

17. Prisoners with special needs

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Key points

- All prisoners are potentially vulnerable people, with individual health and care needs requiring proper assessment and management.
- Prison populations in many parts of Europe are becoming increasingly complex with regard to special needs.
- Overcrowding has a negative impact on the physical and mental health of prisoners, and particularly on the health of prisoners with special needs, posing additional challenges to prison authorities.
- Two major requirements in dealing with prisoners with special needs are: (i) a skilled assessment as part of the admissions procedure; and (ii) a suitable staff recruitment and training policy so that the staff who work in prisons are enabled to respond appropriately and effectively to special needs.
- An individualized approach is essential.
- Needs are not static, so re-assessments are necessary throughout the whole term of imprisonment. New needs emerge, such as those relating to the rising number of older prisoners in prison.
- It is not possible in prisons to deal satisfactorily with people with severe special needs that require facilities and skilled attention which are only available in specialist institutions.
- Admission of severely ill or disabled people to prison should be avoided and only used as a last resort.
- Diversion schemes and other alternatives to imprisonment should be used more widely and consistently than at present.

This chapter concerns prisoners with specific needs associated with their disability, minority status, nationality, sexual orientation and age. Prisoners with mental health care needs (another large group with special needs) are covered extensively in Chapter 11, and a more detailed discussion of the health care needs of older prisoners is included in Chapter 19.

The starting point in the discussion of prisoners with special needs today must be the recognition of the growing complexity of prison populations. Nearly all prisoners may have special needs, all are vulnerable to a greater or lesser extent and the vast majority come from difficult and deprived backgrounds, with personal histories which can considerably influence the care and treatment they require. Thus it is essential to give priority

to the reception process, the early days in prison and the health and other relevant assessments.

Many prisoners have needs that require special consideration. Women, young people and prisoners with mental health care needs are important examples. This chapter looks at prisoners who have special needs due to their disability or age, or because of their ethnicity, indigenous or minority status, nationality or sexual orientation, which present diverse and challenging needs. For those whose health care requirements are most difficult to meet within a prison, the correct approach is early appreciation of their needs and a diversion scheme to admit them to places equipped to provide them with appropriate care. This has become increasingly well-recognized for those with severe mental ill health or advanced illnesses where it is not possible to provide the level of expertise and care necessary within the restrictions of a prison service. However, diversion schemes remain underdeveloped in many parts of Europe, which increases the pressures on criminal justice systems to meet the requirements of those with considerable needs who have to remain in prison.

International standards

This chapter is mainly based on the UNODC *Handbook on prisoners with special needs (1)*, which goes into greater detail and includes important information about the definitions of the conditions and groups being considered, the background and size of the problem, the relevant international standards and examples of good practice.

Some relevant provisions from two of the key international treaties which are relevant to all of the groups covered in this chapter, including their health and care requirements, are quoted below. These instruments, and other standards relevant to specific groups, prohibit any discrimination in ensuring that everyone, including prisoners with diverse backgrounds and needs, enjoys the right to the highest attainable standard of physical and mental health:

International Covenant on Civil and Political Rights
Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection

against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. (2)

International Covenant on Economic, Social and Cultural Rights
Article 12 (1)

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. (3)

General principles of care

Prison systems are required to protect the physical and mental health and well-being of prisoners. This challenging task, within often old and overcrowded institutions, can only be tackled in accordance with the general principles of care stressed throughout this guide. These include: respect for the individuality of each prisoner; the importance of a holistic approach; the essential need for basic care such as adequate nutrition, exercise and constructive use of time; maintenance of contacts with family and friends; and a basis of hope for the future.

Treatment in prisons

The medical examination on entry into prison should reveal whether a prisoner has special needs. If this is the case, a fuller assessment is necessary so that a diagnosis and plan of treatment can be prepared. Even in countries with good resources and with an established national health service, it is unlikely that the prisoner will be carrying a health notice drawing attention to a health condition or allergy, but these should be investigated and their presence or absence noted. If the prisoner is a non-national, and has brought medicines from his or her country of origin, these should be discussed with the prison's pharmacist or brought to the attention of a medical member of the prison health team so that local equivalents can be obtained in good time.

The treatment to be provided should be confirmed in writing by the health team and should clearly indicate the quantity and frequency of treatment. The quality of the treatment is generally measured as equivalent to that provided for citizens in the local community. It is not possible to meet every special demand as some may be unrealistic or unreasonable. All requests should, however, be carefully considered and where they are impossible to meet, a record should be made of what was asked for with an explanation as to why the request could not be met. The standard of treatment must be enough to meet the requirements of the illness and must comply with established medical opinion.

A suitable prison or place of detention

Prison authorities are obliged to recognize that prisoners with special needs should be admitted to prisons capable of handling the needs and providing the necessary care. This can create problems for prison staff who have no say in who is sent to the prison and often have little warning as to the special needs involved. It is essential, therefore, that the whole criminal justice system should be alert to plans for dealing with prisoners with special needs. Where there is serious mental illness, there should be a possibility of diversion at an early stage of the criminal justice process to a place with the specialist psychiatric facilities necessary for the treatment of that prisoner. Responding to the needs of prisoners with severe physical disabilities or with more than one serious health or other problem can be very challenging. While it is not possible to plan for every rare condition, a whole criminal justice system plan for the more common conditions with advice on what to do in emergency situations is becoming an essential part of a well-managed prison health care system.

A proper manner of detention

With reference to a proper manner of detention, the European Court of Human Rights issued a judgment in the case of *Feher v. Hungary* (2013) which is applicable to all prisoners, including those with special needs. The Court stressed that States must ensure that "the manner and method of the execution of the measure do not subject the individual to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention" (4). The proper manner of detention will depend on the training of all staff working in prisons and on the ethos of the prison as developed by the senior management team. It also requires the embedding of knowledge and attitudes which will be conducive to meeting the above requirements as regards all prisoners with special needs. The importance of staff training has led to the inclusion of a chapter on the subject in this guide. The additional requirement for meeting special needs is to conduct joint training and multidisciplinary training in the training programme, in order to improve the capacity of the staff to respond to the sometimes complex needs of individuals with special needs in the most holistic and effective way.

Some important messages

The difficulties encountered by policy-makers, courts and prison authorities when trying to meet the needs of offenders with special needs encourage an approach which looks carefully at the following points. First, prisons must meet the needs of the clear majority of prisoners, who are relatively young and relatively lacking in handicapping conditions. Second, imprisonment should as a general principle be considered as a last

resort. This is particularly important in the case of older or severely handicapped people: alternatives to prisons and community sentences need serious consideration and are often the best way to ensure the most humane and acceptable way to carry out the decisions of the courts. Third, when assessing the suitability of the necessary treatment in a suitable place and in the desired manner, it should be remembered that prisons inevitably magnify the individual's problems. Fourth, regular monitoring and reassessment is necessary as illnesses can become more serious and disabilities more complicated over time. Fifth, most prisoners with special needs have more than one serious condition and several challenging needs, which need to be assessed and treated in a holistic manner. Finally, while prison staff are becoming more professional and their training and continuing training will probably increase, many prison systems find it difficult to recruit suitable people willing to work in prisons, especially as their status and remuneration are limited. In providing quite complicated treatment regimes, and in the need to have knowledge and understanding of the wide range of problems involved, the quality of staff must be a key priority and they must receive considerable skilled support before prisoners with special needs can be satisfactorily catered for in most prison systems.

Prisoners with physical disabilities

An increasing number of prisoners have physical disabilities, in part due to the ageing of prison populations. The adoption of the United Nations Convention on the Rights of Persons with Disabilities (5), which entered into force in May 2008, has introduced clear obligations to prison authorities and health care services in relation to the treatment and care of prisoners with disabilities. In particular, Article 25 of the Convention covers the health care rights of persons with disabilities, as follows:

States Parties recognize that persons with disabilities have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are gender sensitive, including health-related rehabilitation. In particular, States Parties shall: (a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health and population-based public health programmes; ...

Recommendation No. R (98) 7 of the Council of Europe Committee of Ministers (Concerning the Ethical and Organizational Aspects of Health Care in Prisons), paragraph 50, provides important guidance on the

accommodation of prisoners with disabilities and older prisoners (6):

Prisoners with serious physical handicaps and those of advanced age should be accommodated in such a way as to allow as normal a life as possible and should not be segregated from the general prison population. Structural alterations should be effected to assist the wheelchair-bound and handicapped on lines similar to those in the outside environment.

See the *Handbook on prisoners with special needs* (1) for other relevant provisions and additional international standards of relevance.

Health issues

Prisoners with physical disabilities require access to some services which may not be available in every prison, such as physiotherapy, occupational therapy, and regular dental, sight and hearing tests and aids. Close cooperation with community health care services is essential to ensure that such services are offered to prisoners according to their needs. The particular health problems which can arise in the case of, for example, prisoners in wheelchairs or with limited mobility, include pressure sores which must be detected early, suitably treated and deterioration prevented.

Some prisoners with disabilities, especially those with sensory disabilities, are at risk of developing mental health care needs, as the isolation experienced by such individuals may be intensified in the prison environment. Taking into account the problems with communication faced by prisoners with sensory disabilities, assistance should be provided to ensure that they have equal access to counselling programmes.

A suitable prison

Careful assessment will be necessary to check that people with physical disabilities can cope with the arrangements of the prison, such as stairways, beds, access to toilets and bathing facilities, and access to prison programmes and leisure rooms. As recommended by the Council of Europe (see above), structural adjustments may need to be made to accommodate the needs of prisoners with physical disabilities. For example, handrails can be provided in their cells, bright colours may be used for steps to make them visible for those with visual disabilities, and ramps can be introduced to facilitate the access of those using wheelchairs.

A proper manner of detention

Those with disabilities are highly vulnerable to humiliation and violence. Plans to tackle such stigma, discrimination

and bullying must be part of the prison coping mechanism for such prisoners, reflected in prison staff training.

Ethnic minorities and indigenous peoples

In many countries, ethnic minorities and indigenous peoples are overrepresented in prisons. This is important to remember in assessing the treatment and care plans for these groups in prison. Why this occurs could be a useful topic for discussion among staff as part of their continuing training. It is important that there should be no discrimination in the treatment of members of these groups, including in responding to their health care needs which, in practice, requires some additional considerations to be taken in to account.

The International Convention on the Elimination of All Forms of Racial Discrimination, *General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system*, Article 38, states the following (7):

38. When persons belonging to the groups referred to in the last paragraph of the preamble are serving prison terms, the States parties should:

(a) Guarantee such persons the enjoyment of all the rights to which prisoners are entitled under the relevant international norms, in particular rights specially adapted to their situation: the right to respect for their religious and cultural practices, the right to respect for their customs as regards food, the right to relations with their families, the right to the assistance of an interpreter, the right to basic welfare benefits and, where appropriate, the right to consular assistance. The medical, psychological or social services offered to prisoners should take their cultural background into account; ...

A full outline of the definitions differentiating these groups can be found in the *Handbook on prisoners with special needs* (1).

Health issues

An understanding of the needs of ethnic minorities and indigenous peoples will involve some awareness of the differences in traditions, religion and language. Some members of these groups may not speak the language most commonly spoken in the prison. It is essential that interpretation services are provided during their medical examinations and consultations and that written and visual information on health care be available in the languages of minority groups most commonly represented in prisons. The relationships of these groups with health teams can be complicated by the discrimination they have experienced, or feel they have experienced, as well as the

physical and verbal abuse they may have been subjected to. Voluntary agencies who work on issues related to the needs of these groups can be of assistance.

Members of these groups may have special health care needs as a result of their socioeconomic marginalization in many societies. They are generally likely to have received inadequate medical care prior to imprisonment, and they may be at a higher risk of some conditions, such as STIs and health problems relating to substance abuse. There should be no differences in medical or nursing care otherwise, but respect and trust between them and the health teams have to be deliberately strengthened.

A suitable prison

The location (distance from place of origin) of the prison may have an impact on the mental well-being of members of some indigenous groups, as the family is central in some indigenous societies and critical to the well-being of the individuals. The breaking of family and community ties can have a particularly harmful effect on the mental health of members of indigenous groups, especially women.

A proper manner of detention

The proper manner of detention is key in meeting the needs of ethnic minorities and indigenous peoples. The attitudes of the staff and their understanding of diversity must be part of their continuing training. In addition, the assessment and allocation of these prisoners should aim to ensure that they are not accommodated with any other prisoners who may pose a risk to their safety, such as prisoners who are known to have racial or ethnic prejudices or backgrounds involving violence against minority groups.

Foreign prisoners

In recent times, there has been a marked increase in the number of foreign nationals in prisons in western Europe. Prison services are, therefore, likely to have policies and plans in place to meet their general needs. In its *Recommendation No. R (84) 12 concerning foreign prisoners* of 1984, the Council of Europe made specific recommendations on the treatment of foreign prisoners, requiring (among other things) that, as far as possible, authorities take measures to counterbalance disadvantages faced by this group of prisoners (8). This requirement applies to health care needs, which may sometimes differ from those of the national prison population:

13. Foreign prisoners, who in practice do not enjoy all the facilities accorded to nationals and whose conditions of detention are generally more difficult, should be treated

in such a manner as to counterbalance, so far as may be possible, these disadvantages.

Health issues

The most serious challenge for foreign prisoners is communication. It is essential that prison services make every effort to provide interpretation during medical examinations (as necessary), to prevent misunderstandings and health complications. This is also important to reassure foreign nationals, who do not speak the language of the country in which they are imprisoned, that their needs are being taken seriously. Nevertheless, the possibility of misunderstanding has to be remembered and follow-up of discussions with the health team may be necessary. Assessments should take into account the possible presence of a tropical disease or one that is endemic in the country of origin but rare in the country of imprisonment. Specialist help in diagnosis and the drawing up of treatment plans may be necessary.

It is more important than ever that information, health information, health promotion and harm reduction materials (leaflets, audiovisual materials) should be made available in different languages and using vocabulary adapted to the level of education of the prison population.

A suitable prison

Being imprisoned in a foreign country can complicate the maintenance of family contacts or planning for discharge. While it is not easy to see a remedy, the prison authorities could try to compensate by allowing foreign prisoners to make more telephone calls home and at more flexible times, facilitating contact by technical aids such as skype where feasible, and allowing longer than usual visits for family members travelling from abroad. A transfer of the prisoner to his or her country, if not a resident in the country of imprisonment, should be discussed with the prisoner at an early stage and transfer procedures started if he or she wishes such a transfer. Countries may have bilateral agreements to exchange or repatriate detainees, and such arrangements should be fully deployed on health grounds when necessary.

A proper manner of detention

Most prison staff are likely to share their native country's attitudes and prejudices, so it is a further challenge for them to understand and accept the diverse backgrounds of people in the prison. Yet all prisoners, without discrimination, must be treated in the same way by all those working in the prison. Prison policies which do

not tolerate any kind of discrimination together with the training and continuing training of staff are crucial in this regard. Once again, the assessment and allocation of foreign prisoners should aim to ensure that they are not accommodated with prisoners who may represent a risk to their safety due, for example, to nationalistic views and violence based on such views.

Lesbian, gay, bisexual and transgender prisoners

Lesbian, gay, bisexual and transgender (LGBT) prisoners comprise a particularly vulnerable group, due to the heightened risk of discrimination and abuse in the closed environment. In comparison to other groups covered in this chapter, this group has the further complication that in some countries, sex relationships between consenting same sex adults are criminalized under various morality or other laws. It is, therefore, of great importance that there are top-level policies on how to deal with this particularly vulnerable group in prisons.

The relevant international standards relating to the treatment of LGBT persons in prisons are summarized in the *Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity*, principle 9: the right to treatment with humanity while in detention (9),¹⁴ extracts from which are provided below:

STATES SHALL:

- A. Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;
- B. Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired; ...

See the *Handbook on prisoners with special needs (1)* for the definitions of each group and other important information.

Health issues

The major difference in terms of health needs for this group concerns the possibility of STIs, since often they will

¹⁴ In 2006, a set of international legal principles on the application of international law to human rights violations based on sexual orientation and gender identity was developed by the International Commission of Jurists and the International Service for Human Rights, on behalf of a coalition of human rights organizations, in order to bring greater clarity and coherence to states' human rights obligations. Following an experts' meeting held in Yogyakarta, Indonesia, from 6 to 9 November 2006, experts from 25 countries unanimously adopted the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (The Yogyakarta Principles).

have engaged, or been forced to be engaged, in a lifestyle that includes risky behaviour. With LGBT prisoners being at high risk of rape, they are also at high risk of acquiring HIV/AIDS in prisons. The health team will advise on detection and assessment as well as on therapeutic regimes. Transgender prisoners having undergone surgery might need specific attention and specialized care.

Prisoners with gender dysphoria should be provided with treatment available in the community, such as hormone therapy, as well as psychological support if required.

LGBT prisoners may also be in need of counselling for mental health needs associated with victimization.

There should be close collaboration with community-based organizations working on LGBT issues and specialized health care services to ensure that additional specialist help from outside the prison, including professional staff with added experience and skills in this field, is available to assist with the health care of these prisoners so as to meet the possible requirements mentioned above effectively.

A suitable prison

The vulnerability of these prisoners, especially to violence (including sexual violence), has to be carefully assessed in terms of allocation of prisoners within the prison. While this is essentially a matter for the prison management, the health team should make it clear that safety is essential to protect their mental health and physical integrity and that protection and support are important requirements, if treatment of any illness is to be effectively provided.

A proper manner of detention

As indicated above, staff will need the guidance of national policies and the leadership of senior management in providing a proper manner of detention. The prisoners themselves will not usually report victimization, aggression and humiliation as they are too well aware of retaliation. An essential principle of classification and allocation should be to house LGBT prisoners in whichever environment will best ensure their safety, while endeavouring to avoid segregation or isolation to the maximum possible extent unless the prisoners themselves request it. In the allocation of such prisoners, their wishes and concerns should be taken into account as far as possible, especially in the cases of transgender prisoners. When transgender prisoners are accommodated according to their birth gender, especially when male-to-female transgender prisoners are placed with men, this can pave the way to sexual abuse and rape.

Older prisoners

In many countries, older prisoners form a growing proportion of the prison population. The dividing line is often taken to be 50, 55 or 60 years because of the belief that vulnerable populations tend to have accelerated ageing by about 10 years. While there are no specific standards which apply exclusively to older prisoners, Council of Europe Recommendation No. R (98) 7 (6) referred to above includes some provisions which apply to older prisoners. Articles 13 and 14 of the United Nations Principles for Older Persons cover the needs of all older individuals, including prisoners (10):

13. Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment.

14. Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives.

See also Chapter 19 of this guide.

Health issues

Prisoners sentenced when they are older may receive different treatment from that for prisoners who age in prison. In the former case, there may well be a considerable medical history to check on admission, and many may be on long-term preventive medication such as aspirin or cholesterol-reducing medicines. As prisons are obligated to protect the physical and mental health of the prisoners, the principle of continuum of care should be applied and the treatment provided outside prison continued, while also taking into account any findings of the health assessment carried out on admission. The impact of unhealthy life styles and inadequate medical attention in the years leading up to imprisonment should be borne in mind. Older prisoners may typically suffer from chronic and multiple health problems, including heart and lung problems, diabetes, hypertension, cancer, Alzheimer's disease, Parkinson's disease, ulcers, poor hearing and eyesight, memory loss and a range of physical disabilities including dental problems and related mastication difficulties. Alcohol abuse has also been identified as a widespread problem among this group. In addition, depression and fear of dying, and particularly dying in prison, affect the mental well-being of older prisoners. As a result, older prisoners are likely to require a number of health care services, including medical, nutritional and psychological treatment. Thus, the health care of older prisoners necessitates the engagement of

a multidisciplinary team of specialist staff, including a medical specialist, nurse and psychologist as a minimum. Prison authorities need to establish close cooperation with community health services to ensure that specialist care is provided by outside medical services, as necessary.

It is advisable for the admissions procedure to include a screening tool to establish any physical difficulties (such as impaired hearing and vision and decreased mobility) experienced by the prisoner so that adequate medical care and assistance can be provided.

Prison authorities should ensure that special dietary needs are catered for to maintain the health of older prisoners and to prevent serious health complications.

A suitable prison

In most countries there is as yet no upper age limit as regards imprisonment, but the physical demands need to be considered against the probable development of incapacity in older prisoners. As with a number of the groups covered in this chapter, alternatives to imprisonment should be considered wherever possible, taking into account the probable harmful impact of imprisonment on older prisoners and the costs associated with catering for their multiple health care needs.

As older prisoners are also likely to include a high proportion of prisoners with physical disabilities, structural alterations may need to be made to their accommodation to facilitate their mobility in the prison and protect them from accidents.

A proper manner of detention

Council of Europe Recommendation No. R (98) 7 recommends that prisoners “of advanced age should be accommodated in such a way as to allow as normal a life as possible and should not be segregated from the general prison population” (6). The determination of suitable accommodation should be based on a careful assessment of individual needs. In general, allowing older prisoners to live with the general prison population is important to protect them from isolation and to ensure their access to all the programmes and activities offered in the prison. At the same time, account needs to be taken of their special accommodation requirements referred to above.

The day-to-day difficulties which may be faced by older prisoners are likely to be readily understandable to staff as most societies now have a proportion of elderly people in their midst. Such prisoners could well also deteriorate more rapidly in prison, both physically and mentally, with loss of hearing or problems with memory or eyesight. Issues of this kind should be revealed through regular monitoring.

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