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|  | **CRC (90th Session)**  Country name: Cuba |
| **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:  The international human rights community needs to adopt stricter time limits for children in pretrial detention. 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.[[1]](#footnote-1) Pretrial detention is only permitted as a measure of last resort and for “*the shortest appropriate period of time*.”[[2]](#footnote-2) 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.[[3]](#footnote-3) The Committee additionally recommended that any such detention should be reviewed regularly by a competent body[[4]](#footnote-4) These recommendations can and should be strengthened.  Defendants in pretrial detention are more likely to be abused, mistreated and tortured,[[5]](#footnote-5) 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, school drop-out, and drug use among children.[[6]](#footnote-6) Research shows that children’s sense of time is significantly different than adults, making even short periods of detention particularly harmful.[[7]](#footnote-7) 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. As a result, it is critical that children’s rights organizations advocate for significant reductions in the use of pretrial detention as well as speedier trials in order to reduce the duration of pretrial detention.  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 be collecting or reporting.  Criminal justice procedures for children vary widely throughout the world, and it appears that international and regional human rights bodies have, to date, been reticent to prescribe what constitutes the “*shortest appropriate time*” for pretrial detention for children. Clarification is desperately needed since children in many countries are suffering irreversible harm from spending excessive periods of time in pretrial detention. 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[[8]](#footnote-8). This means that the most significant time spent deprived of liberty is while awaiting trial, when children are ostensibly presumed innocent.  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. Such report was conducted by reviewing the respective current statutes or court rules in force at the time that the data was collected. When the actual statute or court rule could not be directly examined, when unavailable, secondary sources such as UN reports, Concluding Observations from the CRC Committee, or other IGO or NGO reports, were used to determine the content of the statute.  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.  The number of days were calculated at 30 days per month when the statue used a number of months rather than days for durations shorter than one year. Monthly durations beyond one year are added to a 365-day period. For example, 18 months was calculated as one year (365 days) plus six months (six 30-day periods, or180 days) to be 545 days. All time limits and averages were rounded to the closest whole day.  If a statute referenced another law or calculation, such as a portion of time based on the possible sentence, such calculation was made. However, when sufficient information could not be found to calculate the time, a maximum limit was not included.  If the pretrial detention time limit was defined based on multiple procedural steps, such as X days from arrest to arraignment and Y number of days from arraignment until sentencing, then the longest possible number of days allowed were added for each step to establish the pretrial detention time limit. Most countries do not include in their limits the time held before first hearing or initial charge  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. | |

**Cuba**

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| Cuba has a blanket pretrial detention limit of a maximum of a maximum of **180 days,** or 6 months. A child may remain in pre-trial detention for a total of **60 days** with a possible extension totaling no more than **180 days**, or 6 months. | |
| Statute Citation | **Criminal Procedure Law (Law No. 5 of August 13, 1977, as amended by Decree No. 208 of February 16, 2000)** (Translated from Spanish)  **ARTICLE 107.** The Instructor practices the instructional actions and other proceedings of the preparatory phase in the shortest possible time.  The term of the investigation of the preparatory phase file should **not exceed sixty days** from the date of the commencement resolution and can only be extended, justifiably, by the Chiefs of the Instructor, in accordance with what is regulated by the body or organism to which it belongs.  In these cases, **the maximum term for the termination of the**  **file is six months from the date of the decision to initiate the**  **file,** the Instructor having to deliver it to the Prosecutor under the conditions in which he finds. The extensions granted will be informed to the Prosecutor when there are defendants  subject to provisional imprisonment for the purpose of assessing whether or not to maintain that measure precautionary.  Notwithstanding the provisions of the preceding paragraph, exceptionally and upon reasoned request of the corresponding Provincial Head of the Ministry of the Interior, or, where appropriate, of the Chief Prosecutor Provincial, the Attorney General of the Republic may grant a new term for the  conclusion of the instruction of the preparatory phase file.  When the Instructor considers exhausted the instruction of the preparatory phase file, the will be terminated by order, or by conclusive report when it results necessary. Before issuing the closing diligence or preparing the conclusive report referred to in the previous paragraph, the Instructor will inform the Prosecutor that he deems the instruction exhausted to the  effects that the latter, if deemed necessary, examine the file and rule on it**.**[[9]](#footnote-9) |
| Recommended changes to statutory limit according to international law: | * JJAI recommends establishing a 30-day maximum for children detained while awaiting trial. * JJAI recommends that alternative disciplinary or rehabilitative measures be exhausted before resorting to pretrial detention. * Pretrial detention should start at the moment of the initial detention and end at the moment that the court establishes a final sentence. * 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. |
| Additional Information on the country |  |
| Questions for the state party related to child pretrial detention time limits: | One or more if not already available:   * + Data on the average time children actually spend in pretrial detention.   + Data on children detained with adults.   + Data on the number of children who spend longer than the maximum time in pretrial detention.   + Data on duration of pretrial detention as it varies by race, gender, religion or other relevant characteristics.   + Data on efforts to reduce/ establish the length of pretrial detention and expedite cases.   + Information on how appeals and other challenges affect duration of pretrial detention.   + Information on standards related to initial court appearance, determination of legality of initial detention, and judicial control over detention of children.   + Data on oversight and children’s access to legal counsel within pretrial detention. |
| Link to Global Study | <https://jjimexico.org/ptd-report/> |

1. 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. [↑](#footnote-ref-1)
2. G.A. Res. 44/25, Convention on the Rights of the Child, art. 37(b) (Nov. 20, 1989) [hereinafter CRC]. [↑](#footnote-ref-2)
3. 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]. [↑](#footnote-ref-3)
4. *Id.* ¶ 83 (specifying that regular review is “preferably every two weeks”). [↑](#footnote-ref-4)
5. 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>. [↑](#footnote-ref-5)
6. 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>. [↑](#footnote-ref-6)
7. David E. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 Stan. L. & Pol'y Rev. 13, 18–19 (2003). [↑](#footnote-ref-7)
8. *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*]. [↑](#footnote-ref-8)
9. Protection of Young People Act of 10 August 1992, art. 26 (1992), http://legilux.public.lu/eli/etat/leg/loi/1992/08/10/n3/jo. [↑](#footnote-ref-9)