



CHILDREN IN PRETRIAL DETENTION:

PROMOTING STRONGER
INTERNATIONAL TIME LIMITS

FACT SHEET No. 5

Recommended 30-day pretrial detention limit

In reducing the time that children spend in pretrial detention, it is necessary to leverage the unique role that international human rights bodies have in setting standards and recommendations for states to follow. The following are proposed international standards to limiting the time children are allowed to spend in pretrial detention:

New International Standard Limiting Child Pretrial Detention Length:

Without international guidance on an acceptable time limits for child pretrial detention, it is unreasonable to conclude that countries will enact a ceiling that is compatible with international principles. Not only is it imperative for the human rights bodies to adopt specific standards, including absolute ceilings on pretrial detention, but they should also recommend these specific good practices to countries in concluding observations.

- 1. International, regional, and national human rights bodies should consider that a 30-day maximum for children detained while awaiting trial is in the best interests of the child. Judges should set the time limit in individual cases based on the specific procedural circumstances of the case, which should be shorter than 30 days, whenever possible.**
- 2. The duration of pretrial detention should only be allowed to be extended once by a judge for up to 30 more days based upon the procedural needs of the case at hand, and upon 1) a request by the defense that justifies the extension; 2) a request by the prosecution and a showing that more time is absolutely essential to secure evidence that is necessary and cannot otherwise be obtained, or; 3) a showing of other exigent circumstances in the present case that justifies the extension. When extending the period of pretrial detention, the judge should limit it to the shortest time that is absolutely necessary, based on the procedural needs of the case and justified by the parties, rather than as a rule to extend the pretrial detention time by 30 days.**
- 3. Children who are in detention for the statutory maximum number of days should be placed in supervised release immediately and not re-detained for that same offence.**
- 4. These standards should be based on the understanding that pretrial detention starts at the moment of arrest or initial detention and ends at the moment that the court establishes a final sentence.**

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Recommendation to Clarify Justification for the Length of Pretrial Detention

Pretrial detention, like all forms of deprivation of liberty, must be used as a last resort, in exceptional circumstances, and for the shortest period of time possible. However, according to the CRC, pretrial detention is specifically meant to safeguard the legal process, not for punishment or rehabilitation. This means that pretrial detention decisions should never be based solely on the crime charged, as this violates the presumption of innocence. Any pretrial measure, including pretrial detention, must be based on the procedural risks—risk of flight, risk to the victim and the risk of the obstruction of justice—and the pretrial measure must be proportional to the procedural risk.

While the decision between pretrial detention and pretrial release must be based on procedural necessity, human rights bodies rarely specifically addressed the basis for the duration of pretrial detention. When they do, as the European Court of Human Rights has, the


justification for extending the time is vague “public interest.” As a result, as seen in Section 3, some countries adopt pretrial detention durations based on the crime charged, the age of the child, or the length of the eventual sentence.

Human rights bodies should clarify that the duration of pretrial detention must be justified based on the procedural need of the case at hand, just like the decision on whether to detain awaiting trial or not. Decisions regarding the duration of pretrial detention should be individualized decisions based on the procedural requirements of the case at hand and any extension of that time should also be justified on the procedural need. Basing the duration of pretrial detention solely on the crime charged, age of the child, or even public security erodes the presumption of innocence.

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