

Information note on legislative options and the role of the criminal justice system in responding to drug use

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This information note has been prepared by Cathal O'Regan, Secretary to the Citizens' Assembly on Drugs Use, to assist the Oireachtas Committee in considering the legislative framework and the role of the criminal justice system in responding to drug use. While the note has been informed by work previously undertaken during the Citizens' Assembly, it has not been approved by, or published in the name of, the members of the Citizens' Assembly.

1 Introduction

As the Citizens' Assembly got underway, it quickly became apparent that discussions about the criminal justice system and legislative frameworks might prove to be somewhat challenging. Not because these are particularly complicated issues. They are no more complicated than many other topics dealt with by the Citizens' Assembly. Nor because there are divergent and often passionately-held opinions about these issues, which there clearly are. The Citizens' Assembly is perfectly suited to dealing with contentious issues like this. Quite simply, the challenge was to find a way to avoid the conceptual confusion that tends to permeate debates on these issues.

In debates about legislation and the criminal justice system, terms like 'decriminalisation', 'depenalisation' and 'legalisation' are deployed in different and contradictory ways by commentators, policy and legal experts, and politicians. All too frequently, public and political debate about the criminal justice system and legislative frameworks in relation to drug use can be hindered and undermined by terminology.

Two people might declare that they support 'decriminalisation', yet they could very well mean two entirely different things that are, in fact, mutually incompatible. Or, another two people might share the very same policy objective, but use different terminology to describe it, one labelling their proposed approach as 'decriminalisation', while the other might describe it as 'depenalisation'. Similarly, another two people could share the very same policy objective, with one describing it as 'legalisation' and the other considering it to be 'decriminalisation'.

As the Citizens' Assembly discovered, there are multiple ways to use each of these terms, with no definitive or authoritative interpretation. This, needless to say, can lead to considerable confusion. The chances are that, ever before two people in a debate realise that they actually agree on their underlying policy objectives, they will become locked into a dispute triggered by different understandings of terminology.

In an effort to avoid these pitfalls, the Citizens' Assembly took time to carefully examine the different meanings and alternative interpretations of key terms. It also developed a typology of five distinct legislative options. This helped the Assembly to successfully navigate its way through these complexities, enabling it to make recommendations that provide an unambiguous indication of strategic direction, clarity about what it means by a 'comprehensive health-led approach', and a few residual questions that it has left to the Oireachtas to examine further.

All but one of the 36 recommendations were agreed by super-majorities, with 31 of the recommendations supported by over 90% of members, and another four supported by over 80% of members. That strong consensus is a good indication that the Citizens' Assembly managed to avoid the conceptual confusion that has permeated so many other debates on these issues. While one recommendation revealed greater divergence of opinion, even then the members were conceptually clear about what options they were voting for.

This note recaps on how the Citizens' Assembly approached the issues, and what it has recommended.

Section 2 explores some frequently-used terminology.

Section 3 focuses on recommendation 17, concerning how the State should deal with the possession of drugs for personal use in legislative terms. Section 3.1 explains what is meant by a comprehensive health-led approach, while Section 3.2 explains the four alternative legislative options that had been considered by the Citizens' Assembly.

Section 4 focuses on recommendations 11 to 14, which relate to policy and services for people with underlying drug problems who are engaged with the criminal justice system.

2 Terminology

Internationally, and in Ireland, terms such as *criminalisation*, *prohibition*, *depenalisation*, *diversion*, *decriminalisation*, *regulation* and *legalisation* are referenced extensively by academics, legislators, policy makers, stakeholders and media commentators. However, some of these popularly-used terms are so poorly defined and loosely used that they can serve to confuse the listener. Different terms are used interchangeably as if they meant the same thing, while in other cases, the same term can be used to mean entirely different things.

During the Citizens' Assembly, a drug policy expert from the EMCDDA helpfully suggested to the Assembly members that they focus less on trying to clarify and agree on definitions of terminology, and more on explaining in plain language what policy objectives they wish the State to pursue. Ultimately, this is the approach that was used by the Citizens' Assembly and it undoubtedly helped the Assembly navigate successfully through the issues and come up with clear recommendations.

Nevertheless, the following definitions, drawing on sources including the EMCDDA (2023), may, to a limited extent, be helpful in describing the meaning of frequently-used terminology. Perhaps more importantly though, as the EMCDDA makes clear, it is important to recognise that there are limitations to the usefulness of these terms.

2.1 Prohibition

Prohibition refers to forbidding something by law. In Ireland, the possession, sale and supply of controlled drugs is deemed illegal and is prohibited by law. Possession is prohibited under Section 3 of the 1977 Misuse of Drugs Act, while sale and supply is prohibited under Section 15. Similarly in Portugal, possession of drugs for personal use is prohibited by law, which is an important starting point in that country's comprehensive health-led approach.

2.2 Criminalisation

Criminalisation refers to the act of determining in law that the commission of a specified illegal act constitutes a criminal offence.

2.3 Health-led responses

Health-led responses are those which focus in the first instance on actions or interventions that address drug use and associated health and social harms, such as deaths, the spread of infectious diseases, dependency, mental health disorders and social exclusion.

Health-led responses depend on State authorities, including the police, social services and health authorities, having the legal powers necessary to implement diversion, so that a person found in possession of drugs for personal use, whether that be problematic or non-

problematic drug use, will be referred to the relevant health authority, dissuasion committee etc. in the first instance.

Health-led responses seek to strike an optimal balance between important policy objectives, including diversion measures away from prosecution towards health interventions, dissuasion measures, depenalisation measures and decriminalisation measures. The optimum legal framework to strike this balance will vary from jurisdiction to jurisdiction, depending on the provisions of their legal system.

2.4 Depenalisation

Depenalisation generally refers to the policy of closing a criminal case without imposing punishment, for example because the case is considered 'minor' or if prosecution is not in the public interest.

Jurisdictions that have depenalisation models include Austria, Germany and Poland. Another well-known depenalisation model is found in the Netherlands ("coffee shop model"), whereby selling and possessing scheduled drugs remains illegal and punishable under law, but the State does not prosecute possession of cannabis for personal use, and tolerates the sale of cannabis in 'coffeeshops' provided vendors adhere to detailed guidelines.

It should be noted that some commentators, including in Ireland, use a broader definition of depenalisation to refer to any measures that reduce the likelihood of prosecution, conviction and custodial sentences. Rather confusingly, others will describe this as 'de-facto decriminalisation'.

2.5 Diversion

Diversion refers to any mechanism that moves an offender away from the path of punishment by the criminal justice system and towards a health-oriented response such as counselling, treatment or social reintegration.

The system in Portugal, whereby people found using drugs or in possession of a small quantity of drugs for personal use may be diverted away from punishment towards a health-oriented response, is often referred to as "decriminalisation" but, as the Portuguese authorities themselves have been at pains to point out to the Citizens' Assembly, their model is set up primarily to support "diversion" and "dissuasion". In fact, the authorities also have the option, frequently used, of closing the case ("depenalisation"). It is an illustration that there is not only one option but there may be combinations.

The underlying policy objectives can be summed up in phrases such as 'help, not harm', or 'treatment, not punishment'. The Portuguese authorities describe their approach as a 'carrot and stick' approach. The criminal justice system has an important role within this approach, but it is secondary to the health and dissuasion measures operated by the Dissuasion Committees.

Austria also has a comprehensive health diversion model, in which the police, school authorities and others are obligated to refer people found in possession of drugs for personal use to the health authorities. While similar in effect to Portugal, it is implemented using different legal mechanisms.

2.6 Legalisation

Legalisation refers to the process of moving from prohibition to regulation, rendering lawful an act that was previously prohibited. With legalisation, regulations can be introduced to limit the extent of permissions involved, as is seen with restrictions for alcohol and tobacco, where regulations govern who can sell, purchase and use these products.

Within a legalised and regulated regime for drugs, it would remain illegal for non-regulated bodies to sell drugs. There are different ways to regulate the sale of currently controlled drugs, ranging from state monopolies to free market approaches. Penalties for breaching these regulations may be criminal or non-criminal.

The term 'legalisation' is often used in the context of removing penalties for some forms of drug production, supply and sale. Examples of this kind of approach can be found in Uruguay, Canada and over 20 US states. In addition, this could include the system established to permit home-grown and private use of cannabis in Malta and in the Australian Capital Territory.

Logically, of course, legalisation and regulation of supply comes hand in hand with legalisation of possession.

P.S: Since the conclusion of the Citizens' Assembly, Germany has introduced provisions to legalise cannabis possession and regulate supply.

2.7 Decriminalisation (de-jure and de-facto)

Decriminalisation refers to the removal, either in law ("de-jure" decriminalisation), or in practice ("de-facto" decriminalisation) of criminal status from a certain behaviour or action.

With decriminalisation, the likelihood of an offender receiving a criminal record and custodial sentence can be very significantly reduced (usually with 'de-facto' decriminalisation), or entirely eliminated (usually with 'de-jure' decriminalisation).

In many EU jurisdictions, decriminalisation in the context of drug laws does *not* mean that the behaviour becomes legal, nor does it mean the elimination of sanctions or penalties for the commission of an offence.

In the context of drug legislation, decriminalisation typically stands in contrast to legalisation. While legalisation is generally agreed to represent the introduction of a more liberal regime for drug use, decriminalisation is considered to be a continuation of a policy of prohibition, but one that is rooted in a more compassionate, health-focused strategy that seeks to significantly reduce (or perhaps eliminate) the prospect of prosecution, criminal conviction and custodial sentences, and significantly increase the likelihood that appropriate interventions, including health-led interventions, will be provided.

Under decriminalisation, provided that the country's legal system allows for the establishment for non-criminal offences and sanctions, sanctions and penalties can still be applied. For example, drugs can be confiscated and non-criminal penalties such as fines may still be applied. Such non-criminal penalties are not necessarily insignificant; in Spain, a first drug use offence may result in a (non-criminal) fine of €600. In Croatia, while the possession of drugs for personal use is classified as a non-criminal misdemeanour, it punishable by fines ranging from €650 to €2,600, or by imprisonment ('administrative detention') of up to 90 days. In Portugal, a robust range of penalties can be applied to people found in possession of drugs for personal use: they will be diverted to health or

social services, may have a fine imposed, be required to do community service, or have curfews or travel restrictions imposed, including having their passport confiscated.

Two ways to legislate for decriminalisation

Broadly-speaking, there are two different ways to legislate for decriminalisation.

De-jure decriminalisation means decriminalisation that abolishes the criminal offence in law. This approach clearly removes the possibility of criminal convictions and records, and custodial sentences. As described above, in the context of drug laws, the removal of the criminal offence through de-jure decriminalisation is typically accompanied by the introduction of alternative types of offence.

Portugal, which decriminalised the possession of drugs for personal use, abolished the criminal offence, but counterbalanced this with the introduction of an administrative offence. This ensures there is a clear legal basis for Portugal's comprehensive health-led approach, with both the police and health authorities retaining the legal authority to implement diversion and dissuasion measures.

The Citizens' Assembly heard that there is considerable uncertainty about whether, if Ireland were to decriminalise on a de-jure basis, our legal system could establish an effective legal basis, via the creation of an administrative or regulatory offence, that would allow the gardai and health authorities the legal powers to promote diversion and dissuasion, both of which are essential policy objectives under the comprehensive health-led approach.

The Citizens' Assembly heard from several legal experts on these issues.

Prof. Yvonne Daly of DCU explained that while Ireland has alternatives to criminal law, such as designating certain acts as regulatory offences or administrative offences, these approaches are currently used more frequently in areas like Commercial Law and Environmental Law, rather than in relation to acts by individuals.

Barrister and senior lecturer at Galway University, Prof. Tom O'Malley explained that, in contrast to Portugal's civil law system, Ireland's common law system does not provide the same basis for replacing a criminal offence with an 'administrative offence'. While there is a degree of overlap nowadays between civil and criminal matters, for example with regulatory penalties in respect of certain commercial activities, Ireland's legal framework doesn't provide for the imposition of civil sanctions for minor offences. Therefore, something is either in the criminal justice system or it is not. If something is deemed criminal it is dealt with by the criminal process (including the police, DPP, courts and prisons), but if it's not a criminal matter there can be no involvement by the criminal justice system.

In Ireland, unlike in other EU jurisdictions, the phrase 'decriminalisation' is often used synonymously with 'legalisation'. This can be understood in terms of our history over recent decades, where a number of pieces of legislation have been introduced which decriminalise acts that were previously criminalised.

The Criminal Law (Sexual Offences) Act 1993, which was passed by the Houses of the Oireachtas on 24 June 1993, decriminalised consensual same-sex sexual activity between adult males. This effectively rendered legal what had previously been illegal.

Similarly, the Blasphemy (Abolition of Offences and Related Matters) Act 2019 provided for the abolition of the offences of blasphemy and blasphemous libel, again rendering legal what had previously been illegal.

In that sense, legal experts and legislators in Ireland will generally understand the concept of 'decriminalisation' to refer to a legislative action that results in an offence being abolished, and becoming legal.

In summary, abolishing a criminal offence in law *without* then re-designating it as an offence of some other kind is, the Citizens' Assembly heard, tantamount to legalisation. Based on the information made available to the Citizens' Assembly, full-blown *de-jure* decriminalisation, which could be achieved by simply repealing Section 3 of the Misuse of Drugs Act 1977, thereby abolishing the criminal offence, would effectively render the possession of drugs for personal use legal, *unless* effectively counterbalanced by the introduction of another class of non-criminal offence that would confer a legal basis for gardai and health authorities to implement the kind of comprehensive health-led approach recommended by the Citizens' Assembly.

De-facto decriminalisation means that while the law has not explicitly or fully decriminalised the act of possession, existing legislation can be amended, and new laws introduced, to significantly change the policies and practices followed by police, prosecutors and courts, to the extent that decriminalisation exists *in effect*, or to all intents and purposes.

Austria's legal approach is an example of de-facto decriminalisation. It includes a combination of depenalisation and formal diversion protocols, sentencing guidelines and legal mechanisms providing the police, health and education authorities with the necessary legal basis to implement a comprehensive health-led approach that very significantly reduces the likelihood of prosecution, conviction and custodial sentences. The philosophy underpinning this approach can be described as 'therapy, not punishment', or 'help, not harm'.

If Ireland's legal system does not provide sufficient scope to legislate on a de-jure basis for a form of decriminalisation that also supports diversion and dissuasion, then it may well be that a de-facto form of decriminalisation is eminently possible. This would likely require the amendment of existing legislation, including the provisions of Section 3 of the Misuse of Drugs Act 1977, as well as the possibility of requiring new primary and secondary legislation.

Perhaps a useful reference point for the Committee in considering what could be achieved in terms of de-jure decriminalisation in an Irish context can be seen in the regime for dealing with Road Traffic Offences. While such offences are still dealt with under criminal law, there is a sophisticated system, including the use of mandatory Fixed Charge Notices and penalty points, that ensures people committing minor offences have ample opportunity to avoid prosecution, up to a certain threshold. It offers a clear example of how thresholds for either the frequency or gravity of offence can underpin a strategy that is 'carrot and stick' in nature.

3 Citizens' Assembly recommendation in relation to the possession of drugs for personal use

The question of how the State should deal with possession of drugs for personal use proved to be the most multi-dimensional question considered by the Citizens' Assembly. To navigate the potential complexities of this issue, the Secretariat designed a typology with five legislative alternatives, each of which had distinctive policy objectives. Each option was accompanied by an explanatory narrative which summarised the essential features of the approach. The five options that appeared on the final ballot paper were:

- A: The 'Status Quo', or current legal framework
- B: Health Diversion
- C: Comprehensive health-led response
- D: Tolerance of possession of drugs for personal use
- E: Legalisation and regulation of drugs

Members voted for Option C in respect of all drugs, and this subsequently became recommendation 17 in the final report.

Option C: A comprehensive health-led approach

Recommendation 17 calls on the State to introduce a comprehensive health-led response to possession of drugs for personal use. Under this approach, the State would respond to drug use and misuse primarily as a public health issue rather than as a criminal justice issue. While possession of controlled drugs would remain illegal, people found in possession of illicit drugs for personal use would be afforded, first and foremost, extensive opportunities to engage voluntarily with health-led services.

Depending on how the legislation was designed, this approach would minimise, or potentially completely remove the possibility of criminal conviction and prison sentences for simple possession. A member of An Garda Síochána, on finding someone in possession of illicit drugs for personal use, would refer that person directly to a SAOR Brief Intervention, designed to assess, inform, dissuade and prevent people from developing problematic drug use, and where appropriate, offer a person an onward referral to addiction services. This mirrors the practice in both Austria and Portugal, which both combine health diversion, decriminalisation and dissuasive sanctions, which the Assembly has heard about in some detail.

There are several open questions about how Ireland might best legislate for this model, but it is clear that this approach seeks to combine the objectives of health diversion, dissuasion and decriminalisation. Changes are likely to be required to the Misuse of Drugs Act 1977, in conjunction with the enhanced use of existing legislative provisions, such as those contained within the Probation of Offenders Act 1907. New legislation may also be required. Given the important legal and constitutional issues to be considered, the Citizens' Assembly views it as the responsibility of the Oireachtas, informed by legal advice and detailed pre-legislative scrutiny, to determine the most appropriate legal mechanisms to achieve this goal.

The Assembly has identified a number of key questions that the Oireachtas should consider in balancing the objectives of health diversion, decriminalisation and dissuasive sanctions, including:

- Does the Irish legal system allow for the criminal offence of possession of drugs for personal use to be reclassified as an 'administrative' offence? The answer to this question has an important bearing on whether 'decriminalisation' can be done on a de-jure or de-facto basis.
- Should the sanction of prison sentences for simple possession offences be removed entirely from the statute book?
- What limits, if any, should there be on the number of times a person found in possession of drugs for personal use can be diverted to health interventions? Should no limit be set, or should a threshold be specified, beyond which a person would be referred back to the Courts for potential dissuasive sanctions (e.g. a fine)?
- What dissuasive sanctions, if any, should be available for repeat offenders, and which body should apply those sanctions?
- Should the Courts continue to have the role of applying sanctions such as fines, Community Service Orders, the Probation Act, referrals to Restorative Justice programmes, etc. Alternatively, can, and should, another entity be authorised to impose administrative sanctions?

3.1 Alternative options to deal with the possession of drugs for personal use

To fully comprehend the rationale and policy objectives behind the Citizens' Assembly recommendation for Option C: a comprehensive health-led approach, it is instructive to also look at the four other options that the Assembly did not support.

Option A: Status Quo

This proposition was for the retention of the current legislative approach to possession of drugs for personal use, including offences specified under S3 of the 1977 Misuse of Drugs Act, and sentencing as specified under S28 of the Act.

Members supporting the 'status quo' approach are likely to be of the view that the current legislative approach to possession of drugs for personal use is essentially the correct one and should not be significantly altered. This means that the offence of possession of drugs for personal use, as legislated for under Section 3 of the 1977 Misuse of Drugs Act, and the sentences provided for under Section 28 of the Act, should be retained. Under this approach, possession of drugs remains illegal, and the Section 3 offence of possession for personal use can ultimately result in a criminal conviction and prison sentence, as specified in Section 28 of the Act.

There are, however, provisions that allow for leniency in the treatment of first-time offenders caught in possession of cannabis for personal use.

Under the status quo, there is no legal basis for direct referrals by Gardaí to health-led services. Consequently, all S3 offences are dealt with by the criminal justice system.

The current approach, which gives Gardaí the legal basis to issue an Adult Caution for first-time offenders caught in possession of cannabis for personal use, has scope to be expanded. Also, the current legal framework gives judges the basis to allow people an opportunity to avoid a criminal conviction and prison sentence, for example, through schemes such as the Cork Courts Referral Programme, and/or through the imposition of fines.

Option B: Limited Health Diversion

This option would have called on the Government to introduce the planned Health Diversion legislation as an urgent legislative priority.

Members favouring the 'Limited Health Diversion' approach to people found in possession of drugs for personal use (S3 offences) are likely to be of the view that the Government's 'Health Diversion' model, which the Assembly heard is planned but not yet implemented, is the correct approach.

The Health Diversion model as currently planned would mean that the offence of possession of drugs for personal use, as legislated for under Section 3 of the 1977 Misuse of Drugs Act, and the sentences provided for under Section 28 of the Act, would be retained. Under this approach, possession of drugs remains illegal, and the Section 3 offence of possession for personal use can ultimately result in a criminal conviction and prison sentence, as specified in Section 28 of the Act.

The Health Diversion model, however, provides for leniency/depenalisation in the treatment of first-time offenders found in possession of any controlled drug for personal use. Under Health Diversion, Gardaí would have the power to divert first-time offenders to a health intervention known as the SAOR Brief Intervention model. First-time offenders, therefore, would avoid an appearance in court, with the prospect of a criminal conviction, fine and possible prison sentence.

Option D: Tolerance of possession of drugs for personal use

This option would have called on the State to take a more tolerant approach to people found in possession of drugs for personal use.

Under this approach, while possession of controlled drugs would continue to remain illegal, people found in possession of drugs for personal use would be treated with tolerance, combining decriminalisation and depenalisation. People found in possession of drugs should simply have those drugs confiscated, with no further consequences or charges to follow, and no required referral to health or other support services. (Drug Treatment services would, of course, be available for people with problematic drugs use should they wish to access them).

While legislative change would be required to support this form of decriminalisation and depenalisation, it would be a matter for the Oireachtas, informed by legal advice and detailed pre-legislative scrutiny, to determine the most appropriate legal mechanisms to achieve this, on either a de-facto or de-jure basis.

Option E: Legalisation and regulation of drugs

This proposition would have recommended to the State that drugs should be legalised and made available to adults on a regulated basis. This option would see the State adopt an entirely new approach, whereby drugs (some or all) would be legalised and subject to regulation. This would represent a significant departure from other legal approaches that

have been considered, and would have implications for the production, sale and distribution of drugs, as well as for possession of drugs.

If Ireland were to legalise and regulate the sale and supply of drugs, it seems logically inevitable that it would also necessitate the decriminalisation of possession of drugs for personal use, within agreed regulations (e.g. possession in schools or prisons might still be prohibited).

Under legalisation with regulation, people who use drugs would benefit by a) being able to possess (and consume) drugs without fear of arrest or prosecution, and without the stigma that they currently experience; b) not having to purchase drugs from the black market controlled by Organised Crime groups; c) knowing the source and quality of drugs, reducing the risk of poisoning from contaminated products. In addition, a decision to legalise drugs could have beneficial implications for efforts to reform legislation in relation to Spent Convictions.

Under this approach, the Exchequer would also benefit from a new revenue stream from taxation of drugs sales, hypothecating these revenues for investment in education and prevention for the wider population, and treatment and recovery services for people with problematic drugs use. Some proponents of legalisation make the further point that Ireland has the potential to develop a vibrant cannabis industry, with significant export potential and economic dividends including job creation.

A decision to legalise drugs would require significant redrafting of the legislative framework and regulatory system.

Given the important legal and constitutional issues to be considered, the Citizens' Assembly views it as the responsibility of the Oireachtas, informed by legal advice and detailed pre-legislative scrutiny, to determine the most appropriate legal mechanisms to achieve this goal.

Another important question, which would have been explored in Stage 4 voting, had this model been voted for, is what supply models the members of the Assembly favoured.

4 Responding to people with problematic drug use within the criminal justice system

Recommendations **11** to **14** focus on how policy and services can better support people engaged with the criminal justice system who have underlying drug problems. These recommendations take as a starting point the fact that a considerable number of people with problematic drug use will end up in front of the criminal justice system, for a range of offences other than simple possession.

In strategic terms, the recommendations effectively amount to a comprehensive health-led approach for people with problematic drug use who find themselves engaged with the criminal justice system. Implementation of recommendations 11-14 would, in effect, result in limited de-facto decriminalisation of offenders with underlying addictions.

The recommendations highlight several examples of what is already possible, within current legal provisions in Ireland, to increase the extent to which people can be diverted towards health-led interventions, and away from prosecution, conviction and custodial sentences.

Recommendation 11 calls on the State to formalise, adopt and resource alternative, health-led options for people with a drug addiction within the criminal justice system.

Appropriate alternatives to criminal convictions and custodial sentences, in which treatment, therapeutic and rehabilitative supports are provided, can contribute to more effective outcomes for the individual with problematic drug use, and their family, while reducing the burden on the prison system.

There are presently over 4,700 people in the prison population, over 70% of whom have some form of drug addiction. The waiting lists for addiction treatment within the prison system are lengthy, meaning that people serving sentences of less than 12 months have little or no prospect of receiving the treatment they need while in prison. Added to that, a criminal record and prison sentence can compound and exacerbate the challenges facing someone as they try to recover from addiction and rehabilitate themselves back into society.

Under existing legislative provisions, the Courts can effectively divert offenders away from criminal convictions and custodial sentences into treatment-focused services. Examples include the Cork Courts Referral programme, the Dublin Drug Treatment Court and various restorative justice programmes.

Similarly, under existing legislative provisions, prisons can facilitate the early release of prisoners into the care of community-based organisations offering therapeutic, education, training, housing and other supports that facilitate sustainable recovery. One example of good practice that the Citizens' Assembly heard about was the Cork Alliance programme.

While the Courts clearly have significant discretionary powers under current legislation to divert offenders away from convictions and custodial sentences, the use of these options is limited and sporadic across the country, rather than mainstream and systematised.

Recommendation 11 calls for the formal adoption and resourcing of alternative, health-led options for people with a drug addiction within the criminal justice system. This would require key stakeholders including the departments of Justice and Health, HSE, Courts Service, Prison Service, Probation Service, Parole Board and Judicial Council to develop agreed guidelines and protocols to provide health-led options for people with drug addiction within the criminal justice system. The objective should be to provide meaningful alternative pathways, where appropriate, to divert people away from criminal convictions and custodial sentences and into non-custodial treatment, recovery and rehabilitation services. The mainstreaming of effective models, such as the Drug Treatment Court and Court Referral programme, should be prioritised.

Recommendation 12 follows on with a specific call on Government to provide adequate additional funding for community-based and residential treatment and recovery services as an alternative to custodial sentences for people with problematic drugs use.

The Citizens' Assembly heard several examples of the cost-effectiveness of running community-based services, including youth work and youth diversion schemes, drug treatment services, restorative justice schemes, compared to the annual cost of a prison place. It will require concerted efforts by the departments of Justice and Health to redirect funding allocations to community based services, via channels such as the HSE and Probation Services.

Recommendation 13 focuses on the needs of people within the prison population who have underlying drug problems, and calls on the Department of Justice and the Irish Prison Service to develop and fund enhanced prison-based addiction treatment services. It calls on the department and Prison Service to publish a detailed action plan with ambitious targets to guarantee timely access to drug treatment services for those entering the prison system with drug addiction issues, including people who have received sentences of 12 months or less. The action plan should set out clear pathways to ensure continuity of care following release from prison.

Recommendation 14 calls on the government to develop and expand the use of alternative pathways for young people engaged in low-level sale and distribution of drugs. The Assembly recommended that the judiciary adopts the widespread use of restorative justice and diversion initiatives in these cases, with enhanced investment in community-based youth work and community development projects and initiatives.

The Assembly heard about effective evidence-based alternatives to coercive sanction for young people engaged in low-level sale and distribution of drugs, including Restorative Justice programmes and youth diversion schemes. The Assembly recommended that these type of initiatives should be developed and expanded, with enhanced investment in community-based youth work and community development projects and initiatives.