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COUNCIL FOR PENOLOGICAL CO-OPERATION

PC-CP

**Draft Recommendation regarding the Promotion of Mental Health and
the Management of Persons with Mental Disorders by Prison Services
and Probation Agencies**

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Please note that at this stage Rules 1-19 are the part of the draft that requires close consideration. The preceding matter has been added to give early view of what the whole will look like. The footnotes will eventually form part of the Commentary. They have not been developed fully yet and are included only to clarify the preliminary thinking behind the Rules. Passages marked in yellow below are further questions for the PC-CP.

**Recommendation CM/Rec ... of the Committee of Ministers to member States regarding the
Promotion of Mental Health and the Management of Persons with Mental Disorders by Prison and
Probation Services (Adopted by the Committee of Ministers on ... at the ... meeting of the Ministers'
Deputies)**

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

Having regard to the European Convention on Human Rights (CETS No. 5) and the case law of the European Court of Human Rights;

Having regard also to the work carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and in particular the standards it has developed in its Third General Report with respect to the mental health of person in detention;

Supporting the strong emphasis on equitable access to healthcare set out in the Convention on Human Rights and Biomedicine (ETS No 164);

Noting the specific relevance of the principle of equivalence of care for people with mental disorders in penal institutions reiterated in Article 35 of Committee of Ministers Recommendation (2004)¹⁰ concerning the protection of the human rights and dignity of persons with mental disorder.

Building upon the European Prison Rules (CM/Rec (2006)2) and Recommendation (98)7 concerning the ethical and organisational aspects of healthcare in prison, which both make detailed provision for arrangements for healthcare, including mental healthcare, of prisoners.

Building further upon the Council of Europe Probation Rules (CM/Rec (2010)1) and the European Rules on Community Sanctions and Measures (CM/Rec (2017) 3), which both emphasise the duty of probation agencies to respect the human rights of person subject to sanctions and measures and that, when planning and carrying out their interventions, due regard needs to be given to the dignity, health, safety and well-being of such persons;

Reflecting the guiding principles and recommendations that flow from the findings of the Council of Europe White Paper regarding the management of persons with mental disorders by the prisons and probation services (CM(2023)3-add);

Recommends that governments of member States be guided in their legislation, policies and practice by the rules contained in the appendix to this recommendation.

Part I

Scope and General Principles

Scope

1. 1. This Recommendation shall apply to the promotion of mental health and the management of persons with mental disorders by prison services and probation agencies.
- 1.2. a. Prison services shall apply this Recommendation to incarcerated persons to whom the European Prison Rules (Rec (2006) 2-rev) are applicable.¹

¹ Rule 1.2 is designed to link this recommendation to the scope of the European Prison Rules (EPR). Rule 10 of the EPR sets out in detail to which incarcerated persons those Rules. In interpreting the scope of the current Recommendation reference should also be made to the commentary on Rule 10 of the EPR.

Note that, like the EPR, the current Recommendation is not designed to deal with the detail of the treatment of children (persons under the age of 18 years) who are incarcerated or subject to community sanctions or measures because of offences they committed. Such children should be dealt with in terms of the European Rules for juvenile offenders subject to sanctions or measures (CM/Rec(2008)11). and not as prisoners. However, if nevertheless, such children are held in prisons the current recommendation should also apply to them, to the extent that it protects their interests.

- b. Such persons are regarded as prisoners for the purpose of this Recommendation.
- 1.3. a. Probation agencies, as defined in European Probation Rules (CM/Rec (2010) 1), shall apply this Recommendation to persons subject to community sanctions and measures.²
 - b. Such persons are regarded as probationers for the purpose of this Recommendation.
- 1.4. a. Prison services and probation agencies may refer prisoners and probationers to other organisations for the promotion of their mental health and the management of their mental disorders.³
 - b. Prisoners and probationers who are referred shall be dealt with in terms of this Recommendation.

General principles

- 2. Prisoners and probationers shall receive the support they need to maintain, protect and improve their mental health.⁴
- 3. Prisoners and probationers shall have access to mental healthcare that is at least of equivalent quality to that provided for the general population.⁵
- 4. Prisoners and probationers shall be provided with relevant information in a form that they can understand on how they can access support for their mental health.⁶

Prison services are not defined in the EPR. However, those rules assume the existence of a prison service in Rule 46(2). Part 5 of the European Prison Rules indicates deals with the staff that should comprise a prison service. These staff members are ultimately responsible for implementing this Recommendation.

² Rule 1.3 is designed to link this Recommendation to scope of the European Probation Rules and indirectly to the European Rules on Sanctions and Measures. The definition of a 'probation agency' in the former is important in this regard. To understand what is meant by persons subject to community sanctions and measures to whom this recommendation applies, it is important also to consider the definition of 'community sanctions and measures' in the European Rules on Community Sanctions and and Measures. **Comment above deals with limited application to children in prison but what about those subject to community sanctions and measures??**

³ Such cooperation should be encouraged where the prison service or probation agency does not have the capacity to offer the services 'in-house'.

⁴ The World Health Organization (WHO) underlines that mental disorders occur at disproportionately high rates in prisons due to several factors: the widespread misconception that all people with mental disorders are a danger to the public; the general intolerance of many societies to difficult or disturbing behaviour; the failure to promote treatment, care and rehabilitation, and, above all, the lack of, or poor access to, mental health services in many countries. The WHO notes that many of these disorders may be present before admission to prison. They may be exacerbated further by the stress of imprisonment but may also develop during imprisonment itself: WHO/ICRC Information Sheet "Mental Health and Prisons", 2005. For these reasons mental healthcare is particularly important for prisoners and probationers. The use of the words "at least" indicates that in some instances more mental health services may need to be provided for prisoners and probationers than is available in the outside community.

⁵ There should be high-level commitment at the political level to securing equivalence of mental healthcare for persons under the responsibility of prison services and probation agencies, with the necessary resources, infrastructure and support for implementation. (Council of Europe White Paper regarding the management of persons with mental disorders by the prisons and probation services (CM (2023)3-add) (White Paper) 7.1.a).). Member states should ensure that policy governing mental healthcare for persons held in the prison system or under the supervision of probation agencies, is an intrinsic part of national mental health policy, with high priority placed on the steps necessary to secure equivalence of care. **Where the national healthcare system gives users a voice in shaping mental health care interventions, steps should be taken to ensure that prisoners and probationers can exercise this right. Should this be said? In the commentary? In a rule? At all? E.G: "Service users should be involved in the development of these interventions, e.g., trauma informed care in women's prisons." (White Paper)**

⁶ It is important that information be provided in a form that takes into account the cognitive und linguistic abilities of prisoners and probationers.

5. Alternative provisions shall be made for prisoners and probationers whose mental health is incompatible with continued imprisonment or probation.⁷
6. Continuity of mental healthcare shall be ensured for prisoners and probationers, with respect to such initiated before or during their imprisonment or probation.⁸

Part II

Promotion of mental health

7. The maintenance, protection and improvement of the mental health of prisoners and probationers shall be promoted by intervening with primary secondary and tertiary measures.

Primary Intervention

8. Primary intervention shall include taking the following proactive measures to prevent the onset of mental health problems among prisoners and probationers:
 - a. Generating a supportive and caring environment;⁹

⁷ In line with Rule 12 of the European Prison Rules, national policy should stipulate that people whose state of mental health is incompatible with detention in a prison should be sent to an establishment specially designed for the purpose.

National policy should further stipulate that treatment for mental disorders should not take place in penal institutions except in hospital units or medical units suitable for the treatment of mental disorders; and that people with severe mental disorders who have been placed in prison should be promptly transferred to appropriate healthcare facilities where this is required for their care.

Dedicated arrangements between the prison and healthcare systems at local level should be in place to ensure that such transfers can be effected promptly. **Is there a similar provision for cross reference as far as probationers are concerned?**

⁸ Attention should be paid to the mental healthcare of prisoners and probationers as they pass between different parts of the health and criminal justice systems. This includes: between mainstream mental health services and prison on admission; when transferring between prisons, or between prison and healthcare facilities, including forensic mental health facilities; and when leaving prison, whether or not under the supervision of probation services.

A co-ordinated approach, involving high levels of co-operation, should be established between the healthcare and criminal justice systems, and within and across different parts of the criminal justice system, in order to provide the continuity of care essential for effective mental health services.

Such an approach should be in place both at national policy level, between health and justice departments, and at local level between all relevant facilities, to support the effective planning, commissioning and delivery of services.

Joint working groups should be created at local level, bringing together prison and probation staff (prison officers, psychologists, case managers, social workers), health professionals (physicians, nurses, psychiatrists) and volunteers (where appropriate) working in all sectors: prison, probation, and mental health. Such groups should work together on a regular basis.

Referral of persons with mental disorders to external mental healthcare services that can provide treatment after release, whether or not this is under the supervision of the probation service, should follow written protocols and partnership agreements in order to establish shared responsibility.

⁹ Creating a supportive and caring environment encourages positive social relationships, stress reduction, and opportunities for personal growth and development, which can help prevent the onset of mental health problems among prisoners and probationers. Prison and probation staff can create a supportive environment by treating individuals in their care with respect and dignity, providing opportunities for social interaction and support.. This can have a positive impact on their mental health.

- b. Providing access to mental health services from admission to imprisonment and probation onwards;¹⁰
- c. Offering information and education on mental health;¹¹
- d. Addressing social determinants of mental health;¹²
- e. Offering access to physical activities and programs that promote well-being;¹³
- f. Supporting family and community connections;¹⁴ and
- g. Providing support for re-entry into the community.¹⁵

Secondary Intervention

- 9. Secondary intervention shall include taking the following proactive measures to identify and treat mental health problems among prisoners and probationers at an early stage, before they become more severe:
 - a. Screening for mental health problems;¹⁶
 - b. Offering timely and effective treatment;¹⁷
 - c. Providing crisis intervention services;¹⁸ and
 - d. Monitoring and evaluating mental health services.¹⁹

¹⁰ Providing access to mental health services, including screening, assessment, and treatment, can help identify and address mental health problems at an early stage.

¹¹ Providing education on mental health, mental illness, and the importance of seeking help can help reduce stigma and promote early intervention. Probation agencies may provide education and training on mental disorders to staff members and individuals under their supervision.

¹² Addressing social determinants of mental health, such as poverty, inequality, and discrimination, can help prevent the onset of mental health problems among incarcerated individuals.

¹³ Providing access to activities and programs that promote well-being, such as exercise, art therapy, and mindfulness activities, can help prevent the onset of mental health problems. Regular physical activity can have a positive impact on mental health, reducing stress and anxiety and promoting a sense of well-being. Prisons can encourage physical activity by providing access to exercise facilities, sports programs, and other physical activity opportunities.

¹⁴ Maintaining connections with family and community can be an important factor in promoting positive mental health in prisons. Prisons can facilitate these connections by providing opportunities for visitation, allowing phone calls and letters, and supporting re-entry programs that promote family and community connections. Special importance is attached to promoting the relationship between incarcerated fathers and their children, because this is where the greatest deficits exist.

¹⁵ Providing support for re-entry into the community, such as support through case management and community-based mental health services, can help individuals with mental health problems manage their symptoms and reduce the risk of recidivism.

¹⁶ Regular mental health screening can help identify individuals who may be at risk for developing mental health problems or who are currently experiencing mental health problems.

¹⁷ Timely and effective treatment, such as therapy and medication, can help individuals manage mental health problems and prevent them from becoming more severe.

¹⁸ Crisis intervention services, such as suicide intervention programs, can help prevent individuals from experiencing a mental health crisis.

¹⁹ Regular monitoring and evaluation of mental health services can help ensure that they are effective and are meeting the needs of incarcerated individuals.

Tertiary Intervention

10. Tertiary intervention shall include taking the following proactive measures to manage and treat mental health problems that have become more severe or chronic among prisoners and probationers:
- a. Providing access to intensive mental health services;²⁰ and
 - b. Addressing substance use;²¹

Part III

Management of mental disorders

- 12.1. Prisoners and probationers with mental disorders [are persons who] have clinically significant disturbances in their cognition, emotional regulation, or behaviour.²²
- 12.2. Such mental disorders require specific treatment and other interventions.²³

Screening

- 13.1. Prison services and probation agencies²⁴ shall ensure that persons in their care are screened by appropriately qualified prison or probation staff or other qualified persons to identify those with mental disorders.²⁵
- 13.2. Such screening shall:
- a. Take place on admission to prison in the case of prisoners;²⁶

²⁰ Providing access to intensive mental health services, such as inpatient treatment or specialized programming for individuals with serious mental illness, can help manage and treat severe or chronic mental health problems.

²¹ Addressing co-occurring substance use can help individuals with mental health problems manage their symptoms and reduce the risk of relapse. Substance use can have a negative impact on mental health, exacerbating existing mental health conditions and increasing the risk of developing new ones. Prisons can address substance use by providing education and treatment programs for individuals with substance use disorders.

²² A mental disorder is usually associated with distress or impairment in important areas of functioning: See WHO Fact Sheet. Mental Disorders 7 June 2022 <https://www.who.int/news-room/fact-sheets/detail/mental-disorders> .

²³ Managing mental disorders is a significant challenge for prison services, as individuals in the criminal justice system are more likely to have mental health problems than the general population. Mental disorders can affect an individual's ability to comply with prison rules, maintain positive relationships, and cope with the challenges of incarceration. Therefore, it is essential that prison services have the skills and resources to effectively manage mental disorders among those in their care.

It is important for prisons to promote a culture of mental health awareness and support. This may involve providing educational programs to incarcerated individuals and staff, promoting mental health awareness for example through posters and other materials, and providing access to peer support programs. By taking a comprehensive and coordinated approach to the management of mental disorders in prisons, correctional systems can promote the well-being of incarcerated individuals and reduce the risk of negative outcomes.

²⁴ Managing mental disorders is an important aspect also of probation services' work, as individuals under their supervision may be more likely to have mental health conditions than the general population. (SOURCE?) Mental disorders can have a significant impact on a person's ability to comply with probation requirements, maintain employment, and lead a fulfilling life. Therefore, it is essential that probation services have the skills and resources to effectively manage mental disorders among those they supervise. Through these efforts, probation services can promote the well-being of individuals under their supervision, reduce the risk of reoffending, and improve public safety.

²⁵ Such assessment may use tools such as questionnaires or interviews. This process can help to ensure that individuals receive the appropriate care and support during their time in prison.

²⁶ In accordance with the EPR, Rules 15.1.f, 16.a and 42. Prison services should screen new prisoners at admission, subject to the requirements of medical confidentiality and should register any relevant information regarding their physical

- b. Take place at the beginning of period of probation in the case of probationers; and
- c. Be repeated when necessary.

Assessment

14. Where prisoners or probationers are found to have a mental health disorder, they shall undergo a more comprehensive assessment to determine the nature and severity of their condition, as well as any risk factors or needs they may have.

Treatment

15.1. Prison services and probation agencies shall provide access for prisoners and probationers to a range of mental health treatment options, such as medication and psychotherapy.

15.2. Treatment may be delivered by specialised and trained prison or probation staff or through external mental health services.

15.3 Mental health treatment shall be based on the free and informed consent of prisoners and probationers, provided that such treatment may be applied without their consent in exceptional circumstances specified in national law.²⁷

Crisis intervention

16.1 In the event of a prisoner having a mental health crisis, such as self-harm or attempted suicide, prison services shall intervene to provide immediate support, assistance and treatment, either from the prison health service or by referral to an outside mental health service.²⁸

16.2 In the event a probationer having a mental health crisis, such as self-harm or attempted suicide, that comes to the attention of the probation services, they shall intervene by referring the probationer the appropriate mental health service in the community.

Part IV

Staff

Training

17. 1. Prison and probation staff shall receive training on the promotion of mental health and the management of mental disorders from which prisoners and probationers often suffer.²⁹

and mental wellbeing. This information should be supplemented promptly by a medical examination. **Consent in this regard?**

²⁷ Article 5 of the Oviedo Convention on Human Rights and Freedoms requires that any intervention in the health field be carried out only after the person concerned has given free and informed consent to it. Rule 6 applies this principle also to prisoners and probationers who may be subject to such treatment.

²⁸ The ECtHR has made it clear that the failure to intervene when a prisoner is facing a mental health crisis will be regarded as a violation of art 3 of the ECHR: *Rivière v. France*, 11.07.2006. The Court looks critically at the mental health services that are being offered in such cases: *Slawomir Musiał v. Poland*, 20.01.2009; *Dybeku v. Albania*, 18.12.2007; *Murray v. the Netherlands* [GC], Application No 10511/10, 26.04.2016.

When there is a risk of suicide the authorities may be found to violate the right to life, which is guaranteed by art 2 of the ECHR, if they do not take adequate steps to prevent the suicide: *Coselav v. Turkey* 9.10.2012 (They may also be held liable if a prisoner actually commits suicide and the authorities knew of the risk but did not take adequate steps to prevent it, or did not investigate the cause of death appropriately afterwards. *Keenan v. United Kingdom* 3.4.2001.)

²⁹ All prison and probation staff should have a programme of training and refresher courses on mental health, psychology, and suicide prevention. As part of their basic education, they should be trained in how to interact with and offer support to prisoners and probationers with mental disorders. This may help to reduce stigma, and promote understanding of the importance of treatment adherence. See report on the CPT's visit to Romania in 2021, CPT/Inf (2022) 06, para 67.

- 17.2. Such training shall enable them to interact effectively with individuals with mental health problems, to improve the quality of care and to reduce the risk of negative interactions.³⁰

Part V

Information and research

Information

18.1. Anonymised and aggregated data on the prevalence of mental disorders in the penal system shall be systematically collected.³¹

18.2. Anonymised data on suicide, attempted suicide and self-harm shall routinely be collected and monitored.³²

Research

19. Research shall be undertaken to develop an improved evidence base on effective interventions supporting people with mental disorders in prison or under the supervision of probation services, and with respect to the implementation of mental health policies and practices in the penal system.³³

³⁰ Prison and probation staff should be trained with different aspects of knowledge and techniques of intervention, possibly including restorative approaches.

As a minimum, initial suicide intervention training should include but not be limited to, the following: why correctional environments are conducive to suicidal behaviour; staff attitudes about suicide; potential predisposing factors to suicide; high risk suicide periods; warning signs and symptoms; recent suicides and/or serious suicide attempts within the facility/agency; and components of the facility/agency's suicide intervention policy.

³¹ Member states should take steps to require the systematic collection of anonymised and aggregated data on the prevalence of mental disorders in the criminal justice system, to inform the effective planning of services and to facilitate research to improve care (White Paper 7.1.c)).

To support this process, methods should be developed for collecting data on mental disorders in a consistent manner, in line with the relevant data protection rules in Europe. The use of structured assessment tools would facilitate this process.

³² Member states should require standardised and anonymised data on suicide, attempted suicide and self-harm to be routinely collected and monitored at both national and local level. These data should be used to identify trends over time, both at national level and at the level of individual institutions; examine possible preventive actions; and share good practice.

³³ In light of the current inadequate evidence base on the effectiveness of interventions for those with mental disorders in prison or under supervision by the probation service, member states should, as a matter of priority, increase levels of research funding, and work with practitioners and the academic sector to improve the available evidence base. Given the particular lack of evidence with respect to mental health in probation, a dedicated programme of mental health research with experts working in probation settings should be established. Sufficient research funding should also be made available to evaluate the implementation of mental health policies and practices, and their impact on health and on re-offending outcomes.