

CITYWIDE DRUGS CRISIS CAMPAIGN



**SUBMISSION TO THE WORKING GROUP ON ALTERNATIVE
APPROACHES TO POSSESSION OF DRUGS FOR PERSONAL USE**

6TH APRIL 2018

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 Committees of the National Drugs Strategy (NDS). The consultation process carried out during the development of our Strategic Plan in 2012 highlighted the growing concern in our communities about the negative impact of criminalisation on people who use drugs and their families and since then Citywide has been actively engaged in promoting informed debate on the issue through our community networks, local community meetings, political briefings and public and policy statements. In July 2015 Citywide presented on the issue of alternatives to criminalisation at a Think Tank organised by Minister Aodhán Ó Ríordáin and the Dept. of Health and in October 2015 Citywide made an oral presentation to the Oireachtas Justice Committee on alternative approaches to possession. In November 2016 Citywide hosted a conference at which international speakers provided updates on the most recent policy developments at an international level and in 2017, Citywide developed a section on its website dedicated to presenting the evidence base on decriminalisation.

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 do not believe any person should be deemed a criminal because he/she uses a drug. The new NDS reaffirms the commitment in the Programme for Government to a health-led rather than a justice approach to the drugs issue and this provides an appropriate policy framework for the removal of criminal sanctions for possession.

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. Evidence from 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

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.

It is important therefore at the start of the discussion to make a clear distinction between decriminalisation and legalisation, as the two are often confused and conflated. **Decriminalising** drugs 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 given a criminal conviction, although administrative or civil sanctions can apply.

This is clearly distinct from the concept of ‘**legalising**’ 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, while the individual’s possession of a drug for his/her own use is no longer treated as a criminal offence, the drugs trade remains illegal and subject to criminal law and no drug that is currently illegal is made legal.

Fundamentally, under a decriminalisation model, drug possession and use do not result in a criminal record or arrest as the matter is treated as a public health issue rather than a criminal justice one.

2) Negative effects of criminalisation in Irish drugs policy

Citywide’s position in support of decriminalisation is shaped by the experience of our network members on the ground in our communities and the growing realisation over 20 years of the inherent contradictions between the health objectives of our NDS and the continued policy of criminalising people who use drugs and, indeed, the resources that are wasted as a result of these incompatible policies.

- Citywide recently launched the Stop the Stigma campaign to increase public awareness of the impact of stigma on people who use drugs and this stigma has been strongly reinforced by society’s message that people who use drugs are involved in criminal behaviour. Families also share in this experience of stigma, and fear of criminalisation of a loved one can be a serious barrier to looking for help. Stigma and discrimination against people who use drugs is wrong and decriminalising their use of drugs is an important step in working to end it.
- In 2016 71% of convictions for drug offences in Ireland were 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, DPP and court resources. These resources would be better invested in treatment and health services; while we don’t have figures for Ireland, the UK’s National Treatment Agency (NTA) estimates that every £1 spent on drug treatment saves society £9.50 through crime reduction, economic and social reintegration and reduced health expenditure.
- Research carried out by Citywide in 2014 has highlighted the barriers to rehabilitation 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. A criminal conviction relating to drug use has a potential negative impact on them in many aspects of their lives, including employment, accessing training, future travel, getting a visa, and getting insurance. In addition, in recent times, an increasing number of employment positions and voluntary activities in Ireland require Garda vetting – many people who are no longer using drugs will not even consider applying

for positions that require Garda vetting as they believe most potential employers will not give them a chance if they see a drugs conviction on a vetting form.

- 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 recovery, rehabilitation and re-integration of people who use drugs user 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.
- This conflict of objectives is also evident in relation to youth work services. The aim of youth 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 in to that system. Criminalisation for drug use is particularly inappropriate and damaging for a young person whose key needs are for support and diversion.
- The absence of the voice of people who use drugs in our NDS to date has been a serious gap and increasing their involvement through local, national and regional fora is a key an objective of the NDS and has been strongly supported by Citywide. Criminalisation is a serious barrier to supporting and promoting the development of a strong voice for people who use drugs to inform the development of services and policies.

3) Evidence from 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 and we have worked in partnership with our colleagues in Release, International Drugs Policy Consortium (IDPC) and Transform. 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.

A country that decriminalises is no longer the odd one out but rather part of a growing evidence-based trend. There are between 25 and 30 countries now having some form of decriminalisation in place and the trend towards decriminalisation has not been centred on one continent or in richer or poorer nations. A number of countries in Europe and Latin America have taken the decision not to treat drug use as a criminal justice issue, while states in Australia and the United States of America have a long history of decriminalising cannabis for personal use. 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 major national and international bodies have found no link between the severity of punishment and the level of drug use in society.

- Release launched a report in 2012 looking at 21 jurisdictions that had decriminalised possession of all, or some, drugs and found **no increase** in prevalence of drug use.
- The World Health Organisation ('WHO') agreed: "there is **no clear link** between punitive enforcement and lower levels of drug use ... moves towards decriminalisation are **not** associated with increased use," while the United Nations Development Program ('UNDP') states: "longitudinal and comparative analyses suggest that there is **no clear link** between more punitive enforcement and lower levels of drug use .
- In its 2014 policy paper on Drugs: International Comparators, the UK Home Office found that, "Looking across different countries, there is **no apparent correlation** between the 'toughness' of a country's approach and the prevalence of adult drug use".

While no clear relationship can be shown between drug laws and prevalence rates, the evidence is clear that the consequences of drug use are made worse by addressing them through the criminal justice system rather than through the health system, and that decriminalisation helps reduce the health risks associated with drug use. The health and social risks of criminalisation are documented by, amongst others, the UN Special Rapporteur on Health in 2010 and the UK Home Office Drugs International Comparators 2014.

A range of studies also show improved health and social outcomes as a result of removing criminal penalties; the experience in Australia has been documented by the Drug Policy Monitoring Programme (DPMP) which found that decriminalisation reduces social costs to individuals, including improving employment prospects and in 2016 the Executive Director of the UNODC reported that "the provision of evidence-based treatment and care services to drug-using offenders, as an alternative to incarceration, has been shown to substantially increase recovery and reduce recidivism."

The experience of the Czech Republic is interesting in that it introduced a law to criminalise possession in 1998, while at the same time putting in place a study to measure the impact of this new stricter law. The study found that availability of drugs did not decline, adverse health events related to drug use increased and there was an added social cost to the Czech economy. On the basis of this evidence, the Czech Republic changed its laws again to reflect a less punitive approach.

Decriminalising drugs is increasingly recognised as a pragmatic policy response that effectively begins to manage drug use where punitive measures have failed. A growing number of UN bodies have voiced their support for decriminalising the possession and use of all drugs, with both the Joint UN Programme on HIV/AIDS (UNAIDS) and the WHO doing so in 2014.

- The United Nations Development Programme (UNDP) has stated that member states should *“address abuses that interfere with access to comprehensive harm reduction services, including laws criminalizing drug use and possession of small amounts of drugs for personal use and drug paraphernalia ... taking advantage of flexibilities available in the drug conventions on penalization of possession and use of controlled substances, including decriminalization of drug use and possession of small amounts of drugs for personal use”*.
- The UN General Secretary, Ban Ki-Moon, declared in 2015 that countries should *“consider alternatives to criminalization and incarceration of people who use drugs and focus criminal justice efforts on those involved in supply. We should increase the focus on public health, prevention, treatment and care, as well as on economic, social and cultural strategies”*.
- The head of the United Nations Office on Drugs and Crime (UNODC) has stated: *“we must ensure that drug users are treated with respect, not marginalized or discriminated against,”* and that *“drug users should be treated as patients and not criminals”*.
- UN Women has stated, *“member states should avoid ... criminalizing the most vulnerable in the chain of drug production and drug trafficking, including the possibility of decriminalizing drug use and low-level, non-violent drug offenses”*.

4) What Ireland can learn from the experience of Portugal

Portugal introduced decriminalisation in 2001, as a result of a growing consensus among law enforcement and health officials that the criminalisation and marginalisation of people who use drugs was making the Portuguese drug problem worse, and that under a new, more humane, legal framework it could be better managed. There is a significant body of evidence now available on the Portuguese experience of decriminalisation which can help to inform our discussions here in Ireland and it is very positive that the Working Group has had the opportunity to hear directly about the Portuguese experience. 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 requires the person to take part in an assessment process. This process enables a distinction to be made between first time drug use, repeat drug use and problematic drug use. This is important, 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. This leads to the best outcomes for the person who is using drugs 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 Dissuasion Committees are made up of a legal expert, a health professional and a social worker, supported by a team of psychologists, sociologists and social workers. The engagement of a range of professionals is intended to provide a comprehensive service for people who use drugs and to provide the opportunity to address any underlying issues. We need to be realistic in recognising that this level and range of services is not available 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, and we need to continue to support and build on this model. Recent years have seen serious challenges to locally based community drug services, with significant cuts in the budgets of existing services and a lack of development of new services, leading to serious gaps and limitations in availability and access. The need to invest in our community drug services should be a key element in our discussions on decriminalisation.
- A key feature of the Portuguese model is the pro-active approach to providing employment opportunities for people recovering from drug use, with incentives to employers to take on and support people in their transition. This is in marked contrast to the Irish experience, where increased expectations are being placed on people who use drugs to progress into employment without a pro-active approach to increasing the job opportunities that are available to them. People recovering from drug use are at a disadvantage in a competitive employment market and it is not enough to leave their chances to the market; the Portuguese experience demonstrates the value of a more pro-active intervention by the state.
- In Portugal one of the key difficulties that emerged for reintegration of people who use drugs into the community was lack of housing and this is very much mirrored by the current experience in Ireland. Lack of access to decent affordable housing is currently a major barrier to rehabilitation and reintegration. Again in Portugal the need for a specific intervention was recognised and access to transitional housing has been 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 major

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 if we are to have any chance of providing an effective context for decriminalisation.

- In Portugal there has been a strong national structure (formerly the Institute of Drugs and Drug Addiction, 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. This 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 through ensuring that the new national structures of the NDS are supported by government in carrying out their functions.
- It is important to note in looking both at Portugal and Ireland that decriminalisation does not operate in a vacuum from other broader social policies. Like Ireland, Portugal has experienced severe economic recession in recent years and there is a real risk in Portugal that significant reductions in health and welfare budgets will undermine many of the drug-related health and social improvements that have come about since decriminalisation.

5) Conclusions and recommendations

The new NDS reaffirms the commitment in the Programme for Government to a health-led rather than a justice approach to the drugs issue and this now provides an appropriate policy framework for the removal of criminal sanctions for possession. Decriminalisation in no way implies that drug use is not a serious issue, or one that should be ignored or allowed to proliferate in society. The role of our drug laws is to protect people from the potential harms that are associated with drug use; given that no direct link has been shown to exist between criminalisation and lowered levels of drug use, and that criminalisation in itself is shown to be harmful, the current criminalised status of drug possession is not a policy based on evidence. **The introduction of decriminalisation is, in Citywide's view, an essential element of implementing the government's commitment to a health-led approach, as it will provide a legal framework for our response to drug use to be implemented through a social and public health approach rather than through a criminal justice one.**

Those who are responsible for drugs policy in Portugal do not over claim for decriminalisation and do not present it as a solution to the drugs problem. However, it is viewed as a crucial element of an overall policy and Citywide concurs with this broader policy view. 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. 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 the evidence shows that this investment will provide overall value for money for wider society.**

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 a crucial element of the response to the serious drugs problem, there is no longer a political commitment to implementing this approach. **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 serious drugs problem.**

We have been working with our international partners on recommendations for the development of an effective model of decriminalisation in Ireland, looking at issues such as thresholds, sanctions and penalties, roles of respective agencies, referral pathways, monitoring, evaluation and resources. **Citywide is currently developing a more detailed paper on proposals for implementation of an appropriate decriminalisation model in the Irish context and will submit this to the Working Group on completion.**

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