to the Criminal Justice system?

No. It is already well established that criminalisation does not work, does not reduce drug consumption, and does not help those in need. A failure to engage may be due to a multitude of reasons such as lack of childcare, lack of transport, obligations in relation to work or education and therefore not being able to engage in services that may only be open Monday to Friday, 9am-5pm. If needed, repeated attempts at engagement and education should be required. If people who use drugs need help or treatment, they will ask for it when they are ready to do so. The most important aspect is that non-judgemental help and support are there when it is needed. Forcing people towards help, treatment or engagement will only have the opposite of the desired effect.

On November 25th, 2021, the city of Vancouver became the first city in Canada to decriminalise all drugs. One component of the Vancouver model is a voluntary referral to support and treatment services for individuals found to have illegal drugs in their possession

[49] Hart, Carl L.: DRUG USE FOR GROWN-UPS. Kirkus Media LLC, 2020.At page 9.

for personal use[50]. This aspect of their policy serves to emphasise the importance of autonomy and personal decision-making, with their model as a whole acknowledging that criminalisation does not deter drug consumption and emphasising that not all drug consumption leads to problematic use or addiction. This approach is well-researched, compassionate, and based on factual data. Vancouver's provincial Health Officer commented on the harms of exposure to the criminal justice system by stating *"Engagement with the criminal justice system exposes non-violent, otherwise law-abiding people to a great deal of harms that they would otherwise not experience.[51]"*

8. Are there any other supports and resources which might be considered useful to this discussion?

Additionally, we believe it is important that the committee consider drug testing and a drug amnesty in conjunction with any other developments: a place where people can go to have their drugs tested and if they are contaminated, an area where they can safely dispose of them[52].

We would urge the consideration of mobile units that could support supervised consumption. Although legislation has been passed to facilitate a permanent site, this has yet to materialise, meanwhile, people are dying at an exponential rate. We are currently fourth highest in Europe for drug-related deaths[53]: a statistic which is directly influenced by Ireland's outdated and harmful approach to drug policy. In Scotland, Peter Krykant established a drug consumption van which became the UK's and Scotland's first overdose prevention site[54]. Through his work, he has saved countless lives and prevented hundreds of possible overdoses. One man has shown us how it can be done and how it should be done. We would urge the Justice Committee to examine the possibility of mobile consumption units in Ireland and what, if any, legislative change needs to take place to facilitate such a service.

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[50] City of Vancouver "Request for an exemption from the Controlled Drugs and Substances Act Pursuant to section 56(1) that would decriminalize personal possession of illicit substances within the City of Vancouver. Final Submission to Health Canada. May 2021.

[51] "*Stopping the Harm - Decriminalization of People Who Use Drugs in BC*" Provisional Health Officer Report at page 5. Available at (https://www2.gov.bc.ca/assets/gov/health/about-bc-s-health-care-system/office-of-the-provincial-health-officer/reports-publications/special-reports/stopping-the-harm-report.pdf)

[52] Please see The Loop drug testing services https://wearetheloop.org/

[53] EMCDDA "Drug Related Deaths and Mortality in Europe" July 2019. See also : "Ireland fourth-highest for drug-related deaths, The Irish Examiner, October 2017.

[54] https://www.theguardian.com/commentisfree/2021/apr/30/uk-first-drug-consumption-van

DPU_09

Ref: An examination of the present approach to sanctions for possession of certain amounts of drugs for personal use.

Patients For Safe Access are dedicated to ensuring safe and legal access to cannabis for therapeutic use and research, protecting the rights of medical cannabis patients, and to promoting scientifically valid information about cannabis use.

Kenny Tynan - Executive Director - Patients For Safe Access

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1. In your opinion, is the Criminal Justice system appropriate for dealing with possession of small quantities of drugs for personal use?

No, the current system does not offer any type of support for people who have chosen to take drugs for personal use - a lot of court cases result in a fine which can lead to repeat offenses, addiction and more criminal behavior.

2. In your opinion, is the current system, which can result in a criminal record, counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes?

Yes. A criminal record can restrict gaining meaningful employment or traveling abroad while bringing shame on the drug consumer, which can result in a lack of support from family members, and mental health problems, which lead to repeat behavior of consuming. Early intervention where the consumer feels supported and understood is key to rehabilitation.

3. In your opinion, do you think that a type of administrative sanction would be appropriate to a criminal sanction?

No, neither of these approaches are suitable options for dealing with drug use. Instead, a holistic approach towards treating the core issue behind drug use such as addiction, self medicating for pain, mental health, social and economic factors. A group could be established to handle these cases.

4. In your opinion, do you think that an administrative sanction would be more cost-effective to the Exchequer rather than a criminal sanction?

Yes. An administrative sanction would cost less due to time not spent in court and on Garda resources. However if we are sanctioning people who do not have a problem with their drug use then we are wasting resources which could be used to treat problematic drug use.

5. Do you believe Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere, if so what?

We have a lot to learn from the Portuguese model based on harm reduction. Since decriminalization, heroin use has dropped by 75% and now has the lowest overdose rate in Europe. Portugal has established the Commissions for the Dissuasion of Drug Addiction which allows for sanctions rather than convictions. (1)

The reclassification of Cannabis in the UK in 2004 to a class C drug led to a 33% drop in cannabis cases. This in turn saved over 199,000 police hours (2).

A study conducted in the US in states that legalised Cannabis for adult use or medical or both found a significant reduction in crimes relating to the production & distribution of Cannabis , reduction in other crimes including some property and violent crimes and cannabis consumers switched from consuming illegal cannabis to legal cannabis (3).

6. In your opinion, do you think that a health-focussed approach to drug use is a better alternative?

A health led approach would work better for people who have chosen to use drugs. A health led approach would lead to better rehabilitation rates through allowing channels of communication to be opened between the drug consumer and a professional who is qualified in rehabilitation or addiction services, unlike the current system. A health led approach could allow for medical cannabis patients who do not qualify under the conditions of the medical cannabis access program to no longer live in fear of getting a criminal record or prison time. This kind of approach frees up time and resources for an Garda Siochana, the courts, and the prison system.

7. Do you think that anyone who refuses to engage in any proposed administrative system should then be referred to the Criminal Justice system?

No, medical cannabis patients who use cannabis for therapeutic benefits for their conditions, but do not qualify under the medicinal cannabis access program should be exempt. A system such as CanCard in the UK could be introduced to allow cannabis patients to be identified when stopped by police.

www.cancard.co.uk

8. Are there any other supports and resources which might be considered useful to this discussion?

References

1. 75% drop in heroin use Portugal https://www.cato.org/commentary/drug-prohibition-blame-opioid-crisis
2. 199,000 hours of police time saved in the UK following reclassification of Cannabis https://www.dpp-law.com/blog/is-cannabis-a-class-a-drug/
3. (pdf) Study “Does legalising Cannabis reduce crime?” https://reason.org/wp-content/uploads/does-legalizing-marijuana-reduce-crime.pdf

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Crainn’s Submission to *The Joint Committee on Justice*

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An examination of the present approach to sanctions for possession of certain amounts of drugs for personal use.

By Ryan McHale
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I

Opening Statement

We would like to thank the committee for the invitation to submit as a witness on the topic of drug decriminalisation. We at Crainn have been working as advocates for drug policy reform, harm reduction and the safe regulation of cannabis for almost a year now through various online outlets. We have run a number of campaigns, both online and in-person and work hard to make the case for drug policy reform to the public and legislators. We have amassed over 32,000 subscribers on our Reddit page, and several thousand across other social media platforms.

Irish drug policy has failed both society and the vulnerable people it was supposed to protect. For many years our drug death rates have been among the highest in Europe, 3 times the EU average. Hundreds of people in Ireland die every year due to our current approach to drug policy.

Addiction and substance abuse are health issues, not criminal ones. Current policy is outdated, and clearly does not recognise this fact. A functioning drug policy is one that works towards reducing the harms of drugs. This is possible, it has been done before. Ireland has much to learn from jurisdictions such as Portugal, Switzerland, Malta, Vancouver and many more, but we shouldn't copy & paste one programme and expect it to work here. We must come up with our own plan, inspired and influenced by other policies and the latest data. In our submission to the committee we have outlined a number of recommendations, taking into

consideration what has worked from other areas, what hasn’t worked from other areas and what we are hearing from both those who consume drugs and support services.

We propose that Ireland needs a clear, cohesive multi-year plan that outlines exactly how we are going to reduce drug-related harms. We need to know where we are going to allocate funds, not only into services but into education as well. Relevant ministers should show steadfast dedication in diverting the direction of drug policy, not least by meeting with foreign partners but by actually putting together a working policy and evolving this policy to ensure it meets current needs. Our future drug policy should also be centralised around a set of core pillars, similar to what is being done in Vancouver and what has been done in Switzerland. Harm reduction must be central to these pillars.

We also propose a re-thinking of how we treat cannabis possession in Ireland. Not only does personal possession of this drug take up the majority of drug-related court cases, costing the state a massive amount of funds and ruining future opportunities for many people, we have seen alarming trends in counterfeit cannabis that has extreme adverse health impacts. Regulation is absolutely necessary.

We need engagement across the country, targeting areas that are hit by addiction while being flexible enough to adapt to emerging drug trends. We see services such as mobile overdose prevention clinics in Portugal that can access areas in which infrastructure is not yet established. Such pragmatic solutions like this in Ireland are necessary.

Without a coherent, compassionate and health lead plan involving all stakeholders, Ireland will fail to make any progress in tackling drug related harms to society and users. We acknowledge in our submission the different kinds of drug use, and how policy should approach them. We can tackle the alarmingly high rates of addiction in this country, it has been done elsewhere. We cannot do it without a plan. Our submission to this committee gives a number of overviews and analyses of Ireland, and the wider world, offers concrete solutions and raises issues that are not often covered by the mainstream eye. We hope that the committee considers what we have contributed with due care, and will continue to engage with stakeholders on the ground in Ireland, and across the world.

Thank you,

Ryan McHale.

II

Answers to questions posed by the committee

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1) In your opinion, is the Criminal Justice system appropriate for dealing with possession of small quantities of drugs for personal use?

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The criminal justice system is inappropriate for dealing with issues of drug use. In Ireland, the majority of drug related convictions disproportionately go towards those that are from disadvantaged areas, which see higher levels of policing, unemployment, family issues and addiction. This is a disproportionate impact of the criminal justice system, and much of the crime prevalent in these areas are simply symptomatic of more systemic issues. More policing in areas that have been hit particularly hard by addiction will not improve positive outcomes in terms of drug abuse, or reduce the harm of drugs.

Standard or 'recreational' use of drugs is commonplace and widespread in Ireland. The recent DUHEI report from 2021 showed that over half of third-level students have used some form of illegal drug, primarily cannabis. Drug use in Ireland, like all countries, is unlikely to come to an end. Policing and criminalising was an attempt at this end that neglected any evidence that drug use rates would decline. Since the misuse of drugs act, that allows Gardai to search and arrest on the basis of simple drug possession, drug use and the harms of black market products have increased so much that it appears to be out of control and generally more unsafe

than before. The illegal, criminalising market does not encourage those who need help to seek treatment and products circulating vary widely, often containing unwanted or dangerous additives. It should be recognised that many cases of personal drug use are non-problematic, and many will live their lives using drugs without adverse consequences. Future policy should be aware of this in order to remain steadfast in providing support and intervention for those who do in fact need it.

The rationale behind the intense prohibition of drugs, and subsequent criminalising of the user is that it will reduce the negative outcomes of drug use. This hasn't worked, in any country. Decriminalisation of drugs and better investment into support services achieves this. Steps taken in this direction would mean facing the issue head on and giving tools to those who specialise in treatment. Policy must understand that problematic drug consumption is a health issue, with the vast majority of those struggling with addiction dealing with a dual diagnosis. A drug policy that works is one that reduces the harms of drugs, not increases them.

The criminalisation of drugs has also left the market completely unregulated. In recent years, we are seeing adverse effects of such a policy, particularly with cannabis. We are seeing a rise in counterfeit products that do not contain cannabis, instead containing harmful, deadly chemicals that can kill and cause other adverse health effects which cannabis itself would not. These products are consumed unknowingly, users are not seeking contaminated products. Drugs.ie, the HSE's drug arm has been sounding the alarm on this issue since May 2021 on their website, recognising that the issue is still ongoing and developing. Even more recently, the European Union's drug monitoring agency looked at the rise of black-market cannabis being contaminated and recognised five countries in the EU

that are outliers on this front. Ireland is one of them. Since there are no regulatory checks as is seen in Canada, or other markets where cannabis is carefully regulated, deadly contaminants can be easily slipped in without warning or accountability on the black market.

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2) In your opinion, is the current system, which can result in a criminal record, counter-productive in terms of dissuading people from drug use and encouraging engagement in rehabilitative programmes?

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Definitely. We already know that arrests and convictions are not the solution to helping those with addiction, instead they need medical support. In our opinion, the fear of criminalisation does not help anybody that uses drugs. This fear alienates people who use drugs from accessing support services , engaging with the Gardaí, and further marginalises those who are already struggling. The idea that drug consumption needs to end and that all policy efforts work toward this goal through criminalisation shows further misunderstanding of drugs on behalf of Irish policy. If the goal of policy is to completely wipe out drug-consumption, then it will always be fighting an ideologically driven losing battle. Instead, our drug policy should work on reducing the harms of drugs.

We have seen the HSE's drugs.ie share harm reduction education targeted towards users of MDMA. Instead of dissuading those who choose to use MDMA with fear of criminalisation, adverse effects or death, they fully adopted a harm-reduction ethos. Their advice encouraged those who choose to engage with MDMA to go

slow, tell their friends about their use, to take a small amount and not to feel afraid to seek help in case of an adverse outcome. This educational model is already making its way across Ireland, but its impact is much reduced without adequate policy or supporting resources such as drug testing to back it up. In the United Kingdom, select festivals introduced 'drug-testing' tents that allowed festival-goers to have their drugs tested front-of-house and receive harm reduction information. One festival saw a 95% reduction in drug-related hospital admissions that year. It is clear that abstinence focused policy not only doesn't work, it puts people at substantially greater risk.

Harm reduction can be defined as: [attempting] to reduce the adverse consequences of drug use'. Harm reduction can not only influence and direct education, but it can also direct and influence policy. The Canadian Paediatric Society recommended that drug educators 'Provide messages that encourage delay in initiation of potentially risky behaviours, and at the same time, promote risk-reduction strategies if adolescents choose to engage or are already engaging in the behaviour'. In terms of our policy, criminalisation simply increases the harms of drugs - and does not reflect the harm reduction ethos driving jurisdictions with effective policy relating to drugs. Policy should focus on equipping all people with effective drug education, especially consumers of drugs and those who work in treatment and prevention. Overdose prevention education can not only be applied to physicians, but can be life-saving when given to those currently in addiction, and to their friends and families.

Fear of criminalisation will not encourage engagement with rehabilitation services. Our criminalisation model is failing those who struggle with addiction or consume drugs. Portugal had a widespread addiction problem for many years until they

implemented their current drug policy that not only decriminalised, but invested in 'Methadone clinics, clean needle handouts, programs to encourage small businesses to hire addicts in treatment, and a pan-ministerial network of support for those struggling to stay off drugs. The Portugal experiment simply changed the paradigm of problematic drug use by genuinely adopting a 'compassionate approach.'. There are many lessons to be learned here.

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3) In your opinion, do you think that a type of administrative sanction would be appropriate to a criminal sanction?

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We believe that the idea of sanctions when deciding policy around drug use is completely counterproductive. This model indicates a misunderstanding of how we should deal with the health issue that problematic drug use and addiction really is. This system will prove to have a disproportionate harmful impact on the most marginalised. We know that problematic drug use primarily affects young men from disadvantaged areas coming from troubled homes. Sanctioning these individuals by way of fine or caution will only breed more discontent and cost the poor even more whilst those in positions of privilege will reap the benefit of such a system. Essentially, this system of sanctions will only increase the harms of drugs and suppress levels of support.

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4) In your opinion, do you think that an administrative sanction would be more cost-effective to the Exchequer rather than a criminal sanction?

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Yes. Portugal saw an '18% reduction in social costs of drugs' following their model. These 'significant reductions' in costs were associated with the reduction in criminal proceedings and maintaining of prisoners relating to drug use. However, while administrative sanctions will certainly be more cost-effective to the state, they will not be effective in helping those in addiction, nor will it assist us in reducing rates of addiction and death. Ireland needs to come to terms with the fact that we have one of the highest drug-related mortality rates in Europe. Ranking 4th highest out of all EU nations in 2017. Administrative sanctions have no role to play in harm reduction. We need to focus on directing funds saved from the criminal justice system into safe consumption centres, more needle programmes, heroin assisted therapy, investment into adequate treatment centres and appropriate, evidence-based regulation of substances.

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5) Do you believe Ireland can learn from the approaches of other jurisdictions elsewhere which have removed small quantities of drugs for personal use from the criminal sanction sphere, if so what?

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Ireland has much to learn from other jurisdictions. It is easily noted that there have been a number of approaches, and Ireland should recognise all of them. Instead of simply copying a policy from one nation, we should extract different elements from each one - and recognise shared values across the board.

Portugal

Some key findings from Portugal following drug decriminalisation include: Drug related deaths consistently being below the EU average since 2001 and prisoners being sentenced for drug-related crimes dropping from 45% to 15%. As previously mentioned, decriminalisation was not the only factor in these successes. Portugal, alongside their 'decrim' model greatly expanded their treatment services. Portugal also distributes 1.3 million clean needles per year, which dramatically reduced rates of HIV. In 2019, Portugal launched their first mobile overdose preventential clinic.

However, certain experts have warned about stagnation on the drugs front in Portugal, stressing the need for continued pragmatism and investment. We need to ensure a future drug policy is flexible, adequately funded and can evolve to meet the changing needs of those it seeks to help. It also should be noted that Portugal's

mandatory admission toward treatment with threat of consequence should be regarded as heavy handed, and has resulted in up to 80% of admissions being dismissed for non-problematic use or non-addiction. This bulk of people entering services unnecessarily means those who need treatment may not be reached.

Malta

The Maltese model has mirrored Irish policy in many ways, with over 75% of drug arrests in 2017 being for personal possession, and only providing a limited number of needle outlets across the country. However, Malta has recently decided to legalise cannabis for adult use. In terms of relieving pressure from the criminal justice system in Malta, this will certainly have a positive impact - as cannabis is the most used drug in Malta. Their approach to liberalising cannabis laws differs greatly from a U.S. model and avoids commercialisation, focusing on personal growing and 'cannabis clubs'. Malta has also appointed a 'cannabis czar' to oversee the process and has been tasked with designing the licensing process and compliance rules for adult use. She has a background in addiction and harm reduction services, and believes the regulatory model will focus on 'risk reduction' to protect those who consume cannabis in Malta, a measure that could greatly protect Irish people from the alarming contaminated cannabis trend.

Money saved from the criminal justice proceedings in Malta could go toward further investment into a reliable and effective drug policy. Investment into addiction clinics and needle outlets, for example. From this model we can begin to see the first steps toward sensible drug policy that will reduce the rates of drug-related deaths in Malta that can be easily replicated in Ireland, seeing as we

take tens of thousands of cases for simple possession of cannabis through the courts every year.

Switzerland

The Swiss took a pragmatic approach to drug policy in the 80s and 90s after facing an intense heroin epidemic. The Swiss drug policy is led by four pillars of 'harm reduction, treatment, prevention and repression'. The secretary general of the Romand Group of Addiction Studies in Geneva has said that the goal was 'to not fight drugs anymore'. Among some controversy, the Swiss managed to introduce safe consumption rooms and heroin-assisted therapy, which has ultimately shown to be successful. The Swiss say that consumption rooms also keep drug use off the streets, which benefits the public and the user. The Swiss don't enforce mandatory drug-testing screenings with patients in treatment.

Switzerland has not decriminalised drugs. They operate under a sort of de facto 'decrim' model. With the introduction of the four pillars approach, law enforcement's view on tackling drugs was changed. The Swiss police are 'focusing less on the users and more on big time dealers'. The Swiss police also saw a massive reduction in crime, specifically theft. Theft rates were reduced by 98%.'We reduced theft by 98 percent. We never had a security figure like this'.

Recently, the Swiss announced a legal cannabis pilot programme including 400 citizens with the aims of monitoring the health of those who are consuming cannabis, and to give information on safe consumption to participants.

Canada - Vancouver

Vancouver is also taking a pragmatic approach to drug use in 2016 following increased rates of overdose. Vancouver is currently on the path to decriminalising drugs based around a voluntary referral system to services. Their policy also follows four pillars, being inspired by the effective Swiss model. The Vancouver authorities came to this conclusion after engagement with Vancouver Police Department, Vancouver Coastal Health, addictions doctors, and research scientists. They also engaged in conversations with people who use drugs and representatives of groups that face disproportionate discrimination and exclusion.

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6) In your opinion, do you think that a health-focussed approach to drug use is a better alternative?

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Of course. We consider that a health lead approach is the only suitable way forward. We know, from the scientific data and research from Ireland and around the world, that addiction is a health problem, not a criminal one. We know that homelessness also increases rates and risk of addiction. A criminal perspective on this is simply unacceptable, and out of line with all of the medical literature. We must also recognise the existence of dual diagnosis when it comes to drug abuse. We know that over half of all of those with substance abuse problems/ addiction are also dealing with one or more diagnoses.

Further, much drug use in society does not warrant health intervention. Services are aware of this, but policy must also reflect it. Policy should stray away from mandatory enrollment into drug treatment services for those who do not need it, instead focussing on those who are at risk. We mustn't overflow our health capacity for drugs with non-problematic cases, specifically cases of simple cannabis possession. These resources would be better utilised by targeting those with the most urgent needs.

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7) Do you think that anyone who refuses to engage in any proposed administrative system should then be referred to the Criminal Justice system?

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No. We should not threaten those who refuse to engage with any such system with criminal action. This again will be ignoring the central issue and using the criminal justice system as a strong-armed final solution. Instead, we should be looking to figure out why an individual may not want to receive help or engage with the system, and work out cohesive steps to offer them some sort of help. We should support, not punish.

This can range from offering full-on rehabilitative assistance, or providing resources to access clean and safe materials to assist with their health and avoid worst-case scenarios or adverse outcomes. A policy aiming to help those with health issues that have criminal sanctions as its back-up plan is not truly a health-led policy, and shows a clear lack of understanding and compassion. We must not fall back into old, dangerous habits and always look for another solution,

one that reduces harm. We see using the criminal justice system as simply giving up on those that need help, not offering them any hope or help.

As stressed above, many such personal possession cases simply will not need any support, and state resources should be able to recognise this and choose to allocate its resources in other areas.

III

Our Recommendations to the Committee

1. A consistent and detailed multi-year plan that outlines areas of funding, support and steps to reduce the alarmingly high rate of drug-related deaths in Ireland.

2. Decriminalise personal possession of all drugs in order to further support the user and reduce the number of drug related cases passing through the criminal justice system with the aim of increasing positive health outcomes for those who have substance abuse problems.

3. An appreciation and recognition of the existence of 'dual-diagnosis'. The majority of those who have problematic relationships with drugs are also suffering with another mental health condition.

4. Consider basing a drug policy around a series of 'pillars' similar to the Swiss and Canadians. Harm reduction should be central to policy.

5. Similar to the Vancouver model, introduce a voluntary referral system to health services across the board. Do not focus on sanctions, administrative or criminal for dealing with personal users of drugs.

6. Introduce heroin-assisted therapy and increase funding toward safe consumption rooms following analysis of the Swiss model.

7. Greatly increase the number of clean needles and other clean drug equipment outlets for addicts to reduce disease. Mobile outlets for therapy and equipment should also be considered.

8. Fund and encourage 'harm reduction' based drug education across the entire country, at all levels.

9. Introduce drug-testing services at music festivals and other cultural events that see high rates of drug use in order to see substantial reductions in the number of drug related hospitalisations as seen in the U.K.

10. Encourage relevant ministers to meet with stakeholders on the ground in Ireland working in areas of addiction and drug use, and meet with foreign partners that have adopted drug policies as mentioned in this paper.

11. Legalise cannabis for adult use in order to greatly increase the quality and safety of the current Irish supply, similar to the Maltease approach.

12. For plant based drugs, personal production should be legally tolerated in amounts consistent with personal use. The law should not be involved unless there are additional circumstances such as significant black market involvement.

13. The DPP should ensure that the public interest requirements are being adequately met when Gardai are sending drugs cases to the courts on behalf of the DPP.

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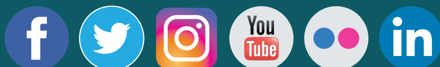

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