

## Draft Provisions on Rights of Prisoners

The Public Authority shall fully implement the UN Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules and shall ensure that protective measures are guaranteed in all situations of custody.

Everyone remanded in custody pending trial for an indictable offence has the right to spend no more than 110 days in custody before the commencement of the trial and everyone remanded in custody pending trial for a summary offence has the right to spend no more than 40 days in custody before the commencement of the trial. These rights can be waived or can be removed where the interests of justice clearly require this.<sup>1</sup>

A person convicted of a crime shall be given a custodial sentence only as a measure of last resort. The Public Authority shall develop and encourage the use of alternatives to prosecution and custodial sentences.

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.

There shall be no discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.<sup>2</sup>

The religious and moral beliefs of prisoners shall be respected.<sup>3</sup>

Any person deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social and cultural rights to which they are entitled under national or international law, including those conferred by this Bill of Rights, and which are compatible with the deprivation of liberty.<sup>4</sup>

No-one shall be imprisoned for non-payment of a fine or for debt.

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<sup>1</sup> From 1<sup>st</sup> NIHRC draft based on situation in Scotland. Aimed at building on Articles 5 & 6 of ECHR, right to liberty and security and right to fair trial.

<sup>2</sup> From UN Basic Principles for the Treatment of Prisoners.

<sup>3</sup> Amended from New European Prison Rules (Council of Europe). Original refers to groups to which a prisoner belongs.

<sup>4</sup> The 1<sup>st</sup> NIHRC draft contained a similar clause (number 14) and this has been amended here to include not only the Bill of Rights but other rights in society.

In allocating prisoners to different institutions or regimes, due account shall be taken of their judicial and legal situation (untried or convicted prisoner, first offender or habitual offender, short sentence or long sentence), of the special requirements of their treatment, of their medical needs, their sex and age.<sup>5</sup>

Males and females shall in principle be detained separately, although they may participate together in organised activities as part of an established treatment programme. Male and female prisoners shall be at all times be transported separately.<sup>6</sup>

In principle, untried prisoners shall be detained separately from convicted prisoners unless they consent to being accommodated or involved together in organised activities beneficial to them.<sup>7</sup>

The purposes of the treatment of persons in custody shall be such as to sustain their health and self-respect and, so far as the length of sentence permits, to develop their sense of responsibility and encourage those attitudes and skills that will assist them to return to society with the best chance of leading law-abiding and self-supporting lives after their release.<sup>8</sup>

Prisoners shall have the right to access a doctor, when necessary, at any time during the day and night.<sup>9</sup>

Disciplinary procedures shall be mechanisms of last resort. Whenever possible, prison authorities shall use mechanisms of restoration and mediation to resolve disputes with and among prisoners.<sup>10</sup>

Special high security or safety measures shall only be applied in exceptional circumstances.<sup>11</sup>

Women prisoners shall only be strip searched where is reasonable concern with regard to their safety or the safety of others. In these exceptional cases, the search shall be carried out by a medical

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<sup>5</sup> New European Prison Rules

<sup>6</sup> New European Prison Rules

<sup>7</sup> New European Prison Rules

<sup>8</sup> New European Prison Rules

<sup>9</sup> New European Prison Rules, Guidance from Committee of Ministers.

<sup>10</sup> Council of Europe, Committee of Ministers Recommendation (2006) 2.

<sup>11</sup> Guidance Committee of Ministers on European Prison Rules.

professional who is not the person responsible for that individual's medical care.<sup>12</sup>

Young prisoners shall be detained under conditions which as far as possible protect them from harmful influences and which take account of the needs peculiar to their age<sup>13</sup>.

Persons who are suffering from mental illness and personality disorder and whose state of mental health is incompatible with detention in a prison should be detained in a therapeutic mental health facility.<sup>14</sup>

Pregnant women and mothers of young children shall be imprisoned only as a last resort, for those convicted of the most serious offences and who represent a danger to the community.<sup>15</sup>

The Public Authority shall take effective measures to ensure that favourable conditions are created for the reintegration of ex-prisoners into society including assistance in finding suitable homes and work to go to.<sup>16</sup>

The medical services of the institution shall seek to detect and shall treat any physical or mental illnesses or defects which may impede a prisoner's resettlement after release. All necessary medical, surgical and psychiatric services including those available in the community shall be provided to the prisoner to that end.<sup>17</sup>

The Public Authority shall ensure provision of adequate support for the families and children of prisoners and ex-prisoners.

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<sup>12</sup> Based on Amnesty International policy on strip searching.

<sup>13</sup> New European Prison Rules

<sup>14</sup> New European Prison Rules and Guidance from Council of Ministers with a addition of 'personality disorders' to reflect absence of this from NI mental health legislation

<sup>15</sup> New European Prison Rules and Guidance from Committee of Ministers.

<sup>16</sup> From NIHRC first document September 2001 with addition on home and work from New European Prison Rules

<sup>17</sup> New European Prison Rules