

Strasbourg, 3 June 2024

PC-CP (2023) 8 Rev 5

COUNCIL FOR PENOLOGICAL CO-OPERATION

PC-CP

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

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This version of the draft Recommendation has been updated by the experts in the light of the changes proposed by the PC-CP at its meeting on 28 May 2024. Please note that at this stage Sections 1-25 are the part of the draft that requires consideration. The footnotes will eventually form part of the Commentary, but they are incomplete and should be considered as background.

**Recommendation CM/Rec ... of the Committee of Ministers to member States
regarding the Promotion of Mental Health and the Management of the Mental Disorders
of Prisoners and Probationers**

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 (ETS No. 5) and the case law of the European Court of Human Rights;

Having regard to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS n°126) and 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-rev) 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 services 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;

Emphasising the Rules for Juvenile Offenders Subject to Sanctions or Measures (CM/Rec (2008) 11) in all matters relating to children under the age of 18 years.

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 provisions contained in the appendix to this recommendation;
- ensure that this recommendation and the accompanying commentary to its text are translated and disseminated as widely as possible and more specifically among judicial authorities, prison and probation staff, mental health staff and individual prisoners and probationers.

APPENDIX

Part I

Scope and General Principles

Scope

1. This Recommendation shall apply to the promotion and protection of the mental health and the management of the mental disorders of prisoners and probationers by the authorities that in national law have responsibility for the health care, or any aspect of such care related to the mental health of prisoners and probationers, irrespective of the specific agency providing such care.¹
- 2.1. This Recommendation shall apply to adult prisoners and probationers.²
- 2.2. If exceptionally children under the age of 18 years are held in a prison for adults, this Recommendation shall apply to them together with any other provision designed to protect the mental health of children in prison.³
3. For the purposes of this Recommendation prisoners are incarcerated persons to whom the European Prison Rules (Rec (2006) 2-rev) are applicable.⁴

¹ The authorities that have the responsibility referred to in Rule 1 may vary from country to country. Prison and probation service will inevitably be involved but in some instances the primary authority will be national health service. In other instances, there may be a specialist mental health service, whose responsibilities extend to (aspects of) the mental health prisoners or probationers. This Recommendation is designed to encompass all these possible permutations.

² Rule 2.1 makes it clear that, subject to the limited exception in Rule 2.2 this Recommendation is designed to deal with the mental health of adult prisoners and probationers only.

³ Rule 2.2 follows Rule 11.1 of the European Prison Rules (EPR) (Recommendation Rec (2006) 2-rev), which provides that children under the age of 18 years should not be held in a prison for adults. If nevertheless, exceptionally, they are held in a prison, Rule 11.2 of the EPR provides that that “there shall be special regulations that take into account their status and needs”. See further the European Rules on juvenile offenders subject to sanctions and measures (CM/Rec (2008)11), Rules 69 to 75 of which deal with the health of juveniles deprived of their liberty.

⁴ Rule 3 is designed to link this recommendation to the scope of the EPR. Rule 10 of the EPR sets out in detail to which incarcerated persons those Rules refer. It provides:

10.1 The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

10.2 In principle, persons who have been remanded in custody by a judicial authority and persons who are deprived of their liberty following conviction should only be detained in prisons, that is, in institutions reserved for detainees of these two categories.

10.3 The rules also apply to persons:

- a. who may be detained for any other reason in a prison; or*
- b. who have been remanded in custody by a judicial authority or deprived of their liberty following conviction and who may, for any reason, be detained elsewhere.*

10.4 All persons who are detained in a prison or who are detained in the manner referred to in paragraph 10.3.b are regarded as prisoners for the purpose of these 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 the EPR apply not only to every person “detained in a prison” within the meaning of the rules, but also to persons who, while not actually staying within the perimeter of the prison, nevertheless administratively belong to the population of that prison. That implies that persons enjoying furloughs or participating in activities outside the physical boundaries of the prison facilities, for whom the prison administration is still formally responsible, must be regarded as prisoners.

4. For the purposes of this Recommendation probationers are persons subject to probation as defined in European Probation Rules (CM/Rec (2010) 1).⁵
5. Prisoners and probationers with mental disorders are persons who have clinically significant disturbances in their cognition, emotional regulation, or behaviour.⁶

General principles

6. Prisoners and probationers shall promptly receive the support and care they need to maintain, protect and improve their mental health, with respect for their human dignity.⁷
7. Mental health care shall take account of gender and cultural factors that may determine the needs of prisoners and probationers.⁸

⁵ Rule 4 is designed to link this Recommendation to scope of the European Probation Rules ((CM/Rec (2010) 1). The definition section of the European Probation Rules explains that probation:

relates to the implementation in the community of sanctions and measures, defined by law and imposed on an offender. It includes a range of activities and interventions, which involve supervision, guidance and assistance aiming at the social inclusion of an offender, as well as at contributing to community safety.

The definition section of the European Probation Rules notes further that community sanctions and measures mean:

sanctions and measures which maintain offenders in the community and involve some restrictions on their liberty through the imposition of conditions and/or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment.

⁶ Mental disorder is usually associated with distress or impairment in important areas of human functioning: See WHO Fact Sheet. Mental Disorders 7 June 2022 <https://www.who.int/news-room/fact-sheets/detail/mental-disorders>. 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.

⁷ Rule 6 stresses the fundamental link between good mental health care and human dignity. See in this regard Article 1 of the Recommendation (2004 (10), concerning the protection of the human rights and dignity of persons with mental disorder and the Council of Europe White Paper regarding the management of persons with mental health disorders by the prisons and probation services (CM (2023)3-add) p 16.

⁸ Gender and cultural backgrounds influence individuals' different life experiences, including trauma, stigma, and the coping mechanisms they adopt. Understanding these differences helps mental health professionals provide more effective care tailored to individual needs. Certain gender and cultural groups may face unique stresses to their mental health, such as discrimination, societal pressures, or specific traumas related to their identity. Addressing these factors can assist in managing their mental health effectively.

Gender and cultural factors can affect access to mental health services. For instance, individuals from certain cultures may have different attitudes towards seeking help or face language barriers. Understanding these factors allows mental health providers to make services more accessible and culturally competent.

Gender and culture can influence how individuals respond to different treatment approaches. For example, certain therapies or interventions may be more effective or acceptable within specific cultural or gender contexts. Tailoring treatment plans accordingly can improve outcomes.

Addressing gender and cultural factors in mental health care for prisoners and probationers is crucial for successful reintegration into society. Cultural identity and gender roles play significant roles in an individual's sense of self and community, so supporting these aspects can facilitate rehabilitation and reduce recidivism.

Taking gender and cultural factors into account in all aspects of mental health care aligns with human rights principles, including the right to health and the right to be free from discrimination. It promotes equity and ensures that all individuals receive care that respects their dignity and autonomy.

8. Prisoners and probationers shall have access to mental healthcare that would produce outcomes of equivalent quality to the mental healthcare provided for the general population.⁹
9. 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.¹⁰
10. Alternative provisions shall be made for prisoners and probationers whose mental health is incompatible with the sanction or measure imposed.¹¹
- 11.1. Where the mental health of a prisoner makes it essential that such prisoners be separated from other prisoners, such separation may be imposed provided that the requirements of Rule 53A of the European Prison Rules are met.¹²
- 11.2. A prisoner shall never be subject to solitary confinement for mental health reasons.¹³

⁹ There should be political and a managerial commitment to securing equivalent outcomes of mental healthcare for persons under the responsibility of prison and probation services, 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). Emphasis should be on achieving the same quality of health care for prisoners and probationers as for other members of the public, even if the means of delivering it may vary. Member States should ensure that policy governing mental healthcare for persons held in the prison system or under the supervision of probation services, is an intrinsic part of national mental health policy, with high priority placed on the steps necessary to secure equivalence of care. The meaning of equivalence of health care of all kinds is spelled out in Article 10 of the Recommendation R (98) 7 concerning the ethical and organisational aspects of health care in prison.

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.

¹⁰ It is important that information be provided in a language, manner and form that takes into account the cognitive and linguistic abilities of prisoners and probationers.

¹¹ Alternative provisions may take different forms. 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. In the case of probationers, the 'alternative provisions,' may simply amount to an adjustment of the probation conditions. The European Court of Human Rights (ECtHR) has held that Article 3 of the European Convention on Human Rights (ECHR) imposes an obligation on the State to transfer prisoners with mental disorders to special facilities, if a failure to do so would result in inhuman or degrading treatment in the prison in which they are held (*Murray v. the Netherlands* [GC], No 10511/10, judgment of 26/04/2016, para 105).

¹² Underlying both parts of Rule 11 is the distinction drawn between separation and solitary confinement in the EPR. All prisoners who are separated from other prisoners must be offered at least two hours of meaningful human contact a day (EPR Rule 53A). Solitary confinement is a harsher form of separation, where such contact need not be provided (Rule 60.6.a of the EPR)

Rule 53A of the EPR contains a list of the restrictions that apply also to the use of separation of prisoners from other prisoners for mental health related reasons. This list should be studied and applied in full. Particular attention is drawn to Rule 53A.c which provides that separation shall be used for the shortest period necessary to achieve its objectives and shall be regularly reviewed in line with these objectives". Rule 53A.d provides that "prisoners who are separated shall not be subject to further restrictions beyond those necessary stated purpose of such separation." In the case of separation for mental health reasons, it may be possible for separated prisoners to continue with other activities such as studying, for example.

¹³ In terms of Rule 60(6) solitary confinement may only be used as a disciplinary punishment, and then in the very restricted circumstances. Therefore, as Rule 11.2 makes clear, it cannot be imposed for any mental health related purpose.

Of particular importance to mental health in respect of solitary confinement as a disciplinary punishment, is that Rule 60.6.a provides that solitary confinement "shall never be imposed on children pregnant women, breastfeeding mothers or parents with infants in prison". Also important is Rule 60.b.b that provides, inter alia, that: "solitary confinement shall not be imposed on prisoners with mental or physical disabilities when their condition would be exacerbated by it. Where solitary confinement has been imposed, its execution shall be terminated or suspended if the prisoner's mental or physical condition has deteriorated."

12. Where mental health services for prisoners and probationers are rendered by various authorities, these authorities shall cooperate closely and take joint responsibility for such services,¹⁴ while ensuring that such co-operation meets all appropriate national and international data protection and medical confidentiality standards.¹⁵
13. Where the prisoners or probationers are subject to interventions related to the offence of which they have been convicted, such interventions shall be consistent with the promotion of their overall mental health.¹⁶
14. Continuity of mental healthcare shall be ensured for prisoners and probationers, with respect to such care initiated before or during their imprisonment or probation period.¹⁷

Part II

The Promotion and protection of mental health

Promoting mental health

15. The maintenance, protection and improvement of the mental health of prisoners and probationers shall be promoted by encouraging prisoners, probationers and relevant staff to foster good mental health. Good mental health shall be promoted by:

¹⁴ This co-operation may take various forms. Prison and probation services may refer prisoners and probationers to other authorities for the promotion of their mental health and the management of their mental disorders. Co-operation should be encouraged where a prison or probation service does not have the capacity or legal authority to offer the services 'in-house'. Other authorities should be able to refer prisoners and probationers back to the prison and probation services, if this would be in the best interests of the prisoners and probationers concerned.

¹⁵ Rule 13 of the Recommendation concerning the ethical and organisational aspects of health care in prison (Recommendation R (98) 7) requires that "medical confidentiality should be guaranteed and respected for prisoners with same rigour as in the population as a whole", while Rule 18 provides that when prisoners are transferred, their medical records should be transferred too, "under conditions ensuring their confidentiality". More generally, rule 16A.5 of the EPR provides, in respect of prisons, that: "National law shall specify what information shall be collected and processed and shall contain detailed rules to ensure that data protection standards are met with regard to such information." The same general confidentiality principle and data protection standards that apply in prisons should be applied *mutatis mutandis* to probationers.

¹⁶ Treatment or therapy aimed at reducing recidivism may include a mental health element. Steps should be taken to ensure that it complements the promotion of the overall mental health of the persons concerned.

¹⁷ Attention should be paid to ensuring the continuity of mental healthcare of prisoners and probationers, as they pass between different parts of the criminal justice and health systems. This continuity 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. Such an approach should be in place both at national level, between health and justice departments, and at local level between all relevant facilities, to support the effective planning, commissioning and delivery of services. See also Rule 12 above.

Community based joint working groups may be created, for example, 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.

Co-operation may also take other forms. For example, a probation service may be asked by a judicial authority to provide a pre-sentence report. If such a report were to recommend a community sentence that includes treatment for a mental health disorder, it is important that the probation service cooperates with providers of such mental health treatment, both in formulating the treatment recommendation and in implementing the treatment, if it becomes part of a sentence or measure imposed by the sentencing court.

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 and to ensure that appropriate personal data safeguards are applied throughout (On data protection see also Rule 12 above.)

- a. Creating a supportive and caring environment;¹⁸
- b. Offering information and education on mental health;¹⁹
- c. Providing access to mental health services from admission to prison and placement under probation onwards;²⁰
- d. Acknowledging and where possible addressing social determinants of mental health;²¹
- e. Offering access to and providing opportunities for physical activities, creative arts and other programmes that promote well-being;²²
- f. Supporting prosocial and community contacts;²³ and
- g. Providing support for re-entry into the community.²⁴

¹⁸ Creating a supportive and caring environment encourages positive social relationships, stress reduction, and opportunities for personal growth and development can make a contribution to maintaining the mental health of 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. Such an environment can have a positive impact on their mental health.

¹⁹ Providing information and education to prisoners and probationers on maintaining good mental health, avoiding mental disorder and the importance of seeking help, can reduce stigma and promote early intervention. For example, prisoners and probationers can be provided with easy-to-follow documents on mental health issues that are likely to arise while they are serving their sentences or focused educational courses dealing with these issues may be offered.

Prison and probation staff need education and training on mental health, as provided in Part IV below, to enable them to inform prisoners and probationers in this regard.

²⁰ Providing access to mental health services, can assist in identifying and addressing the mental health needs of prisoners and probationers at an early stage.

²¹ Addressing social determinants of mental health, such as poverty, inequality, and discrimination, may help to prevent the mental health of prisoners and probationers being jeopardised. For example, where the mental health of indigent persons is burdened by concerns about their debts, they may be assisted to manage them more effectively.

²² Providing access to activities and programmes that promote well-being can help prevent damage to mental health.

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 programmes, and other physical activity opportunities: Rule 27 of the EPR. For probationers, too, daily access to physical exercise is beneficial. Probation services should encourage probationers to join community-based exercise programmes, where possible.

There are a wide range of programmes that may be offered to prisoners in order to alleviate boredom and this safeguard their mental health. Creative arts, which are mentioned specifically in the Rule 14.1e, may include, for example, music, theatre or painting. 25.1 of the EPR specifies that the prison regime offer “shall offer a balanced programme of activities” to all prisoners. Opportunities for work, education and religious observance (See Rules 26, 28 and 29 of the EPR respectively) are particularly useful for maintaining the mental health of prisoners. Targeted programmes, for example to learn anger management, may play an important role too.

Ideally, probationers should have access to a similar range of activities to that offered to prisoners in order to maintain and improve their mental health. Where probation includes a community service requirement its potential positive impact on the mental health of the probationers concerned, should be born in mind. In many instances, probation services have to rely on other agencies and community groups to provide access to appropriate activities and programmes that underpin good mental health. Probation services should seek to facilitate access to such activities and programmes for all probationers.

²³ Maintaining prosocial contacts of various kinds with family, peers and community can be an important factor in promoting positive mental health for prisoners and probationers. Prisons can facilitate these connections by providing opportunities for visits, allowing phone calls, letters, videocalls, and prison leave, and supporting re-entry programmes that promote family and community connections. Special importance is attached to promoting the relationship between incarcerated parents and their children, because this is where the greatest deficits exist. See the Recommendation concerning children with imprisoned parents (Rec (2018) 5). Probation services should also facilitate the contact between probationers and their families wherever possible.

²⁴ Providing support for re-entry into the community, such as support through case management and community-based mental health services, can help individuals manage their symptoms and reduce the risk of recidivism.

Protecting mental health

- 16.1. Authorities dealing with prisoners and probationers shall be sensitive to the needs of those whose mental health may require specific protective measures.²⁵
- 16.2. Where necessary, such authorities shall take measures to protect the mental health of prisoners and probationers by:
 - a. Addressing substance abuse;²⁶
 - b. Providing access to crisis intervention services²⁷ and
 - c. Dealing with systemic issues within the healthcare and criminal justice systems that contribute to poor mental health outcomes.²⁸

Self-harm and suicide prevention

17. Authorities dealing with prisoners and probationers shall take special measures to prevent self-harm and suicide by:
 - a. Developing and enforcing policies specifically addressing self-harm and suicide prevention.²⁹
 - b. Offering prisoners and probationers who are at risk of self-harm and suicide access to timely and effective counselling and other forms of support;³⁰
 - c. Establishing clear protocols for responding to self-harm and suicide attempts, including immediate medical and psychological intervention;³¹
 - d. In the case of prisons, creating specialized units or safe rooms for prisoners in acute crisis, ensuring they are monitored and supported,³² and

²⁵ This is not a full screening as for a possible mental disorder (On screening, see Rule 17 below.). However, prison and probation officers should be constantly alert to the possibility that prisoners and probationers may need protective measures.

²⁶ Addressing co-occurring use of both legal and illicit substances that may have an effect on mental health, can help prisoners and probationers 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 and probation can address substance use through the provision of education and treatment programmes for individuals with substance use disorders.

²⁷ Crisis intervention services can prevent individuals from suffering from an ongoing mental disorder. On crisis intervention in a context of a mental health disorder, see Rule 20 below.

²⁸ Adequate funding should be allocated for mental health services, including hiring sufficient mental health professionals, expanding treatment programs, and ensuring access to psychiatric medication in order to avoid the negative mental health impact of overcrowding, inadequate funding for mental health services, and disparities in access to care.

²⁹ 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*, No. 1413/07, judgment of 09/10/2012. Prison services may also be held liable if a prisoner actually commits suicide and the authorities knew or ought to have known of the risk but did not take adequate steps to prevent it and did not investigate the cause of death appropriately afterwards: *Keenan v. United Kingdom*, No. 27229/95, judgment of 03/04/2001.

³⁰ Timely and effective intervention, such as therapy and medication, and family and social support, can help individuals manage their mental health and prevent problems from becoming more severe.

³¹ As noted also in Rule 21.1 below, where crisis intervention is considered for persons with mental disorders, suicide attempts should be dealt with by adopting a therapeutic and not a punitive approach. This applies to all suicide attempts, whether the person concerned has a mental disorder or not.

³² Acute crises can lead to unpredictable and potentially dangerous behaviour, posing risks to the affected individual, other inmates, and prison staff. Specialized units are equipped to handle such situations more safely and effectively, reducing the risk of harm and maintaining overall prison safety.

Prisoners retain their human rights despite being incarcerated. Providing appropriate care for those in mental health crises is an ethical responsibility. Ensuring that they have access to specialized units respects their dignity and rights, and aligns with international human rights standards.

- e. Regularly reviewing and updating policies based on best practices and emerging research on self-harm and suicide.³³

Part III

The management of mental disorders

Screening

- 18.1. As prisoners and probationers with mental disorders require prompt specific treatment and other interventions, the responsible authorities shall ensure that persons in their care are screened by appropriately qualified staff or by external mental health services to identify those with mental disorders.³⁴
- 18.2. Screening shall include an assessment of the use of substances and related medical and social problems.³⁵
- 18.3. Screening shall:
 - a. Take place on admission to prison in the case of prisoners;³⁶
 - b. Take place prior to discharge from prison or at the beginning of the period of probation in the case of probationers who are not referred to probation directly from prison;³⁷ and
 - c. Be repeated when necessary.³⁸

Prisoners in acute crisis, such as those experiencing severe mental health episodes, are at heightened risk of self-harm or suicide. Specialized units or safe rooms are designed to provide a secure and supportive environment where these individuals can receive immediate care and supervision. This helps in stabilizing their condition and preventing tragic outcomes.

³³ Emerging research can provide new insights into the most effective strategies for preventing self-harm and suicide. By integrating these insights into policies, prisons and other institutions can improve the effectiveness of their interventions, ensuring they are using the best available methods to protect individuals at risk.

Patterns of self-harm and suicide can change over time, influenced by social, cultural, and environmental factors. Regular policy reviews help institutions stay updated on these trends and adapt their approaches, accordingly, ensuring they remain relevant and effective.

Advances in technology can offer new tools and methods for monitoring, preventing, and responding to self-harm and suicide. Updating policies to incorporate these technological innovations can enhance the ability of institutions to detect and intervene in crises more promptly and accurately.

³⁴ Depending on the circumstances and national law, the responsible authorities may be prison or probation staff or the staff of medical or other services to which national law ascribes screening responsibilities. Screening may use tools such as questionnaires or interviews, depending on what is appropriate in the prison or probation context.

³⁵ The medical history assessment should also identify any signs of substance dependence and the use of substitution treatment. The aim is to identify people with substance abuse disorders and to establish the care and treatment measures they need. Screening should be interdisciplinary and may involve various specialists, such as mental health experts and social workers. Problems with family and interpersonal relationship, for example, may affect mental health negatively.

³⁶ Rules 15.1.f, 16.a and 42 of the EPR provide that prison services shall screen new prisoners at admission and, subject to the requirements of medical confidentiality, register any relevant information regarding their physical and mental wellbeing. This information should be supplemented promptly by a medical examination.

³⁷ In the case of probationers in particular, screening may be less intensive, as they may have access to mental health services outside the criminal justice system. The intensity of the screening required should be adapted to the needs of the individual case.

³⁸ It is important that all responsible authorities co-operate to ensure that additional screening is conducted when a suspicion arises that a prisoner or probationer may be suffering from a mental disorder.

Assessment

19. Where prisoners or probationers are found after screening to have indications of a mental disorder, they shall be offered a comprehensive assessment to confirm whether the original finding was correct and to establish the nature and severity of their mental disorder, as well as any risks they may pose or needs they may have.³⁹

Treating mental disorders

- 20.1. Prison and probation services shall facilitate the access for prisoners and probationers to a range of effective mental health treatment options.⁴⁰
- 20.2. Treatment for mental disorders shall be delivered by specialised staff or through general mental health services, incorporating a multidisciplinary approach as far as possible.
- 20.3. Treatment for mental disorders shall be based on the free and informed consent of prisoners and probationers, unless such treatment may be applied without their consent for medical reasons specified in national law.⁴¹
- 20.4. The treatment of persons with substance abuse disorders shall, if necessary, include substitution treatment and other harm reduction methods.⁴²

Mental health crisis intervention

- 21.1. A mental health crisis shall be approached as far as possible from a therapeutic perspective, under the supervision of healthcare staff.⁴³
- 21.2. In the event of a prisoner having a mental health crisis:

³⁹ Assessment should go further than the initial screening, particularly in the assessment of the risk that the prisoner or probationer may pose to themselves or to others because of their mental disorder.

⁴⁰ Treatment options that are used should all be evidence based and should involve, where appropriate, medical care and also a wide range of therapeutic rehabilitative and meaningful recreational activities.

⁴¹ 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. This general principle applies also to prisoners and probationers who may be subject to treatment for mental disorders.

In so far as national law specifies that treatment may exceptionally be applied without a person's consent, the law should provide for protective conditions, including supervisory, control and appeal procedures (Articles 7 and 26 of the Oviedo Convention). The treatment in question should also not run counter to the principles established in the ECtHR case law, according to which the application of coercive and non-consensual measures against persons with psychological or intellectual disabilities requires that such measures be employed as a matter of last resort and when their application is the only means available to prevent immediate or imminent harm to the patient or others. Furthermore, the ECtHR has stressed that the use of such measures must be commensurate with adequate safeguards from any abuse, providing sufficient procedural protection, and capable of demonstrating sufficient justification that the requirements of ultimate necessity and proportionality have been complied with and that all other reasonable options failed to satisfactorily contain the risk of harm to the patient or others. It must also be shown that the coercive measure at issue was not prolonged beyond the period which was strictly necessary for that purpose (*M.S. v. Croatia* (No. 2), No. 75450/12, 19/02/2015, judgment of 19/02/2015, paras 104-105). The procedural safeguards with respect to complaints Rule 70 of the European Prison Rules are also of particular importance in this context.

⁴² Prisoners and probationers often use illegal substances. Any substitution treatment already started for opioid addiction (opioid agonist treatment) or any other drug treatment for substance dependence should be continued. Further steps for general harm reduction that could be taken, for example, include provision of sterile injection equipment, vaccination against hepatitis A and B, and condom distribution. Cooperation with external addiction treatment centres should be established in order to ensure continuity of treatment.

⁴³ The approach adopted should never be punitive. If healthcare staff are not available immediately, other staff should intervene only to stabilise the situation until the healthcare staff can take over.

- a. The agencies intervening in such a mental health crisis shall medically assess the situation and shall provide immediate support, assistance and treatment, either from the prison health service or by referral to an outside mental health service;⁴⁴
- b. Any crisis intervention shall be as unintrusive as possible;⁴⁵
- c. The separation of such a prisoner or the use of force or restraints as part of such crisis intervention should be avoided wherever possible, as such interventions may exacerbate the prisoner's condition: and
- d. If separation, use of force or restraints as part of such crisis interventions cannot be avoided, the restrictions and limitations on the use of such measures set out in the European Prison Rules shall apply.⁴⁶

21.3. In the event a probationer having a mental health crisis that comes to the attention of the probation services, they shall intervene by referring the probationer to the appropriate mental health service in the community.

Part IV

Staff

Mental Health

22. Authorities that employ staff whose duties include promoting and protecting the mental health and managing the mental disorders of prisoners and probationers, shall take all necessary steps to support such staff in dealing with stress related to the performance of these duties.⁴⁷

⁴⁴ The ECtHR has made it clear that the failure to intervene when a prisoner is facing a mental health crisis may amount to a violation of art 3 of the ECHR: *Rivière v. France*, No. 33834/03, judgment of 11/07/2006. The Court looks critically at the mental health services that are being offered in such cases: *Slawomir Musiał v. Poland*, No. 28300/06, judgment of 20/01/2009; *Dybeku v. Albania*, No. 41153/06, judgment of 18/12/2007; *Murray v. the Netherlands [GC]*, No 10511/10, judgment of 26/04/2016. See also Rule 47.2. of the European Prison Rules.

In countries where prisoners who are outside prison are still regarded in law as 'prisoners', for example because they are on prison leave or because the implementation of their sentence has been interrupted, special procedures should be put in place to deal with the possibility that such prisoners may face a mental health crisis outside prison.

When a mental health crisis is serious or of a long duration consideration should be given to moving a prisoner to a therapeutic institution. See in this regard Rule 10 above, which provides that alternative provisions shall be made for prisoners whose mental health is incompatible with continued detention in a prison.

⁴⁵ Crisis intervention can serve as a gateway to more comprehensive mental health care, identifying individuals in need of ongoing treatment and ensuring they receive appropriate care, including therapy and medication. It helps stabilize inmates experiencing severe mental health episodes, allowing for a calmer and safer environment for both inmates and staff. This stabilization is crucial for the effective management of the prison population.

Implementing crisis intervention programs often involves training prison staff to recognize and respond to mental health crises. This training increases staff awareness and understanding of mental health issues, leading to more humane and effective management of inmates.

⁴⁶ See Rules 53a and 64 to 68 of the EPR and also the CPT Standards on means of restraint in psychiatric establishments for adults (CPT/Inf(2017)6).

⁴⁷ Dealing with prisoners and probationers in difficult situations on a daily basis can increase stress levels among prison and probation staff. The impact to such stress on staff health may sometimes lead to long absences from work. Careful management of staff work schedules may assist in reducing work-related stress.

Training

- 23.1. Prison and probation staff shall receive training on the promotion and protection of mental health and the management of mental disorders.⁴⁸
- 23.2. Such training shall enable them to interact effectively with persons with mental disorders, to improve the quality of care and to reduce the risk of negative consequences.⁴⁹
- 23.3 Such training shall also enable staff to cope with work-related mental stress.⁵⁰

Part V

Information and research

Information

- 24.1. Accessible, anonymised and aggregated data on the prevalence of mental disorders in the penal system shall be collected systematically, in order to inform the effective planning of services and to facilitate research to improve care.⁵¹
- 24.2. Anonymised data on suicide, attempted suicide and self-harm, where accessible, shall routinely be collected and monitored.⁵²

Research

25. Research shall be sufficiently funded and undertaken to develop an improved evidence base on effective interventions supporting persons 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.⁵³

⁴⁸ The specialist mental health related training for staff should be seen in the context of the general 'Guidelines regarding recruitment, selection, education, training and professional development of prison and probation staff' (CM (2019)111-add). See Rule 7.2.a) in particular. All prison and probation staff should have a programme of training and refresher courses on mental health, psychology, and suicide prevention. 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.

⁴⁹ Prison and probation staff should be trained with different aspects of knowledge and techniques of intervention, possibly including restorative approaches, dynamic security, interpersonal communication and de-escalation skills. Particular attention should be paid to the prevention of suicide and self-harm, as these behaviours are often linked to poor mental health.

⁵⁰ Employers are responsible for countering the mental stress experienced by staff dealing with prisoners and probationers. This should be done as part of occupational health management. In this way institutional resilience can be increased.

⁵¹ Member States should take steps to require the systematic collection of anonymised and aggregated data on the prevalence of mental disorders in the penal 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.

⁵² 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.

⁵³ 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.