

# DECRIMINALISATION

## THE MALAYSIAN EXPERIENCE

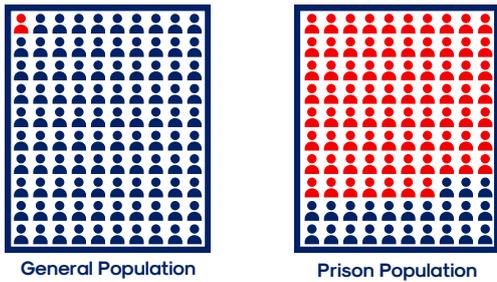


Drug Policy Program  
Malaysia

# Why Malaysia Needs A Drug Policy Reform

## 1. Prisons are Overcrowded.

According to Ramkarpal Singh, a former deputy minister in Prime Minister's Department (Law and Institutional Reform), the number of prisoners nationwide up to September 2023 was 75,379, exceeding the prisons' maximum capacity of **69,816**. 53,072 individuals have been imprisoned for drug-related offences, making up 70.4% of all inmates in the country.



Overcrowded prisons can worsen the spread of infectious diseases such as HIV, tuberculosis (TB) and Hepatitis C. According to a 2014 study, prevalence of previously undiagnosed TB disease was 7.7%, which is 77 times higher than the Malaysian general population. Prisons contribute to the TB burden among general population through released inmates and prison staff.

**Prison diseases are not isolated.**

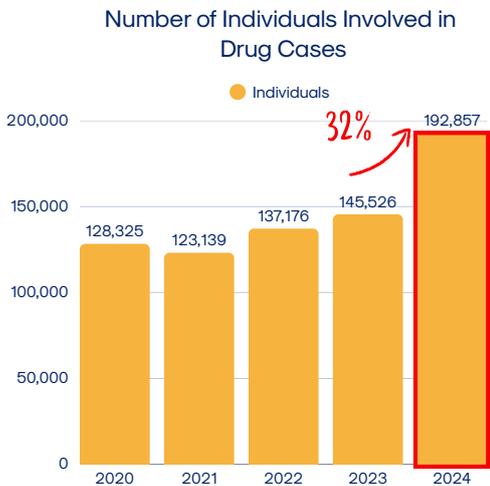
Diseases like TB can spread from incarceration setting into the community through released inmates and daily contact with staff.



According to Home secretary-general Datuk Awang Alik Jeman, **RM 1.15 billion** was spent annually on imprisoning people for drugs. The cost of each inmate per day is RM 50. These funds can be better channeled to:

<p><b>REFOCUS LAW ENFORCEMENT ON REAL THREATS</b></p> <p>Resources can be shifted for authorities to target high-level suppliers and networks, not individuals struggling with addiction or poverty.</p>	<p><b>EDUCATION AND PREVENTION</b></p> <p>Educating the masses not only about harms of drug use but also the harms of stigmatising past or current users</p>	<p><b>COMMUNITY DEVELOPMENT</b></p> <p>Developing marginalized, impoverished communities to help curb descent into problematic/illegal activities</p>	<p><b>TREATMENT &amp; HARM REDUCTION</b></p> <p>Harm reduction services such as counselling, methadone replacement, rehabilitation and more can be expanded</p>
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## 2. Punitive Laws are Not Working.



(AADK, 2024)



(AADK, 2023)

According to AADK data, The number of individuals involved in drug cases in 2024 increased 32.5% from 2023. In the year 2023, 34.3% of AADK's clients were repeated cases.

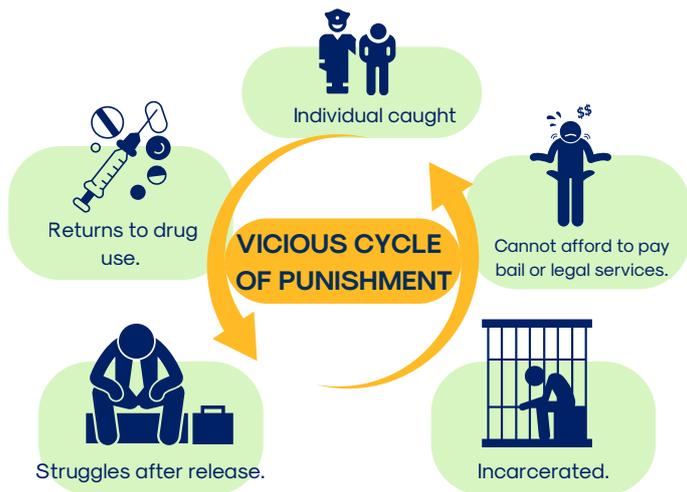
If punitive laws worked, the number of individuals involved in drug cases should be decreasing. The number of repeated cases should not be as high as it currently is.



# Why Malaysia Needs A Drug Policy Reform

## 3. End Lifelong Punishment of Criminal Records

Registration of Criminals and Undersirable Persons Act 1969 punishes people who use drugs (PWUD) by giving them a criminal record. Lifelong criminal records affect individuals, families and communities negatively, trapping them in a vicious cycle of punishment.



### Barriers Faced by Individuals Caught for Personal Drug Use:

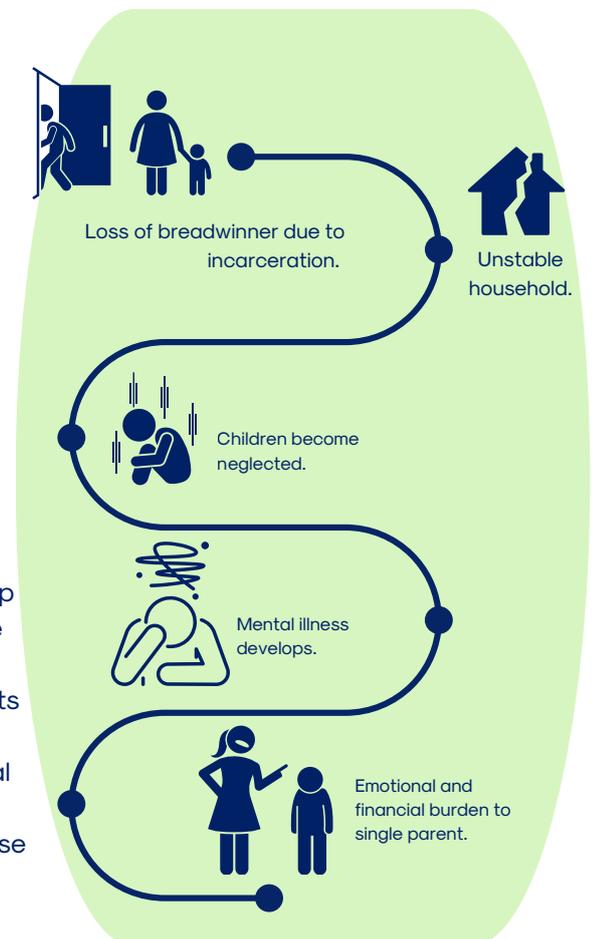
- **Incarceration Risk:** Many cannot afford bail or legal representation.
- **Unemployment:** 27% of those arrested for drug-related cases in 2024 were unemployed at the time (AADK).
- **Post-Release Barriers:** Criminal records limit access to jobs, housing, and recovery support.
- **Stigma & Instability:** Individuals face social stigma and economic hardship after release.
- **Higher Risk of Relapse:** Without support systems, many return to drug use due to untreated issues or as a coping mechanism.

### Impact of Incarceration on Families:

- **Loss of Income:** 95.7% of individuals with drug-related issues in 2024 were men aged 15–39 (AADK)—many likely household breadwinners. Incarceration removes critical income.
- **Household Instability:** The absence of a breadwinner destabilizes the family emotionally and financially.
- **Relapse Risk:** Family conflict is a known driver of relapse (2022 study).
- **Child Neglect & Mental Health:** Household stress can lead to child neglect and increase the risk of mental illness.
- **Intergenerational Harm:** Mental illness and substance use are closely linked in Malaysian studies, increasing the risk of substance use within the family.
- **Burden on Single Parent:** The emotional and financial strain may cause the remaining parent to lash out or develop substance use issues themselves.

### How Criminal Records Harm Communities:

- **Public Health:** Fear of arrest deters individuals from seeking medical help or addiction treatment. Increases the spread of infectious diseases due to lack of healthcare access.
- **Poverty:** Mass incarceration leads to loss of income and rising legal costs for families. Communities become trapped in poverty due to disrupted household structures. Children in high-poverty areas with heavy criminal justice presence face higher dropout rates and incarceration risk.
- **Recidivism:** Criminal records and untreated mental health issues increase the cycle of re-offending. Stigma and lack of support drive people back into substance use.
- **Data shows** people in compulsory drug detention relapsed in 31 days, compared to 352 days for those in voluntary MMT (Methadone Maintenance Therapy) programs.

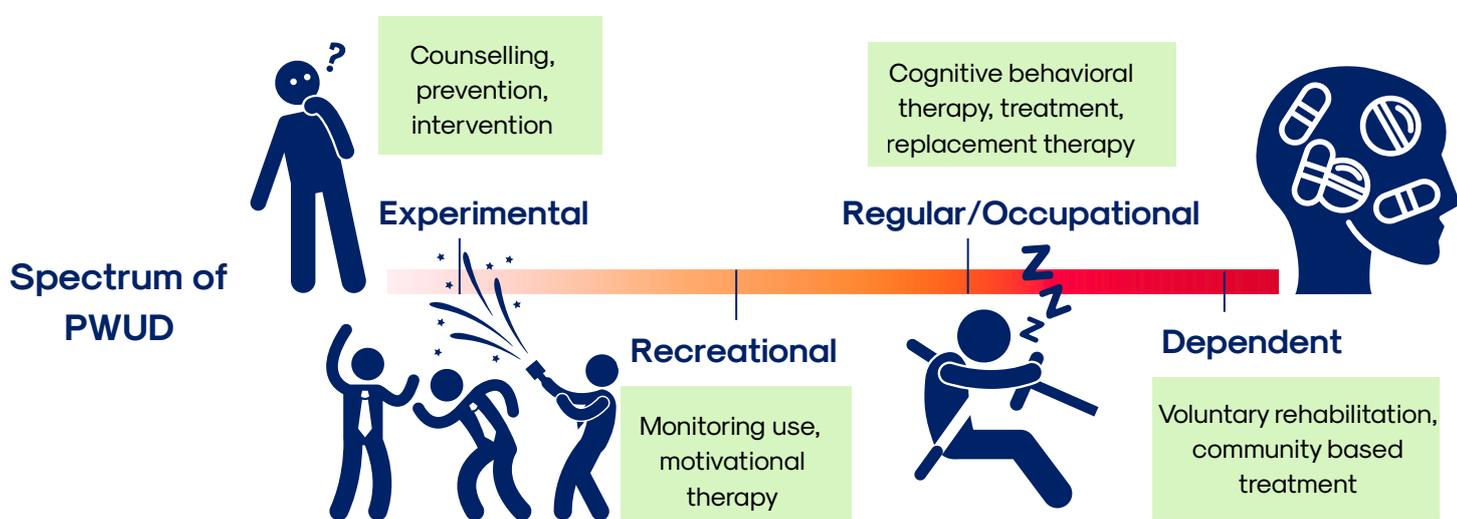


# What are the Issues with the Laws?

## The Laws Involved:

1. Dangerous Drugs Act 1952
2. Drug Dependants (Treatment & Rehabilitation) Act 1983
3. Registration of Criminal and Undesirable Persons Act 1969

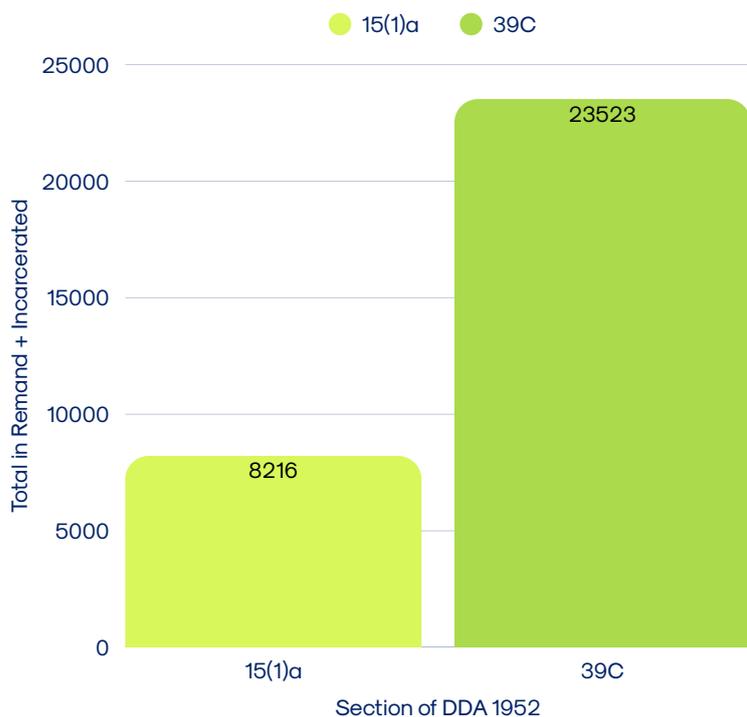
1. **Not all PWUD are the same**, yet the laws do not differentiate between each type of user. **80% of people who use drugs are not addicted** and each type of user would need a specific type of intervention. This does not happen under the current system.



## 2. Legislative Decriminalisation: Drug Dependants (Treatment & Rehabilitation) Act 1983 Reforms

- March 2023: Home Minister acknowledged flaws in current drug laws and proposed reforms to treat drug use as a health issue.
- July 2024: Amendments to the Drug Dependants (Treatment & Rehabilitation) Act allow courts to send people to rehab (including private centres) instead of prison. However, the law still criminalises drug use – individuals must be arrested, charged, and appear before a magistrate before diversion is possible.
- This shows Malaysia recognises the problem, but the amendment falls short of true decriminalisation. It remains punitive and court-controlled, not voluntary or health-led.

# What are the Issues with the Laws?



### 3. Punishment vs Rehabilitation: Section 15 (self-administration) and Section 39C (increased penalties for previous drug-related conviction)

- Section 39C imposes increased penalties for repeat drug offences, even if past convictions occurred decades ago.
- This creates a revolving door of incarceration for PWUD, especially those with substance use disorders.
- Section 39C is not rooted in science as relapse is part of the journey to recovery. Punitive escalation does not address the underlying issue or reduce drug use.
- According to 2021 study, no link has been found between Section 39C and reduction in drug cases.

In September 2023, the number of individuals in both remand and prison with previous drug use convictions was **23,523**.

### 4. Contradicting Laws and Systemic Gap

- The Dangerous Drugs Act 1952 (DDA 1952) and Drug Dependant (Treatment & Rehabilitation) Act 1983 (DDTRA 1983) are contradictory as DDA 1952 frames drug use and possession for personal use as criminal, whereas DDTRA 1983 tries to frame it as a health issue.
- In practice, the decision to charge an individual under the DDA or send them to compulsory treatment under the DDTRA often rests on enforcement discretion. This creates legal uncertainty and unequal outcomes. Two individuals caught in similar situations may face entirely different pathways: prison, rehab, or fines.

### 5. Urine Testing: Flawed Implementation

- The law states that urine tests should be conducted by a medical officer, but this is rarely practiced.
- Urine tests are a screening tool, not a diagnostic instrument for substance use disorder.
- Reliance on urine tests can lead to wrongful assumptions, detentions, and barriers to care.

# What is Decriminalisation?

## DECRIMINALISATION IS NOT LEGALISATION.

The removal of criminal penalties for drug use and possession for personal use. People who use drugs should be provided with treatment and support through the healthcare system and community, not through imprisonment, mandatory rehabilitation, or the criminal justice system. **NOT legalisation.**

### What is the difference?

#### Decriminalisation

- **Drugs remain illegal;**
- No criminal repercussions for those caught with possession of drugs for individual use and those caught using drugs;
- Will be given other administrative sanctions (such as a summon or fine);
- Will not have a criminal record;
- Supply and manufacture of drugs remain criminal offences.

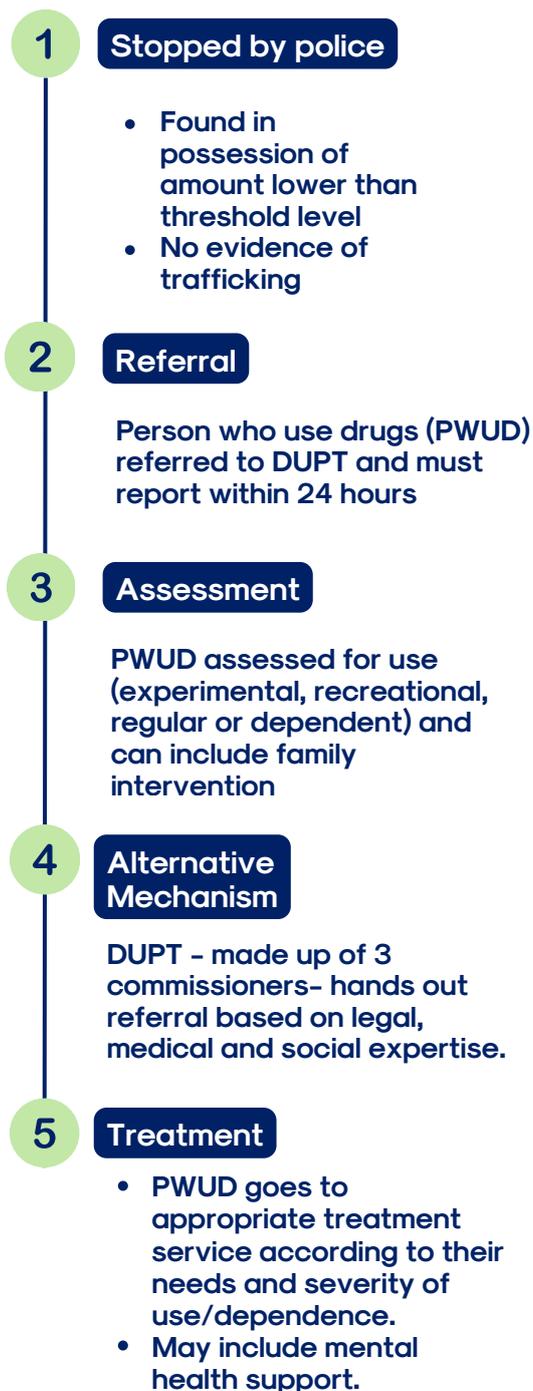
#### Legalisation

- Use and possession of drugs will have **no legal consequences;**
- Cultivation, production, sale, and supply of drugs are allowed but regulated;
- Examples: Alcohol and tobacco.

The goal is **NOT** to legalise drugs, but to reframe drug use as a health issue rather than a criminal one, and to eliminate punitive, non-evidence-based laws that do more harm than good.

# Our Proposed Model

## The Alternative: Drug Use Prevention and Treatment (DUPT)



### Key Elements of Malaysia's Decriminalisation Model

- Threshold level: a small amount for personal use.
- Law reform: move PWUD with below threshold level to civil administration or public health systems.
- Set up alternative sentencing process such as DUPT Commission.
- Increase investment into community-based treatment or evidence-based models for offenders to get better.
- Carefully monitor implementation..

### Other possible actions taken by DUPT

- Deferred sentence
- Fine
- Community service order, other minor penalty
- Voluntary referral to information/education/treatment

# Frequently Asked Questions

Will decriminalisation encourage small quantity trafficking?

During an investigation, if an individual is found with evidence of trafficking small quantities of drugs (even one or two pills), they will be arrested and charged under trafficking.

Why do we need to decriminalise minor possession?

Think of it like cigarettes. A smoker might carry a pack because they use it. A seller would have cartons.

In the same way, someone who uses drugs might carry small amounts for personal use. That doesn't make them a criminal or a dealer.

Will decriminalisation encourage new users?

No. Research from countries like Portugal shows decriminalisation does not increase drug use.

How do you tell the difference between drug use/possession of small quantities for personal use and drug supply?

Most countries use threshold quantities which are specific weight limits to distinguish personal use from supply. If someone carries more than that amount, it may be treated as supply. There will also be an investigation to determine whether the person is intending to traffick or not.

# Frequently Asked Questions

Are we soft on drugs?

Not at all. Decriminalisation prioritises health over punishment. People still face consequences, but through treatment and support, not prison. It's a smarter way to reduce drug use and harm.

Are the health and social services ready?

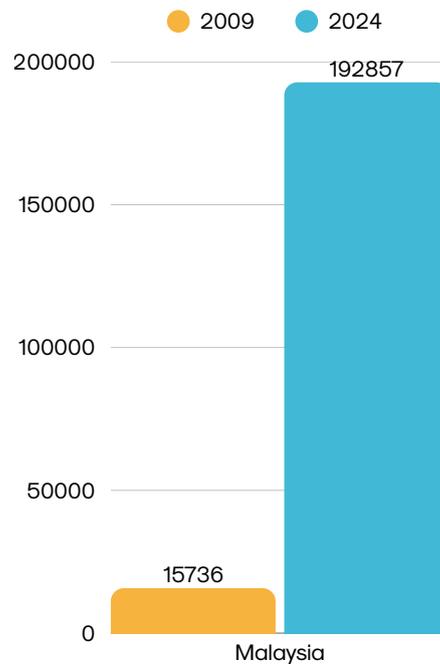
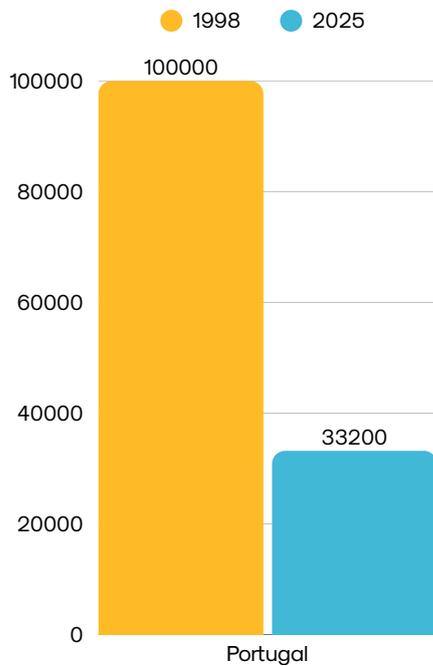
Malaysia has existing infrastructure like AADK, which can be retrained to support a health-based approach. Ensuring services are ready is essential for decriminalisation to succeed.

Are we following the West?

Countries like Portugal were early pioneers in drug decriminalisation, and now more nations across regions are following suit due to its proven benefits. Decriminalisation can take many forms and be tailored to fit each country's unique context.

# Statistics

Earliest numbers of problematic drug use in Portugal showed 100,000 individuals. This number dropped to 33,200 in 2025. In comparison, Malaysia's earliest available data shows 15,736 drug users in 2009. **The numbers increased 12 times by year 2024.**



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15(1)(a) - Self administration took up **50.7%** of all cases in 2023.



# Statistics

## DEMOGRAPHICS

(AADK, 2023)



95.7% Men

76.4%

Malay

63.2% of people aged  
15–39 (Youth)

27.1%  
unemployed



38.4%



# The Portuguese Model

In 2001, Portugal decriminalised personal possession and drug use. The threshold quantity was equivalent to a 10-day supply of any drug. Anyone caught with less than the amount was not subject to criminal sanctions.



Police were deemed the deciding authority in decision-making.

## How it Works



Individual caught:

- with use or possession of drugs below the 10-day supply threshold;
- no evidence of trafficking



Referred to

- Commission for the Dissuasion of Drug Addiction;
- Undergoes assessment by a 3-person government appointed panel. One member must be a lawyer, and the other two experienced professionals (e.g: psychologists or social workers);



Outcomes from the Commission:

- Voluntary referrals to health or social services;
- if refused: penalties like community service, fines, or document confiscation (e.g: license suspension);
- Entire approach aligns with public health-centred harm reduction.

# The Portuguese Model

## Impact of Decriminalisation (2001 - 2022)



40% → 15%

decrease in drug related incarceration of all prisoners

- HIV cases dropped from 1,287 (2001) to 16 (2019)
- Portugal once had 50% of new EU HIV cases, now only 1.7%
- AIDS diagnoses among injecting users fell from 518 (2000) to 13 (2019)

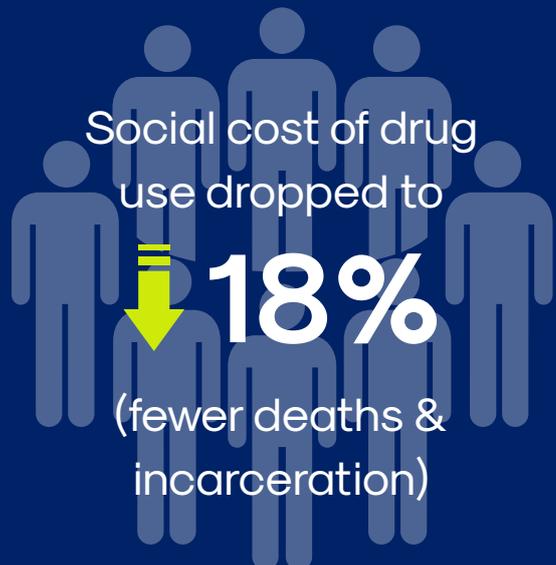


75% ↓

- Decrease in drug related deaths
- Consistently below EU average for 20+ years



Reduced pressure on justice system and reallocation of resources



Social cost of drug use dropped to

18%

(fewer deaths & incarceration)



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