



PRETRIAL DETENTION AND PUBLIC HEALTH: UNINTENDED CONSEQUENCES, DEADLY RESULTS

The excessive use of pretrial detention leads to overcrowded, unhygienic, chaotic, and violent environments where pretrial detainees—who have not been convicted—are at risk of contracting disease. Holding facilities, which include police lock-ups not designed for large numbers or extended stays, often force detainees to live in filthy, overcrowded conditions without access to fresh air, minimal sanitation facilities, health services, or adequate food.

In the worst cases, detainees die from the conditions and associated disease, and surviving detainees sleep with the corpses. In some cases, pretrial detention centers are so bad that innocent people plead guilty just to be transferred to prisons where the conditions might be better. But detainees are not the only people whose health is threatened: outbreaks of disease such as tuberculosis or hepatitis C often begin in pretrial detention centers and then quickly spread to the general public. Thus the overuse of pretrial detention is not just a human rights problem, but also a looming public health crisis.

Health Rights of Pretrial Detainees under International Law

People in detention have the right to “the health services available in the country without discrimination on the grounds of their legal situation.” Health and medical provisions of the Standard Minimum Rules for the Treatment of Prisoners are wide-ranging and stipulate that:

- a medical officer should examine every prisoner “as soon as possible after his admission and thereafter as necessary;”
- the prison medical officer should see prisoners who are ill on a daily basis and report cases where a detainee's health is injuriously affected by continued imprisonment;
- prisoners awaiting trial should be kept separate from convicted prisoners;
- prisoners awaiting trial have the right to all services, including medical care, accorded to all prisoners.

Why Excessive Pretrial Detention Threatens Public Health

While both convicted prisoners and pretrial detainees face disease and other threats to their health, the risks are often more severe for pretrial detainees.

► Overcrowding

In many countries overcrowding is more severe in remand centres and is a principal determinant of the spread of infectious diseases such as tuberculosis.

► Inadequacy of Health Services

Health services are frequently limited, inadequate or even nonexistent in remand facilities which leads to failures of detection and management of tuberculosis, sexually transmitted diseases, and other conditions.

► Lack of Access to Longer-duration Treatment and Care

Even when health services are present in remand facilities, there is often a reluctance to start treatment for infectious diseases that requires a

sustained period of therapy, such as for tuberculosis, HIV or hepatitis C, or for methadone maintenance.

► Population Less Likely to Be Under Medical Care

Pretrial detainees who are not granted bail tend to be low-income and many belong to marginalized communities. As such, they are likely to enter detention with pre-existing health conditions. Similarly, drug users are more likely to be arrested, infected with disease, and less likely to be receiving medical care.

► Ineligibility of Pretrial Detainees for Educational and Other Programs

Pretrial detainees seldom have access to exercise, sports, educational, vocational, and other programs that may be available to convicted

prisoners—services that could enhance physical and mental health. This absence undermines the effectiveness of whatever health services may exist.

► Spread of HIV/AIDS and Tuberculosis

Pretrial detention plays a crucial role in what has been termed the “mixing bowl effect” of putting HIV-positive and HIV-negative people together where sex and drug use are prevalent and where condoms and sterile injection equipment are rarely to be found. Management of TB is particularly difficult in pretrial detention due to detainee turnover, movement of detainees within remand institutions, and movements to other institutions within the criminal justice system.

Special Populations

Female Detainees

Women in remand are more likely than men to face violations of international standards for the treatment of unconvicted detainees because special pretrial facilities for women rarely exist. Furthermore, because women constitute a minority of the detainee population, specialized health services for women are seldom available. Pretrial detention puts women at extremely high risk of sexual abuse and violence, particularly where women detainees are housed along with convicted offenders and/or men. Sexual violence, heinous in itself, also exacerbates mental disorders and increases the risk of HIV and other sexually transmitted diseases. Finally, because women are often detained for crimes that by definition heighten their need for health care, such as attempting an illegal abortion, the circumstances of women in detention can be particularly catastrophic.

People with Mental Illness

As an entry point to correctional systems, pretrial detention facilities receive people with mental illness who are not yet diagnosed or treated, including those who should be remanded to a psychiatric hospital or institution. For people with mental illness, the factors most likely to contribute to improved mental health are those least likely to be present in pretrial detention—namely, maintaining an atmosphere of protection from violence, access to educational and physical activity, and access to specialized care and support.

A recent study found that women in pretrial detention in Moscow, of whom 79 percent were sex workers, had higher HIV rates than juvenile prisoners and homeless women tested at the same time. Other sexually transmitted infections were also highly prevalent among these women. Another study estimated that between 30 and 50 percent of women entering prison in Russia from 2000 to 2002 had sexually transmitted diseases.

A study based on longitudinal TB data from 26 countries in Eastern Europe and Central Asia concluded that the rate of growth of prison populations was the most important determinant of differences in the TB infection rates in these countries. A study from Brazil concluded that the early weeks of incarceration were the riskiest for tuberculosis transmission.

Recommendations

- Reduce the excessive and arbitrary use of pretrial detention to ensure that pretrial detention is used as an exceptional measure. A smaller number of people in pretrial detention is the first line of defense against disease in remand facilities. Such reduction also helps alleviate the overall problem of prison overcrowding.
- Provide early access to medical assistance to ensure the medical needs of suspects are addressed upon arrest. Early identification of contagious diseases minimizes their spread and provides a check against instances of torture. The presence of external professionals also contributes to increased openness and transparency of the system.
- Promote the participation of health professionals in monitoring pretrial detention centers.
- Develop training on pretrial detention in the curricula of health professionals.

This is a summary of the report, “Pretrial Detention and Public Health,” by Joanne Csete (Columbia University Mailman School of Public Health) with contributions from Dirk van Zyl Smit (School of Law, University of Nottingham), published by the Open Society Justice Initiative and the Open Society Institute Public Health Program in 2011.

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