



**IPRT Submission to the Committee on Justice, Defence and Equality on Ireland's approach
to the possession of limited quantities of certain drugs
August 2015**

Introduction

The Irish Penal Reform Trust (IPRT) is Ireland's leading non-governmental organisation campaigning for the rights of everyone in the penal system, with prison as a last resort. IPRT is committed to reducing imprisonment and the progressive reform of the penal system based on evidence-led policies. IPRT works to achieve its goals through research, raising awareness, and building alliances.

IPRT's vision includes ensuring that the principle of imprisonment as a last resort is at the centre of Government policy, as well as making clear the links between criminal justice policy and wider social policy. IPRT therefore welcomes the invitation from the Joint Committee on Justice, Defence and Equality for written submissions in relation to arguments in favour of and against altering the present approach to sanctions for possession of certain amounts of drugs for personal use.

Decriminalisation vs. Legalisation

We note that the Committee has specifically limited its considerations to the issue of *possession of limited quantities of certain drugs*; specifically, the decriminalisation (as opposed to legalisation) of possession of limited amounts of certain drugs and the use of civil/administrative rather than criminal sanctions to respond to the current offence of possession of controlled substances. We understand the proposed **decriminalisation** to be a reform of the law that would abolish criminal sanctions (including imprisonment) in respect of the act of possession of a controlled substance, but would continue to enforce a prohibitionist regime by shifting the responses and sanctions for possession to a civil or administrative context.

A criminal justice issue - or a social and health issue?

In respect of the offence of simple possession for personal use, Ireland's approach to date has been to rely on the criminal justice system to tackle what is, in fact, a public health issue. Using a criminal justice response to tackle a chronic relapsing condition such as drug 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. This approach carries significant financial costs, and is not based on strong evidence of effectiveness in reducing the numbers of repeat possession offences.

Criminal Law on Possession

Under the *Misuse of Drugs Acts* where an individual is found in possession of cannabis, imprisonment is an available penalty on a third or subsequent conviction (on summary conviction a prison sentence of no longer than 12 months is available and on conviction on indictment a prison sentence of not more than three years is available). Possession of a controlled drug other than cannabis may carry a sentence of no longer than 12 months of on summary conviction and a prison sentence of not more than seven years on indictment.

The Social Harm of Imprisonment

The strongest reason for a move away from the use of imprisonment as a response to repeated offences of possession is that short term imprisonment is an ineffective and counter-productive measure. In the words of the Scottish Prisons Commission, "*prison may sometimes do good, but it always does harm*". Prison represents a serious restriction on the rights of the prisoner, quite apart from the deprivation of liberty; it carries with it profound negative social impacts on the prisoner, on his or her family and on his or her community, and often the consequences of even a short period of imprisonment are permanent for both the prisoner and those close to him or her. Losing contact with family, employment and social or community services, even for a short period can have long-lasting negative effects. In short, imprisonment for less serious offences compounds the cycles of disadvantage – poverty, homelessness, addictions, mental health issues - which are often at root of offending in the first place¹.

IPRT strongly believes that a focus on addressing the causes of drug use would be more effective and more efficient than expending resources on criminalisation and imprisonment.

Impact on Prison System

In 2012, *Release* (national centre of expertise on drugs and drugs law, London) reported² on the impact of decriminalisation on the Portuguese criminal justice system, both in respect of recorded offences and prison overcrowding:

"On the criminal justice side, Portugal has reduced the number of criminal drug offences from approximately 14,000 per year to an average of 5,000 to 5,500 per year after decriminalisation. This has led to a significant reduction in the proportion of individuals in Portuguese prisons for drug-related offences – in 1999, 44 per cent of prisoners were incarcerated for drug-related offences; by 2008, that figure had reduced to 21 per cent. This resulted in a major reduction in prison overcrowding in Portuguese prisons."³

¹ Irish Penal Reform Trust (2012) *Shifting Focus: The Vicious Circle of Social Exclusion and Crime*, Dublin. Available at: <http://www.iprt.ie/contents/2276> [Accessed 7 Aug 2015]

² *A Quiet Revolution: Drugs Decriminalisation Practices Across the Globe*, Rosmarin & Eastwood, 2012 http://www.release.org.uk/sites/default/files/ereader/quiet_revolution/index.html#/30

³ *Ibid* at page 32

The Irish penal estate has grown significantly since the mid-1990s, including during times of falling crime rates, yet some prisons continue to hold numbers beyond their capacity and the problem of overcrowding remains a continuing concern.

The Irish Prison Service Annual Report 2014 provides figures which show that in 2014 there were 761 sentenced committals for “*controlled drugs offences*”⁴. While the report does not provide further data as to the nature of the offences within that category, it may be noted that 546 (70%) of these were serving sentences of less than 12 months; and 407 (53%) were for less than 3 months⁵. This suggests that the majority fell at the lower end of the scale in respect of seriousness, and the cohort is likely to include repeat possession offenders. Where offenders are committed to prison for repeat possession offences this adds to an already overcrowded prison system and can place increased pressure on stretched resources.

Ireland has one of the highest rates of committal to prison in the European Union, due to the overuse of short custodial sentences. While the daily prison population rate is 83 per 100,000, Ireland’s rate of committals (number of people committed to prison) is 375 per 100,000, while the rate of release is 379 per 100,000⁶. The *flow of entries and releases* from Irish prisons puts severe strain on the prison system in a number of discrete areas:

- **Admissions:** administrative and assessment (including medical) resources.
- **Accommodation:** 5 of Ireland’s 14 prisons regularly operate above recommended capacity.
- **Security:** transience in the prison population, caused by high rates of committal on short sentences, increases the risk of illegal drugs entering the system and creates an unstable environment in which it is more difficult to maintain good order.
- **Rehabilitation:** significant resources are expended on securing accommodation and linking prisoners due for release with community treatments, including methadone clinics.

Decriminalisation may also have the effect of reducing the number of drug users circulating within the prison system, thus potentially reducing the numbers of those exposed who may not have been using controlled substances before incarceration. The Connolly Report noted that:

*“A number of explanations were also advanced during interviews as to how illicit drugs entered the areas. Factors mentioned included {...} the influence of prison where people had developed addictions and/or met people who would subsequently introduce them to drug-dealing...”*⁷

⁴ This data is not disaggregated further into offence type

⁵ See Appendix V of the Report http://www.irishprisons.ie/images/pdf/ar2014_english.pdf

⁶ Aebi, M.F. & Delgrande, N. (2015). *SPACE I – Council of Europe Annual Penal Statistics: Prison populations. Survey 2013*. Strasbourg: Council of Europe.

⁷ Connolly, Johnny and Donovan, Anne Marie (2014) *Illicit Drug Markets in Ireland*, National Advisory Committee on Drugs and Alcohol, Dublin.

Diversion of drug possession offenders away from the criminal justice system into appropriate community-based treatments and alternatives would reduce some of the strains on the prison system, which would be able to instead divert resources into management of longer-term prisoners and those who have committed more serious offences.

IPRT believes that short-term and low risk offenders could be safely and efficiently removed from the criminal justice system, thus reducing some of the pressure on strained prison resources.

Drug-related Deaths

IPRT does not have the relevant expertise to propose drug treatment approaches. However, evidence suggests that community-based approaches are preferable to prison. An Irish research study found an increased risk of mortality among prisoners within days and weeks following their release from prison; many of these deaths were drug related. This was thought to be caused by the altered tolerance to drugs which an individual may develop while in prison⁸. Of 105 deaths examined, the vast majority (88.6%) were male, aged between 20 and 29, unemployed (83.8%), and living in unstable accommodation (20%) or homeless (9.5%).

Since 2012, the Inspector of Prisons has conducted investigations into deaths of prisoners which occur in prison and on temporary release; these reports are made public. IPRT notes the number of drug-related deaths of prisoners on temporary release documented in the Inspector of Prisons investigation reports. Of the six published reports on deaths that occurred on temporary release in 2014, four were due to suspected overdoses⁹. One of these deaths was of a 20-year-old female serving a sentence of 5 months¹⁰.

Financial Cost

Using the full force of the criminal justice apparatus is an expensive response to personal drug possession and potentially diverts resources away from the provision of services in the community, health and education that could go some way in preventing drug-related offending in the first place.

The average cost of one prison place in Ireland is approximately €69,000 per annum. This figure represents the actual cost of holding a prisoner for one year (excluding education spend) and does not include police time¹¹, criminal investigation, legal aid costs or court time. A recent study¹² by the National Advisory Committee on Drugs and Alcohol highlights that

⁸ Walsh, Simone and Lyons, Suzi (2010) Drug-related deaths among recently released prisoners. *Drugnet Ireland*, Issue 35, Autumn 2010. p. 25.

⁹ See Office of the Inspector of Prisons (2014/2015) *Report on the death of Prisoner A – 2014; Report on the death of Prisoner B – 2014; Report on the death of Prisoner G – 2014; Report on the death of Prisoner G – 2014*. Available at: <http://inspectorofprisons.gov.ie/en/IOP/Pages/WP14000001> [Accessed 7th August 2015]

¹⁰ See Office of the Inspector of Prisons (2014) *A report by the Inspector of Prisons Judge Michael Reilly into the circumstances surrounding the death of prisoner A on 15th January 2014 while on temporary release*.

¹¹ According to the National Drugs Strategy “The Gardaí advise that about 20% of drugs crime relates to supply offences and 80% to possession”

¹² Connolly, Johnny and Donovan, Anne Marie (2014) *Illicit Drug Markets in Ireland*, National Advisory Committee on Drugs and Alcohol, Dublin

possession offences take up a significant amount of court time, and calls for alternative approaches to handle possession cases. Views have also been expressed that decriminalisation may also free up Garda time to concentrate on investigating and prosecuting the crimes that cause the most harm, rather than targeting low level possession offences:

“An issue highlighted by the National Drug Strategy Steering Group, ... relates to the use of resources by the Garda Síochána, particularly in relation to the prioritisation of drug-related crime and, in particular, the time being allocated by the Garda Síochána to personal possession of cannabis offences. The view was expressed that this time might be more usefully spent on more serious offences, such as supply offences.”¹³

CityWide Drugs Crisis Campaign has also noted that by directing problematic drug users into treatment programmes rather than the criminal justice system, decriminalisation would reduce criminal costs and allow money to be redirected towards tackling organised crime.¹⁴

The Committee Report¹⁵ notes that the Portuguese approach resulted in a reduction in costs for the State. This was reportedly due to the reduction in costs associated with police time, criminal investigations, legal aid costs and court time¹⁶ as well as the reduction in the number of HIV/AIDS cases thereby reducing the cost on the health budget. The prison environment is a high-risk environment for the transmission of communicable diseases, namely HIV, Hepatitis C, and Tuberculosis (WHO, 2007) mainly due to structural conditions within prison systems such as over-crowding, lack of sanitation and limited access to healthcare services (WHO, 2009). Again highlighting the links between prisons, prisoners and communities, communicable diseases tend to spread more rapidly among groups that experience high levels of socioeconomic disadvantage, many of whom may subsequently enter the prison system (Northern Dimension Partnership in Public Health and Social Wellbeing (NDPHS), 2008). As a result, prisoners become more susceptible to communicable diseases because they have no control over their environment or the individuals they interact with (WHO, 2009).

The Commission on English Prisons Today has stressed the importance of what it calls ‘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 custody into community based initiatives which tackle the underlying causes of much crime*”. The Commission states very clearly that it understands this process as investing in ‘alternatives’ **outside** of the justice system, and not within it. This understanding reflects IPRT’s view of the need to develop effective interventions in Ireland, separate from the criminal justice system.

¹³ Ibid.

¹⁴ CityWide Drugs Crisis Campaign (2013) *Decriminalisation: a new direction for drugs policy?* Dublin.

¹⁵ Joint Committee on Justice, Defence and Equality, June 2015, page 4

¹⁶ According to the Courts Service Annual Report 2014, almost 18,000 drugs matters came into the District Court in 2014. See:

[http://www.courts.ie/Courts.ie/library3.nsf/%28WebFiles%29/76D5C7C737385EFF80257E91002F3D7A/\\$FILE/Courts%20Service%20Annual%20Report%202014.pdf](http://www.courts.ie/Courts.ie/library3.nsf/%28WebFiles%29/76D5C7C737385EFF80257E91002F3D7A/$FILE/Courts%20Service%20Annual%20Report%202014.pdf)

IPRT views the proposed introduction of the Portuguese model (if properly researched, resourced and operationalised) as one which potentially represents an innovative and cost-effective diversion of drug users out of the criminal justice system.

Breaking the Cycle

Crucially, the Portuguese approach ensures that no criminal record will result from contact with the *Commission on Dissuasion*, recognising the crucial point that having a criminal record for drug misuse may produce insurmountable obstacles to employment and other opportunities. Obstacles to education, employment or training are counterproductive to a person's recovery and rehabilitation. The purpose of this provision is to allow the person the opportunity to turn their life around, and acknowledge efforts to move on from the behaviour. The strong words of the Argentinian Supreme Court in the *Arriola* case illustrate the principle:

*'Criminalizing an individual [for drug use] is undeniably inhumane, subjecting the person to a criminal process that will stigmatize him for the rest of his life and subject him, in some cases, to prison time.'*¹⁷

In Ireland, CityWide have also found that:

*'Criminalisation does not act as a deterrent when someone decides to use drugs but it does cause significant harm to an individual's future prospects as the requirement to disclose previous convictions never lapses.'*¹⁸

Securing employment or training is crucial to breaking the cycle of drug use and offending. Along with enacting effective spent convictions legislation in Ireland, IPRT believes that this approach would remove a significant barrier to the successful reintegration of those found to be in possession of drugs.

Conclusion

- IPRT believes that a focus on addressing the root causes of personal drug misuse would be more effective and more efficient than expending resources on criminalisation and imprisonment.
- IPRT believes that low risk offenders, including those found in possession of drugs for personal use, could be safely and efficiently removed from the criminal justice system. This would reduce some of the pressure on prison space and resources.
- Moves to decriminalise certain drug-related offences must be met with investment in evidence-informed substance misuse services, treatment and interventions in the community.

¹⁷ The judgment is only available in Spanish however a summary of the findings is available at: <http://druglawreform.info/en/country-information/latin-america/argentina/item/235-the-arriola-ruling-of-the-supreme-court-of-argentina>

¹⁸ CityWide Drug Crisis Campaign (2013) *Decriminalisation: a new direction for drugs policy?* Dublin.

- Securing employment or training, and the ability to rebuild a life after committing an offence, is crucial to breaking the cycle of offending. Along with enacting effective spent convictions legislation, removing those found in possession of drugs for personal use from the criminal justice system could remove existing significant barrier to rehabilitation.
- IPRT views the introduction of this model (if properly researched, resourced and operationalised) as one which has strong potential to represent an innovative and cost-effective response to drug use. IPRT strongly recommends the diversion of drug users away from the criminal justice system and towards drug treatment and services.