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|  | **CRC June Pre-Sessional Working Group (83rd Session)**  Country name: Belarus |
| **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.[[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) 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[[7]](#footnote-7). 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 be 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.[[8]](#footnote-8) 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. | |

**Belarus**

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| Belarus lacks a comprehensive children justice system. However, the Criminal Procedure Code considers a Generally applicable Pretrial detention with no limit or extension established. | |
| Statute Citation | Belarus Criminal Procedure Code (Translated from Russian) CHAPTER 13 MEASURES OF CROSSING  Article 116. Concept and types of preventive measures 2. The following are measures of restraint:  1) a written undertaking not to leave and proper conduct;  2) personal guarantee;  3) the transfer of a person for whom the status of a serviceman applies, under the supervision of the command of the military unit  4) return of the minor to supervision;  5) pledge;  6) house arrest;  7) Detention in custody.  Уголовно-процессуальный кодекс Республики Беларусь [Criminal Procedure Code of the Republic of Belarus] No. 295-3 June 16, 1999, https://sherloc.unodc.org/res/cld/document/blr/1999/criminal\_procedure\_code\_of\_the\_republic\_of\_belarus\_ru\_html/Belarus\_Criminal\_Procedure\_Code\_RU.pdf |
| Recommended changes to statutory limit according to international law: | * JJAI recommends that alternative disciplinary or rehabilitative measures be exhausted before resorting to pretrial detention. * JJAI also recommends establishing a 30-day maximum for children detained while awaiting trial. * The 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. * 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 | * The minimum age of criminal responsibility is 14 years for specifically named offenses in the Penal Code, and 16 years generally. * Belarus lacks a comprehensive juvenile justice system. |
| Questions for the state party related to child pretrial detention time limits: | * + 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. *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-7)
8. Additional methodological information available in *Children in Pretrial Detention: Promoting Stronger International Time Limits,* i, May, 2018 (available at https:jjimexico.org/ptd-report/) [↑](#footnote-ref-8)