

# Standards for mental health care in prisons

## Lord Douglas Hurd

Prisons tend to be a closed world. While there may be sections of the public who prefer not to know more, the fruit of silence and ignorance about prison is neglect. It is better for prisons to be held to account rather than remain immune to criticism. Setting formal standards has the effect of raising practice up to the best examples of how to treat people in prison.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (SMR) were agreed in 1955 and have remained substantially unchanged. There have been significant changes since then in how prisons are run. For example, the SMR do not explicitly prohibit torture; they refer to 'insane and mentally abnormal' prisoners; and they do not require that prisons are safe. Clearly, revision is required.

In 2012, the United Nations agreed to focus a revision of the SMR in nine areas, including health care. The process is guided by three principles:

- The process should take account of international standards since 1955
- Advances in correctional science should guide thinking about new standards
- Any changes to the SMR should not lower existing standards

The process continues, but it is worth reflecting on how standards for prison health care might be updated. In broad terms, the revised SMR should:

- Set the duties of prison health care professionals in the context of ethical standards governing health care
- Clarify how the principles of informed consent by patients and confidentiality of medical data should be maintained in custodial settings
- Describe the duties of health care staff in the event of evidence of torture or other cruel, degrading or inhumane treatment
- Incorporate advances in the diagnosis and treatment of mental health needs – as well as in the human rights of patients

The International Covenant on Economic, Social and Cultural Rights (UN, 1966), Article 12, states that everyone has a right to 'the enjoyment of the highest attainable standard of physical and mental health'. When this principle is applied to people in custody, it demonstrates the significant advances in principles governing prison health care. These include, for example, equivalence, integration, medical independence and the status of the prisoner as patient.<sup>1</sup>

Equivalence implies that the standards governing mental health care in the community should apply in prisons. In particular, the same therapeutic guidelines and staffing principles should apply, and treatment should be subject to the informed consent of patients.

In its report, *Good Governance for Prison Health*, the World Health Organization (WHO) argued that the principles of equivalence and integration should be linked:

- Prison health services should be at least of equivalent professional, ethical and technical standards to those applying to public health services in the community
- Prison health services should be integrated into national health policies and systems, including the training and professional development of health care staff<sup>2</sup>

Clearly, equivalence and integration of services is crucial to the prison's management of mental health needs.

In 2007, WHO convened a meeting in Trecin, focusing on mental health in prisons. A criterion agreed there was that:

*'Promoting mental health and well-being should be central to a prison's health care policy. This will address such matters as the general prison environment, prison routines and levels of prisoner activity, education and work opportunities, and staff-prisoner relationships.'*

– **Trecin Statement on Prisons and Mental Health (WHO, 2007)**

Introducing a similar commitment into the SMR would reflect an international consensus that mental health is a central concern of prisons.

WHO's *Good Governance for Prison Health* further clarified that health care professionals should exercise judgement based on the health needs of their patients, independently of the prison authorities. Further, Principle 9 of the UN Basic Principles for the Treatment of Prisoners (1990) states:

*'Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation.'*

– **Basic Principles for the Treatment of Prisoners (United Nations General Assembly, 1990)**

Taken together, these principles would bring the SMR in line with contemporary ethical standards<sup>3</sup> and would establish that, for the purposes of health policy, the primary status of detained persons is as patients.

In setting out the implications of the patient status of prisoners who have mental health needs, the SMR revision process should consider the relevant UN standards for mental health. Prison authorities may need further clarification about when medical grounds indicate the need for differential treatment and when that would result in discrimination. A 1991 UN statement provides some guidance:

*'There shall be no discrimination on the grounds of mental illness. "Discrimination" means any distinction, exclusion or preference that has the effect of nullifying or impairing equal enjoyment of rights. Special measures solely to protect the rights, or secure the advancement, of persons with mental illness shall not be deemed to be discriminatory.'*

**– Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care (UN General Assembly, 1991)**

The current SMR provide guidance on the roles of medical staff in the diagnosis and treatment of prisoners with mental health problems. Rule 24 covers assessment of mental health on admission; Rule 25 (2) requires medical officers to report to the director when a prisoner's mental health is being harmed by imprisonment; Rule 32 covers the doctor's role in safeguarding the mental health of prisoners undergoing punishment or other disciplinary sanctions. All of these functions have changed; and all will require careful discussion to update them.

In addition, Rule 82 (which refers to 'insane and mentally abnormal prisoners') states:

- (1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible
- (2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialised institutions under medical management
- (3) During their stay in a prison, such prisoners shall be placed under the special supervision of a medical officer
- (4) The medical or psychiatric service of the penal institutions shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment

It could be argued that the SMR must maintain the duty to transfer people with serious mental health needs away from custody or risk lowering the existing standard set by the 1955 text. A useful precedent is the first criterion agreed on in Trecin:

*'There must be a clear acceptance that penal institutions are seldom, if ever, able to treat and care for seriously and acutely mentally ill prisoners. Such prisoners should be diverted whenever possible to appropriate mental health services before reaching the prison gate. Those already in prison should be transferred to specialist psychiatric care as soon as possible.'*

**– Trecin Statement on Prisons and Mental Health (WHO, 2007)**

Care not Custody is a coalition, in England and Wales, founded by the National Federation of Women's Institutes and the Prison Reform Trust, to promote greater use of diversion from prison for people who are mentally ill. It responds to evidence that too many people receive inadequate mental health care in prison who could have been diverted earlier to hospitals or community-based

alternatives. The campaign was launched by a resolution in response to the experience of a member whose son committed suicide in custody. She wrote:

*'My son did not cope well with prison. Care for the mentally ill should be therapeutic and in surroundings conducive to peace and recovery – not the barred, noisy, stressful and gardenless prison. Those of you who have visited prisons will be aware of how unpleasant and entirely unsuitable a place they are for the mentally ill.'*

United Nations Standard Minimum Rules for the Treatment of Prisoners have stood for over 50 years. Mental health care plays a crucial role within prisons and, by extension, is fundamental to the revision process. The United Nations has made a solid foundation for building consensus on standards that apply across diverse jurisdictions, are accepted by practitioners as authoritative and set challenging expectations. In too many countries, prisons remain our least visible, most neglected institutions and this is to the detriment of us all.

## Endnotes

- 1 Penal Reform International. Website: [www.penalreform.org/priorities/prison-conditions/health/](http://www.penalreform.org/priorities/prison-conditions/health/)
- 2 United Nations Office on Drugs and Crime and World Health Organization, 2013. *Good governance for prison health in the 21st century: A policy brief on the organization of prison health*. Executive summary available at: [www.euro.who.int/\\_\\_data/assets/pdf\\_file/0017/231506/Good-governance-for-prison-health-in-the-21st-century.pdf](http://www.euro.who.int/__data/assets/pdf_file/0017/231506/Good-governance-for-prison-health-in-the-21st-century.pdf) [Accessed 21 February 2014].
- 3 See, for example, Rule 8 of the Bangkok Rules, which states: 'The right of ... prisoners to medical confidentiality, including specifically the right not to share information ... shall be respected at all times.' See further: United Nations, 1982. *Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*. Available at: [www.ohchr.org/EN/ProfessionalInterest/Pages/MedicalEthics.aspx](http://www.ohchr.org/EN/ProfessionalInterest/Pages/MedicalEthics.aspx) [Accessed 3 April 2014].
- 4 For further information, see: [www.prisonreformtrust.org.uk/ProjectsResearch/Mentalhealth/TroubledInside/Aplaceofsafety](http://www.prisonreformtrust.org.uk/ProjectsResearch/Mentalhealth/TroubledInside/Aplaceofsafety) [Accessed 3 April 2014].

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