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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.

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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 Current policy is outdated, and clearly does not recognise this fact.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 prevententian 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.