

**Submission to the UN Committee on the Rights of the Child  
regarding draft General Comment No. 24 on children's rights in juvenile justice**

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**Contributors**

Louise Southalan<sup>a</sup>

Stuart Kinner<sup>a,b,c</sup>

Rohan Borschmann<sup>a,b</sup>

a. Justice Health Unit, Centre for Health Equity, Melbourne School of Population and Global Health, University of Melbourne

b. Centre for Adolescent Health, Murdoch Children's Research Institute

c. Griffith Criminology Institute, Griffith University

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The authors express their appreciation to the Committee for the opportunity to provide comments on draft General Comment No 24. This revision is a significant opportunity to inform the understanding of the Convention on the Rights of the Child (**CRC**) with respect to States' obligations regarding justice-involved children and young people.

Considerable evidence has emerged since the promulgation of General Comment No 10 in 2007 regarding the health of justice-involved children and young people, and the interdependence of health and justice. The international community has also developed a consensus on the importance of people in criminal detention enjoying the full right to health on a non-discriminatory basis. This is reflected in, for example, the Nelson Mandela Rules,<sup>1</sup> adopted by the UN General Assembly in 2015, which require member states to provide healthcare in prison and youth detention that is equivalent to that available in the community (Rule 24.1), and to maximise coordination of care between prison and community health systems (Rule 24.2).

This full enjoyment of the right to the highest attainable standard of health applies to justice-involved children and young people. The non-discriminatory nature of this right was described at length in the Committee's General Comment 15 in 2013, which considered article 24 of the CRC. The Committee stated that "In order to fully realize the right to health for all children, States parties have an obligation to ensure that children's health is not undermined as a result of discrimination, which is a significant factor contributing to vulnerability."<sup>2</sup> This reinforced the already explicit findings in General Comment 14 of the Committee on Economic, Social and Cultural Rights in 2009, which noted that States are not permitted to discriminate against people detained in criminal justice settings regarding their equal enjoyment of the right to health.<sup>3</sup>

Accordingly, States need to ensure that systems are in place within justice settings, including detention, so that justice-involved children and young people enjoy full and equal access to the right to health on the same basis as other children and young people.

The current draft of General Comment 24 is notable for its divergence from this international consensus. It does not make it clear that States have an obligation to ensure that justice-involved children and young people enjoy full and equal access to the right to health. It also does not identify CRC article 24 as one which States need to take into account when developing and implementing a comprehensive juvenile justice policy. The draft does cite article 24 within the context of the ‘preventing offending’ element, but overall does not recognise the highest attainable standard of health as an important outcome in its own right for justice-involved children and young people.

Health is considered in paragraph 108 of draft General Comment 24, which states that “Every child has the right to be examined by a physician or a health practitioner upon admission to the detention/correctional facility and shall receive adequate medical care throughout his/her stay in the facility, which should be provided, where possible, by health facilities and services of the community”.

However this narrow reading of the right to health is not consistent with the breadth of the right to health of all children and young people articulated in the Committee’s General Comment 15, and with the obligation on States to ensure non-discrimination against children and young people in youth detention. The right to health very clearly encompasses more than just access to medical care.<sup>4</sup>

The Committee should ensure that the standard of health care referred to for children and young people in detention settings is consistent with the expectations it set out for children’s health in General Comment 15:

*Children are entitled to quality health services, including prevention, promotion, treatment, rehabilitation and palliative care services. At the primary level, these services must be available in sufficient quantity and quality, functional, within the physical and financial reach of all sections of the child population, and acceptable to all. The health-care system should not only provide health-care support but also report the information to relevant authorities for cases of rights violations and injustice. Secondary and tertiary level care should also be made available, to the extent possible, with functional referral systems linking communities and families at all levels of the health system.<sup>5</sup>*

In addition to the imperative to uphold the rights of justice-involved children and young people, there is sound evidence supporting the provision of effective health services in youth justice settings. Children and adolescents who experience youth detention constitute a large, marginalised, medically vulnerable population that is largely hidden from public view. Young people who experience youth detention often do so within a life trajectory characterised by multiple disadvantage, instability, abuse and neglect, and limited financial resources.<sup>6</sup> These social and structural drivers of youth detention overlap, to a large degree, with the determinants of health.

Consistent with this, there is growing evidence that many young people in youth detention experience complex, co-occurring health conditions and elevated rates of health-compromising behaviours. These include mental disorder and substance dependence,<sup>7</sup> cognitive dysfunction and learning difficulties,<sup>8</sup> sexually-transmitted and blood-borne viral infections,<sup>9</sup> self-harm and suicidal behaviour,<sup>10</sup> oral disease,<sup>11</sup> and chronic conditions such as asthma.<sup>12</sup> Health-compromising behaviours related to substance use, sexual experiences, and violence all contribute to this poorer health profile. Young people who experience youth detention have often under-utilised primary and preventive care in the community prior to being detained, such that detention often represents the first real opportunity to meaningfully identify their health needs and initiate coordinated care.

Given the high concentration of ill-health among detained children and youth, and the importance of health in influencing future life course, there is much to be gained by providing an effective, coordinated health response for young people in detention settings. This is important not only for the young people who experience detention, but also offers significant benefits for States. There is compelling evidence that inadequately addressing the health needs of detained young people comes at a very high economic cost to States. On release from detention young people with unaddressed health issues have very frequent and expensive engagement with health services, police and other government agencies.<sup>13</sup>

A comprehensive juvenile justice policy incorporating health considerations would include routine and valid screening for health conditions, population and targeted health promotion, scaled and evidence-based treatment and rehabilitation, and a functional health information system. Continuity of healthcare between detention and the community is crucial, and requires coordination of detention and community health systems.

Effective healthcare for detained children and youth must be evidence-based. States and international organisations must commit to building the evidence base, through data collection, research, evaluation, and uncensored public dissemination of this evidence.

Particularly in light of their complex health and psychosocial needs, the health of justice-involved children and youth must be included in all relevant government policies, not just those explicitly relevant to the justice system. The World Health Organization *Moscow Declaration on Prison Health as part of Public Health* articulated this point, particularly in relation to health systems, stating that prison health “must be an integral part of the public health system of any country”.<sup>14</sup> For States Parties to the CRC, this entails systematically including youth detention health within all relevant public health planning, policy, financing, and data collection.

This is entirely consistent with the statements of the Committee in General Comment 15:

*Children in disadvantaged situations and underserved areas should be a focus of efforts to fulfil children’s right to health. States should identify factors at national and subnational levels that create vulnerabilities for children or that disadvantage certain groups of children. These factors should be addressed when developing laws, regulations, policies, programmes and services for children’s health, and work towards ensuring equity.*<sup>15</sup>

## Conclusion and recommendations

The Committee has a significant opportunity and an important duty in this revised General Comment to explicitly confirm the international position that children and young people in justice settings enjoy the same right - to the highest attainable standard of health - as other children and young people.

If the Committee does not explicitly state that justice-involved children and youth enjoy the right to health on an equal basis, in the terms described in General Comment 15, then General Comment 24 will be significantly out of step with the international understandings of the non-discriminatory right to health for people in detention. The Committee would be understood to endorse a discriminatory, lower standard of health for these children. This would be contrary to the accepted interpretation of the right to health, and also contrary to the leading principle of non-discrimination within the CRC. It would also be inconsistent with the evidence of what is effective in improving both health and justice outcomes for this group

Health needs to be included as a fundamental part of the comprehensive policy, and incorporated in all elements of it. Accordingly, we recommend that draft General Comment 24 be amended to state:

1. That children and young people in justice settings enjoy the right to health on an equal, non-discriminatory basis to other children and young people, as provided by article 24 and explicated by the Committee in General Comment 15;
2. That paragraph 5 of General Comment 24 should include specific reference to article 24 of the CRC as one of the relevant articles to be taken into account in the CRC requirement to develop and implement a comprehensive juvenile justice policy;
3. That discussion of each of the core elements of a comprehensive juvenile justice policy note the need for States to develop effective health systems and services for detained children and young people, and that these provide continuity with community health services; and
4. That in developing the health component of the comprehensive policy, States should proceed on the basis of evidence regarding effective health interventions, and ensure that the health status and health outcomes of justice-involved children and young people are monitored and assessed, along with the effectiveness of health systems and services serving justice settings.

## Endnotes

- <sup>1</sup> *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* (Annex to UN doc A/RES/70/175, United Nations, 2016).
- <sup>2</sup> Committee on the Rights of the Child, *General comment No. 15: On the right of the child to the enjoyment of the highest attainable standard of health (art. 24)*, UN doc CRC/C/GC/15 (2013), [8].
- <sup>3</sup> Committee on Economic Social & Cultural Rights, *General Comment 14: The right to the highest attainable standard of health*, UN doc E/C.12/2000/4 (2000), [27].
- <sup>4</sup> The Committee on Economic, Social and Cultural Rights note in paragraph 4 of General Comment No 14 that '[t]he reference in article 12.1 [of ICESCR] to 'the highest attainable standard of physical and mental health' is not confined to the right to health care. On the contrary, the...right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment'. It further stated at paragraph 9 that '[t]he right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health'.
- As far back as 2007 the Special Rapporteur on the right to health emphasized that States' obligations under the right to health encompass much more than merely the provision of health care: 'article 24 of the Convention on the Rights of the Child states that the right to health includes access to nutritious food, clean drinking water, environmental sanitation and so on, as well as medical care. Equating the right to health with a right to medical care is a misinterpretation of international human rights law': UN, *Report to the General Assembly* (Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, 2007, United Nations), [46].
- <sup>5</sup> Committee's *General Comment No. 15* (n2 above), [25].
- <sup>6</sup> M Golzari, S Hunt and A Anoshiravani, 'The health status of youth in juvenile detention facilities' (2006) 38(6) *Journal of Adolescent Health* 776; Elizabeth Barnert, Raymond Perry and Robert Morris, 'Juvenile incarceration and health' (2016) 16(2) *Academic pediatrics* 99.
- <sup>7</sup> S Fazel, H Doll and N Langstrom, 'Mental disorders among adolescents in juvenile detention and correctional facilities: a systematic review and metaregression analysis of 25 surveys' (2008) 47(9) *J Am Acad Child Adolesc Psychiatry* 1010; Robert F Eme, 'Attention-Deficit/Hyperactivity Disorder and the Juvenile Justice System' (2008) 8(2) (2008/06/05) *Journal of Forensic Psychology Practice* 174; *Pathways to Desistance - Final Technical Report* U.S Department of Justice, (2014).
- <sup>8</sup> Huw Williams et al, 'The prevalence of traumatic brain injury among young offenders in custody: a systematic review' (2015) 30(2) *Journal of head trauma rehabilitation* 94.
- <sup>9</sup> Stuart A Kinner et al, 'Age-Specific Global Prevalence of Hepatitis B, Hepatitis C, HIV, and Tuberculosis Among Incarcerated People: A Systematic Review' (2018) 62(3) *Journal of Adolescent Health* S18.
- <sup>10</sup> Marquita Stokes et al, 'Suicidal ideation and behavior in youth in the juvenile justice system: a review of the literature' (2015) 21(3) *Journal of Correctional Health Care* 222.
- <sup>11</sup> Barnert, Perry and Morris (n6 above); Diego Canavese Oliveira et al, 'Impact of Oral Health Status on the Oral Health-Related Quality of Life of Brazilian Male Incarcerated Adolescents' (2015) 13(5) *Oral health & preventive dentistry* 417.
- <sup>12</sup> Golzari, Hunt and Anoshiravani (n6 above); Fazel, Doll and Langstrom (n7 above); Stuart Kinner et al, 'Complex health needs in the youth justice system: A survey of community-based and custodial offenders' (2014) 54(5) *Journal of Adolescent Health* 521.
- <sup>13</sup> Kamala Mallik-Kane and Christy Visser, *Health and Prisoner Reentry: How Physical, Mental, and Substance Abuse Conditions Shape the Process of Reintegration* (Justice Policy Center, 2008, Urban Institute); Melinda Schlager Arnold, *Rethinking the Reentry Paradigm: A Blueprint for Action* 2013, Carolina Academic Press); Nancy La Vigne, Christy Visser and Jennifer Castro, *Chicago Prisoners' Experiences Returning Home* 2004, Urban Institute); Patricia A. Janssen et al, 'Factors that support successful transition to the community among women leaving prison in British Columbia: a prospective cohort study using participatory action research.' (2017) 5(3) *CMAJ open* E717; Stuart A Kinner et al, 'Service brokerage for improving health outcomes in ex-prisoners' (2013) 2 (28 February 2013) *Cochrane Database of Systematic Reviews* ; Stuart A. Kinner et al, 'Low-intensity case management increases contact with primary care in recently released prisoners: a single-blinded, multisite, randomised controlled trial' (2016) 70(7) *Journal of Epidemiology and Community Health* 683; Emily Wang et al, 'Engaging Individuals Recently Released From Prison Into Primary Care: A Randomized Trial' (2012) 102(9) (09//) *American Journal of Public Health* e22; Shira Shavit et al, 'Transitions Clinic Network: Challenges And Lessons In Primary Care For People Released From Prison' (2017) 36(6) (Jun 2017) *Health Affairs* 1006; William Cunningham et al, 'Effectiveness of a peer navigation intervention to sustain viral suppression among hiv-positive men and transgender women released from jail: The link la randomized clinical trial' (2018) 178(4) *JAMA Internal Medicine* 542 ; Moscow Declaration, *Declaration on Prison Health as Part of Public Health* 2003, World Health Organization).
- <sup>14</sup> Moscow Declaration (n13 above), 2.
- <sup>15</sup> Committee's *General Comment No. 15* (n2 above), [11].