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**COVER PAGE**



# The Panic Room: Examining the Construction of Drug Panics as a Form of Control.

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**TITLE PAGE**

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## **ABSTRACT**

Post-1970, there has been a significant move in the number of people imprisoned for illicit drug offences. Through the creation of offences as well as an increase in legislative activity, the sanctions available for a person to receive for an illicit drug offence has increased in severity, resulting in a more punitive system. The effects of this increase in severity is seen in the US as the current mass incarceration crisis takes a stronghold in the criminal justice system. The Republic of Ireland (Ireland) has also witnessed an increase in the number of people imprisoned in this offence category. In 2022, when this discussion takes place, there are currently 1.22 million people incarcerated in the US. While there has been an apparent decrease in the number of people incarcerated in the US (Beckett, et al., 2018), this amount of the population is quite staggering.

Through examining the legislative framework in both Ireland and the US along with data which shows the results of this legislative activity, this thesis argues that this increase in law has resulted in an increase in the number of people imprisoned for these offences as well as an increase in the severity of the response. This increase in law is attributed to the creation of certain events or acts becoming classified as ‘crime’. The increase in legislative activity in tandem with further creation of offences is explored as a method of control over the general population, an area explored by various authors (Foucault, 1975; Hillyard & Tombs, 2007; Carrier, 2008). Through constructing a ‘drug panic’, a division is created between the law-abiding citizens and those who engage in drug use or supplying these illicit drugs. This thesis finds that increases in penalty and severity show a harsh response from the criminal justice system to illicit drug offences in both countries which has only grown over time. This thesis concludes on the basis that while an analysis has taken place concerning the data made available by agencies in Ireland and the US, a detailed analysis was not possible as there was a sufficient lack in the available data. Concluding on this data availability, a transparency concern is discussed. If the government and associated agencies do not provide data, research cannot take place. While it is not understood why it may be unavailable, this adds fuel to the climate of control. If an exact understanding of the way in which these governments use law to enforce stricter prison systems while not allowing the general population to understand how these prisons work, the authority of those in power may be questioned, making it harder to exercise control over those not in power.



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## CHAPTER ONE - INTRODUCTION

“Who controls the past controls the future. Who controls the present controls the past” –  
George Orwell, 1984.

There has been an unprecedented amount of legislative activity in the area of illicit drug offences since the late 1970's (Garland, 2011). This rise in activity has resulted in a wider number of charges, prosecutions and sentences for these offences. In both the Republic of Ireland (Ireland/Irish) and the United States (US), this increase in activity has been charted widely. Sentencing is portrayed as the best approach from those in power to stop the apparent spread of this 'crime' (Jenkins, 1994; Garland, 2001; Lacey, 2007). This increase in offences as well as penalties for these has been well established but the question of why this increase has happened, should be considered.

By creating a panic among the public concerning illicit drugs, those in power can continue to control the general population by threatening punishment should anyone break certain rules. This then makes an enemy of the people who engage in illicit drug use, making the law-abiding citizen view them as people who need to be disciplined. Through this threat, the power and authority of a government is ensured as their legitimacy will not be questioned.

Certain groups of academics (Quinney, 2001; Carrier, 2008; Hillyard & Tombs, 2007) view crime as a construction which the author of this thesis agrees with. Telling the general public that an act or an event is a punishable offence creates a fear or disapproval of certain behaviour ensuring the control or the weakening of any opposition to the powers that be.

This thesis begins by discussing the construction of crime, moving from an activity or an act, to a punishable offence. This is followed by a discussion of law from both an Irish and US perspective which shows that while legislation in the area of illicit drug offences has increased, so have the penalties, becoming harsher over the years examined. The results of these laws are then examined in the next chapter which examines data from various stages of the criminal justice system in each country. This examination shows that through increased legislation, more people have been charged, prosecuted and imprisoned for illicit drug offences in each country, seeing a particular increase in the number of those imprisoned in each country. The central argument of this thesis is that this increased legislation has resulted in an increasingly punitive approach to illicit drug offences in both countries and by creating a drug panic through this legislation, those in power ensure control over the general population.

## RESEARCH CONTEXT

In 2020, there was an estimated 1,155,610 arrests made for illicit drug offences in the US (drugpolicyfacts.org, 2020). In Ireland in 2020, 22,166 drug offence incidents were recorded by the Central Statistics Office, with An Garda Síochána recording up to €36.7 million in seizures of illicit drugs. It can be seen from relevant data that both countries have seen an increase in the number of recorded illicit drug offences, along with an increase in the number of people imprisoned for illicit drug offences. Examining the figures from the Central Statistics Office (the CSO), it would suggest that the growth in the number of incidents under Misuse of Drugs Acts, it appears that a harsher approach to illicit drug crime may be necessary in Ireland. In 2021, 20,140 incidents were recorded by the CSO under the Misuse of Drugs Acts.

### **The Extent of Illicit Drug-Related Crime in Ireland:**

A sensationalism of illicit drug crime has been witnessed in Ireland leading to increasingly lengthy sentences for such crimes as well as associated gang feuds linked to the illicit drug market. There is no doubt about the harshness of the current penal climate in Ireland in relation to illicit drug crime. The two major events which created these 'drug panics' in Ireland are; the heroin epidemic in the 1970s and the murder of a well-known journalist in 1996.

The Misuse of Drugs Act, enacted in 1979 was introduced quite smoothly and met little opposition from a bipartisan government. This was in the most part due to little political discussion concerning illicit drugs. An epidemic in the uptake in the use of heroin was charted in the late 1970s. A notable statistic put forward by Butler (1991) recorded the increase of treatment of heroin users from the Jervis Street centre. In 1979, the Service treated 55 heroin users, while in 1981, it treated 417 users (Butler, 1991). This increase led to a number of significant legislative changes.

A particular heating up of the penal climate witnessed in Ireland came after the death of Veronica Guerin in 1996. Guerin, an investigative journalist, was pursuing Dublin drug gangs, in an effort to understand their activities in order to report this to the general public. As a result, Guerin was murdered by a high ranking drug dealer whom she had been investigating at the time of her death. Media and public outrage at her death resulted in promises from the politicians in power at the time to punish these offenders more harshly and to prevent this from happening again (O'Donnell & O'Sullivan, 2001). The public demanded toughness and tough is what the politicians gave them.

Tough sentencing policies and tougher legislation are often seen in Ireland as the solution to these crime issues. As the illicit drug market is ever growing, legislation has to be reviewed and changed where necessary every few years. In the USA over the same period, crime arrests and incidents also show a significant increase since the 1990s. As these have grown, so too has the prison population. At one point over half of the prison population was made up of people admitted for illicit drug offences.

### **The Extent of Illicit Drug-Related Crime in the US:**

While there is a difference in the timeframe for criminalisation in the US when compared with Ireland, the approach from the US has always been strict with regard to illicit drug offences. Currently, of all those incarcerated in the US, there are 1 in 5 people incarcerated for an illicit drug offence (Prison Policy Initiative, 2022). According to statistics from the Drug Centre for Drug Abuse in the US, on average, there are 244,000 people in the US sentenced to prison for illicit drug related crime. (2022). In 2010, 1.4 million arrests were made for illicit drug offences while in 2018, 1.65 million arrests were made. Arrests for illicit drug offences in the US make up to 26% of all arrests made per year. In 2019 alone, 73,210 people were sentenced for illicit drug related crimes (2022). While capital punishment is available in the US for drug trafficking offences, nobody has been executed under state law for this offence.

Considering the mass incarceration crisis, one might assume when looking at the number of those in prison that the crime rate for drug offences in particular has grown, however it can be seen that there is a bigger issue at hand. The 'War on Drugs' has had an impact on sentencing practices which are still in place to this day. This 'war' saw the onset of the mass incarceration crisis in the US which still continues to this day. Brandow comments that the illicit drug laws introduced as part of this 'war' were a 'monumental' failure (Brandow, 1991). The War on Drugs was seen to have spread internationally and, as has been discussed, in Ireland. Ireland, similar to the US in the 1990s increased the use of sentencing for illicit drug crimes in an effort to curb the growth in these offences. While it is questionable whether these sentences actually work in their aim, there is no dispute that the illicit drug market has witnessed an increasingly punitive approach, with the solution posed as being longer sentences and more punishments. While many statistics are cited in this discussion, a certain caveat of the 'dark' figure should be discussed.

## **Limitations of Drug-Related Crime Statistics/Crime Data – The ‘Dark’ Figure:**

Belyakova et al argue that while it is possible to classify one state as being particularly punitive or lenient in the sentencing of illicit drug offenders, they caution that legislation and enforcement in actual practice should be taken into consideration. This particular criticism should be kept in mind when analysing Irish legislation and crime statistics as there is a discrepancy in reporting. The Central Statistics Office (CSO), which took over the recording of crime statistics in Ireland from An Garda Síochana in 2006 state throughout their website that there are some publications unavailable due to this inaccuracy. These statistics are noted to be ‘Under Reservation’. This is due to the quality of the data presented which does not meet the standards required for crime statistics. There may have been issues with the PULSE system. Essentially, the statistics are available to read but should not be taken as an accurate reflection of that particular year.

There is a particular criticism when reading any drug-crime related data which is the so-called ‘dark’ figure of crime. Biderman and Reiss (1967) coined this term when they spoke about the idea that, through cross-sectional survey methods, one could discover crimes that were not known to the police. Citing the use of victim surveys, the authors draw on the idea of under-reporting by the police with regard to statistics. To ask the question of how much crime there is, the authors note that this needs to be framed within the remit of an institutionalist or realist perspective. They argue that given the different sources and types of information which determine that an event has happened, it is hard to measure an exact amount. They note any computational limits and technical limits to recording this data which is a trend still seen today. O’Donnell & O’Sullivan (2001) argue that a falling crime rate may conceal a number of things such as the increase in reporting of offences against the person and an under-recording of corporate crime or white-collar crime. De Castelbajac describes the term ‘dark figure’, as a creative name for a long-standing problem seen throughout the criminological discipline (de Castelbajac, 2014). Recording practices will never be able to give us an accurate description of the actual figure of crime because not all crime will be reported.

## **RESEARCH OUTLINE**

The aim of this thesis is to examine the introduction of law for illicit drug offences and use data to show how drug panics, created by those in power, are used to control the general population. This thesis operates on the general assumption that the public does not question the authority of the powers that be. Through this examination, it will be shown what will happen to people

who do question the authority of these powers or act in ways that these powers do not approve of.

This thesis focuses on the increase in the legislation and entry into the criminal justice process of illicit drug offences. This thesis does not focus on a consideration of an alternative approach to dealing with illicit drug offending in both countries. While alternatives to imprisonment are discussed, they are not analysed in great detail. Due to an absence of data from various agencies in the timeframe considered, a detailed analysis is not possible. Therefore, an exact conclusion which states the increase in severity of sentencing in both countries is not part of this thesis. The limited data from both countries leaves the analysis in a restricted area and as a result, an examination of the ways which this data could be improved is not covered.

The results of this thesis will be important from a practical approach. This thesis clearly shows that there is a problem in both countries with regard to their recording and availability of data. Ireland, while having a wide variety of data available, has a caveat where a lot of the information comes from governmental bodies. The US, while having data available, has little data available from a governmental perspective. Data provided by NGOs appears to be more available and detailed. From both approaches, there is therefore a transparency consideration. The question of why so little is provided by government agencies concerning illicit drug offences is considered and as a result, will be an important consideration for further research in this field. The theoretical discussion in this thesis is significant as there has been little consideration in Ireland concerning the social construction of illicit drug crime to date. Therefore, these points should be considered before the introduction of more legislation for illicit drug offences.

## **THEORETICAL FRAMEWORK**

Before beginning this discussion, it is necessary to frame the analysis within the theoretical basis that is it examined concerning the social construction of illicit drug crime.

### **The Social Construction of “Crime”:**

Hillyard and Tombs (2007) argue that crime is a ‘dominant construction’; crimes and criminals are fictitious events which have to be constructed before they can even exist. Without criminal law, they argue, ‘[t]here is nothing intrinsic in any behaviour that allows us to know that it is a crime’ (Hillyard & Tombs, 2007, p. 286). Crime is a definition of human conduct, he states, which is created by authorised agents in a politically organised society. Many academics, such

as Quinney (2001), Steve & Tombs (2015) and Carrier (2008), argue that it is the people in power who define what is classed as a crime. The more definitions created and applied, the greater the amount of crime (Carrier, 2008; Quinney, 2001). Groups who have this power in the decision-making process can then control the lives of others through the assurance of penalties should they stray from socially accepted behaviour (Quinney, 2001). Through creating definitions which protect their own interests, it becomes possible for these elite groups to exercise control over the general population. An idea drawn upon by Foucault (1975), this power dynamic produces ‘docile bodies’, compliant with these regulations.

This leads us into the definition of an act as a crime and who is a ‘criminal’. The idea of the deviant person arises when discussing this. The deviant is defined as “bad” by mainstream society and through criminal law attempts are made to minimise or eliminate the behaviours of the deviant (Vold, et al., 2002). The most common attempt is the imprisonment of the deviant individual, with punishment portrayed as the only way of stopping these ‘bad’ people. The creation of these groups of ‘bad’ people, illustrates how control is carried out through divisions in society.

### **The Construction of “Illicit” Drugs:**

Jenkins (1994) argues that certain forms of drug use have come to be constructed as crime through the creation of ‘drug panic’. Each decade, Jenkins notes, has come with a new drug “panic” which saw an illicit substance become increasingly criminalised. The 1930’s, for example, focused on the dangers of marijuana. Glue sniffing was a focus in the 1960’s, a marked increase in cocaine use was also seen in the 1970s, often combined with an era of permissiveness and sexual experimentation (Bagley & Rosen, 2015), while crack cocaine was the focus in the late 1980’s to early 1990s (Jenkins, 1994). In the 1990s, smokeable methamphetamine, commonly referred to as ‘ice’, has frequently been described as an ‘epidemic’ and led to what Jenkins has called an ‘ice’ panic. Drug panics follow the same pattern; there is a growth in the popularity of a drug, and it is perceived as socially threatening to others. Greater social concern, Jenkins writes, often leads to greater resources being devoted to, even legislated on, the drug ‘issue’. This in turn results in greater detection of and prosecutions associated with the drug of concern (Jenkins, 1994). However, not all social problems come to be constructed as deviant and/or crime as it often comes to be socially accepted. Only those problems which attract enough attention to compete for formal criminalisation come to be constructed as “new crime” (Surette, 2015).

Drug panics are not constructed on their own; they are often created by powerful interests within society. For example, the creation of organised crime and its association with an illicit drug panic show this. Referred to as Transnational Organised Crime (TOC), boundaries have become blurred to the extent of where one threat ends and another begins (Hobbs & Antonopoulos, 2013). TOC has been described by authors (Edwards & Gill, 2004; Hobbs & Antonopoulos, 2013; Hauck & Peterke, 2021) as a reaction to an external threat from ethnically defined groups against western political-economies. Using this external threat, usually from a minority community, international treaties and strict laws are justified by the government. Associating TOC with illicit drugs made it a security issue, legitimising the introduction of foreign policy objectives under the guise of controlling the spread of TOC. The aim of the government in doing this was to ensure that the general population feel the government is doing their 'job' by protecting them and punishing people who engage in this behaviour.

Prior to Nixon's declaration of the "War on Drugs", drug use and addiction was generally understood as more of a health issue. In the nineteenth century, Vold et al observe that addicts were pitied and often treated for their addiction (Vold, et al., 2002). Using the example of the approach to narcotics, the Harrison Narcotics Act was introduced in 1914, taxing and tracking the sale of narcotics. Vold et al comment that under this, there appeared no intention to criminalise people who used narcotics (2002). However, drug use and abuse in the US came to be constructed as "deviant" and "criminal" when the War on Drugs was declared. Criminalising these groups became a means of targeting select groups. Through doing this, the government stigmatises this group, making them the 'bad' people who the public need protection from. And who best to protect them? Those in power creating law. This 'war' created divisions. Even if people who use drugs recreationally do not cause harm to the public, the government was able to control the population by creating a common enemy – the drug user.

Moving with this recreational drug use which does not cause harm to the general public, the stigmatisation of the 'hippie' subculture is discussed. People went from being 'pitied' if they were an addict (Vold, et al., 2002) or casually experimenting with illicit drugs to the 'deviant' bad person who needed to be penalised. 'Hippies', as they are termed, rejected mainstream American society and politics. Instead, they wished to build new communities by experimenting with new social structures. Hippies opposed the Vietnam War and military draft. The slogan, 'make love, not war' is associated with this counter culture movement, a symbol of their non-conformity (Wesson, 2011). Collective drug use was their attempt to ensure that



the government and broader society knew that they could not be controlled despite the legislative efforts of those in power. (Collins, 2019). This was in dispute with the image of these enlightened, self-aware people, liberated from mainstream society.

The question is then asked, why these deviant hippies became people to be feared? In the hippie ideals, their rejection of the mainstream and non-conformity represented a threat to the governments in power. These happy hippies, full of love and enlightenment became enemies of the government, who had to be controlled and eventually, repressed. The rejection of the mainstream was essentially a rejection of the powers and authority of the government. Rejection took many forms; living together in communes rather than the mainstream family home; the rise of permissiveness, such as liberated sex lives and of course; the widespread drug use most associated with this counterculture movement (Cottrell, 2015). The use of psychedelic drugs heightened during this era, with the promise of a 'spiritual awakening' which these drugs could offer (Wesson, 2011). The aim was not a drug high, but the liberation of the mind from the normal world (Burton, 1999). Collective drug use encouraged discussion of their interests; the flaws of the system. Through drug use, hippies wanted to create a more enlightened society (Burton, 1999). As a result, they threatened the stability of the system. They became people to be controlled.

The idea of why they became people to be controlled is discussed further in this chapter. So far, it is established that political forces have created a 'drug crime' issue and have utilised this for their own benefit, threatening anyone who presents an indifference to their authority or an alternative to their power. Through constructing these people as criminals to be feared, the government can 'protect' society by penalising these people. Instead of 'protection', as they claim, what they are actually doing is attempting to remove any opposition or threat to their power. An example of this came in 1989 when President Bush announced that the drug control budget for the next year had to be raised by more than one-third (Reinarman & Levine, 1989). Creating an enemy of the drug user, the Bush administration could justify the introduction of more laws, essentially saying that they have no choice but to raise this spending, rather than spending peoples taxes on 'better' things. The drug user was the perfect group to target. Portraying drug users as rational actors who make active choices to take drugs, the government can vilify these people. In reality, they vilify the people who present a threat to their authority or believe in any counter-movement. By exaggerating an uptake in the recording of crime data, they can claim there has been an increase in drug use and abuse, rather than a better attempt at recording data. This suggests to the public that this data, which the general population usually

does not have access to, indicates that there is always an increase in drug crime and the only answer is harsh penalties.

The Irish approach to drug 'crime' is interesting when compared with the development of illicit drug policies in the USA. Ireland's approach to drug use and abuse followed a similar suit in the timeframe covered about the US. A Report in 1966, published by the *Commission of Inquiry into Mental Illness* was the first policy document published in Ireland concerning illicit drug use and abuse. The Report identified illicit drug use as a problem which, if not controlled, could reach 'serious proportions' (1966). Butler (1991) commented that the Report identified that a 'constant effort' was necessary to 'prevent the abuse of habit-forming drugs'. This gave rise to the development of Ireland's drug policy which placed a focus on legislative efforts to curb the sale and supply of these illicit drugs, with little focus on the use and abuse. The period post – 1970 saw an increase in legislative activity concerning illicit drugs. This increase in legislation both at a national level and an international level relating back to the discussion on TOC, is used to create a 'problem'. Prior to 1970, legislation in Ireland concerning illicit drugs was mainly concerned with controlling licit drugs and regulating their sale in Ireland from a pharmaceutical point. The TOC political discussion is based on an external threat to these western ideals. If it presented a threat to this US superpower, then surely it was a threat to the small island of Ireland. International as well as EU treaties, all aimed at stopping the spread heightened the idea of this as a threat and a problem to be addressed. An example cited by Edwards and Gill (2004) being the Permanent Working Group on Drugs, involving the US and some EU countries.

The Misuse of Drugs Act 1977, introduced in 1979, focused on the sale and supply of illicit drugs and created penalties for people who engaged in this sale and supply. Through the creation of these offences, drug use became criminalised and as a result, criminal penalties were introduced. Prior to this, illicit drugs were governed by several acts, yet none of them criminalised illicit drugs, for example the Poisons Act 1870 or the Dangerous Drugs Act 1934. The Mental Health Act (1945) identified addiction as a potential mental illness which could be addressed/treated through psychiatric help. Today, illicit drugs and the associated offences which were created have become 'criminal' substances and offences. The neoliberal approach to drug use and crime appeared in the late 1970's with the emergence of the new social and health policies around the globe. Western governments have promoted self-reliance and regulation, enforcing the idea that the drug addict chose to use these substances and as a result, had to deal with the consequences by themselves (Bunton, 2001). Citizens were encouraged by

their governments to address risk by themselves and develop a more personal relationship with risk and danger, taking the responsibility away from a governmental role (Bunton, 2001).

It can be seen that Ireland does to an extent, mirror the development of the US in their approach to the criminalisation of illicit drugs. While illicit drugs have been outright banned in the US for a longer time than in Ireland, the 'War on Drugs' ignited a spark seen across most western countries with illicit drugs as the enemy. One author comments on the link between drugs and crime in Ireland saying the only link is by virtue of prevailing legislation which defines criminal offences such as the manufacture or possession of psychoactive substances other than by prescription (Connolly, 2006). Creating 'drug crime' in the US and the spread throughout the globe with particular reference to Ireland is an attempt to control the population.

### **Why is Drug Use Constructed as Crime?**

Garland's Culture of Control, answers the question of why drug use is constructed as a crime. Garland explored the idea of social control through 'crime control' measures (Garland, 2001). Garland drew upon the years post – 1970, in which a significant change was witnessed in the approach to criminal justice (Garland, 2001). The control that Garland refers to comes in the wake of these developments. The New Deal in the US and the development of the welfare state in Britain were focused on strategic solutions to class conflicts and economic disruptions. Social and economic issues were the main focus of these political approaches. Welfare recipients became undeserving offenders who victimised wider society. Policy making was now a method of social control. Penal welfare agencies depended on the capacity of civil society to control individuals and channel their activities in law-abiding directions. By instilling fear of regression into the public, policy became a means for control. Through the promotion of individualism, the state could then justify spending less on welfare recipients and instead, portray them as undeserving people to be disciplined. This reactionary mode of governance produced an obsession with control.

But why was drug use constructed as a crime in this time? Through the construction of an act as a crime, it targets specific people as 'bad' who have to be punished by the government. Drug use is the perfect example. When people take drugs, they are lifted from their current situation, economic, social or political and go to a place, metaphorically, where they do not have to think about their situation. Post – 1970, a rise in neoliberalism came to be (Garland, 2001; Newburn, 2007). Emphasis is placed on private actors rather than the state role. The state views spending on welfare as too great and in turn, demonises these recipients. By constructing

the issue of drug ‘crime’, the use was now a rational choice, an ideology which as discussed already, was not always in place before this rise of self-regulation. Instead of drug use and abuse treated as a health issue, it now became a crime that the person should be ashamed of. This goes on to legitimise the increased spending on crime control measures and the decrease in spending on welfare. Creating these divisions in society then made the general public view these people as ‘criminals’ who made an active choice to be a ‘drain’ on economic resources.

### **What is the purpose of constructing this as “crime”?**

Why would the government wish to control the public? Was it their wish to control everyone or were there specific groups who they wanted to control? This idea of controlling their behaviour is then hoped to produce the ‘docile bodies’ which Foucault discusses. Through this, the government can ensure their authority will not be threatened. Groups such as hippies posed a threat to the authority of the government. Their refusal to live by the rules of mainstream society became threatening to the power of the government. If their minority opinion became the majority, what would happen to their power?

Foucault ( 1975) uses the public execution as an example. In the beginning, public executions were manifestations of state power, a way for the government to show the public what would happen if they acted against their authority (Vold, et al., 2002). While this worked for a period in time, the public began to question this authority. They eventually began to revolt and riots ensued at these public spectacles of power. As a result, state power was called into question.

The state places this control over the population in order to ensure that the public understand that troublesome populations will be rooted out and dealt with. Taking the hippie counterculture, their drug use was a threat to the system. Their questioning of the system and its many flaws suggested the overall dominating power of the government was not as strong as it had been portrayed. In answer, the government demonised their way of life, portraying them as people who were bad and should be punished. Their non-conformity served as a message to the government, ‘no matter how hard you try, you will not control us’.

The purpose of control is ensuring that no counter group can take the authority from those in power. Constructing any opposition as a deviant, bad group of people is viewed as a way of controlling public opinion, “look at the bad people that don’t do what we say”. Taking Foucault’s public execution example is similar to the question of imprisonment for people who commit illicit drug offences. While at one point, punishment became in the minds of the public,

the only solution to the spread of drug use and abuse, questions are now asked of its results. This research aims to address this. What affects has governmental power in the creation of illicit drug crime had on the introduction and enforcement of new laws?

## **CHAPTER OUTLINE**

This thesis has four chapters. *Chapter 2* concerns the legislation introduced in both Ireland and the US concerning illicit drug offences post-1970. This chapter provides a detailed discussion of these laws and how they work in practice. The detailed discussion involves an examination of specific offences which are created by legislation and the associated penalties for these. This will track the growth of penalties and increasing severity.

*Chapter 3* provides an analysis of data concerning illicit drug offences in both countries at various stages in the criminal justice system. The first section considers available online data from various Irish agencies. From the recording of illicit drug offences to the alternatives to imprisonment, all stages in the criminal process are examined. The second part of this chapter then analyses available online data from the US criminal justice process. From the number of arrests per year for illicit drug offences to the number of those imprisoned, all stages in the criminal process are analysed. The specific states of Florida and California are analysed with regard to their prison population made up of illicit drug offenders. This will show the extent of both states approaches to illicit drug crime after a discussion on the general US approach.

*Chapter 4* then concludes by combining the findings from *Chapters 2 and 3*. This chapter explains that while there are no distinctive findings in this thesis based on available data, a few findings can be drawn based upon the available data. It is established throughout the discussion that penalties for illicit drug offences have increased in availability and severity. The lack of data in this area in both countries suggests a transparency concern. This transparency concern gives rise to the overarching thesis statement; the introduction and utilisation by politicians of law by creating a drug panic, is used as a tool of control. The first resort from these governments to criminalise an offender rather than engage in alternatives ensures control over the general population. Future research recommendations are discussed in this concern in order to show how the data can be improved to draw specific distinctions.

# **CHAPTER TWO - ILLICIT DRUG LAWS IN IRELAND AND THE US**

## **INTRODUCTION**

This chapter charts the evolution of laws and sentencing practice in response to illicit drugs in both the Republic of Ireland (Ireland) and the United States (US). Part one focuses on the legislative framework in Ireland. It begins by explaining how illicit drugs were governed by different health and pharmaceutical acts until 1977, when a new act, the Misuse of Drugs Act 1977 was introduced. This act criminalised illicit drugs and created new offences for the possession, use, sale and/or supply, and trafficking of illicit drugs. This section explains how subsequent acts have only created harsher sentences despite alternatives to imprisonment, including court orders and drug treatment courts, being introduced. Part two discusses the legislative framework for illicit drugs in the US at a federal and state level. It focuses on two specific states – Florida and California – to demonstrate the contrast in approaches to illicit drug offences across the US. While laws in Florida are generally characterised by steeper sentences for illicit drug offences, California recently decriminalised marijuana use for adults over 21 and under a certain amount. The chapter argues that legislation in both countries introduced during and after the 1970s resulted in increased penalties for illicit drug offences, including longer prison sentences. Even though alternatives to imprisonment were introduced in both countries, fines and imprisonment remain the primary mode of sentencing.

## **PART ONE: OVERVIEW OF THE LEGISLATIVE FRAMEWORK IN IRELAND**

The principal act which governs illicit drug offences in Ireland is the Misuse of Drugs Act 1977 (the 1977 Act). Prior to the development of the 1977 Act, illicit drugs were governed under health acts, which are listed in the table below. However, the opiate epidemic which gripped Ireland from the late 1970's to 1980's was a turning point for the country in its approach to the criminalisation of illicit drug use which became increasingly framed as an issue of individual pathology (Connolly & Percy, 2015). Other Acts and Regulations governing illicit drugs are outlined in the table below.

**Table 1: List of Laws and Regulations Governing Illicit Drugs in Ireland Pre- and Post - 1970:**

Pre-1977	Post-1977
Poisons (Ireland) Act 1870	Misuse of Drugs Act 1977
Pharmacy Act (Ireland) 1875	Misuse of Drugs Act 1984
Probation of Offenders Act 1907	Criminal Justice Act 1994
Dangerous Drugs Act 1934	Criminal Justice (Drug Trafficking) Act 1996
Mental Treatment Act 1945	Criminal Justice Act 1999
Medical Preparations (Control of Sale) Regulations 1966	Criminal Justice Act 2006
Medical Preparations (Control of Amphetamines) Regulations 1969 and 1970	Criminal Justice Act 2007
	Criminal Justice (Psychoactive Substances) Act 2010
	Misuse of Drugs (Amendment) Act 2015

Adapted from O’Brien, Dillon and Moran (2001).

The Schedule of the 1977 Act contains a list of controlled illicit and licit drugs, which the possession, use or sale of would result in a criminal conviction. A “controlled drug” in this Act is defined as “any substance, product or preparation...which is specified in the Schedule to this Act” or is declared to be a controlled drug for the purposes of this Act (Misuse of Drugs Act 1977, Section 2). Examples of controlled illicit drugs include cannabis and cannabis resin, cocaine, opium, methylamphetamine, to name but a few. This Schedule has been amended over the years to encompass a wider array of illicit drugs. The most recent amendment was in 2016, which saw the addition of bromazepam, fenethylamine, halazepam, ketamine, and zolpidem to the Schedule. While the 1977 Act criminalises illicit drug possession, use and sale in Ireland, among other offences, judges are obligated to consider the medical and social needs of the person prior to sentencing (Connolly & Percy, 2015), an approach which is more closely aligned with the rehabilitative aims of punishment. However, as this chapter demonstrates, sentencing an individual for illicit drug offences in Ireland tends to be more punitive (than rehabilitative) in focus.

**Possession:**

Section 3(1) of the 1977 Act makes it an offence for a person to be in possession of a controlled drug. Possession of a controlled drug is defined as “a person [who] has control and which is in the custody of another who is either under the person's control or, though not under the person’s control, acts on his behalf, whether as an agent or otherwise” (Section 1(2), Misuse of Drugs Act 1977). Under the original 1977 Act, no quantity of a controlled drug was specified as



“possession”, however, Section 15(2) made reference to an unspecified quantity—when a person is proven to be in possession of a controlled drug, and the court, “having regard to the quantity of the controlled drug which the person possessed”, it is “reasonable to assume” that the controlled drug was not intended for the personal use of the person. Section 4(b) of the 1999 Act was the first provision which made explicit reference to a quantity of drug; a person was guilty of an offence when found in possession of a controlled drug with a market value of £10,000 or more. This fine was amended to €13,000 with the 2006 Act in light of Ireland joining the Eurozone (Section 81(1), Criminal Justice Act, 2006).

Penalties for illicit drug possession vary depending on the type of illicit drug. When a person is found to be in possession of cannabis or cannabis resin, the penalties mandated are fines at the discretion of the court. For a first time offender, a fine on summary conviction is made of €381. A second offence sees the fine become €508 and a third time or subsequent offence sees the fine increase to an amount not exceeding €1,270 or at the discretion of the judge, the imprisonment of a term not exceeding twelve months (Section 27(1), Misuse of Drugs Act 1977). When the 1977 Act first came into effect, the penalties were IR£50 (€65.48 in 2022), £100 (€126.97 in 2022) and £250 (€317.43 in 2022) and/or up to 12 months imprisonment for first, second and third or subsequent offences, respectively.

Penalties for the possession of any other controlled drug is dealt with in Section 27(b). A person found guilty of possession of any other controlled drug can be sentenced to twelve months in prison on summary indictment and imprisonment for a term not exceeding seven years for conviction on indictment.

### **Use:**

Criminal penalties for illicit drug use exist only for prepared opium. Section 16 makes explicit reference to offences relating to the smoking or otherwise use of prepared opium, the frequenting of a place with the purpose of smoking or otherwise using opium and having possession of any instruments with the intention of using them to smoke opium (Section 16, Misuse of Drugs Act, 1977). According to Section 27(4)(i), anyone found guilty of the offences specified in Section 16 can be subject to a fine of up to €1,270 and/or twelve months imprisonment or both on summary indictment, while a person found guilty on conviction on indictment can be subjected to an unlimited fine or a term of imprisonment not exceeding fourteen years, or both. There has not been a lot of change in relation to drug use in legislation in Ireland, the only changes being the fine in line with eurozone membership. When the 1977



Act first came into effect, the penalties were £250 and £3,000 for summary indictment and conviction on indictment, respectively. Comparing these fines to the present day, they are currently, €317.43 and €3,809.21. A clear increase in the severity of the fines.

### **Sale/Supply:**

Section 15 makes it an offence to be in possession of a controlled drug for the unlawful sale or supply of the drug. Possession of controlled drugs for unlawful sale or supply occurs when, “any person has in his possession, whether lawfully or not, a controlled drug for the purpose of selling or otherwise supplying it to another in contravention of regulations under section 5 of this Act” (Section 15(1), Misuse of Drugs Act, 1977). When a person is found guilty of the offence of sale and/or supply, the person is liable on summary indictment to a fine of €296.25 and/or twelve months in prison. The person found guilty of this offence on conviction on indictment is punishable by a fine of €3,555 and/or to imprisonment for a term not exceeding fourteen years (Section 27(3)(b)). If the court is satisfied that the addiction was a “substantial factor” leading to the commission of the offence, the sentence can be listed to be reviewed (Section 3G, Misuse of Drugs Act, 1977). Previous penalties for sale and supply offences in Ireland included a €317.43 fine and twelve months imprisonment for a summary conviction while conviction on indictment could lead to a €3,809.21 fine and fourteen years imprisonment.

The 1999 Act was the first amendment to include a mandatory minimum term of imprisonment of ten years when the aggregate market value of the controlled drug possessed for unlawful sale or supply was €13,000 or more. The 2007 Act then introduced a mandatory maximum term of life imprisonment. This mandatory minimum and maximum remains in effect today. This increase in the number of years of imprisonment a person may be subjected to marks a clear punitive turn in the response to the sale and/or supply of controlled illicit drugs in Ireland.

### **Trafficking:**

Drug Trafficking is defined in Section 3(a) of the Criminal Justice (Drug Trafficking) Act 1994 as “producing or supplying a controlled drug” where production or supply contravenes the 1977 Act and any provisions made under it. Drug trafficking also includes transporting or storing a controlled drug where possession of that drug contravenes section 3 or a corresponding law, importing or exporting a controlled drug (as per the Customs Acts, as well as the Misuse of Drugs Acts 1979 to 1984) and doing any act which if committed prior to 1994. Currently, trafficking carries the same penalties as unlawful sale and supply.

The 1994 Act takes prior convictions for drug trafficking offences into consideration during sentencing. Section 3CC Part (b) also allows for the court to have consideration as to “whether the public interest in preventing illicit drug trafficking would be served by the imposition of a lesser sentence”. In this way, the legislation appears to advocate for longer sentences based on the person’s criminal history and the need of the public to be protected from drug trafficking. Such harsher sentencing is aligned with populist approaches to punishment (Seymour, 2006).

### **Considerations in and Alternatives to Imprisonment:**

The Misuse of Drugs Act contains provisions which take a person’s circumstances into account and provides alternatives to sentencing. For example, Section 99 of the 2006 Act gives the Court the power to suspend a sentence where, “appropriate having regard to the nature of the offence” (Section 99 (3)(a)). Where a court has made an order to suspend a sentence under this Act, Section 99(4) sets out a number of conditions to be followed by the offender after the suspension—that the person must co-operate with the probation and welfare service and, should undergo certain treatments or plans such as treatment for alcohol or drug addiction, a course of education or training, or psychological counselling.

The court has the power to refer an offender for a medical order; a supervision order or for a probation order including a pre-sanction report; a probation report or a community service order. A medical order allows for the referral of an offender to a treatment or medical centre and gives the authority to the Court to refer them to an educational course. A person may be referred for a supervision order if the court is satisfied that the person’s welfare would be best suited to the supervision of a body (Section 28(a)(i)). This supervision body can be health body or an order to the Probation services. A Pre-Sanction Report is a direction from the Courts for an assessment from the Probation Service of the person’s suitability. A Probation Order will come from the judge as a direction to the offender to engage with the Probation Service with the eventual aim of rehabilitation, making them unlikely to offend again due to their learning from the experience, rather than serving a sentence. A Community Service Order is when an offender undertakes unpaid work in the community as part of their Probation Order. This Service is aimed at the re-integration of the offender into the community.

The most notable alternatives to imprisonment are offered by Ireland’s drug courts, more commonly referred to as drug treatment courts (DTC). A drug court combines drug treatment with the legal and moral authority of the court (Mitchell, et al., 2012). DTCs therefore

aim to provide ‘alternatives to custody’ (as defined by the Courts Service); instead of criminalising people for low-level drug use offences, the DTC seeks to address their drug use with a problem-solving approach through treatment, rehabilitation and education. However, Irish DTCs are criticised for many reasons. Tiger comments that while treatment based alternatives administered by DTC appear more rehabilitative in nature, a person must plead guilty and is still punished; the only difference to a regular court is that the punishment is moved to the “community” (Tiger, 2012, p. 51). If the person is not transformed by the process, they may still be sentenced (Tiger, 2012). Finally, few people are diverted to DTC in Ireland (Sander, et al., 2016). People incarcerated in prisons have a higher lifetime rate of drug use than the broader community (Sander, et al., 2016). This suggests that while rehabilitative alternatives exist in place of imprisonment in Ireland, particularly for drug use offences, there is an overall tendency towards punishment (and imprisonment).

## **PART 2: OVERVIEW OF THE LEGISLATIVE FRAMEWORK IN THE US**

The construction of the ‘War on Drugs’ in the US towards the latter end of the twentieth century has led to the development of policies specifically focusing on the punishment of illicit drug offenders, rather than treatment or rehabilitation for the offender. The response was aimed particularly at low-level sellers and those who possess small amounts of illicit drugs (MacCoun & Reuter, 1998). The key Acts and Statutes concerning illicit drugs at both a national and federal US level are displayed in this Table 2 below:

**Table 2: US Legislation Discussed in this Chapter**

National Acts	Florida Statutes & Acts	California Statutes & Acts
Comprehensive Drug Abuse Prevention and Control Act 1970. Controlled Substances Act 1970. Anti-Drug Abuse Acts 1986. Anti-Drug Abuse Act 1988. The Violent Crime Control and Law Enforcement Act 1994.	Florida Comprehensive Drugs Abuse Prevention and Control Act. Florida Statutes 1997. Florida Statutes 2006. Florida Statutes 2021.	Uniform Controlled Substances Act. Proposition 215 (1996). California Health & Safety Code 11350 HS. Proposition 47. Adult Use of Marijuana Act (Proposition 64) [1].

While the overall power for law-making is derived in the US Congress, each state has its own system of legislation, meaning where an offence such as possession of cannabis in one state is outright banned, it may be permitted in another state subject to criteria such as medicinal use. As such, this thesis focuses on illicit drug laws at both the federal and state level, with a particular focus on the US states of Florida and California which represent two extreme cases of the differences in illicit drug law in the US.

## **Federal Level**

There are five key pieces of federal legislation in the US concerning illicit drugs; these are, the Comprehensive Drug Abuse Prevention and Control Act 1970, the Controlled Substances Act 1970, the Anti-Drug Abuse Acts 1986 and 1988, and the Violent Crime Control and Law Enforcement Act 1994 (Crime Bill 1994). Most of these Acts, which adopt an overall zero tolerance approach, were developed during the US's 'get tough' era of sentencing, brought in as a response to illicit drug crime in the US.

The Comprehensive Drug Abuse Prevention and Control Act of 1970 (the 1970 Act) provides schedules of illicit drugs and solidified previous illicit drug legislation from different Acts. This Act aimed to address drug abuse and drug dependence by providing treatment and rehabilitation for dependent persons. It was aimed at encompassing further illicit drugs which previous legislation had not caught such as prescription drugs which needed to be recorded and maintained by pharmaceutical bodies in order to enact tight drug control.

The Controlled Substances Act (CSA) was established to create a legal framework in the US to regulate drugs that are "deemed to pose a risk of abuse and dependence" as the Congressional Research Service commented (2021). It is therefore the principal act which gave the US government's 'War on Drugs' a statutory basis and to justify any new sentence practices or more control over illicit substances in the US. The CSA has been amended since its introduction in 1970 to include more illicit substances in the Schedule of named drugs. The Controlled Substances Act makes it an offence for any person to knowingly possess a controlled substance unless permitted to do so under the Controlled Substances Act (*Id.* 844 (a)). A person convicted of simple possession of a controlled substance can be fined \$1000 and can be subjected to a term of imprisonment of one year. This penalty increases for second or subsequent offences under this Title. While this is the overarching approach from the US Congressional standpoint, each federal and state law will have its own provisions relating to simple possession of a controlled substance.

The Anti-Drug Abuse Acts of 1986 and 1988 (ADAA) extended the length of sentences (under the original 1970 Act) and saw the imposition of mandatory minimum sentencing for illicit drug offenders. The imposition of mandatory minimum sentencing has meant that judges must impose this penalty on the offender. There are exceptions to the mandatory minimums imposed by the Acts (Davies, 2010), but these exceptions are limited. This punitive approach was extended further through the Crime Bill of 1994 which introduced capital punishment for some types of illicit drug selling (Gray, 2011).

An interesting difference to Ireland with regard to illicit drug offences in the US is the existence of the offences: “use” and “constructive possession”. While in Ireland, use exists as an offence for opium; use in the US applies to all illicit drugs with exceptions varying by state. An offence found to be exclusive to the US is that of constructive possession. Constructive possession is when a person is found to possess a controlled substance but it is not in their physical possession or located on their body. The person must have knowledge of the whereabouts of this substance in order to meet the elements of the offence. The illicit drugs must also be in a place in which the person can exercise dominion and control.

Through examining illicit drug laws in Florida and California, it will be seen that the approach to illicit drug offences in the US, while varying state by state, still approaches illicit drug offences with a harsh approach with punishment sold to the public as the best approach.

### **Florida:**

The Florida Comprehensive Drugs Abuse Prevention and Control Act is the governing body of legislation at this state level for any drug charges. The last amendment to the Act was made in 2021 meaning the current approach is quite up to date. Florida is seen to have slightly stricter approaches to sentencing people especially for the offence of possession for personal use with penalties varying over the type and quantity of the illicit drug and attention will be paid to the persons previous offending history. With classes of offence, Florida groups offences by seriousness ranging from misdemeanour to felony charges. Different penalties associated are discussed.

### **Possession:**

Currently, possession is governed by the 2021 Florida Statutes which makes it unlawful for “any person to use, or to possess with the intent to use, drug paraphernalia” (S.893.147(1), Florida Statutes 2021). Penalties for illicit drug possession vary depending on the type of drug (i.e., its Schedule) and quantity of the drug a person possesses, with less serious offences

resulting in a misdemeanour charge and serious offences resulting in felony charges. Most offences for illicit drug possession in Florida result in third degree felony charges.

A first degree misdemeanour charge in Florida is an offence which is punishable by up to a year in prison. These are usually offences which are seen as mischief or incidents without violence. A first degree misdemeanour charge in Florida when a person is found in possession of up to 20g of marijuana can result in imprisonment for one year, home detention or a mandatory treatment. This offence only exists for possession of marijuana as the Schedule it is governed by classes it as having certain medicinal purposes while also illicit. When a person has more than four misdemeanour charges they can be subjected to harsher penalties such as longer prison sentences or more fines.

A second degree misdemeanour in Florida is when a person can be punished by up to sixty days in prison and/or a fine of up to \$500. A third degree misdemeanour in Florida is punishable by a fine, forfeiture or restitution. The first degree misdemeanour is a more serious charge before a felony charge.

Cocaine is a Schedule II drug. Possession of cocaine under 28grams is classed as a third degree felony and can result in five years imprisonment or probation and a fine of up to \$5,000 along with drivers licence revocation. If the quantity is found to be more than 28g, a drug trafficking charge can be triggered. This sees the person, who may be a first time offender or addict, subjected to a term of imprisonment in which any rehabilitative measures are not specified in the legislation.

### **Use:**

Currently, drug use in Florida is governed by 2021 Florida Statutes. Chapter 893.147 states that it is unlawful for, “any person to use, or to possess with the intent to use, drug paraphernalia” (S.893.147(1), Florida Statutes 2021). This chapter states that a person shall not, “use, ingest, inhale or otherwise introduce into the human body a controlled substance” as defined by this Chapter (S.893.147(1)(b)). Associated penalties are not specified.

### **Sale/Supply:**

It is illegal in Florida for any person to, “sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance” (S.893.13 (1)(a), Florida Statutes, 2021). A person found to possess more than 20g of marijuana can be subjected to five years imprisonment. When compared to penalties for possession of cocaine with the intent so sell or supply to another person, the penalties for possession of marijuana seem lenient. Anyone found to be in possession of more than more than 28g of cocaine can be subjected up to thirty years imprisonment and up to \$250,000 in fines. Mandatory minimum terms of imprisonment apply to convictions in this charge but are subject to the individual drug and the amount they possess of the drug.

The mandatory minimums which apply to these offences aim to remove the person from the possibility of committing any offences. The rise in the term of imprisonment has jumped from five years to fifteen years all the way to thirty years imprisonment. This rise is all dependent on the quantity of the drug and type. Fines which are applied for each offence are raised also from \$10,000 to \$250,000 is also a point worth noting. These fines may also be applied where the person is serving a prison sentence meaning, even if the person has no other income, they may have to pay hefty sums alongside serving a lengthy prison sentence.

### **Trafficking:**

Currently, the 2021 Florida Statutes makes it unlawful for a person who knowingly, “sells, purchases, manufactures, delivers” or bring into the state, or be in actual or constructive possession of, an illicit drug. Penalties for drug trafficking in Florida have remained unchanged since the 2000s. Penalties differ depending on the type and quantity of the illicit drug, with penalties related to cannabis being seen as more lenient and trafficking in cocaine as more severe. Trafficking quantities of cannabis between 25 to 2,000 pounds can result in a fine of \$25,000 and a mandatory term of imprisonment at a minimum of three years. Trafficking between 2,000 and 10,000 pounds of cannabis results in a \$50,000 fine and a mandatory minimum term of imprisonment for seven years. Trafficking 10,000 pounds or more of cannabis or cannabis plants results in a fine of \$200,000 and mandatory term of 15 years imprisonment.

However, trafficking in smaller quantities of cocaine can result in more severe penalties when compared with penalties for trafficking in cannabis. Trafficking between 28 and 200

grams of cocaine attracts a fine of \$50,000 and a mandatory minimum term of imprisonment of three years. Trafficking more than 150kg carries a mandatory penalty of life imprisonment.

Overall, Florida can be seen as having a harsh approach to penalising people who commit illicit drug offences. Offences related to cannabis are classed as more lenient due to its medicinal purposes. However, even though it can be classed as medicinal, it is still capable of being abused meaning penalties are punitive. Penalties for cocaine in Florida are more harsh. This is because there is no established medicinal capabilities meaning it is on a Schedule which classifies it as so. Penalties become more severe as a result. While it can be confidently said that Florida has a strict approach to these offences, a counter approach is seen in California.

## **California**

Like most US states, illicit drug offences in California resulted in severe fines and prison sentences. The most severe of California's laws was the 'Three Strikes and You're Out' law which was introduced in 1994, shortly after the passing of the federal Crimes Bill. Under the three strikes law, a person previously convicted of two illicit drug offences received a mandatory minimum sentence of 25 years to life imprisonment for a third offence. This resulted in a growth in the number of people incarcerated for drug offences. In 1990, 28% (26,652 out of 94,161) people were incarcerated for illicit drug offences. In 1998, this had increased to 32% (or 50,099 out of 155,888 of people incarcerated) (Auerhahn, 2004). African-American people were also disproportionately targeted by this law (Jones, 2012). When the conditions in state prisons were found to violate a person's Eighth Amendment rights, the Senate passed a bill in 2011 which led to over 30,000 prisoners being released from Californian prisons for non-violent offences, including illicit drug offences. It was following the release of these 30,000 inmates that California changed its overall approach to illicit drug offending, particularly illicit use of cannabis. For example, the Adult Use of Marijuana Act (more commonly referred to as Proposition 64) came into effect in 2016, legalising the use of cannabis for quantities under 28.5 grams for people aged 21 years and over. Proposition 64 also allows for the re-sentencing or dismissal and sealing of previous marijuana-related convictions. Once a person's sentence is deemed suitable, they can apply to have their sentence reheard or dismissed. A person may be subjected to lesser penalties when they are serving sentences for activities that are now legal. Qualifying individuals are resentenced to whatever punishment they would have received under the measure. The introduction of this law led to a significant decrease in the overall number of people imprisoned for illicit drug offences in California.



**Possession:**

Currently, possession in California is governed by various Acts. The Health & Safety Code has a Schedule of the named controlled drugs under this Act. Schedule I includes drugs such as opiates, cocaine base, mescaline or synthetic cannabis. Schedule II includes narcotics or opiates, and Schedule III lists hallucinogens. If a person is found to be in possession of a Schedule I drug, this results in a misdemeanour charge with penalties including up to one year in county jail, not a state prison (Schedule 1, California Health & Safety Code Division 10, Chapter 6, Sections 11350-11651). Penalties for a Schedule II drug are listed below with reference to cocaine. Penalties for possession of a Schedule III drug such as ketamine or tylenol with codeine, can result in up to three years imprisonment and a fine of up to \$5,000.

Penalties for cannabis possession vary, depending on the type and circumstances. Where a person possesses no more than 28.5g of marijuana, and when they are not under 21 years of age, a mandatory drug education course and community service order applies. However, people who possess more than 28.5 grams of cannabis can be incarcerated for up to six months and fined \$500. Possession of 8g of concentrated cannabis is legal, but for quantities of cannabis over 8g, the person may be sentenced to one year in prison and/or receive a \$500 fine.

Possession of cocaine, a Schedule II drug can result in a year imprisonment with a fine of \$1,000 if it is a misdemeanour charge. A personal possession charge for cocaine can result in up to three years imprisonment. A felony charge for possession of cocaine involves the possession with intent to supply it to another person. This can result in a \$20,000 fine and up to four years imprisonment.

**Use:**

Aside from cannabis, the use of illicit drugs in California is generally outlawed. Penalties include felony charges which may result in up to one year in a county jail. Certain privileges can also be suspended under California law—for example, the ‘smoke a joint, lose your licence’ policy which revokes a person’s drivers licence as an alternative to incarceration of offenders for illicit drug use (Gray, 2011). It is an offence in California to be under the influence of cocaine. This is punishable as a misdemeanour charge as discussed already but people can also be diverted to a drug diversion programme if they are found guilty of or plead guilty to this offence.

### **Sale/Supply:**

The Uniform Controlled Substances Act makes it illegal for anyone to transport, sell, administer, furnish or import into the state, a controlled substance. If they do, the person may be subjected to 3 to 5 years imprisonment (Section 11352, CA Health & Safety Code, S.11352). There are exceptions: the sale or transportation of marijuana of greater than 28.5 grams can result in a term of imprisonment for 3 to 4 years. The sale or transportation of methamphetamines is punishable from 2 to 4 years in jail (Health & Safety Code, 11350 HS (2)).

### **Trafficking:**

Drug Trafficking in California is defined as the sale or transportation of illicit drugs and it can result in jail time from 3 to 9 years and a fine up to \$20,000. Penalties may increase if the illicit drugs are over a certain volume or are sold to a minor. Additional penalties are added if a person is found trafficking in cocaine. These include: 3 to 5 years of imprisonment and a raise in the fine imposed, usually by \$20,000.

California clearly approaches illicit drugs with a slightly more lenient approach than that of Florida. However, this should not be mistaken as meaning that California law is not strict for these offences. While the prison terms are different in both states, the decriminalisation means that if a person possesses more than the legal amount of cannabis and has not bought it from a dispensary licenced to sell it, they can face imprisonment. Cocaine is treated more severely than cannabis in relation to punishments for this which sees the imposition of strict penalties from both an imprisonment and financial perspective.

### **Considerations in and Alternatives to Imprisonment:**

Alternatives to punishment for illicit drug offences are similar in Florida and California. A person may seek a Pre-Trial Diversion or a Pre-Trial Intervention. The state will also consider a person's guilt. If the person has pleaded guilty to a charge, the person may receive a lighter sentence. Probation orders are also an alternative in California. The mandatory drug education course and community service order put in place when a person under 21 possesses less than 28.5 g of marijuana is an alternative observed in this state. Instead of criminalising a person straight away, they are taught about their drug use and safer use as well as wider implications. A person may be referred for a Probation Order or a community control order. In 1997, the Florida Statutes mandated that a person must pay the Department of Corrections a portion of the sum equal to the supervision of the court ordered amount. The person must pay for the

opportunity to engage with rehabilitative services, which surely defeats the point of rehabilitation. This appears a classist approach to the provision of these Services which is known to be more effective in combatting these offences. Bunton comments on the neoliberal approach to addiction where governmental responsibilities are moved to individual citizens who are told to exercise their own individual restraint with regard to risk and danger (Bunton, 2001), a viewpoint expressed through this payment for rehabilitation. As there are a number of prison or jail sentences available in California for illicit drug offences, it is considered that the legality of cannabis for people over 21 when under 28.5 grams may be a contributing factor to the low number of people in California prisons for drug offences, since Proposition 64's introduction.

### *Florida Drug Courts*

In the late 1980s, Miami in Florida saw the introduction of the drug court, a problem solving court all aimed at reducing the number of people in prison who have addictions (Sechrest & Shicor, 2001). When considering the length of sentences which can be imposed for illicit drug offences in Florida, it is interesting to learn that the first drug court was piloted in Florida. In 2001, the Legislature stated that drug courts be implemented in each State, with the intent to reduce crime and recidivism and focus on the additional needs of people who are addicted to illicit drugs. There are 93 Drug Courts in Florida. Treatment of the offender's addiction is prioritised over penalty. A worthy alternative, it is understood that these courts are more effective in addressing the persons drug use and/or abuse while finding a treatment option which works for them, in line with the court authority (Mitchell, et al., 2012). When a person successfully completes the Drug Court process in Florida, their charges will be dropped and they will not gain a criminal record.

### *California Drug Courts*

Drug courts in California use the authority of the criminal justice system to offer treatment to offenders who have substance abuse issues. Effective in reducing crime (Carey, et al., 2006), California has over 12% of the 1,000 drug courts in the US. Linked to the increase in drug offenders in the prison population, the introduction of drug courts in the late 1980s has seen an increase in popularity with the criminal justice system taking an interest into the needs and capabilities of the person. California sees a big uptake in this option of a drug court rather than the normal criminal justice approach. A more understanding approach towards people who commit offences when they have addictions, it is clear that these courts are more beneficial to

the addict or person with substance issues. The person will learn to cope with their issues in a healthy environment instead of a system which will likely make their addiction worse through stigmatisation and their loss of freedom (Tiger, 2012).

## **Summary**

This discussion has centred on two nations which on the outside, have starkly different approaches to illicit drug offences. Yet, when examined, it would appear that the countries have a lot of similarities. A similar timeframe is discussed yet the US criminalisation of illicit drugs reaches back further than Ireland's criminalisation. Where Ireland's illicit drug legislation pre-1977 was governed by acts all aimed at controlling and regulating the sale of illicit drugs, usually from a medical/pharmaceutical perspective, the US criminalised illicit drugs for a longer period of time. One noted is the Prohibition era which criminalised the use of alcohol. Where both countries identified drug abuse and dependency as an issue to be addressed, their responses were all aimed at criminalising the sale and supply of illicit drugs with no proof that this will actually help. By introducing prison sentences and extending the sentence lengths over time, the governments in both countries hoped that this would reduce the sale and supply side of illicit drug offences. Yet in practice, lower scale offenders were impacted. One notable bill is the Criminal Justice (Exploitation of children in the commission of offences) Bill 2020. This, if enacted, will allow for the prosecution and imprisonment of any adult who lures a child into criminal activity. The act of the sale and supply of illicit drugs is stated specifically as an offence that is caught under this heading. This new bill would suggest a further tough approach from legislation in Ireland to these offences.

Lower scale offending in this context means that people who have been found guilty of offences such as simple possession or the use of illicit drugs were imprisoned at a high rate. Both countries as a result, introduced measures aimed at curbing the number of people in prison for offences which were, in the US context, for non-violent offences and in the Irish context, for people who were serving sentences of less than three months. Where Ireland made new legislation to create criminal offences for illicit drugs such as possession and use, the US had been doing this for some time before.

Both countries have alternatives to sentencing for illicit drug offences in place. Drug courts are the most notable alternative in place in both countries. A pilot programme which originated in Florida, a surprising fact given that Florida has a strict sentencing policy in place, these drug courts are all aimed at the treatment of the offender with an addiction. However, one criticism

noted is that a person must have pleaded guilty or been found guilty in order to qualify for placement to these courts (Tiger, 2012). This guilt consideration is surely not in line with the voluntary nature of rehabilitation. A further discussion would be the placement of the addicted person to these courts once it is established that their addiction affected their offending behaviour.

Overall, Ireland and the US have followed a similar track where both have introduced harsh sentencing regimes which claims to tackle the sale and supply of illicit drugs, in the overarching aim of reducing drug dependency and abuse. While it is questionable as to whether this actually works, one clear trend is established from both systems. Both systems introduced sentencing measures and over time made them stricter from both a financial and length standpoint. The effects of these is discussed in the chapter concerning prison data. One message is taken here, illicit drug offences are approached in both systems with a punitive response, making the offender the enemy of the general public, portraying to the public that prison sentences and hefty fines are the only solution.

## **CHAPTER THREE - ANALYSIS OF AVAILABLE DATA CONCERNING ILLICIT DRUG OFFENCES FROM AN IRISH AND US PERSPECTIVE**

### **INTRODUCTION:**

This chapter examines data available online from the Republic of Ireland (Ireland) and the US with regard to various stages in the criminal justice system for illicit drug offences from the years 1980 until the present day. Part one examines data from Ireland. This focuses on data from criminal justice agencies which examines the number of incidents under Misuse of Drugs Acts and charts a growth in the recording of these offences. Also examined is the available data concerning alternatives to imprisonment which as it stands, is the Probation Service. Data is presented and general observations are made. Limitations to the data is then discussed in order to show that crime data does is not always an accurate reflection of the issue. This section shows that illicit or “controlled” drug offences as they are named by law, have grown in incidence, which may be because they are being recorded more frequently, which would give rise to the ‘dark figure’ of crime concern.

Part two examines data available online from the US at a national and state level. Data is provided by governmental and non-governmental (NGO) agencies. This data is laid out similar to that of Ireland where it is presented with general observations and then the limitations are discussed. This data shows there has been an increase in the number of people arrested and imprisoned for controlled illicit drug offences since the 1980s, in line with the launch of the ‘War on Drugs’.

While limitations are noted concerning the limited availability of data from both the Irish and US perspective, there is one clear finding. Incidences of illicit drug offences in both countries have increased with a general raise in these numbers recorded by the various agencies. It is argued therefore through this analysis, that governmental data does not reflect the full picture of illicit drug crime in these countries due to transparency issues. Instead of allowing the public to see the full picture, all data sets have a number of years missing and as a result, a complete analysis cannot take place. Transparency concerns tie in with the issue of the dark figure of crime. If the complete picture is not there for the public to see, the government must be hiding certain information in order to ensure their authority, considering that they are the agency which holds and provides access to this data.

## **PART ONE: THE IRISH DATA**

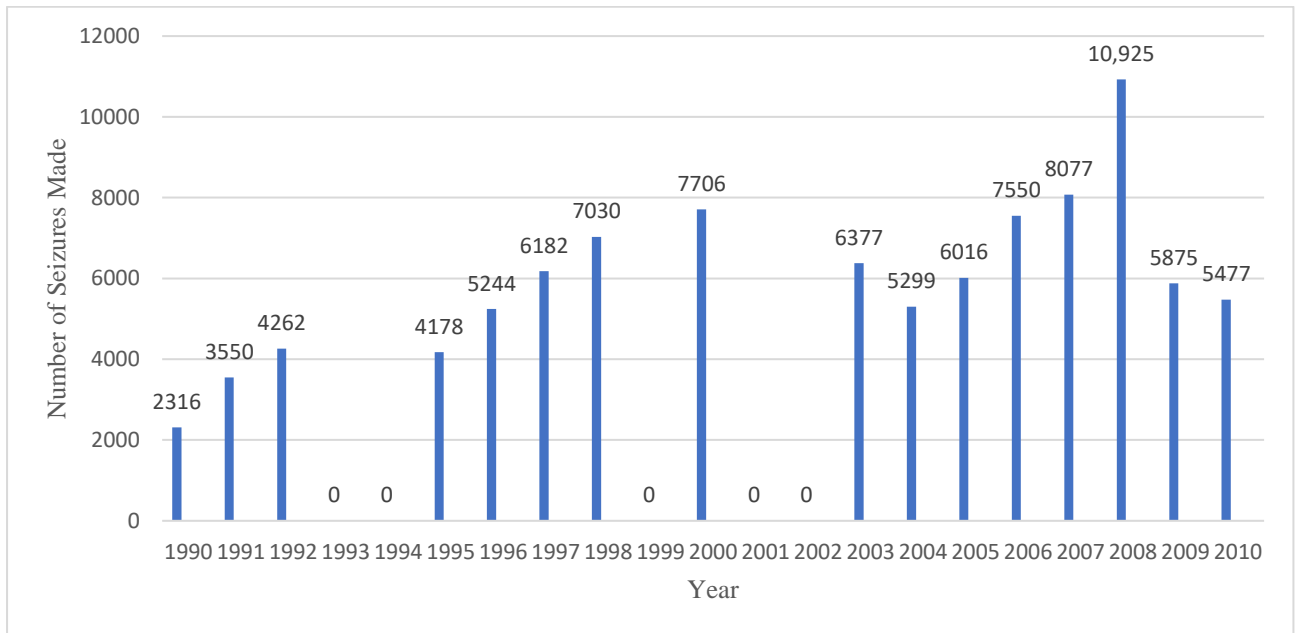
Data recorded concerning illicit drug offences in Ireland is provided by various governmental and criminal justice agencies. The availability while varying in different agencies shows one outcome, Ireland has approached controlled drug offences by applying more penalties over the years. Data from An Garda Síochána is wide yet there are years which have data unavailable, as is seen in graphs provided. Various agencies such as the Irish Prison System and the Irish Probation System also provide valuable data with one element apparent throughout, there is no set data provided which shows the timeframe 1990 until the present day. As a result, data has been pulled from various sources in order to give the most accurate account possible of the evolution in the criminal justice approach in Ireland to controlled drug offences.

### **Incidence of Illicit Drugs in Ireland**

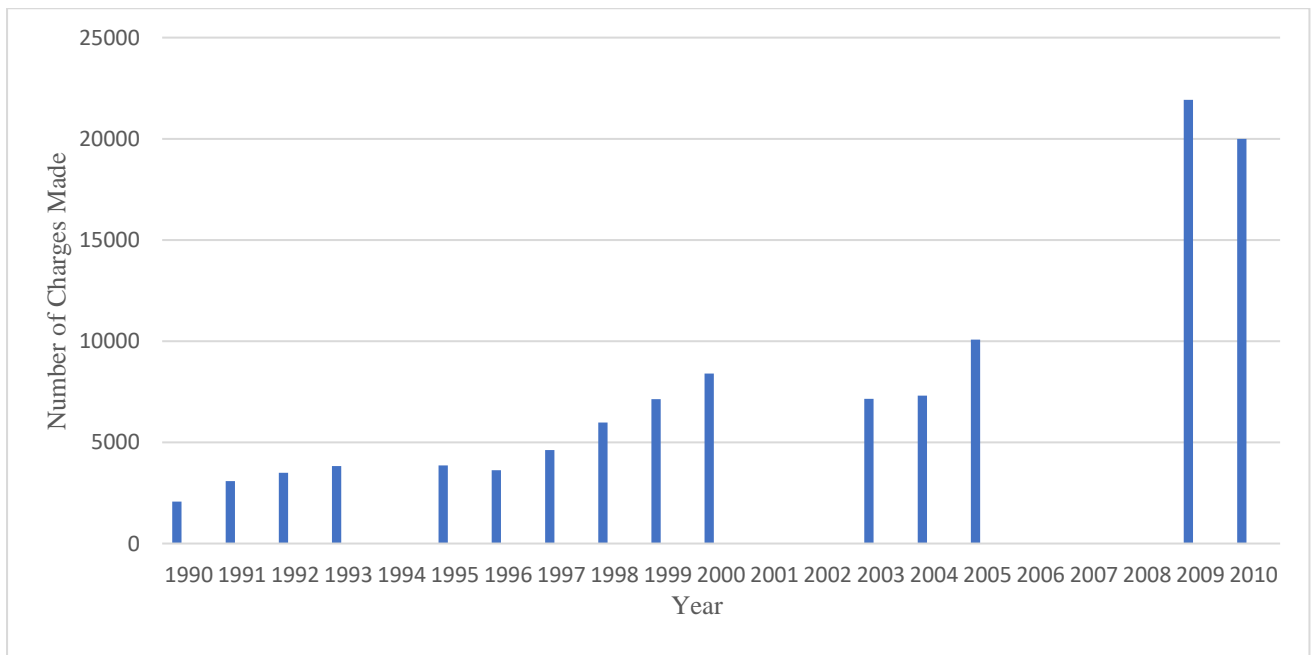
Data on the incidence of illicit drug offences in Ireland have been recorded by multiple governmental agencies in different ways and over different time periods, making in-depth analysis or comparison of the data difficult. However, it is possible to make some assumptions about the incidence of illicit drugs offences in Ireland with the little data that is available.

Currently, there is no data available publicly on the incidence of illicit drugs in Ireland prior to 1990. An Garda Síochána has published a number of controlled drug seizures and charges made under the Misuse of Drugs Acts between 1990 and 2011 in its Annual Reports. These data are provided in Graphs 1 and 2. Despite the absence of data for some years, both Graphs 1 and 2 depict a general increase in the number of controlled drugs seized and charges made under the Misuse of Drugs Acts during this period.

*Graph 1: Number of Seizures under the Misuse of Drugs Acts As Recorded by An Garda Síochána from 1990 to 2010.*



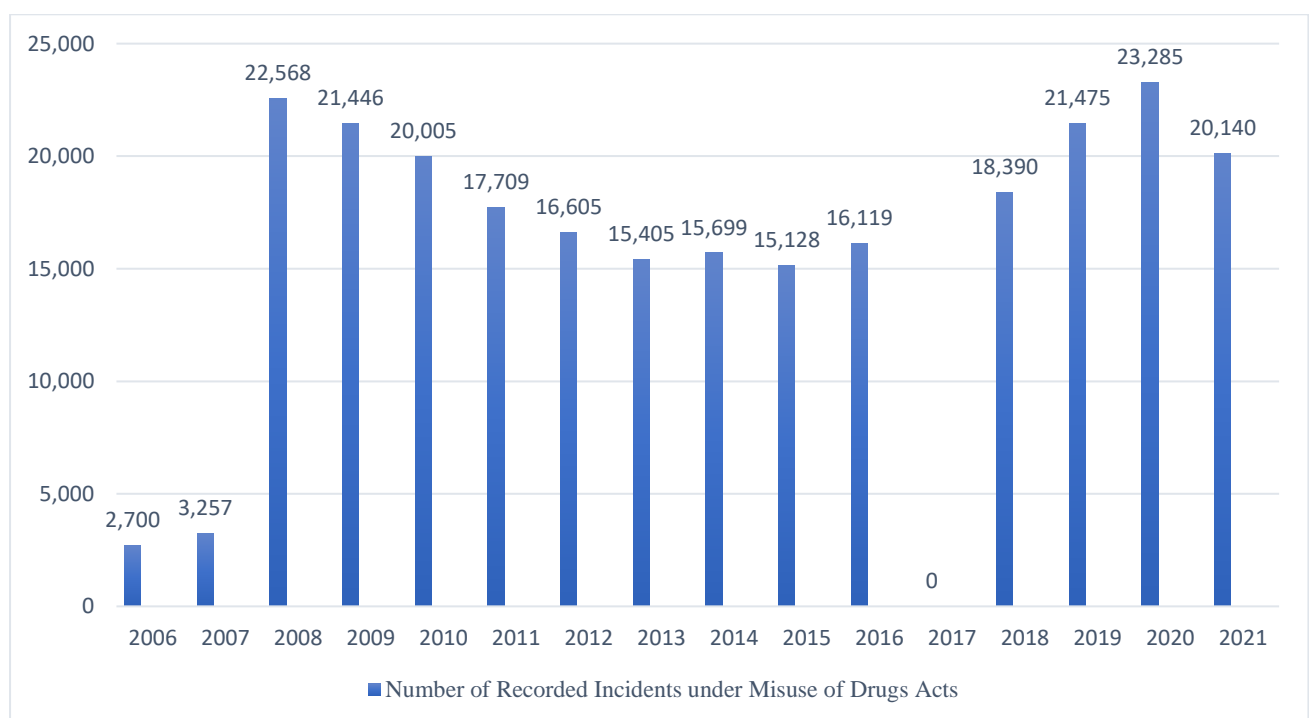
*Graph 2: Number of Charges under Misuse of Drugs Acts As Recorded by An Garda Síochána from 1990 until 2011.*





The Central Statistics Office (CSO) took over the recording of controlled drug incidence data from An Garda Síochána in 2006 due to quality data issues in the PULSE system. Data on the number of controlled drug incidences under the Misuse of Drugs Acts were recorded by the CSO between 2006 to 2021 and are provided in Graph 3. The data indicates a potential decline in the number of recorded incidences between 2008 and 2013. However, since 2016, there appears to be a general increase in the number of incidences.

*Graph 3: Number of Incidents under Misuse of Drugs Acts As Recorded by CSO from 2006 to 2021.*

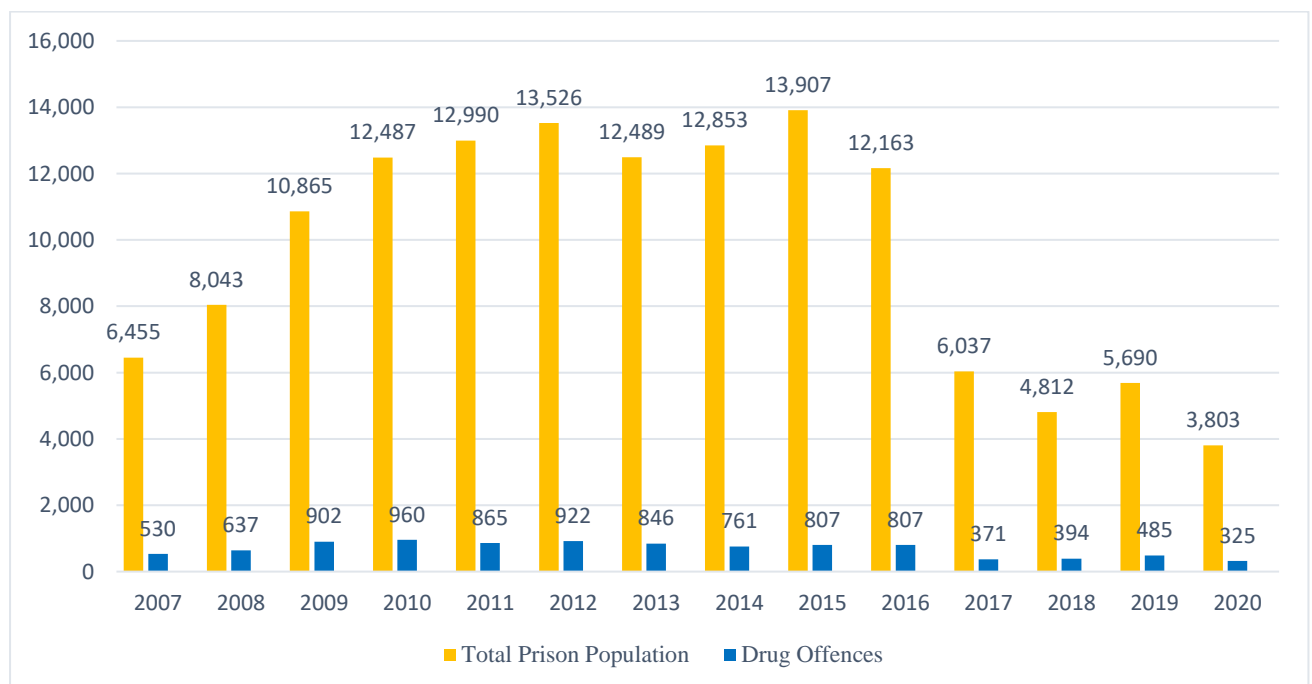


There are three principal limitations to the data provided in Graphs 1 to 3. First, the data provided are for all controlled drug incidences, and includes both legal (ie. prescription and non-prescription) as well as illegal drugs. The data is not reported in ways that allow illicit drug incidences to be isolated. Second, seizures, charges and incidences of controlled drugs does not necessarily mean a person was successfully convicted of a controlled drug offence. Currently, there is no data available publicly on the number of convictions for controlled (let alone illicit) drug offences under the Misuse of Drugs Acts. Finally, this data reflects the police response to controlled drugs, and therefore, is not indicative of the “dark figure” of illicit drug crime.

## Incarceration Rates for Illicit Drug Offences in Ireland

While data from the Irish Prison Service is not widely detailed concerning the exact offence that an offender has been incarcerated for, it is possible to draw conclusions based on the available data. The average percentage of the prison population which is made up of people admitted for illicit drug offences is 12%. The years available; 2007 to 2020 are detailed enough to give an indication as to how the prison population has changed over these years but data from previous years would improve conclusions. People imprisoned for illicit drug offences do not make up the majority of the prison population but, from 2009 until 2016, there was a marked increase in the number imprisoned for these offences. The decrease witnessed after 2016 can be attributed to the Fines Act 2014, introduced in 2016, aimed at lowering the number of people imprisoned for less than three months. The graph indicates a potential decline in the number of people imprisoned for controlled drug offences in Ireland, but this decrease in numbers may be attributed to the Covid-19 pandemic lockdown which took place in early 2020 until mid-2022. Upon this basis, it is not possible to draw a distinct conclusion concerning these data.

*Graph 4: Total Prison Population versus Total Prison Population for Controlled Drug Offences in Ireland.*

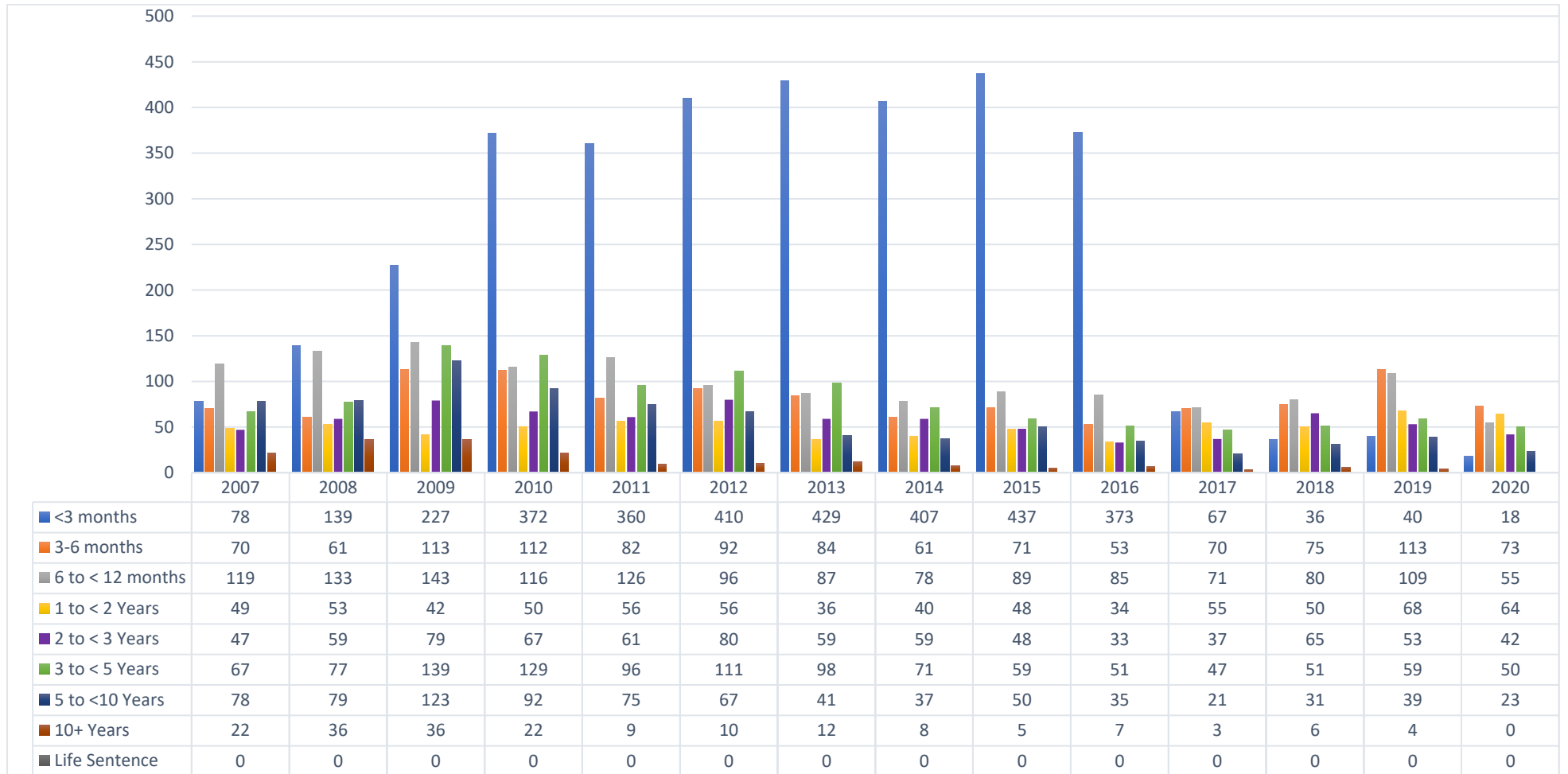


There are two limitations to this data in Graph 4 concerning the specifics of the offences and availability of data from the Irish Prison Service. While it is clear to see that controlled drug offences do not account for more than 10% of the prison population in Ireland, there is no detail as to the specific offences for which a person has been incarcerated. If this was more specific, it would be easier to determine the number of people who have been imprisoned for possession or sale and supply. There is no data available from the Irish Prison Service which concerns previous years from 2006 until 1990. As a result, a complete depiction of the timeframe examined in this discussion cannot be made regarding imprisonment of people who have committed controlled drug offences. This reflects the prison response to controlled drug offences and is indicative of their non-transparency.

### **Sentencing of Illicit Drug Offences in Ireland**

The available data regarding sentence lengths for controlled drug offences in Ireland shows an increase in the number of people imprisoned for controlled drug offences in Irish prisons from 2007 until 2016. This increase was mainly for less than three months. The decline from 2016 onwards is attributed to the Fines Act, introduced in 2016. The general decrease from 2016 onwards is indicative that controlled drug offences in Ireland while not having gone down, have witnessed a decrease in three month sentences. A caveat to note is that of the effects of the Covid-19 pandemic which means direct conclusions cannot be drawn.

Graph 5: Sentence Lengths for Illicit Drug Offences in Ireland

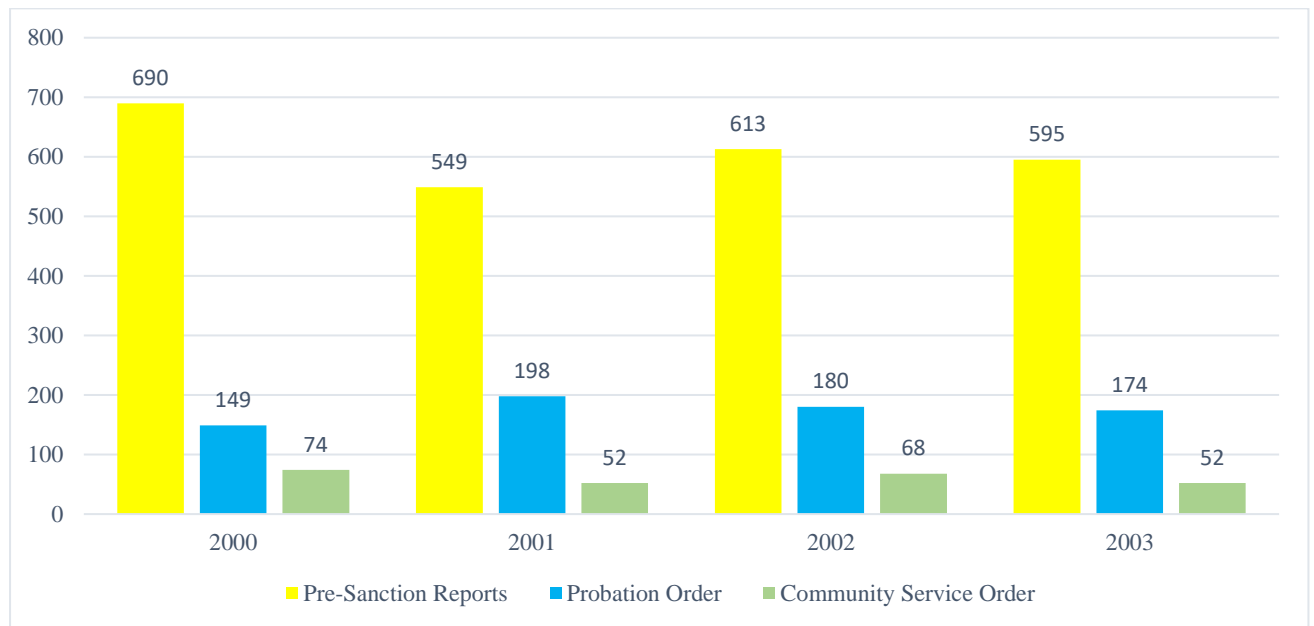


There are two limitations to the data available in Graph 5 concerning sentence lengths in Irish prisons. There is no data available for the years before 2007. Again, this means an in-depth analysis cannot take place. If the Irish Prison Service were to provide further data concerning the years before 2007, a more in-depth analysis could take place concerning the evolution of sentence lengths for controlled drug offences in the Irish prison system. This is also the only data available concerning prisons in Ireland. This means the analysis can only take this one agencies data at face value as there is no other data to measure this against. It would be more helpful if another agency such as a NGO provided it in order to measure them against one another, to understand if this agency is transparent.

### **Reports for Illicit Drug Offenders from Alternatives to Incarceration**

Data provided by the Irish Probation Service is limited but is useful in order to examine the number of referrals to the Service. The years analysed; 2000 – 2003 show a general increase in the referral to the Probation Service for offenders who have committed controlled drug offences in Ireland. The different reports concern show that the alternative to imprisonment is seeing an increase in the criminal justice system. The high use of the pre-sanction report shows a willingness from the judiciary to limit the severity of the offenders sentence provided they comply with this order. The increase in the Probation Order and Community Service Order show this willingness to engage with alternatives to sentencing.

Graph 6: Reports and Orders for Illicit Drug Offenders



There are two limitations to this data provided in Graph 6. A principal limitation to this data which is seen throughout this analysis is the lack of data for other years. If there were data available from before 1990 as well as after 2003, a better depiction of the current approach to the alternatives to sentencing in Ireland would be understood. Therefore, while it is possible to say that there has been a general increase in the use of these alternatives for controlled drug offences in Ireland in the years 2000-2003, further definitive conclusions cannot be drawn. Another limitation which once again is seen throughout this analysis is that this data is not specific. While it is clear that referrals are made to the service for controlled drug offences, this analysis cannot determine which offences these orders have been made for, for example, a Section 3 or a Section 15 offence.

## **PART TWO: THE US DATA**

It would appear that there is a wider array of data concerning illicit drug offences in the US than the ones examined in Ireland so far. Collected by various agencies at a national level, a federal level and from NGOs, these various agencies all go to show one thing; sentencing and arrests of people who have committed illicit drug offences in the US has increased since the declaration of the War on Drugs and in particular, since the 1990s. While there is a greater availability of data, there is a notable absence of consistency. Only in data provided by NGOs, is it possible to cover the timeframe examined, 1990 onwards. At a governmental level, data is not widely available, especially from state specific agencies. This gives rise to the transparency concern. It is questionable as to why this data is unavailable at this level yet a NGO can collate and make it available to the public.

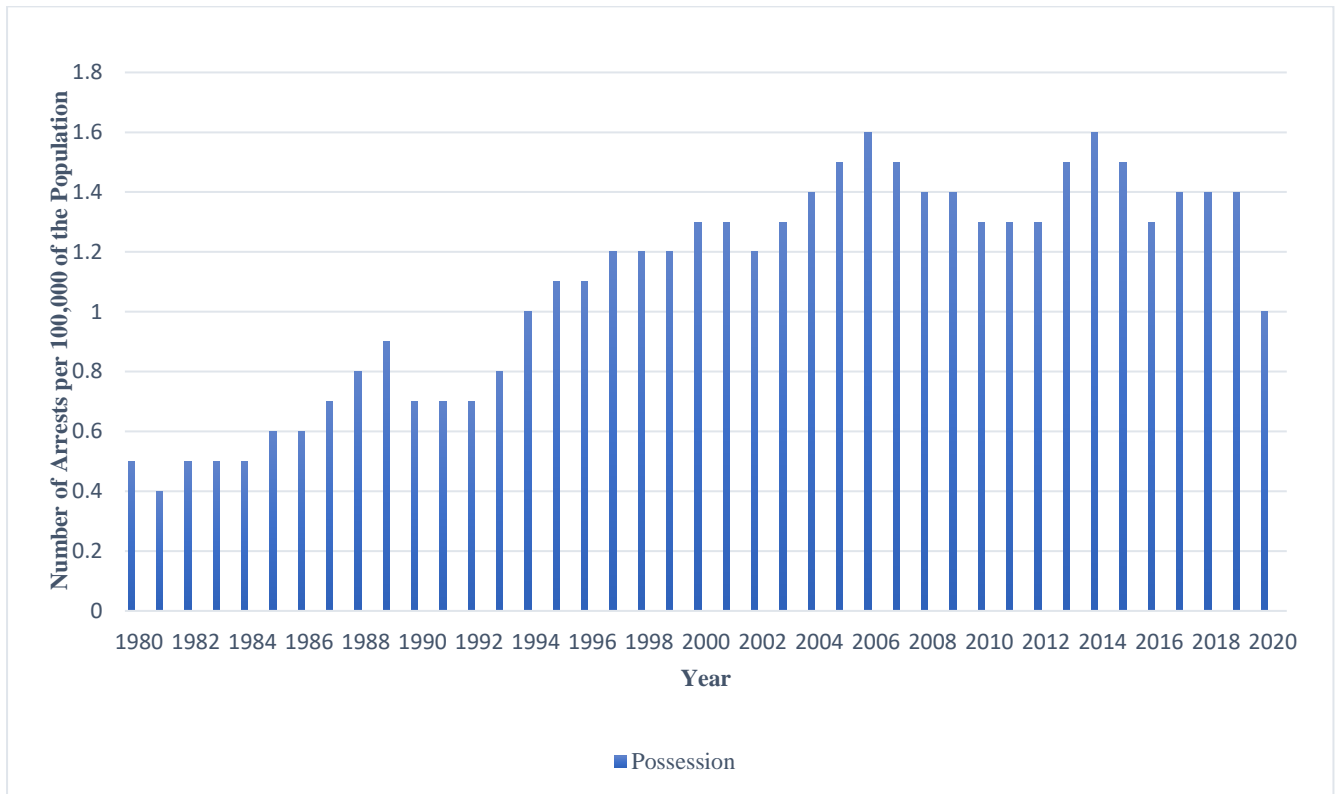
### **Incidence of Illicit Drugs in the US**

While there is a lot more data available from different agencies, there are a wide array of years but it is hard to find data, particularly at a federal level which provides data on sentencing in the US for these offences for the 1990 – present day timeframe. It is possible to draw assumptions based on the data that is provided however.

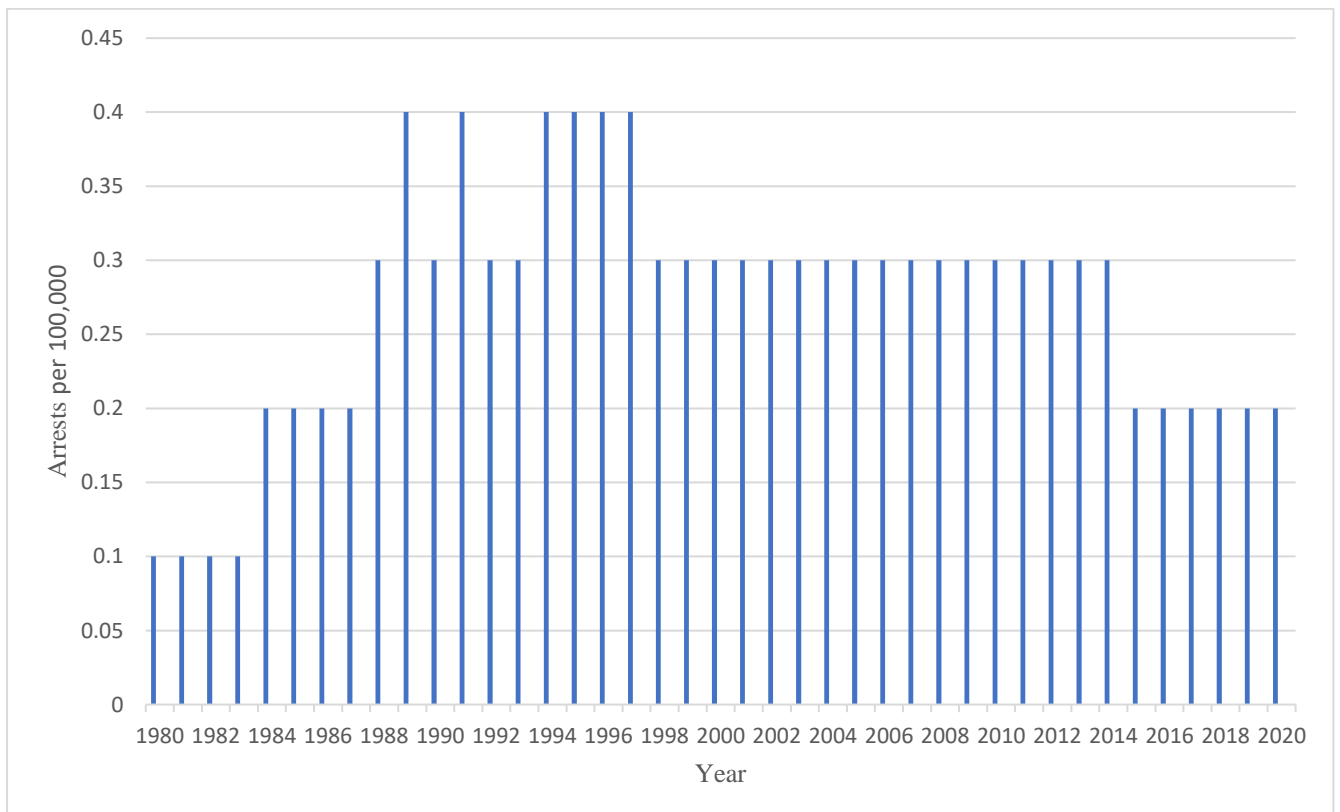
Made available by the Prison Policy Initiative, this data shows a stark increase in the number of arrests for the possession of illicit drugs, particularly from the year 1992 onwards. The arrests are per 100,000 per population. Arrests for possession in the US has generally increased based on the available data.

The number of arrests made per 100,000 in the US for manufacture and/or sale of illicit drugs has increased in the same timeframe. While it would appear that there has been fluctuation and a slight decrease after 2014, it is clear that these arrests have increased.

Graph 7: Number of Arrests for Possession



Graph 8: Number of Arrests for Manufacture/Sale:





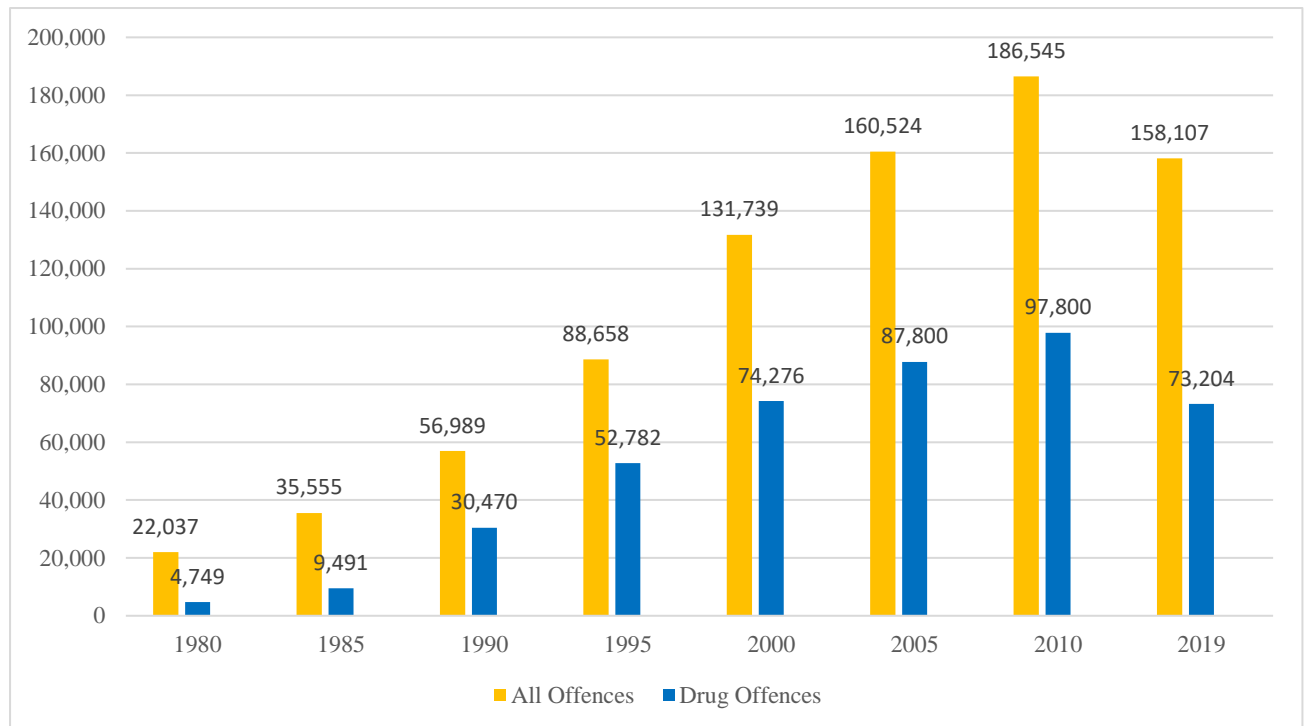
There are two limitations to these data in Graphs 7 and 8. As there is no raw data available, it is difficult to draw distinct conclusions concerning the number of arrests for either possession or the manufacture/sale offences. While it is clear that they have increased, it would be better if there was exact figures arrested per year, rather than per 100,000 of the population. Distinct conclusions could then be drawn concerning the increase in these arrests.

There is also no data concerning how many of these arrests ended in a conviction and sentence for the offender. While it is clear that these arrests increased in the time period examined, it is difficult to determine how many of these arrests contributed to the increase in the prison population in the US, otherwise known as, mass incarceration. If this was available, more specific conclusions could be drawn.

### **Incarceration Rates for Illicit Drug Offences in the US**

The available data concerning the prison population made up of illicit drug offenders is provided by the Sentencing Project, another NGO. While the period of time examined is every five years, conclusions can still be drawn. This data shows an increase in the number of people imprisoned for controlled drug offences in the US. At one point, the people imprisoned for illicit drug offences is more than half of the entire prison population. This data leaves little room for doubt concerning this increase.

*Graph 9: Total Prison Population versus Total Prison Population for Controlled Drug Offences in the US*



There are two distinct limitation to this data in Graph 9. While this data is valuable to show the increase in the number of people imprisoned for illicit drug offences, this data is only available for every five years from 1980 until 2019. This data would be improved if a figure per year was available. This would make it easier to follow this increase and to pick a specific year in which the number of illicit drug offenders imprisoned increased.

Another limitation to this data concerns the ‘jail churn’, the entry of people in and out of the prison system (Sawyer & Wagner, 2019). Their entry to prison is logged but it is not specified here as to whether the imprisonment was the result of a sentence for a controlled drug offence. More specific data on the number of people sentenced per year would improve this data and therefore, improve the ability to draw conclusions.

## **Florida**

It has been established that Florida takes a particularly stringent approach to controlled drug offences as it has some of the harshest penalties for these offences available in the US. The incarceration rate in Florida currently stands at 795 per 100,000 people. At the time of this

analysis (2022), there are currently 391,000 Florida residents incarcerated or under supervision from the criminal justice system.

### **Incarceration Rates for Illicit Drug Offences in Florida**

Data available from the Florida Department of Corrections is useful when examining the state-specific approaches to controlled drug offences in the US. Taken from Annual Reports, this data shows that the number of people admitted for illicit drug offences in Florida has witnessed a slight decrease. This decrease is noted to decrease along with the state prison population.

*Table 3: Number of Admissions for Drug Offences*

<b>Year</b>	<b>Number Admitted for Drug Offences to Florida Prisons</b>
2015-2016	24,226
2016-2017	24,905
2017-2018	25,831
2018-2019	27,844
2019-2020	20,854
2020-2021	17,426

There are two limitations noted about this data in Table 1. While it is valuable to see that a slight decrease is apparent in the number admitted to prison in Florida for illicit drug offences, an accurate picture of Florida prisons cannot be painted as there are no Annual Reports available online from previous years. Had this been provided, a better result could be drawn.

A sentiment echoed throughout this is the jail churn limitation. This data concerns those admitted for controlled drug offences to Florida prisons but it does not state how many of these have been sentenced. As a result, Florida’s approach to sentencing for these offences cannot be commented on. The slight decrease witnessed is the single distinct finding available here.

## **California**

There are currently 565,000 of California residents incarcerated or under criminal justice supervision. The State has seen an increase in the last forty years in the incarceration rate, from 1978 until 2015, often attributed to the Crime Bill 1994, in which California was noted to be a state most affected by this Bill. Controlled drug offences in California are interesting because of the decriminalisation of marijuana use for adults over 21. While other controlled drugs remain criminalised in California, it is a point worth noting due to the available data and the general decrease witnessed in those imprisoned for controlled drug offences in the state.

### **Incarceration Rates for Illicit Drug Offences in California**

Data made available by the California Department of Rehabilitation and Corrections Data Points Entry System indicates a general decrease in the number of people admitted to California prisons for illicit drug offences. State specific data for California is provided by the California Department of Corrections and Rehabilitation Data Entry Points System, along with wider reports from governmental agencies which concern trends in imprisonment. These different agencies provide detailed information but only for a small timeframe. Conclusions can still be drawn concerning the current approach to imprisonment for illicit drug offences in California. The number of admissions for controlled drug offences in California witnesses a general decrease in the years examined. Also witnessing a general decrease is the number of the prison population made up of controlled drug offenders, along with the prison population in general in Californian prisons.

Table 4: Number of Admissions for Drug Offences

Year	Total No of Admissions for Drug Offences in Year
2014	5,659
2015	2,959
2016	2,820
2017	3,049
2018	2,820
2019	2,680
2020	737 *

Graph 10: Number of Admissions for Illicit Drug Offences

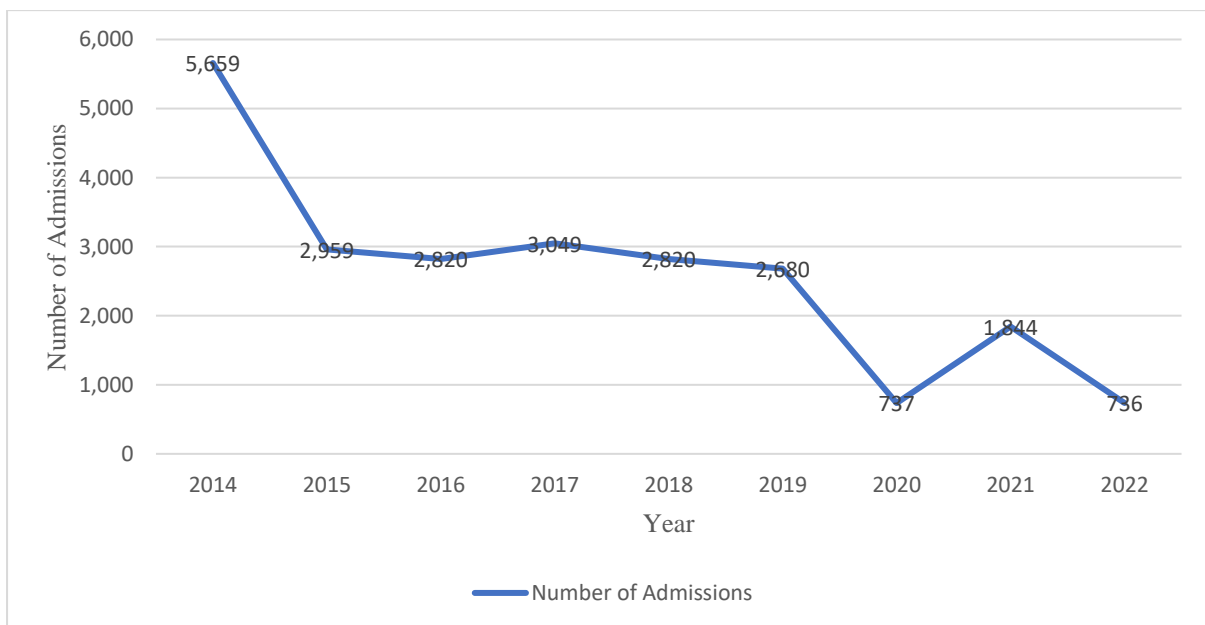


Table 5: Total Prison Population versus Total Prison Population for Illicit Drug Offences in California

Year/Date	Population made up of Controlled Drug Offences	Total Prison Population in California
2014	10,153	135,711
2015	6,410	129,593
2016	5,836	130,390
2017	5,673	131,039
2018	5,272	128,625
2019	4,795	122,687

There are two limitations to the data provided in Tables 2 and 3 and Graph 10. The years which are available concerning this data are not wide. While it is possible to draw conclusions on a general decrease in those admitted to prison for controlled drug offences and for the prison population made up of these offenders, the timeframe examined is small. There is nothing to say that this general decrease is attributed to the decriminalisation of marijuana use in California for adults, because the years before this was introduced are unavailable. As a result, no distinct conclusion can be drawn other than a general decrease.

There is also no specific data on how many of these people admitted to the prisons have been sentenced for controlled drug offences in California. While it is well charted that California laws concerning controlled drug offences allow for harsh penalties, a conclusion cannot be drawn as to how many people are admitted to prison because they have been sentenced.

### **SUMMARY:**

Both countries which have been examined have had a similar pattern in this timeframe, using sentencing as a penalty for illicit drug offences and appearing to do so more over the years while decreasing slightly in the last few years. While there was a lot of data missing in Ireland for the number of charges made for illicit drug offences, it is reasonable to draw the assumption that the recording of these offences has increased in Ireland. The idea of the 'dark figure' of data is seen throughout regarding the unavailability of data from different agencies.

The US while having a similar growth period went in a different direction to this. After 1980, the number of arrests made for illicit drug offences appeared to grow with a peak in the mid-2000s, then witnessing a slight decrease in the last few years. The unavailability of data for previous years was a drawback but for Florida and California, this gave a good indication of a slight decrease in how often these offences have been imprisoned in each state. Appearing to decrease in both states in the years examined, the prison population made up of illicit drug offenders has witnessed change in these years. As the onset of the Covid-19 pandemic would have affected the number of entries into the prison system, conclusions cannot be drawn

It is apparent that both countries saw an increase in the number of incidents recorded or arrests made for illicit drug offences. It would appear that due to the introduction of new legislation in both countries, there has been more policing of these offences. Giving rise to the idea of construction that this analysis details. If more crime is constructed, more crime will be detected.

## **CHAPTER FOUR - CONCLUSIONS**

The aim of this thesis was to provide an analysis of the effects of legislative activity for illicit drug crime. Through showing the increase in the severity of the response, the creation of a drug panic by those in power is understood as a means of controlling the general population, ensuring their power would not be threatened.

### **KEY FINDINGS**

Findings in this thesis draw upon the legal framework in both countries for illicit drug offences and the data available from both countries relating to the various stages in the criminal justice system where illicit drug offences are recorded.

#### **Comparisons of the Legal Framework:**

An analysis of the existing legal frameworks in both Ireland and the US shows an increase in the severity of sentencing practices in both countries for illicit drug offences. Through the construction of illicit drugs as a criminal offence, harsher penalties for these offences create divisions in society. Those in power can dictate to the general population that the small group of people are bad and that they, the politicians, are protecting everyone by sentencing the illicit drug offender.

The increase in the severity of penalties was witnessed in both countries. Post – 1970, the increase in criminalisation was seen and as a result, an increase in the punitive response resulted in a bigger number of people becoming imprisoned and financial punishment also grew in line with this increase. While alternative options are increasing in both countries such as drug courts or rehabilitative programmes for people with drug addictions, it is seen in practice that neither Ireland nor Florida and California often utilise these alternatives to sentencing.

#### **Comparisons of Crime and Prison Data:**

##### **Ireland:**

There appears to be an increase in the number of recorded illicit drug offences in Ireland for illicit drug offences. This steep increase was measured in data provided by criminal justice agencies who record the number of incidents of illicit drug offences in Ireland. An Garda Síochána record an increase in these numbers in their published annual reports, while the CSO shows this in their quarterly crime statistics reports. *Chapter One*, which briefly discussed the

idea of the ‘dark’ figure of crime comes into this increase in the recording. Noted throughout this discussion was the unreliable data from the PULSE system. CSO data is dependent on this system which results in the number of statistics under reservation on the website. Keeping this in mind, the recording practices of data by police (Bidermann & Reiss, 1967). Computational limitations which the authors commented on is clearly an issue. If the correct data is not recorded, it makes it harder to draw specific conclusions on this data.

Data concerning the prison population suggests an increase in the number of people imprisoned for illicit drug offences. While data shows that this offence group is not the highest percentage of the population when compared with other offences, the increase has been witnessed. The prison data also suggests that until recently, the biggest proportion of sentences being served in prison were for less than three months. While this number fell after 2016, attributed to the introduction of the Fines Act 2014, this was a significant finding. In 2015, 55% of committals to prison were made up of people who defaulted on a fine imposed by the court (Rogan & Reilly, 2019). The significance of this suggests a further consideration from the legislature of the use of these sentences. While this thesis is not the place for the discussion of this, it is a noteworthy finding.

Data from the Irish Probation Service was limited in this analysis but showed an increase in the number of people referred to the Service. While this data was not detailed, it was enough to draw a finding. As it is not specified in the data whether the person is referred for a Probation Order or a Community Service Order as an alternative to imprisonment or after their imprisonment and part of their release stipulations, the apparent increase in the referral to this service is witnessed.

#### **USA:**

Based on data made available by NGOs such as the Prison Policy Initiative, it is clear that the US has seen an increase in the number of recorded illicit drug offences. A caveat to note also is that while the number of arrests for both possession of an illicit drug and the manufacture or sale and supply of an illicit drug, this does not always result in a conviction for the offender. This also may not accurately reflect the number of people who are convicted under illicit drug acts either.

The number of people imprisoned in the US for illicit drug offences suggests a staggering increase in the number of people imprisoned for illicit drug offences. At one point, the number of people imprisoned in the US for these offences came to more than half of the



prison population. It should be kept in mind that not all people imprisoned have been found guilty of an offence. As entry into prisons are recorded as part of the prison population, this increase in those imprisoned may not necessarily mean that the offender is serving a sentence, a criticism noted by many authors (Aebi & Kuhn, 2000; Sawyer & Wagner, 2019).

In the specific states Florida and California, there was an apparent decrease in the number of people imprisoned for illicit drug offences. The numbers fell per year when measured against the entire prison population in both states. While it is not possible to comment on the reason for this decrease in Florida, the decrease in California can be drawn upon. This decrease may be attributed to the decriminalisation of marijuana for personal use for adults over 21. As this change allowed for the re-sentencing of offenders previously incarcerated for this offence, the decline may be in line with this.

### **Limitations:**

Limitations to this thesis were the availability of the online data. From both an Irish and US perspective, data was not widely available for the timeframe examined.

### **Irish Data:**

Data was taken from various sources in Ireland including, An Garda Síochána, the Irish Prison Service, the Central Statistics Office and the Irish Probation Service. Data was unavailable from all of these sources for specific years. While AGS data was available from 1990 until the early 2010s, it was not possible to determine anything about the number of charges made by AGS for illicit drug offences from 2011 until the present day. As there was unavailability, this made drawing conclusions hard. The CSO data is all dependent on the PULSE system. While the CSO data was detailed and very helpful to analyse the number of Misuse of Drugs Acts recorded, its dependence on PULSE is a drawback. The CSO website includes a disclaimer for years which are ‘Under Review’, meaning that the data for these years does not meet the quality of standards required for crime statistics.

Data from the Irish Prison Service was helpful regarding sentence lengths and the proportion of the Irish prison population made up of people imprisoned for illicit drug offences. The data from the Irish Prison Service however did limit the ability to draw any concrete conclusions. This is because all data presented in this discussion was taken from one category of data on their website. The Service released a number of PDF tables which included details about the prison population from 2007 until 2020 in three documents. There was no data available for years previous to this, meaning conclusions cannot be drawn about the number of people

imprisoned in Ireland for illicit drug offences, pre-2007. These conclusions would be improved however, if there was data available for previous years from the Service. It would then be easier to trace the imprisonment for these offences and whether the rate has increased or decreased over the years. Due to the short timeframe available from the Irish Probation Service, no concrete conclusion can be drawn regarding Ireland's use of the alternative of Probation or its use for the reintegration of offenders after imprisonment. The data available is useful to see that people began to be referred to the Probation Service.

The unavailability of the data from all providers would suggest a transparency concern from these agencies. The inability to access this data or the limited availability of it decreases the use of this data in further research (Azim & Shaharudin, 2021). If the data cannot be accessed easily, it is then harder to use it.

### **The US Data:**

A similar problem was incurred regarding data availability from the US. Data is available at a state level in a very limited capacity and the only data available from a national level all came from NGOs. Governmental body data was hard to come across concerning illicit drug offences at a national level in the US. This would suggest that there is a lack of transparency from a national level concerning either the rate of imprisonment for illicit drug offences or the number of arrests made for illicit drug offences. The limited numbers which were available at a state level in both Florida and California annual reports was helpful but also limiting. While these annual reports from both states Departments of Corrections, they were available only for limited times. It was helpful that the timeframe for both was the same, (2014 until 2020). However, as these were the only annual reports available online, the ability to draw any concrete conclusions is not possible. Had there been data available from years before such as the 1990s or the 2000s, this analysis would have been far more detailed.

The availability of data from both the Prison Policy Initiative and the Sentencing Project were very helpful to track the rate of incarceration for illicit drug offences and the rate of arrest for the same, it was limiting to the analysis. Data from the Prison Policy Initiative was only available at ratio level. This meant that, as there was no raw data for example, 1000 per 10,000 people arrested for an illicit drug offence, no specific conclusion could be drawn. It made it easier to track that the rate of arrest for these offences had increased over time, but this was the only specific conclusion made. Data from the Sentencing Project was good to track the rate of incarceration for illicit drug offences over time but data was unavailable for specific years such

as, 1983. It was only available for every five years. Had there been data available for specific years, a more detailed analysis could have taken place, rather than tracking broad changes. As NGO data was the most available for the national level, there is consideration as to why there is not as much governmental data available. It would suggest a certain transparency concern. If the government are not willing to produce their own data concerning the rate of imprisonment or the rate of arrests, they may unwillingly admit their part to play in the mass incarceration crisis, fuelling a distrust in themselves or their agencies.

### **Recommendations:**

This thesis builds upon the theoretical framework concerning the construction of illicit drug crime. An area which to date, has not been widely considered in an Irish context. The creation of illicit drug offences is witnessed in both countries and the increase in legislation is charted over time. Concrete conclusions concerning the data could not be drawn however which is something that future research should build upon. On this basis, recommendations are made.

From an Irish perspective, it was apparent that there had been an increase in the number of incidents recorded under Misuse of Drugs Acts. This increase is well charted in the available data but in order to draw distinct conclusions concerning the harshness of the sentences and this increase in the number of incidents, more details should be made available to the public. Details such as which offences have resulted in imprisonment would make it easier to examine the aim of introducing these laws, and then to see who has been targeted by them. As data from the Irish Prison Service is so hard to get and when you get it, it is quite unspecific, there is an issue as to how these prison services work. Secondary data analysis is a growing area (Vartanian, 2010; Bryman, 2012; Johnston, 2017). On this basis, if this area is becoming more popular, data availability concerning the criminal justice system in Ireland should be improved. If not, research cannot take place.

From a US perspective, more governmental information is required in order to draw conclusions. While it was easier to track the prison population at a federal level, the prison population data was provided by NGOs. This non-transparency from the government concerning sentencing for illicit drug offences is seen to be telling of their unwillingness to admit this mass incarceration issue. While trust in the government may not improve if there were more data available concerning this offence group (Matheus & Janssen, 2019), it may improve the possibility of research in this area as it is readily available for both the public and researchers.

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