

European responses to the problem of prisoners with mental health disorders. The case of Spain.

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Health and Prison services in Spain

1979-2002 Transference of Health Care from the Spanish Ministry of Health to the regional autonomous governments Health departments

17 autonomous regions; 2 autonomous cities (Ceuta and Melilla)

17 Autonomous Health systems; and Ministry of Health for Ceuta and Melilla

Prison administration may be transferred to Regions (arts. 148-150 Constitution). Some Regions include it in their Autonomy Statutes

3 Prison administrations: Catalonia (1983), Basque Country (2021), and rest of Spain (Ministry of Interior)



Prison Health Service in Spain ([WHO](#), 2023:422-432)



Reglamento Penitenciario (Prison Regulations) 1996:

- Primary Care provided by Prison administration
- Specialized care and hospitalization by Health administration, paid by Prison administration

Law N° 16/2003 established in its Disposición Adicional 6 that the Penitentiary Health Care System should be transferred / integrated to the Regional Health Care Systems.

This has only happened in the Basque Region in 2011 (BOE) [in 2021 the whole Penitentiary competence was transferred to the Basque Region, BOE].

In 2021 the Regional Health Care System of the Region of Navarra assumed the Health Care competence regarding the prison in Navarre (BOE).

Catalonia made this transfer from Justice to Health between 2006 and 2014

CPT 2021 Report

“The findings of the 2020 visit reinforced the CPT’s view that the Spanish authorities should proceed immediately with the preparation of the transfer of prison health care to the national health service as envisaged by **Law 16/2003**. Transfer would inter alia reinforce through-care with the community and guarantee the independence of health care staff.”

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- ❑ Compliance to Law 16/2003 would be a masterpiece for equivalence of care, continuity of care and medical ethics (WHO, 2023: 62)
- ❑ It needs a political and technical agreement between Spanish Government and EACH Regional Autonomous Government
- ❑ Political, financial and unfamiliarity/fear with prison

Spanish prison mental health

Spanish SMI in Prisons White Book 2023

Sept. '24
58.921 inmates

Estimated (4-5%) SMI
2.500-2900 with Severe Mental
Illness

Ministry of Interior:
Lack of psychiatrist (CPT, 2021:6)
Protocol [PAIEM](#) 2009-2013
Around 1800 prisoners
In some places specialized PAIEM
modules

Basque Country
Provided by Health Ministry
(Osakidetza)
Mental Health Center in Prison

[Catalonia](#)
Integrated in community mental
health care
Recovery paradigm
Agreements with private institutions

Security Measures (for acquitted or semi-acquitted)

Ministry of Interior
473 SM

2 forensic institutions in Sevilla (150 men) and Alicante (324 men and women) and ordinary prisons for Security Measures

Catalonia

49 SM

Special units in prisons (2003):
UHRPI-C Brians (80 beds)

Agreements with private
institutions

Integrated in community mental
health care

Recovery paradigm

Basque Country

No SM in prison system

Mental Health Center in Prison

Civil mental facilities (one
specialised UPL)

REMS model

Regulatory and guarantee of
rights problems

CPT, 2020 first visit to Spanish forensic psychiatric institutions ([CPT, 2021: 8-9](#))

“143. The Committee considers that forensic psychiatric establishments such as PPHs should enjoy full institutional and functional separation from the prison service in the light of the different ethos and staffing profile which characterise prison establishments. Preferably, in the CPT’s view, PPHs should be under the responsibility of the national health-care system (Sistema Nacional de Salud).”

“much needed paradigm shift”



European Court of Human Rights

- No decisions or judgments against Spain on this issue
- Illegal presence of SMI Security Measures in ordinary prisons with inadequate treatment possible violation of art. 3 (Strazimiri vs. Albania 2020)
- Right to life (art. 2) and prohibition of mistreatment (art. 3)



Some conclusions/hypotheses from Spain

A specific prison health care system (provided by prison services) does not guarantee the principle of equivalence; it provides a lower standard of health care.

Integration of prison health care into the national health system improves health care but is not sufficient.

Public health policy makers find it difficult to integrate people deprived of their liberty and stigmatised as criminals in the general health care; specially mentally ill (double stigma).

In any prison health care model, there will be a struggle between the prison or regimental aspects and the therapeutic and recuperative.

Staff responsible for providing medical services must be separated and protected from prison authorities and other prison-medical functions. Medical ethics in prisons require special attention.

Return to the community after deprivation of liberty seems to be the common and persistent problem in all models of care for mental illness.

Some conclusions/hypotheses from Spain

It cannot be ignored that mental illness is structurally linked to social exclusion and substance abuse.

The experience in Basque Country and Navarra shows that prison health care provided by the regional health department can be combined with the management of the prison by the Ministry of the Interior, although there will be conflicts, and coordination will be essential.

The main difficulties for the transfer of prison health care in Spain from the Ministry of the Interior to the regional health departments are financial and a lack of knowledge and fear of what prison health care is.

Prison health care is more than just medical care. It includes prevention, promotion, public health issues, and purely penitentiary and regulatory forensic-medical actions.

Mental health care is a specific and dedicated part of prison health care.

The response to persons acquitted on grounds of mental illness requires specific resources.

The fact that the penal and penitentiary system criminalises mental illness must lead to changes in penal policies.

Appendix

CPT 1993 3rd General Report

43. A mentally ill prisoner should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. That facility could be a civil mental hospital or a specially equipped psychiatric facility within the prison system.



Recommendation (98)7 concerning the ethical and organisational aspects of healthcare in prison

10. Health policy in custody should be integrated into, and compatible with, national health policy. A prison healthcare service should be able to provide medical, psychiatric and dental treatment and to implement programmes of hygiene and preventive medicine in conditions comparable to those enjoyed by the general public. Prison doctors should be able to call upon specialists. If a second opinion is required, it is the duty of the service to arrange it.

13. Medical confidentiality should be guaranteed and respected with the same rigour as in the population as a whole.

20. Clinical decisions and any other assessments regarding the health of detained persons should be governed only by medical criteria. Health care personnel should operate with complete independence within the bounds of their qualifications and competence.

55. Prisoners suffering from serious mental disturbance should be kept and cared for in a hospital facility which is adequately equipped and possesses appropriately trained staff. The decision to admit an inmate to a public hospital should be made by a psychiatrist, subject to authorisation by the competent authorities.

Article 35 of Committee of
Ministers Recommendation
(2004)¹⁰ concerning the
protection of the human
rights and dignity of persons
with mental disorder

Persons with mental disorder should not be subject to discrimination in penal institutions. In particular, the principle of equivalence of care with that outside penal institutions should be respected with regard to their health care. They should be transferred between penal institution and hospital if their health needs so require.

WHO/ICRC Information Sheet “Mental Health and Prisons”, 2005

WHAT CAN BE DONE?

Divert people with mental disorders towards the mental health system: Prisons are the wrong place for many people in need of mental health treatment, since the criminal justice system emphasizes deterrence and punishment rather than treatment and care. Legislation can be introduced which allows for the transfer of prisoners to general hospital psychiatric facilities at all stages of the criminal proceedings (arrest, prosecution, trial, imprisonment).

European Prison Rules (CM/Rec (2006)2)

12.1 Persons who are suffering from mental illness and whose state of mental health is incompatible with detention in a prison should be detained in an **establishment specially designed** for the purpose.

47.1 Specialised prisons or sections under medical control shall be available for the observation and treatment of prisoners suffering from mental disorder or abnormality who do not necessarily fall under the provisions of Rule 12.

The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

Rule 109 1. Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.

2. If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.

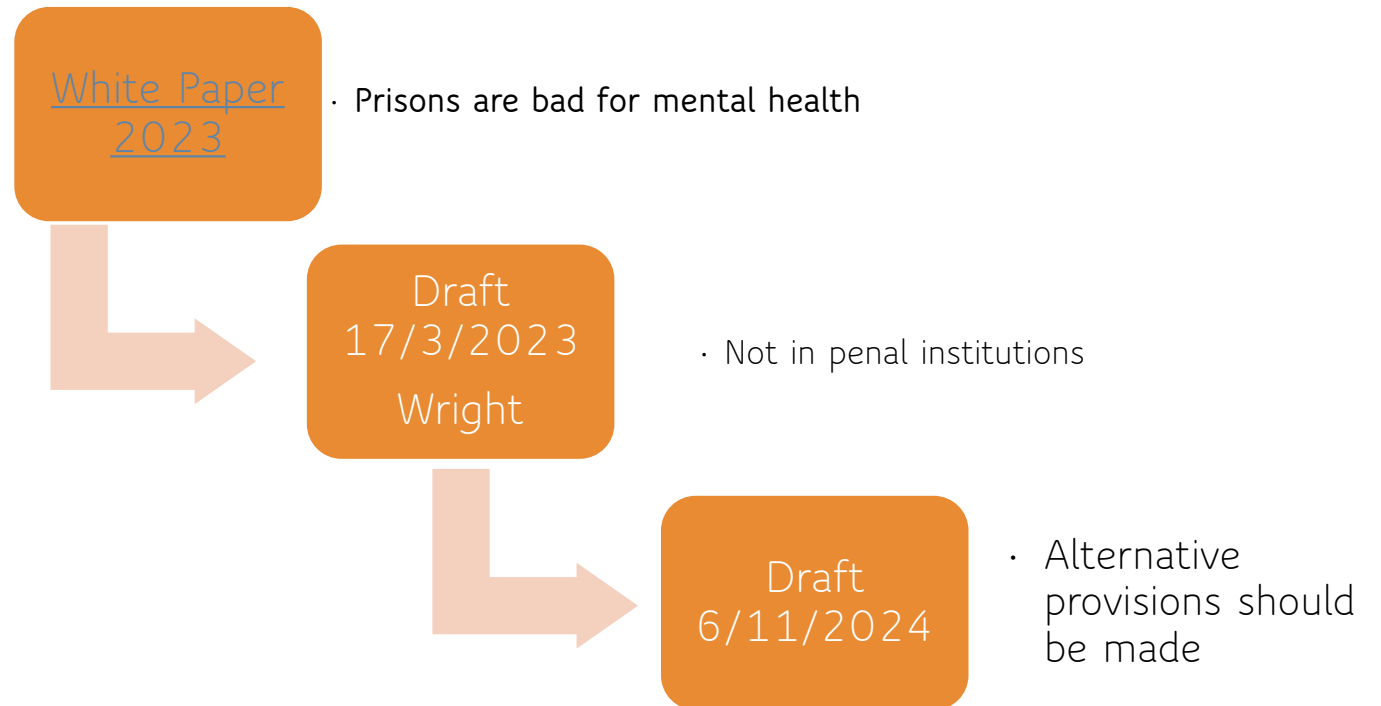
3. The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

Draft Recommendation regarding the Promotion of Mental Health and the Management of Mental Disorders of Prisoners and Probationers

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White Paper 2023

Steps to be taken

b. Diversion of persons with mental disorders to the mental health system at all stages of the criminal proceedings (arrest, prosecution, trial, imprisonment). The imprisonment of people with mental disorders due to lack of public mental health service alternatives should be strictly prohibited by law.

d. Provision of access to acute mental health care in psychiatric wards of general hospitals for prisoners who require it

i. Ensuring that the needs of prisoners are included in national mental health policies and plans

Concerns about the last Draft



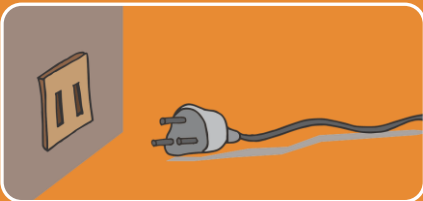
Insufficiency of ethical requirements as general provision

- Independence of medical staff
- Consent and information
- Confidentiality



Lack of clarity regarding responsibility for care in detention.

- Cooperation
- Specialised staff or general
- primacy of the role and clinical decisions



No clear recommendation on whether a person's mental health is incompatible with continued detention.