

# IJJO Recopilation on Legal Texts about Mental Health and Young Offenders

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## United Nations International Standards

### **United Nations - International Covenant on Economic Social and Cultural Rights 1966 (entered into force Jan. 3, 1976)**

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

### **United Nations – Standard Minimum Rules for the Administration of Juvenile Justice Beijing Rules (GA resolution 40/33 of 29 Nov 1985)**

13. Detention pending trial

13.5 While in custody, juveniles shall receive care, protection and all necessary individual assistance - social, educational, vocational, psychological, medical and physical - that they may require in view of their age, sex and personality.

### **United Nations – Convention on the Rights of the Child Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989**

Article 39. States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

### **United Nations - Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) Adopted by General Assembly resolution 45/113 of 14 December 1990**

## **II. Scope and application of the rules**

11. For the purposes of the Rules, the following definitions should apply:

(a) A juvenile is every person under the age of 18. The age limit below which it should not be permitted to deprive a child of his or her liberty should be determined by law;



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(b) The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.

12. The deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society.

13. Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty.

14. The protection of the individual rights of juveniles with special regard to the legality of the execution of the detention measures shall be ensured by the competent authority, while the objectives of social integration should be secured by regular inspections and other means of control carried out, according to international standards, national laws and regulations, by a duly constituted body authorized to visit the juveniles and not belonging to the detention facility.

### **V. Personnel**

85. The personnel should receive such training as will enable them to carry out their responsibilities effectively, in particular training in child psychology, child welfare and international standards and norms of human rights and the rights of the child, including the present Rules. The personnel should maintain and improve their knowledge and professional capacity by attending courses of in-service training, to be organized at suitable intervals throughout their career.

### **United Nations - Principles for the protection of persons with Mental illness and the improvement of mental health care (Adopted by General Assembly resolution 46/119 of 17 December 1991)**

#### Principle 1. Fundamental freedoms and basic rights



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1. All persons have the right to the best available mental health care, which shall be part of the health and social care system.

Principle 2. Protection of minors.

Special care should be given within the purposes of these Principles and within the context of domestic law relating to the protection of minors to protect the rights of minors, including, if necessary, the appointment of a personal representative other than a family member.

### European Texts

#### **Council of Europe - Recommendation Rec(2000)20 of the Committee of Ministers to member states on the role of early psychosocial intervention in the prevention of criminality.**

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to the growing concern about the increasing incidence of juvenile delinquency throughout Europe, which presently takes different and more persistent and violent forms;

Bearing in mind that those who begin offending at an early age are most at risk of engaging in serious criminal behaviour and that there is some evidence of a trend towards young offenders beginning to offend at increasingly early ages;

Considering that any society has a duty to ensure the full well-being of children and to see to it that their interests and rights are respected by all those with responsibilities towards them;

Bearing in mind the primary importance of the family, parents and others charged with taking responsibility for the socialisation and up-bringing of children;

Considering that children are still in the process of developing and that deficits in their socialization may lead to the onset of delinquency;

Convinced that any reaction in terms of preventing criminality requires efforts across society, taking into account adverse social and economic circumstances of children, and deficits in their socialisation, personality and specific needs;



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Considering that special interventions should be made to ensure that, when a child is at risk of engaging in persistent criminal behaviour, such behaviour is effectively prevented, in particular, by promoting protective factors and reducing risk factors;

Bearing in mind that these interventions involve partnership between the state, local community and local agencies; (...)

### *II. Programmes of early psychosocial intervention in preventing criminality*

1. Programmes of early psychosocial intervention to prevent criminality should be developed on the basis that they are in the best interests of the children, families and society and in line with existing legal norms. They should in particular respect the privacy and integrity of children and their families and take due account of the principles of proportionality, non-stigmatisation and non-discrimination.

[...]

6. It should be ensured that adequate resources are provided for early intervention to prevent criminality.

### *III. Children at Risk*

8. All means designed to distinguish and deal with children at risk should be undertaken in their best interests and in accordance with the rights of the holders of parental responsibility.

9. These means should observe the fundamental rights of children, such as physical and psychological integrity or the right to privacy. Exceptions should only be allowed if they directly benefit the child and are permissible in law.

### *IV. Implementation*

11. Statutory as well as other arrangements should be developed for the provision of a wide range of programmes for early intervention to prevent criminality.

[...]

13. In implementing psychosocial interventions, the following principles should be applied: effectiveness (...); minimum intervention (...); proportionality (...); non-stigmatisation (...); non-discrimination (...).



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14. Programmes should be planned, co-ordinated and delivered by local partnerships with a clear indication of who is in charge. They must include those responsible for social welfare, health and the education of children. If deemed appropriate they should work closely together with other relevant agencies such as youth protection, the police, and the voluntary and the private sector.

### *V. Research priorities*

19. In order to promote the exchange of information and knowledge on what causes and prevents criminality and to make this available to policy makers, ways to improve national and international co-operation should be developed both within the scientific community and between the scientific community and those responsible for designing and implementing preventive programmes.

### **Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice**

8. To address serious, violent and persistent juvenile offending, member states should develop a broader spectrum of innovative and more effective (but still proportional) community sanctions and measures. They should directly address offending behaviour as well as the needs of the offender. They should also involve the offender's parents or other legal guardian (unless this is considered counter-productive) and, where possible and appropriate, deliver mediation, restoration and reparation to the victim.

### **Council of Europe - Recommendation Rec(2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder.**

## **Chapter V – Specific situations**

### Article 29 – Minors

1. The provisions of this Recommendation should apply to minors unless a wider measure of protection is provided.
2. In decisions concerning placement and treatment, whether provided involuntarily or not, the opinion of the minor should be taken into consideration



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as an increasingly determining factor in proportion to his or her age and degree of maturity.

3. A minor subject to involuntary placement should have the right to assistance from a representative from the start of the procedure.

4. A minor should not be placed in a facility in which adults are also placed, unless such a placement would benefit the minor.

5. Minors subject to placement should have the right to a free education and to be reintegrated into the general school system as soon as possible. If possible, the minor should be individually evaluated and receive an individualised educational or training programme.

### Council of Europe - Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules

#### *Part I*

##### *Scope and application*

11.1 Children under the age of 18 years should not be detained in a prison for adults, but in an establishment specially designed for the purpose.

11.2 If children are nevertheless exceptionally held in such a prison there shall be special regulations that take account of their status and needs.

#### *Part II*

##### *Allocation and accommodation*

18.8 In deciding to accommodate prisoners in particular prisons or in particular sections of a prison due account shall be taken of the need to detain:

c. young adult prisoners separately from older prisoners.

##### *Work*

26.5 Work that encompasses vocational training shall be provided for prisoners able to benefit from it and especially for young prisoners.





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### *Education*

28.3 Particular attention shall be paid to the education of young prisoners and those with special needs.

### *Detained children*

35.1 Where exceptionally children under the age of 18 years are detained in a prison for adults the authorities shall ensure that, in addition to the services available to all prisoners, prisoners who are children have access to the social, psychological and educational services, religious care and recreational programmes or equivalents to them that are available to children in the community.

35.2 Every prisoner who is a child and is subject to compulsory education shall have access to such education.

35.3 Additional assistance shall be provided to children who are released from prison.

35.4 Where children are detained in a prison they shall be kept in a part of the prison that is separate from that used by adults unless it is considered that this is against the best interests of the child.

### *Training of prison staff*

81.3 Staff who are to work with specific groups of prisoners, such as foreign nationals, women, juveniles or mentally ill prisoners, etc., shall be given specific training for their specialised work.

## **Council of Europe - Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures**

The aim of the present rules is to uphold the rights and safety of juvenile offenders subject to sanctions or measures and to promote their physical, mental and social well-being when subjected to community sanctions or measures, or any form of deprivation of liberty. (...)



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### **Part I – Basic principles, scope and definitions**

#### **A. Basic principles**

5. The imposition and implementation of sanctions or measures shall be based on the best interests of the juvenile offenders, limited by the gravity of the offences committed (principle of proportionality) and take account of their age, physical and mental well-being, development, capacities and personal circumstances (principle of individualisation) as ascertained when necessary by psychological, psychiatric or social inquiry reports.

[...]

8. Sanctions or measures shall not be implemented in a manner that aggravates their afflictive character or poses an undue risk of physical or mental harm.

### **Part II – Community sanctions and measures**

#### **C. Legal Framework**

28. The rights of juveniles to benefits in respect of education, vocational training, physical and mental health care, safety and social security shall not be limited by the imposition or implementation of community sanctions or measures.

### **Part III – Deprivation of liberty**

#### **E. General part**

##### *E.1. Overall approach*

50.1. Juveniles deprived of their liberty shall be guaranteed a variety of meaningful activities and interventions according to an individual overall plan that aims at progression through less restrictive regimes and preparation for release and reintegration into society. These activities and interventions shall foster their physical and mental health, self-respect and sense of responsibility and develop attitudes and skills that will prevent them from re-offending.



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50.2. Juveniles shall be encouraged to take part in such activities and interventions.

51. In order to guarantee the continuity of care, juveniles shall be assisted, from the beginning of and throughout any period of deprivation of liberty, by the agencies that may be responsible for them after release.

52.1. As juveniles deprived of their liberty are highly vulnerable, the authorities shall protect their physical and mental integrity and foster their well-being.

52.2. Particular care shall be taken of the needs of juveniles who have experienced physical, mental or sexual abuse.

### *E.3. Placement*

54. The placement of different categories of juveniles in institutions shall be guided in particular by the provision of the type of care best suited to their particular needs and the protection of their physical and mental integrity and well-being.

[...]

57. Juveniles who are suffering from mental illness and who are to be deprived of their liberty shall be held in mental health institutions.

[...]

60. Male and female juveniles shall normally be held in separate institutions or units within an institution. Separation between male and female juveniles need not be applied in welfare or mental health institutions. Even where male and female juveniles are held separately, they shall be allowed to participate jointly in organised activities.

### *E.4. Admission*

62.2. At admission, the following details shall be recorded immediately concerning each juvenile

g. subject to the requirements of medical confidentiality, any information about the juvenile's risk of selfharm or a health condition that is relevant to the physical and mental well-being of the juvenile or to that of others.

[...]

62.6. As soon as possible after admission:



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a. the juvenile shall be interviewed and a first psychological, educational and social report identifying any factors relevant to the specific type and level of care and intervention shall be made;

### *E.9. Health*

69.1. The provisions contained in international instruments on medical care for the physical and mental health of adult detainees are applicable also to juveniles deprived of their liberty.

[...]

70.2. Special policies shall be developed and implemented to prevent suicide and self-harm by juveniles, particularly during their initial detention, segregation and other recognised high risk periods.

[...]

73. Particular attention shall be paid to the needs of:

d. juveniles with physical and mental health problems;

f. juveniles who have experienced physical, mental or sexual abuse;

[...]

74.2. In order to provide a seamless web of support and therapy and without prejudice to professional confidentiality and the role of each profession, the work of doctors and nurses shall be closely co-ordinated with social workers, psychologists, teachers, other professionals and staff, who have regular contact with juvenile offenders.

## **F. Special Part**

### *F.3. Mental health institutions*

117. Juvenile offenders in mental health institutions shall receive the same general treatment as other juveniles in such institutions and the same regime activities as other juveniles deprived of their liberty.

118. Treatment for mental health problems in such institutions shall be determined on medical grounds only, shall follow the recognised and accredited national standards prescribed for mental health institutions and shall be governed by the principles contained in the relevant international instruments.

119. In mental health institutions safety and security standards for juvenile offenders shall be determined primarily on medical grounds.



## **European Parliament resolution on improving the mental health of the population. Towards a strategy on mental health for the European Union (2006/2058(INI))**

I. whereas approximately 40 % of all prisoners have some form of mental disorder and whereas they are up to seven times more likely to commit suicide than people in the community, and whereas inappropriate imprisonment can worsen the disorder and prevent rehabilitation, [...]

O. whereas in most European Union countries there has been a move from long-term institutionalised care, both for children with developmental and behavioural problems which jeopardise their normal development, particularly in the educational sphere, and for adults with chronic and severe disorders and for those with learning disabilities, towards supported community living, but whereas this has been without proper planning and resourcing of community services, [...]

20. Calls for a multi-disciplinary and multi-agency response to tackling complex mental ill health situations, such as how best to support children or adolescents with developmental or behavioural problems or eating disorders, and/or whose parents in many cases themselves suffer from mental ill health (or are kept in long-term institutions);

[...]

22. Points out that mental ill health and mental disorders commonly have their roots in early childhood and stresses the importance of research into a healthy early childhood;

[...]

28. Believes Member States should work together to find and implement effective strategies to reduce suicide, particularly among young people and other at risk groups;

[...]

48. Believes that the term 'treatment' should be interpreted broadly, with the emphasis on identifying and eliminating social and environmental factors, while the use of medication should be a last resort, particularly in the case of children and young people; [...];

49. Draws attention to the large number of children who grow up in state care institutions in some Member States, especially in some of the new ones; urges the Commission to support more effectively the creation of alternative systems, which would help parents from risk groups to care for their children properly; calls for the 'Child and adolescent mental health in an enlarged Europe: development of effective policies and practices' project, which would coordinate



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progress in children's mental health strategy in the Member States, to be started as quickly as possible and effectively implemented;

[...]

52. Calls for more research into therapeutic and psychological interventions, into the development of more effective drugs with fewer side effects, into determinants of mental disorders and suicide, into outcome measurements for investment in mental health promotion and into methods contributing to successful recovery and remission; (...);

### **European Parliament - Resolution of 19 February 2009 on Mental Health (2008/2209(INI))**

*The European Parliament,*

Q. whereas the foundations for lifelong mental health are laid during a person's first few years of life and whereas mental illness is common among young people, in whom early diagnosis and treatment is of the utmost importance,

3. Calls on the Member States to develop an awareness of the importance of good mental health, particularly among healthcare professionals and target groups such as parents, teachers, those providing social and legal services, employers, carers and, particularly, the public at large;

*Prevention of depression and suicide*

21. Calls on the Member States to implement cross-sectoral programmes for the prevention of suicide, especially among young people and adolescents, promoting a healthy lifestyle, reducing the risk factors such as easy access to pharmaceuticals, drugs, harmful chemical substances and alcohol abuse; (...);

*Mental health in youth and education*

25. Calls on the Member States to provide support to school staff in order to develop a healthy climate, and build relationships between school, parents, health service providers and the community in order to strengthen the social integration of young people;

[...]

27. Stresses the need for health system planning which meets the need for specialist mental health services for children and adolescents, taking into account the move from long-term institutionalised care towards supported living in the community;



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28. Stresses the need for the early detection and treatment of mental health problems in vulnerable groups, with particular reference to minors;

29. Proposes that mental health should be incorporated into the programmes of study of all healthcare professionals and that provision should be made for continuous education and training in that sector;

30. Calls on Member States and the European Union to cooperate in raising awareness of the deteriorating mental health situation of children with emigrant parents and to introduce school programs aimed at helping these youngsters to cope with the psychological problems related to the absence of their parents;

### *Combating stigma and social exclusion*

44. Calls for the organisation of public information and awareness campaigns through the media, the Internet, schools and workplaces, in order to promote mental health, increase knowledge about the most common symptoms of depression and suicidal tendencies, destigmatise mental disorders, encourage people to seek the best and most effective assistance and promote the active integration of people experiencing mental health problems;