

National Collaborative: Activity Pack



A conversation on Human Rights and substance use

Criminal Justice Rights

Human Rights and Criminal Justice

A person's involvement in drug-related criminality affects the enjoyment of some rights and specifically engages others. In no case are human rights entirely forfeited.

All people deprived of their liberty in prisons or other settings must be treated with dignity. They should have the right to healthcare equivalent to the general population.

Everyone has the right to Liberty

This means that:

- arrest and detention must follow clear laws and procedures, which must be applied equally to all;
- no-one should be detained solely on the basis of substance use or substance dependence;
- pre-trial detention should only be imposed in exceptional circumstances, where reasonable, necessary and proportionate;
- people arrested, detained or convicted for substance related offences must benefit from alternatives to custody, sentence reduction and parole, in the same ways as people convicted of other offences do;
- non-custodial measures should be prioritised for people arrested for minor substance-related offences, and for women and children;
- if treatment is ordered, no penalties should attach to failure to complete the treatment;
- treatment as an alternative to custody must only be offered with informed consent, where medically appropriate and must not be ordered for longer than the applicable custodial sentence;
- compulsory substance detention centres must be closed and related with voluntary, evidence-based care and support in the community.

Human Rights and Criminal Justice

Everyone has the Right to a fair trial

Everyone has the right to equality before the law, including people affected by substance use.

This means that:

- carrying and distributing equipment, goods, and information intended for preventing or reducing the harms associated with substance use, should not be criminalised;
- no-one should be at risk of criminal prosecution for being victim of or witness to an overdose or other injury occurring due to substance use;
- controlled substances used as medicines should be available, accessible and affordable for all, including those affected by substance use.



Human Rights and Criminal Justice

Everyone has the right to freedom from torture, inhuman or degrading treatment

This means that:

- everyone in custody must be treated with humanity and with respect for the inherent dignity of the person, including people in detention for substance-related reasons.
- everyone in custody should have access to voluntary and evidence-based health services, including harm reduction and substance treatment services, as well as essential medicines, including HIV and hepatitis C services, at a standard that is equivalent to that in the community this includes access to essential medicines, including for substance dependence, pain treatment and palliative care;
- there should be continuity of health care, including harm reduction and treatment services, with access to essential medicines through transitions of entering and exiting the detention facility, as well as transfer between institutions;
- substance-related health care services must be provided by qualified medical personnel, trained in substance treatment, harm reduction, and palliative care and pain management, as well as other medical conditions that require the use of controlled substances for medical purposes;
- medical staff working in prisons must be able to make independent, evidence-based decisions for their patients.

People should be able to effectively challenge practices that breach these rights, and secure a remedy.



Questions

These questions are intended to focus discussion on the key requirements of the right to health. Some may find it useful to consider each question in turn. Others may prefer to use them as a prompt for discussion. Either approach is fine!

1. In Scotland, is there understanding and respect for the rights in the criminal justice system to which people affected by substance use are entitled? If not, what needs to change?

2. Are controlled substances used as medicines available and accessible for people affected by substance use in custodial settings, including during transition periods? If not, what needs to change?

3. Do people in custody, affected by substance use, have access to health services equivalent to those available in the community? (Including access to essential medicines, harm reduction and treatment services)

4. If people in custody, affected by substance use, are refused access to essential medicines, are they able to effectively challenge that decision and secure a remedy? If not, what are the issues, and what needs to change?

5. Are there examples of good practice that could be built upon?

