

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 RHR 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.

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