



**CRC September Sessional Working Group (82<sup>nd</sup> Session)**  
Country name: Portugal

### **Appropriate pretrial detention times for children**

Cluster of rights:

Right to lawful deprivation of liberty  
Right to speedy trial and brevity of pretrial detention  
Convention on the Rights of the Child Article 37(b)  
Convention Against Torture Article 2

Areas of concern:

International law strictly limits the circumstances in which children can be placed in detention while awaiting trial or while under investigation pre-charge. Pretrial detention should only be used in exceptional circumstances, where it is necessary to ensure the child's appearance at the court proceedings, or where the child is an immediate danger to himself/herself or others.<sup>1</sup> Pretrial detention is only permitted as a measure of last resort and for "*the shortest appropriate period of time.*"<sup>2</sup> However, there is no clarity around what is meant by an "*appropriate period of time.*" The Committee on the Rights of the Child, in General Comment 10, recommended that children who are detained should be formally charged within 30 days and once charged, that a final decision should be made by the court within six months.<sup>3</sup> The Committee additionally recommended that any such detention should be reviewed regularly by a competent body<sup>4</sup> These recommendations can and should be strengthened.

Defendants in pretrial detention are more likely to be abused, mistreated and tortured,<sup>5</sup> and children are particularly vulnerable. In many countries, the lack of adequate facilities, food and sanitation, insufficient access to education and training, and compromised contact with family and friends makes even short periods of time in pretrial detention traumatic for children. Detention has been shown to significantly increase the risk of depression, suicide,

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<sup>1</sup> Patrick Webb & William Allen Kritsonis, *Controlling those Kids: Social Control and the Use of Pretrial Detention among Youth in the United States of America: National Implications*, ERIC (Oct. 2006), <https://eric.ed.gov/?id=ED493565>.

<sup>2</sup> G.A. Res. 44/25, Convention on the Rights of the Child, art. 37(b) (Nov. 20, 1989) [hereinafter CRC].

<sup>3</sup> Comm. on the Rights of the Child, General Comment 10: Children's Rights in Juvenile Justice, § 80, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007) [hereinafter CRC General Comment 10].

<sup>4</sup> *Id.* ¶ 83 (specifying that regular review is "preferably every two weeks").

<sup>5</sup> Moritz Birk et. al., *Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk*, 27, OPEN SOC'Y FOUND. (2011), <https://www.opensocietyfoundations.org/sites/default/files/pretrial-detention-and-torture-06222011.pdf>.

school drop-out, and drug use among children.<sup>6</sup> Unfortunately, in many countries the majority of children in detention are awaiting trial and may spend months or years behind bars before having their cases resolved. Even in jurisdictions that have successfully implemented alternatives to detention, children still spend months or years in pretrial detention, often longer than any sentence they might receive on conviction. It is reportedly common for children to receive conditional release or diversion after months of pretrial detention<sup>7</sup>. This means that the most significant time spent deprived of liberty is while awaiting trial, when children are ostensibly presumed innocent.

The 2018 report “Children in Pretrial Detention: Promoting Stronger International Time Limits” is the first study of how long countries allow children to be detained awaiting trial. Looking at the legal limits in 118 countries, the report found that 26% of countries have no time limit and 40% of countries allow exceptions to their time limit, risking indefinite detention. However, the length of time that children actually spend in detention awaiting trial is data that countries have not been collecting or reporting.

The *Children in Pretrial Detention: Promoting Stronger International Time Limits* report serves as a baseline for the Committee to expand on country practices regarding times of pretrial detention of children.

Methodology:

This alternative report is based on the *Children in Pretrial Detention* report on pretrial detention times of 119 CRC State parties.<sup>8</sup> Such report was conducted by reviewing the respective current statutes or court rules in force at the time that the data was collected. In defining the statutory time period of pretrial detention, when possible, the report applied the statutory maximum for pretrial detention based on the time allowed in detention from arrest until a sentence was established. However, varying jurisdictions defined pretrial detention differently or set limits based on alternative procedural milestones. Where the statute did not provide a length of days or it was unclear, the number of days was based on the national law’s definition of pretrial detention.

Most jurisdictions did not indicate any time limit for children in pretrial detention pending appeals. For the sake of uniformity, only limits based on pretrial detention before the first adjudication were used. State practices are unclear when a case is appealed, and the child is in pretrial detention, such as if the clock is suspended or if the time limit still applies.

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<sup>6</sup> Barry Holman & Jason Ziedenberg. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 3–10, JUST. POL’Y INST. (Nov. 28, 2006), [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf).

<sup>7</sup> E.g., *Diagnóstico del Sistema de Justicia Para Adolescentes del Estado de Chihuahua: “Buenas Prácticas para las Alternativas a la Detención”*, 8–10, JUSTICIA JUVENIL INT’L (Sept. 2017) <https://jjimexico.org/projects/chihuahua> [hereinafter *Diagnóstico 2017*].

<sup>888</sup> Additional methodological information available in *Children in Pretrial Detention: Promoting Stronger International Time Limits*, i, May, 2018 (available at <https://jjimexico.org/ptd-report/>)

## Portugal

Portugal has a procedural statute where a child is placed in an educational institution as a custodial measure. This custodial measure has a blanket limit with exceptions of three months, which can be extended for an additional three months. These precautionary measures can be replaced with detention if a judge determines that the precautionary measures did not achieve the intended purpose. Precautionary measures are reviewed on a case-by-case basis every two months.

Statute Citation	<p>Artigo 60. Duração</p> <p>1 — A medida de guarda de menor em centro educativo tem o prazo máximo de três meses, prorrogável até ao limite máximo de mais três meses em casos de especial complexidade devidamente fundamentados.</p> <p>2 — O prazo de duração das restantes medidas cautelares é de seis meses até à decisão do tribunal de 1.ª instância e de um ano até ao trânsito em julgado da decisão.</p> <p>Article 60. Duration</p> <p>1 - The custodial measure for a child in an educational institution has a maximum period of three months, extendable up to a maximum of three months in cases of special duly substantiated cases.</p> <p>2 - The duration of the remaining injunctions shall be six months until the decision of the court of first instance and one year before the final decision becomes final.</p> <p>Artigo 61. Revisão</p> <p>1 — Oficiosamente ou a requerimento, as medidas cautelares são substituídas, se o juiz concluir que a medida aplicada não realiza as finalidades pretendidas.</p> <p>2 — As medidas cautelares são revistas, oficiosamente, de dois em dois meses.</p> <p>3 — O Ministério Público e o defensor são ouvidos, se não forem os requerentes.</p> <p>Article 61. Review</p> <p>1 - Officially or upon application, the precautionary measures are replaced, if the judge concludes that the measure applied does not achieve the intended purposes.</p> <p>2. The precautionary measures shall be reviewed, on a case-by-case basis, every two months.</p> <p>3 - The Public Prosecution Service and the defense counsel shall be heard, if not the applicants.</p>
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	<p>No. 166/99, aprova a Lei Tutelar Educativa (Educational Guardianship Law), Capítulo I, Seccao III: Medidas cautelares. <a href="http://www.oijj.org/sites/default/files/ley_n_166_99_de_14_de_setembro.pdf">http://www.oijj.org/sites/default/files/ley_n_166_99_de_14_de_setembro.pdf</a></p>
<p>Recommended changes to statutory limit according to international law:</p>	<ul style="list-style-type: none"> <li>• JJAI recommends that Portugal starts working towards a 30-day maximum for children detained while awaiting trial.</li> <li>• The use of extending the time should be more clearly limited. JJAI recommends that 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. It should be defined by the statute the specific possible needs for extending the pretrial detention period.</li> <li>• Children who are in detention for the statutory maximum number of days should be placed in supervised release immediately and not re-detained for the same offense.</li> <li>• JJAI recommends that Portugal refrain from placing juveniles in solitary confinement for any period of time.</li> </ul>
<p>Additional Information on the country</p>	<ul style="list-style-type: none"> <li>• Minimum age of criminal responsibility is 16 years.</li> <li>• Juveniles over the age of 16 benefit from full protection of their rights in the context of juvenile justice proceedings.</li> <li>• There is concern that juveniles are not systematically involved in the proceedings.</li> <li>• There is a lack of adequate training of those involved in the administration of juvenile justice, as well as possible discrimination against immigrants and ethnic minorities.</li> <li>• Children aged 16 and 17 can by law be held in solitary confinement for up to 30 days.</li> </ul> <p>Convention on the Rights of the Child, <i>Concluding Observations on the Combined Third and Fourth Periodic Report of Portugal</i>, ¶¶ 65–66, U.N. Doc. CRC/C/PRT/CO/3-4 (Feb. 25, 2014), <a href="https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPRT%2fCO%2f3-4&amp;Lang=en">https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fPRT%2fCO%2f3-4&amp;Lang=en</a></p>
<p>Questions for the state party related to child pretrial detention time limits:</p>	<ul style="list-style-type: none"> <li>• Data on the average time children actually spend in pretrial detention.</li> <li>• Data on the number of children who spend longer than the maximum time in pretrial detention.</li> <li>• Data on duration of pretrial detention as it varies by race, gender, religion or other relevant characteristics.</li> <li>• Data on efforts to reduce the length of pretrial detention and expedite cases.</li> </ul>

	<ul style="list-style-type: none"><li>• Information on how appeals and other challenges affect duration of pretrial detention.</li></ul>
Link to Global Study	<a href="https://jjimexico.org/ptd-report/">https://jjimexico.org/ptd-report/</a>